

Gender pay gap reporting and its impact on HR

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Pulina Whitaker, partner at Morgan Lewis, discusses what the forthcoming gender pay gap reporting requirements may mean for HR.

The government has committed to introducing regulations that require businesses with at least 250 employees to publish details of their gender pay gap (i.e. the difference in pay between male and female employees) with the aim of providing greater transparency in an employer's pay practices. A consultation which has sought views about the details of these reports closed on 6 September, and it is expected that the results will be published this winter.

Guaranteeing equal pay for work of equal value to men and women is undoubtedly a creditable objective; however will these regulations achieve this goal? Although this requirement may attract attention to pay discrepancies between employed men and women, it is unlikely that the requirement to publish the results of a gender pay audit will eliminate the gender pay gap on its own. Employers may be driven to eliminate a gender pay gap because of market pressures. Otherwise, it is likely that societal change (such as eliminating the notion of 'men's work' and 'women's work', and the presumption that women should take on the primary role in caring for children) will be necessary before the gender pay gap is eliminated.

The new regulations are expected to take effect by March 2016, with the first reports unlikely to be published until 2017. The main incentive to comply with the new rules (and to produce data that do not show an enormous inexplicable gender pay gap) will come from the risk of adverse publicity and reputational damage.

What will these new requirements mean for HR? Of course, this will depend on the size, industry, and makeup of the company – and the drafting of the final regulations. But at this stage we can explore some of the steps HR may wish to take in preparation for these anticipated requirements.

How should HR prepare?

HR may wish to start liaising with management and the legal department to start preparing itself prior to the introduction of the new reporting requirements by:

- gathering information on current pay practices and rates
- considering gender pay gaps that exist on a departmental, geographical, or functional level and comparing these with the composition of the workforce
- considering whether any changes should be made to IT systems and administrative processes in order to improve gender pay reporting capabilities, and
- advising on closing any gaps such as considering expanding part-time/flexible working opportunities, improving parental leave pay and dealing with any gender stereotypes in the recruitment for specific roles

What information will HR need?

The consultation has sought views on what information should be reported, which is yet to be determined. Depending on the results of the consultation this may be the overall pay gap figure, separate gender pay gap figures for full-time and part-time employees, or average earnings of men and women - depending on grade or job type. A concern is that publishing crude averages is likely to be misleading or confusing.

HR may wish to assist management to collate more specific data on any differences in pay between men and women, to provide a more comprehensive overview of pay structures.

How much explanation should HR provide on any gender pay gap?

It is likely that HR will wish to assist in providing contextual information alongside gender pay information in order to clear up any misleading impression and to avoid any negative publicity. A pay gap does not necessarily signify unlawful discrimination. This will be particularly important to keep up a positive image compared with competitors.

Although providing narrative may be helpful in some instances, if it becomes the trend to provide lengthy narrative, this may have a detrimental impact on actually decreasing the gender pay gap (as it will become the norm to rationalise any gender pay gap).

How should HR assist on any complaints/grievances?

HR may wish to undertake an internal equal pay audit in advance of being required to publish the results in the public domain. If it comes to light that there are discrepancies between the pay of men and women, and equal pay claims are threatened by employees, the business may be influenced to settle equal pay claims to avoid any negative publicity.

If any new complaints or grievances come to light in respect of pay discrepancies between men and women, HR should work with management to provide a consistent approach to such complaints or claims. HR may also wish to provide training to management on the requirements under these regulations, and to update policies where necessary.

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