

Gender Pay Gap Reporting — Ireland

October 2021 / Maeve Griffin, Barry Walsh & Ranjit Dhinsda



New legislation aims to make pay rates more transparent and ultimately close the gap in gender remuneration.

The much-anticipated Gender Pay Gap Information Act 2021 (the Act) is now law.

The Act has been described as an "important step on the road to equality" by increasing transparency of the gender pay gap within organisations operating in Ireland. More detailed Regulations clarifying the specific reporting obligations on Irish employers are anticipated soon, but the reporting process is expected to begin from 2022 onwards.

As mandatory Gender Pay Gap reporting has been in place in the UK since 2017, we have teamed up with our Fieldfisher UK colleagues to explain what this new legislation is likely to entail for employers in Ireland and to provide some practical tips on how to prepare.

Organisation Size Threshold

Reporting obligations will apply to all employers in Ireland (private and public sector) with employee numbers above the following thresholds:

- Year 1: 250 or more employees
 - Year 2: 150 or more employees
 - Year 3: 50 or more employees
- * exact dates will depend on date of the forthcoming Regulations.

Information to be Published

The difference between the remuneration of male and female employees (if any) including the difference between the:

- mean and median hourly pay
- mean and median bonus
- mean and median hourly pay of part-time employees
- Percentage of male and female employees who received a bonus
- Percentage of male and female employees who received benefits in kind.

Regulations may also provide clarity on:

- The class of employer, employees and remuneration in scope (however, it is unlikely to include equity partners in professional service firms who are not classed as employees)
- How the number of employees in an organisation is calculated
- How the remuneration is calculated
- The form, manner and frequency in which the information is to be published, which may include references to remuneration bands or job classifications.

Statement Required

Employers will also be required to publish a statement explaining the reasons (in the employer's opinion) for any gender pay gap that might exist within their organisation and the measures being taken, or proposed to be taken, by the employer to eliminate or reduce the gap.

Sanctions / Enforcement

There will be no direct financial penalties for employers who reveal large gaps in gender pay and/or who fail to take effective action to reduce the gap - however negative publicity, difficulty recruiting and retaining talent and pay rise demands may result from any pay gaps identified. The Court of Public Opinion might be a harsh one if the process is not handled carefully. In the UK, evidence from the first four years of gender pay gap reporting suggests the measure has generally helped improve workplace equality and helped boost recruitment and retention of female staff at organisations seen to be proactive on levelling up gender pay.

The Irish Human Rights and Equality Commission (IHREC) will have overall enforcement responsibility and may apply to the civil courts for an order requiring an employer to comply with the Act.

Separately, employees could lodge a complaint with the Workplace Relations Commission (WRC). The WRC may investigate a valid complaint and may make an order for a course of action to be taken by the employer to ensure compliance with the Act.



Practical Top Tips

The Gender Pay Gap reporting requirement has been in force in England and Wales since 2017. Set out below are some top tips that may help employers in Ireland prepare for the new legislation.

1. Who in your organisation will be responsible for compliance with the new legislation?

In England and Wales employers engaged a number of managers. For example, the finance team assisted in preparing the financial data, the HR team analysed the data and prepared narratives to explain any pay gap identified, and PR professionals assisted with queries from the public once the reports were published. The board of directors were often involved in agreeing any strategy to reduce the Gender Pay Gap in the future.

2. Understand your legal obligations

It is important that organisations do not confuse Gender Pay Gap reporting with equal pay rights. Gender pay gap reporting is aimed at capturing generic data and holding organisations to account if there is any difference in pay. This is very different to individual employee's rights to equal pay for equal work.

3. Do not fear your results

In England and Wales there was a fear that greater pay transparency would lead to increased complaints, grievances and litigation. This has not been the case. Instead increased transparency has led to a greater focus on the issue and how to improve any differences in pay.

4. Ensure you have sufficient resources and time to comply with the legislation

It will take time to gather the information, analyse it and present it with a detailed narrative. Several professionals within the organisation will need to be involved and resources needed to reduce any Gender Pay Gap identified. Bearing in mind the public will scrutinise the data and the narratives, it is worth spending time and effort on what will effectively be a public document that will reflect on the organisation's values.

5. Capturing data

Some organisations will have the data readily available. Others may not be collating and retaining data in the way the new law requires. It is important to understand how any data will be captured and to comply with both employment and privacy laws regarding the processing of any data. Data should be aggregated and anonymised.

6. International companies based in Ireland

Not all countries require Gender Pay Gap reporting. However, international companies may decide to comply with the laws in England and Wales and Ireland, but then go further and voluntarily report on their international Gender Pay.

7. The narrative

It will be important to analyse the data and spot any issues. For example, the data may show that women are concentrated in lower level jobs or particular job roles. Bonuses may also favour men rather than women. Once issues have been identified, an organisation will need to explain what steps they will take to remove the underlying causes of the issues. An important strategic decision for each organisation will be deciding how detailed the narrative will be that accompanies the data that has been captured. Narratives need to be realistic, not too ambitious and tailored to an organisation's specific circumstances. Remember organisations will be reporting annually. Finally, the narratives need to be carefully reviewed to ensure that they themselves are not discriminatory.

8. Publicity

How will the organisation deal with public interest in the Gender Pay Gap and narrative that is published? In England and Wales it was recognised that in certain industries Gender Pay Gap issues could not be resolved without adopting a more holistic approach, for example looking at how to incentivise girls to study STEM subjects at school and university, which would then increase the talent pool for which employers could recruit. This can be explained to the public.

9. Communication

How will the organisation report its legal obligation and data to its employees? This will be an important aspect of employee engagement. In an era of increased employee activism both at an individual and collective level, organisations should not ignore their existing employees. It may be that gender pay issues are concentrated in particular parts of the organisation rather than others, or there are particular causes that the organisation is attempting to address. These matters should be explained to existing employees.

10. The Future

Organisations need to remember they will be reporting annually. Employees, potential employees and the public may analyse how well the organisation has done in reducing any Gender Pay Gap identified in Year 1. However, it is also possible for the Gender Pay Gap to worsen. The organisation will have to remain alert and flexible and analyse what has caused the gap to widen and be prepared to explain this. For example the Women and Equalities Select Committee in England and Wales has said that the Gender Pay Gap is likely to be worse in 2021 due to the unequal impact of the pandemic on women in the workplace.

Contacts

Talk to Us!

The prospect of Gender Pay Gap reporting may be daunting for some employers. However, with proper planning and a careful approach, the process may not be as onerous as you think. The first time reporting may be challenging, but employers will get better as time goes on and can learn to embrace the process. With the benefit of our UK colleagues' experience, we are well placed to assist you with any queries that arise or obstacles you encounter. Come and talk to us and we would be pleased to guide you.



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