

EQUAL PAY

Tackling Inequality

Successive governments have sought to tackle gender pay differences. The gap is closing but more needs to be done and legislation is being used to force compliance.

Since October 2014, the Employment Tribunal must, subject to exceptions, order defaulting employers to undertake equal pay audits and to publish these on their website for 3 years, unless they have already undertaken a qualifying audit.

The Government has now produced legislation implementing compulsory gender pay reporting for private/ voluntary sector employers with at least 250 employees. Following consultation during 2015 and 2016, final draft Regulations were laid before Parliament on 6 December 2016 and will come into force on 6 April 2017. In addition, separate regulations will introduce similar requirements for the public sector in England, although not in Wales where the public sector specific equality duties already cover certain information on pay.

Employers will have just over a year before having to publish the required information for the first time, that is, by 4 April 2018. The draft Regulations require employers to calculate gender pay gaps over a specific pay period in which the 'snapshot date' of 5 April falls, beginning 5 April 2017 and annually thereafter.

Understanding and being able to publish information about gender pay and the reasons for any differences is now an important part of regulatory compliance for private and public sector employers, including charities. Equal pay is also a matter of importance for employers of all sizes, with increasing numbers of claims being brought in the private sector.

Our qualified experts have years of experience of helping employers with equal pay and discrimination cases and compliance. As we know how to defend cases, we know what you need to have in the first place.

With this wealth of experience, we can help your organisation tackle its legal obligations and, if necessary, defend itself.

Importantly, by tackling the issues through us, you will benefit from the 'legal advice privilege' that covers

confidential communications between lawyers and their clients (even where no litigation is contemplated). Documents and communications which are created in this context should not have to be disclosed in legal proceedings. You can rest assured that, as you prepare to comply with the forthcoming legislation, you retain control over how much information is disclosed and when.

HOW WE CAN HELP YOUR ORGANISATION

We can advise your organisation on its obligations under the new gender pay reporting regulations (if applicable), review your present arrangements and provide a qualifying Equal Pay Audit.

WHAT IS AN EQUAL PAY AUDIT?

Our Equal Pay Audit will assess your level of risk and together we will develop an action plan to address any identified problems.

An Equal Pay Audit involves:

- A comparison of pay of men and women doing equal work
- A comparison of pay of employees with other protected characteristics
- The identification of any equal pay gaps
- The explanation and justification of gaps using objective criteria
- Addressing any gaps that cannot be satisfactorily explained
- Ongoing monitoring

The benefits of conducting an Equal Pay Audit are:

- You will identify, explain any justifiable differences and ultimately eliminate pay inequalities
- The audit will support rational, fair and transparent pay arrangements
- Your organisation will demonstrate a commitment to fairness and equality
- You will also demonstrate the values of your organisation

- If relevant, you will also help meet your public sector equality duty
- Regulatory compliance

OUR AUDIT APPROACH

Right at the outset we will discuss and agree the scope of the audit including how data will be managed. And, to give you cost certainty, we will also discuss the budget for costs.

Typically all employees are included in an audit, irrespective of the nature of their contract and we cover relevant "protected characteristics", namely: age; disability; race; religion or belief; sex and sexual orientation and marriage / civil partnership. Where data is not available we can advise on monitoring and data capture approaches.

Our audit will also consider the causes of any significant pay inequalities and assess the reason for them and any justifications. Where relevant, our audit will also consider the distribution of bonuses and any differences between bonus payments paid to men and women.

We will work with you to develop an equal pay action plan to remedy any direct or indirect pay discrimination.

Alongside the Equal Pay Audit we will review your policies and procedures to identify any areas of concern and to ensure policies and procedures are consistent and compliant with current legislation.

DATA COLLECTION

Where possible data will be extracted or exported from your HR System.

Normally our Equal Pay Audit will analyse both base pay and total remuneration, including benefits. Where this is not possible due to incompleteness or accessibility of data, base pay only will be audited.

Data will be analysed for all employees to calculate pay gaps. Thereafter, employee data will be grouped as appropriate. The group of employees analysed will be stated in the findings. Employee counts stated in the tables of the report will normally be headcount figures rather than full time equivalent figures.

METHODS FOR ESTIMATING THE PAY GAP

The gender pay gap is calculated using the average (mean and median) pay of females expressed as a percentage of the average (mean and median) pay of males for the purposes of compulsory gender pay reporting, and also for those doing work of equal

value or similar work within a fuller Equal Pay Audit. Similarly, pay gaps can be calculated for the other protected characteristics and reported using both the mean and median salaries. Pay gaps of 5% or greater will be considered to be significant and worthy of further investigation.

CONTENT OF REPORT

The report will typically include:

- Overall gender pay gaps
- Detailed analysis of gender pay gaps
- Analysis by other protected characteristics
- Conclusions
- Recommendations

OUR EXPERIENCE

We have been heavily involved for a number of years in ongoing equal pay litigation within the public sector, defending over 300 claims. As well as defending Employment Tribunal claims we have extensive experience of equal pay questionnaires; grievances; requests for information under the Data Protection Act 1998 and the Freedom of Information Act 2000; advising on areas of potential risk and potential material factor defences; job descriptions; negotiations and drafting terms of settlement.

We have secured the withdrawal / dismissal of a large number of these claims. This has brought a very significant benefit to our clients, saving them considerable management time and legal costs and removing the risk of liability for those claims. It demonstrates our ability to handle complex, long-running, multi-party litigation and secure a favourable outcome for our clients.

We have also developed expertise in advising on equal pay issues and participating in national equal pay working parties.

If you would like further information or to discuss your requirements, please contact:

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