

# Client Alert

11 April 2017

## International Companies beware – New Gender Pay Gap Reporting Regulations applicable in the UK

The new Gender Pay Gap Reporting Regulations require employers in the U.K. to report on the pay gap between men and women in their organisation with the aim of reducing the gender pay gap in the U.K. workforce. The Regulations seek to address the U.K.'s gender pay gap which is above the OECD average and is the 21st largest out of the 33 OECD countries.

The Regulations apply to all employers of more than 250 “employees” in the U.K. On 5 April each year all U.K. employers, including international companies with operating entities in the U.K., must publish figures to show the pay gap between male and female hourly pay on a mean and a median basis, the pay gap between male and female bonus awards on a mean and median basis, and the proportion of men and women receiving such pay and bonuses. The figures must be published annually, with the first reports to be produced on or before 4 April 2018 based on a “snapshot date” of 5 April 2017.

We focus on ten of the most challenging issues to get to grips with before April next year.

### 1. Who is an “employee” under the Regulations?

The definition of an employee is broad and catches workers (if directly engaged by the employer), independent contractors and casual workers. However, partners and LLP members are not included.

### 2. Are overseas workers included?

Yes, but only if their employment relationship suggests a stronger connection to Great Britain than to another country. Factors which might assist to indicate this strong connection would include that the employee pays tax in the U.K, maintains a home in the U.K. and/or has a U.K. contract.

### 3. Are part-time workers counted?

Yes, each is counted as one employee for reporting purposes, including job-sharers. If an organisation handles employee numbers as ‘full time equivalents’ this is important, as the reporting obligation and the calculations which follow are based on the number of individual employees.

### 4. What counts as pay for reporting purposes?

For reporting purposes the difference in hourly pay between men and women, basic pay, allowances, pay for piecework, pay for leave, shift premium pay are all included,

For more information, contact:

**Jules Quinn**

+44 20 7551 2135  
jmquinn@kslaw.com

**Kim Roberts**

+44 20 7551 2133  
kroberts@kslaw.com

**King & Spalding**  
*London*

125 Old Broad Street  
London EC2N 1AR  
Tel: +44 20 7551 7500  
Fax: +44 20 7551 7575

[www.kslaw.com](http://www.kslaw.com)

but overtime pay, termination payments (including statutory payments on termination of employment), pay in lieu of holiday and salary sacrifice are not.

## **5. What counts as bonus for reporting purposes?**

For bonus pay reporting, any remuneration relating to profit sharing, productivity, performance, incentive or commission, whether of money, vouchers, securities, securities options or interests in securities must be reported on.

## **6. What about variable hours of work?**

The gender pay gap is calculated by identifying pay and dividing it by the number of weekly working hours. Whilst this is straightforward for employees who work fixed contractual hours, numerous employees do not. Issues such as including variable overtime pay and how to deal with employees who work autonomously, are not clarified by the Regulations. A practical approach is required, but there will be significant variances in approach by employers, which will, in turn, lead to variations in the results and could skew the figures significantly.

## **7. Expressing the information by reference to pay “quartiles”**

The Regulations prescribe that the results of the calculations must be ranked by hourly rate of pay and then divided into quartiles, with equal numbers of employees in each. Lastly, employers must express the proportion of male and female employees in each quartile, to show the gender pay gap in each sector of the workforce from the highest paid employees to those who receive the least. This appears to be an attempt to simplify the presentation of the information, but it will take organisations time to get to grips with what is required.

## **8. Where must the information be reported?**

The Regulations require the information to be published annually on the company’s website. The report must be signed as accurate by a director of the organisation. The first set of data must be published by 4 April 2018 at the latest and must stay on the website for three years, allowing for comparisons to be made with previous years and progress to be assessed. Explanatory notes are not compulsory, but it is anticipated that they will be used extensively to explain discrepancies in the data and to identify remedial action that is being taken to address any gaps.

## **9. What happens to organisations which fail to comply?**

There are currently no fines or penalties for failing to publish the information. However, the U.K.’s Equality and Human Rights Commission (the U.K. Government body responsible for monitoring equality issues) has the power to issue compliance notices.

## **10. How are employers likely to react to the new Regulations?**

Whilst the Regulations don’t have “bite” in terms of financial penalties for compliance failings, it is likely that some employers will comply and will publish the required information to avoid the U.K. Government’s “naming and shaming” proposals for employers who do not report. Those employers who have a good story to tell will see the new requirements as a way to distinguish their organisation as achieving gender pay equality and will seek to reap public relations rewards from doing so.

*Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,000 lawyers in 19 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at [www.kslaw.com](http://www.kslaw.com).*

*This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.”*