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SPECIAL REPORT

WHAT THE WORLD NEEDS RIGHT NOW IS MINDFULNESS. A GUIDE TO GREATER AWARENESS, COMPASSION, BALANCE AND EQUILIBRIUM

JANE PATEMAN, GROUP HR DIRECTOR – BIFFA

{ TIP OF THE ICEBERG }

“FORGET SEAGULLS CIRCLING LANDFILLS, THE CIRCULAR ECONOMY REQUIRES CUTTING-EDGE TECH & SCIENCE”

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BY THE WAY, #PAYMEEQUAL TOO...

In the wake of the first annual gender pay gap reporting deadline for organisations with 250 employees or more, takes a moment to review the key trends and themes emerging. In a climate of increased concern about gender equality, and in the wake of high profile pay and sex discrimination scandals in recent months, how should employers deal with increased scrutiny and manage the potential legal and reputational risks?



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In recent months there has been growing public scrutiny of gender inequality in light of the #MeToo movement and high profile examples of apparent pay disparity. Against this backdrop, and particularly in light of the abolition of employment tribunal fees in the UK last summer, allegations of harassment, discrimination and unequal pay are likely to be a significant concern for employers in the coming months. For now, the focus is on the gender pay gap data published by over 11,000 organisations in the regime's first reporting year which ended on 4th April for private companies and 30th March for public sector employers.

Seventy-eight percent of organisations which have reported have a median pay gap in favour of men. Eight percent of employers reported no median pay gap, and the remainder reported pay gaps in favour of women. The private sector, with an average median pay gap of 8.1 percent, performed better overall than the public sector, with an average median pay gap of 14 percent. Examples of sectors with the largest median gender pay gaps include construction, aviation and financial services, as expected, although many were surprised to see other industries such as fashion retail and education featuring in this group. Only one in three organisations have a majority of women among their top earners, which is consistent with a lack of women in senior positions being the most commonly cited driver of the pay gap. The sectors with the smallest median pay gap are accommodation and food, followed by the health sector.

There has been a trend towards publishing additional statistics beyond those required by the regulations where doing so provides a more favourable picture, for example, breaking down pay by employee grade, or excluding the highest earners or particular categories of staff. In the legal sector, certain law firms included data for partners in response to pressure from the media and staff to do so, despite the regulations not requiring their inclusion. Taking a step further, 238 employers with fewer than 250 employees, who were not obliged to submit statistics, reported voluntarily. It is likely such employers did so to send a strong message to the market and their employees, and signify their support for reducing the gender pay gap. More than

1,500 entities reported in the 24 hours before the deadline, higher than the total number of firms reporting in the first 330 days of the service being in operation. This demonstrates the strong reluctance of employers to be the first in their sector to publish, preferring to wait to see how the gender pay gap of their competitors compared with their own, and also the way others sought to put forward a positive case for change.

The majority of employers have used narratives in their pay reports as a mouthpiece to demonstrate positive steps they are taking to eradicate the gap. Most have been very clear in their reports that having a gender pay gap is not the same as paying men and women unequally for the same or similar work, but instead is attributed to uneven distribution of men and women across the highest paid and lowest paid brackets of the workforce. However, the Office of National Statistics (ONS) has concluded in analysis published on 17 January 2018 that, contrary to popular belief, the majority of the gender pay gap in the UK cannot be explained by differences in characteristics between men and women and the types of jobs they do. The study focuses on

pressure on employers by employees, the press and other interested parties to justify gaps which exist in pay and bonuses. The credibility of reported data is also likely to come under heavy scrutiny. Before the reporting deadline, the Financial Times analysed pay gap data, querying statistics which seemed improbable. Various employers changed the data they originally published as a result - one doing so on three separate occasions. The potential impact on reputation arising from such public scrutiny is therefore as significant as the risk of potential enforcement measures.

For employers, prevention is better than cure, and proactive steps should be taken to identify any pay disparity in their organisation. The process of compiling gender pay gap statistics may present an ideal opportunity for organisations to review pay policies with a view towards striving for pay equality and workplace transparency around pay structures. Where pay disparity is identified, it should be investigated and measures taken to address inequality before grievances or claims arise. Promoting transparency and open communication are important steps toward

and specific detail to the employee, to demonstrate that in their role, the situation is not as bad as the headline figures suggest. However, particular care needs to be taken as to the potential knock-on effect of providing discrete pockets of data, which could lead to more problems than it solves. Instead, employers should think about how best to illustrate action which is being taken to address the gap. Providing an artificial, vague, generic or brief explanation is unlikely to be sufficient to address the issue, with the media already reporting employees' outrage at their employers' responses to large gender pay gaps. Therefore, having clear and measurable initiatives in place is important to give confidence to employees and potential recruits that positive and tangible steps are being taken.

Employers may soon experience the impact publication is likely to have on their business - particularly in relation to brand, pipeline talent, employee engagement, and business growth. There have already been reports in the press that head-hunters are approaching women and asking if they are interested in moving to competitors with lower gender pay gaps. Indeed, published gender pay statistics are likely to have ramifications for the organisation long after the 4th April. Looking ahead, it is likely that there will be an increase in the number of equal pay claims being brought. Although a gender pay gap does not equate to unequal pay, the statistics published may be used as further evidence to support equal pay claims or alert potential claimants to the existence of possible claims. It is anticipated that this is most likely to occur in respect of bonus gaps as significant differences in bonus pay may be more difficult to justify by reference to objective criteria. Employers should also be aware of the increased likelihood of employees submitting data subject access requests or raising grievances in response to publication of pay gap data, as a precursor to bringing claims. They should also be prepared to face more instances of collective action, with employees joining forces to address perceived inconsistency of treatment. ●

PREVENTION IS BETTER THAN CURE, AND PROACTIVE STEPS SHOULD BE TAKEN TO IDENTIFY ANY PAY DISPARITY IN THEIR ORGANISATION. THE PROCESS OF COMPILING GENDER PAY GAP STATISTICS MAY PRESENT AN IDEAL OPPORTUNITY FOR ORGANISATIONS TO REVIEW PAY POLICIES WITH A VIEW TOWARDS STRIVING FOR PAY EQUALITY AND WORKPLACE TRANSPARENCY

the median (not mean) gender pay gap and finds that only one-third of the pay gap can be attributed to observable differences in the characteristics of men and women and the jobs they do (such as average age, job tenure, company size, and occupation). With regard to the unexplained remainder, the ONS states that more analysis is needed on family structures, education, and career breaks. Until that is done, the ONS stresses that the unexplained element should not be interpreted as a measure of discriminatory behaviour (although it concedes this may play a part). There will no doubt be further

achieving a diverse, fair, and productive working environment. It is likely that employers whose reports show a large gender pay gap will receive queries or complaints from employees and, indeed, many have been faced with concerns in the weeks since the deadline passed. These may consist of questions as to why the gap exists, what is being done to rectify the gap, or requests for further information regarding the employee's specific role or department. Employers consequently need to think carefully about the best way they can allay such fears. It may be that an employer is able to provide further

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