

Lee Harding & Pulina Whittaker, Morgan Lewis – Gender pay equality

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The Prime Minister recently announced plans to introduce legislation requiring companies with more than 250 employees to publish equal pay audits.

Commenting on the ONS statistics that, on average, a woman earns 80p for every £1 earned by a man, Mr Cameron hopes that these audits will create greater transparency in an employer's pay practices. In turn, so the theory goes, this will embarrass companies into doing the right thing, forcing employers to increase women's pay and closing the gap.

Guaranteeing equal pay for work of equal value to men and women is undoubtedly a laudable objective in a genuinely

meritocratic society. It has also been the law since the principle was first enshrined in the Equal Pay Act of 1970.

So why has the gender pay gap between such a hard nut to crack and will the proposed reforms make any difference?

The solution to achieving gender pay equality appears fiendishly complex. This goes beyond conscious or unconscious bias in pay practices against women in the workplace. Rather, the underlying root cause lies with gender and cultural stereotypes for men and women.

This point does not seem lost on the Government and is reflected in its consultation document on closing the gender pay gap.

Before introducing secondary legislation to require equal pay audits from employers, the Government is consulting the public on the level of gender pay information to be required, the frequency with which businesses should be required to publish that information and how long businesses should be given to prepare for the new changes. The consultation closes on 6 September 2015.

Sensibly, the Government proposes that its new legislation will be made in 2016 but will not come into force until later so as to give businesses an opportunity to prepare for implementation.

One of the concerns that big business is likely to have about greater pay transparency is that the publication of crude averages is likely to be misleading or confusing. Businesses will therefore need to get better at collecting and reporting on management information relating to any pay differences between men and women. This is likely to require changes to administrative process and IT systems and may be expensive and time consuming.

Publishing contextual information alongside gender pay information to clear up any misleading impression is likely to

become an important piece of an employer's public relations strategy.

Another issue is whether such compulsory equal pay audits will influence more employers into settling equal pay claims. The business risks of an employer having to undertake and disclose the results of an equal pay audit could be significant.

There is the risk of further litigation, disruption and cost to an employer's business, as well as possible reputational damage. Many employers may therefore want to carry out an internal equal pay audit in advance of being required to publish the results in the public domain. This would help employers who are concerned about the equality of their pay systems, to take remedial steps to equalise their pay systems prior to being forced by law to publish gender pay equality information.

It is unlikely, however, that the requirement to publish the results of a gender pay audit will, eliminate the gender pay gap on its own. As the Government itself recognises in its consultation document, men and women often gravitate towards different career paths.

This can, for example, be seen at an early stage by the small proportion of women accepting university places in engineering, mathematics and computer science compared to men. This may be due to certain stereotypes formed about "men's work" and "women's work" even as early as primary school, although it is difficult to decide how much the difference in careers pursued by women is due to genuine choice rather than bias.

Another recognised problem is that women often experience a negative effect on their wages as a result of having previously worked part-time or taken time out to be the full-time or part-time primary carer of their children or other family members. The publication of gender pay information will not address this issue.

With the introduction of shared parental leave and pay, however, there are now greater incentives for men and women to share the responsibility of caring for their family. Over time, the publication of this information may therefore show a reduction in the gender pay gap, as these new rights are taken up by men and women.

The publication of the results of an equal pay audit is unlikely to resolve gender pay inequality. Better transparency should lead to greater understanding of pay differences and this may, in turn, lead to better solutions to improve gender pay equality.

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