

# HR update: Pay gap reporting

There have been a number of developments in employment law recently, including obligations for gender pay gap reporting. Ben Wood from Eversheds Sutherland looks at how gender pay gap reporting impacts on schools and how you can comply with your obligations.



### Summary points

- Governing bodies of maintained schools and proprietors of academies that employ 250 employees on the snapshot date are listed as relevant employers in the recent Equality Acts.
- Once you have determined that your school is a relevant employer, you need to calculate each employee's hourly rate.
- You are then required to calculate the difference between both the mean and the median hourly rate of pay for male and female full-pay relevant employees.
- The information must be reported within a year of the snapshot date.
- Knowing if you have a gender pay gap and what it is as far in advance of the reporting date as possible will give you time to understand why it exists and to plan how to tackle it.



The obligation for all relevant employers to report information on their gender pay gap came into force earlier this year. For schools, this came in as an extension to their existing duties under the public sector equality duty.

While obligations for public sector employers largely mirror those for the private sector, the snapshot date is different, 31 March each year rather than 6 April, keeping it in line with existing reporting obligations under the public sector equality duty.

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#### Relevant employer

A relevant employer is one that is listed in the recent Equality Acts (and both governing bodies of maintained schools and proprietors of academies are listed) and that employs 250 employees on the snapshot date. Those employed by local authorities (LAs) but working at maintained schools are treated, for reporting purposes, as employees of the governing body of the school.

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 apply to private and voluntary sector organisations with 250 or more employees. The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 apply to public bodies with 250 or more employees.

‘Employment’ means employment under a contract of employment, a contract of apprenticeship or a contract personally to do work, so you should look carefully at any individuals your school retains on non-standard employment contracts. It does not matter whether the number of employees fluctuates throughout the year; what matters is how many are employed on 31 March. While many individual schools will not, on their own, employ 250 staff, many multi-academy trusts may find that, collectively across all the schools in the trust, they do.





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Even if your school is out of scope you should prepare for the fact that members of the public, employees, prospective employees and unions will get used to the idea that gender pay information is available. They may start asking questions about your institution and whether there is a significant gap regardless of whether you are obliged to report.

#### **Calculating the hourly rate**

Once you have determined that your school is a relevant employer, there are a number of steps you need to take to calculate each employee's hourly rate.

#### **1 Identify your relevant pay period.**

This is the period in respect of which you pay your employees, i.e. weekly, four weekly, monthly, etc. The relevant pay period is the period in which the snapshot date falls.

#### **2 Identify all ordinary pay and bonus pay paid to employees during the relevant pay period.**

For these purposes you can ignore those employees who are currently in receipt of less than full pay because they are on leave, i.e. those on sick leave or maternity leave.

'Ordinary pay' includes basic pay, paid leave (if paid at full rate), shift premiums and allowances such as London weighting. It does not include overtime pay, redundancy or termination payments, or remuneration provided otherwise than in money, i.e. benefits in kind, salary sacrifice or expenses.

#### **3 Calculate weekly working hours.**

For most people this will be easy, as staff will have normal working hours identified in their contract. For those without normal working hours you take the average hours worked over the previous 12 weeks (ignoring weeks in which no work was done).

#### **4 Calculate the hourly rate.**

Take the ordinary pay paid during the relevant period and multiply it by 7, then divide by the number of days in the relevant pay period (a month is treated as having 30.44 days). The final step is to divide the resulting amount by the number of working hours in a week.

For example, if you have an employee who is paid £1500 per month and works 35 hours per week, the hourly rate is £9.85 ( $£1500 \times 7 \div 30.44 = £344.94 \div 35 = £9.85$ ).

### What is your gender pay gap?

While there are requirements to publish information in relation to bonus payments, for the purposes of this article we will deal only with differences in pay.

You are required to calculate the difference between both the mean and the median hourly rate of pay for male and female full-pay relevant employees. The mean is the sum of all the hourly rates divided by the number of hourly rates. To calculate the median, list all the hourly rates in numerical order and find the middle one. (If there is an even number of hourly rates in the list then the median is the mean of the two middle rates.)

The differences must then be expressed as a percentage. For example, if your male employees have a mean/median hourly rate of pay of £15.00 and females have a mean/median hourly rate of pay of £13.00 then your gender pay gap is 13.3% ( $15 - 13 = 2 \div 15 \times 100 = 13.3$ ).

Finally, you must rank all of your full-pay relevant employees' hourly rates of pay in order from lowest to highest, then divide them into four equal sections (quartiles) and express the proportion of males and females in each quartile as a percentage of employees in that band.

Fortunately, there are software solutions available to assist with getting the calculations right. Of more importance will be how you react to data showing a significant gap.

### Reporting obligations

The information must be reported within a year of the snapshot date. First reports will be due by 30 March 2018, and then annually after that. It must be published in English on your own website in an accessible manner for a period of at least three years. The information must also be uploaded to a designated government website (accessed via [www.gov.uk](http://www.gov.uk)).

While it is not a requirement, employers can (and probably should) add a voluntary supporting narrative to the information. This statement can be used to provide a context for the figures and any explanations, together with an action plan for how you intend to tackle your pay gap if one exists.

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### Enforcement

The regulations contain no enforcement mechanism. However, the government has indicated that it will run periodic checks to assess for non-compliance, produce tables by sector of reported gender pay gaps and highlight and identify employers publishing particularly full and explanatory information. The Equality and Human Rights Commission may also be empowered to take enforcement action.

Within five years the government must review the obligations and publish a report on whether they meet the government's policy objectives or whether they impose an unnecessary burden on employers. It is possible, depending on the outcome of that review, that we could see the imposition of penalties for non-compliance.

### Impact on employers

Although there is no enforcement mechanism, we can expect that the published gender pay gap information will be of interest to current and potential employees and to trade unions.

Knowing what your pay gap is as far in advance of the reporting date as possible will give you the time you need to understand why any gap exists and an opportunity to put in place a plan for tackling it. This might be giving senior managers the tools to explain the gap or tackling any equal pay or discrimination risks that have been identified.

The opportunity to provide commentary on your data in your gender pay gap reporting will be an important step in managing the risks.



**Ben Wood** is Eversheds Sutherland's national lead for academies. He has spoken at numerous DfE sponsored and other events on the academy conversion process. Ben also regularly attends DfE academy lawyer meetings and is a governor of a maintained school. He edits Eversheds Sutherland's unique commentary on the standard articles for academies and has published numerous articles on academy governance and HR issues.