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GENDER PAY GAP REPORTING - FINAL REGULATIONS PUBLISHED

The Government has, this week, published the final gender pay gap reporting regulations (though not the accompanying guidance). The regime marks the introduction of a significant new regulatory obligation, which larger employers should now begin to plan for.

For an overview of previous developments in this area, please see our previous eBulletins by clicking on the following links:

- ◆ [Gender pay gap reporting: early indication of final structure of regime](#)
- ◆ [Mandatory gender pay reporting](#)
- ◆ [Gender pay gap - consultation just published](#)

The table below gives an overview of what has changed in the final Regulations:

ISSUE	ORIGINAL DRAFT	FINAL VERSION
Which employers are covered?	Only those with 250+ employees in GB with a UK law contract.	<p>The 250+ threshold has been maintained, but the requirement for those employees to be GB-based and working under a UK contract has gone.</p> <p>This means that the regime will apply to all employers with 250 or more employees, apparently wherever those employees are based. This may well pose real challenges for multinational employers.</p> <p>The regime applies on an employer by employer basis and there is no aggregation across corporate groups.</p>
Are workers included?	No, the definition seemed to capture employees only.	<p>The notes to the Regulations state that the wide definition used in the Equality Act 2010 applies to the regime, so that workers are within scope. This is not, however, set out in the Regulations themselves.</p> <p>Workers occupy an intermediate category between employees and the genuinely self-employed. Some consultants, contractors and agency staff may be within this category.</p>
Are LLP members included?	Unclear, but salaried members probably in scope.	No. Although LLP members are workers, they are specifically excluded from the gender pay gap reporting regime.
What has to be calculated?		
Hourly pay	<p>Difference between gross mean hourly pay for all male employees and for all female employees.</p> <p>Difference between gross median hourly pay for all male employees and for all female employees.</p> <p>Pay to include basic pay, sick pay, maternity pay and bonuses.</p> <p>Pay to exclude overtime and benefits in kind.</p>	<p>This requirement has been left substantively unchanged, despite some minor amendments in the drafting.</p> <p>The various elements of “pay” have been largely retained, although the final version makes it clear that all forms of family leave are covered, not just maternity pay.</p> <p>The Regulations now contain a very detailed mechanism for the calculation of hourly pay.</p> <p>The hourly pay calculations are not required for employees who are on a reduced rate of pay because they are on leave – e.g. unpaid sick leave or maternity/paternity/shared parental leave.</p>

Bonus	Difference in mean bonus pay for male and female employees.	<p>The obligation to calculate the mean bonus gap remains in place.</p> <p>The Regulations have added a requirement to calculate the difference in median bonus too.</p> <p>The Regulations also give some guidance on how to deal with bonuses awarded in the form of shares or other incentives, which was lacking in the original draft.</p> <p>The bonus calculations apply to all employees, including those who are excluded from the hourly pay calculations.</p>
Pay quartiles	The original draft called for the workforce to be divided into quartiles by pay, based on the overall pay range in the organisation. The number of men and women in each quartile would then be published.	<p>The final version has changed methodology. The number of men and women in each quartile will still be needed, but the quartiles themselves will be generated by splitting the workforce into four equally sized groups.</p> <p>The Regulations do not appear to require the publication of the boundaries between each quartile, or for the data to disclose the grades of workers in each segment.</p>
When do the calculations have to be done?	The original draft called for calculations to be based on data as at 30 April 2017.	<p>The snapshot date has been changed to 5 April 2017.</p> <p>This means that hourly rate calculations will be based on pay received in the pay period in which 5 April falls. In other words, the April payroll for monthly paid employees.</p> <p>Bonus calculations will be based on all bonuses awarded in the 12 months to 5 April 2017.</p>
When does this have to be published?	The report had to be published on the firm's website by no later than 29 April 2018.	That date has been brought forward to reflect the changed snapshot date, so the deadline is now 4 April 2018.

Overall, the final version of the Regulations (which still have to be formally approved by Parliament) offers some improvements from the original version, but retain some significant flaws. The more detailed step-by-step guide to how to run each calculation is to be welcomed, but the removal of any territorial restriction is potentially problematic for larger organisations with employees in other jurisdictions. The Government has announced an intention to publish guidance, which will hopefully deal with some of these tricky aspects. That guidance, however, will not be published until the Regulations have received Parliamentary approval.

The Regulations will pose different challenges for each employer, so the key message is that businesses should begin to engage with the new regime as soon as possible, to ensure they understand both the scope of their obligations and, importantly, to plan an effective internal and external communication strategy around the publication of their gender pay report.

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DECEMBER 2016

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