



Burges Salmon

Gender Pay Audit Advisory Service

– FAQs

Why is the gender pay gap in the news?

New legislation will be introduced in the next 12 months which will require organisations with 250 or more employees to publish gender pay data showing the differences in pay between men and women in the organisation. The specifics in terms of what has to be published and in what level of detail are not yet available. However, on 14 July 2015, the government issued a Consultation Paper “[Closing the Gender Pay Gap](#)” asking for views on how to implement its commitment to require larger employers to publish gender pay information. The consultation closed on 6 September 2015.

Statistics from the Office for National Statistics suggest that whilst the gender pay gap between men and women in the United Kingdom is reducing, it persists in most sectors of the economy. On average, women working full-time in the UK earn 9.4% less than men in comparable jobs. The disparity rises to over 15% for managers, directors and senior professionals reaching 25% in skilled trade occupations. When part-time employees are included the difference is 19.1% across the whole workforce.

What is the risk of publishing gender pay data?

The gender pay gap is widespread and the reasons for it are, at least in part, attributable to historic and systemic inequalities in the economy and society as a whole. This means that it is likely that many organisations will discover that their own data discloses a gender pay gap.

If the data published shows a gender pay gap for which there is no explanation then, as well as causing employee relations issues and reputational damage, this also presents a risk of equal pay claims from workers.

An employer operating a pay system where there is evidence of a gender pay difference will carry the burden of proof in any claim – both in terms of explaining the reason for the difference and, potentially, showing that reason is objectively justified.

What happens if an employer does not publish the data?

Failure to publish will be a criminal offence, attracting a fine of up to £5,000. In addition, organisations should consider the reputational and employee relations risks associated with any failure to comply with the obligation to publish.

We do not pay employees based on their gender so we won't have any problems

Not necessarily. Under the Equality Act 2010 workers doing “like work”, or “work of equal value” have the right to be paid the same unless the difference in pay can be justified on non-gender based grounds. This means workers who, on the face of it, do jobs which are very different can argue that they are engaged in work of equal value in terms of the demands and skills required. If the work is of equal value then the workers are entitled to equal pay even though they are performing different roles. This means employers can find, unexpectedly, that they have an issue.

The comparison is of each element of reward (including benefits as well as pay) so each aspect of the worker's pay and benefits must be compared and differences explained. It is not enough to say that the overall package is comparable. Many organisations have legacy benefits and allowances – the rationale for which are lost in the mists of time. Inequalities can also arise from employees acquired as part of a transfer of an undertaking whose pay and benefits have been red-circled.

Aren't claims for equal pay generally expensive and difficult for individuals to pursue?

Yes. Equal pay claims are difficult and time-consuming, as well as potentially expensive for both parties as they can involve the use of expert witnesses. However, there is strength in numbers and, in the past twenty years, mass claims have been brought by workers in the public sector. There is evidence to show that interest in mass claims in the private sector is growing. Over 1000 staff working in Asda have brought claims that their work as supermarket colleagues is of equal value to the (mostly male) distribution centre workers whom they say are paid more. 30 female managers at Network Rail say they have been paid £3,000 – £4,000 less than male comparators. Their union, TSS, points to 3,000 female employees who may benefit if the initial 30 are successful; that could increase Network Rail's annual wage bill by £10 million.

Claimant law firms are actively seeking out potential claimants. Claims can be brought for pay going back for 6 years so potential compensation could be considerable.

What can I do to prepare for the publication of gender pay data?

Employers should audit their current pay structures and processes well in advance of the obligation to publish gender pay data. If differences in pay are identified then the reason(s) for those differences should be explored. If any areas of concern are identified, steps can be taken to resolve these in the period before publication of the data is necessary. Employee relations and communications strategies can be developed to deal with any employee reaction to the publication of the data.

Next steps

Equal pay law is complex and the Burges Salmon employment team can provide you with any legal advice and support you require during the audit process. We can help you design and develop the audit, identify any potential risk areas and work with you on a strategy to reduce those risks.

Crucially, you will benefit from the legal advice privilege which applies to communications between clients and their lawyers. Ordinarily, documents created as part of any audit process, even if confidential, can be disclosable as part of litigation if they are relevant to the proceedings. Confidential documents created for the purposes of taking legal advice and communicated between lawyers and their clients are generally privileged – they do not have to be disclosed if a claim is brought. Under our gender pay audit service, you can avoid inadvertently creating documents which would be disclosable in legal proceedings.

Contact

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