
Briefing

Gender Pay Gap Information Act 2021 has been Signed into Law



INSTITUTE OF DIRECTORS
IN IRELAND

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The Gender Pay Gap Information Act 2021 (the “Act”) was signed into law on 13 July 2021.

The Act, once commenced by ministerial order, will amend the Employment Equality Act 1998, requiring the Minister for Children, Equality, Disability, Integration and Youth (the “**Minister**”) to make regulations requiring private and public sector employers (subject to employment thresholds) to report and publish information relating to their gender pay gap, and, where there is a gap, to explain why there is a gap and what measures are being taken to reduce it.

Minister O’Gorman stated “*Reporting of the gender pay gap by employers will provide accountability and transparency, helping to ensure that employers address the gender pay disparity between men and women.*”

What is the Gender Pay Gap?

The gender pay gap is the difference in the average gross hourly pay of women compared with men in a particular organisation, such that it captures whether women are represented evenly across an organisation.

The gender pay gap should not be confused with the concept of equal pay for equal work. The existence of a gender pay gap does not necessarily indicate discrimination by employers or that women are not receiving equal pay for equal work. The right to equal pay arises under the Employment Equality Acts. Equal pay legislation has been in force in Ireland since 1975. Employers are required to pay employees on the same terms when they do “like work” which is defined as work that is the same, similar or work of equal value.

Will all employers in Ireland be affected?

The mandatory reporting obligations will apply to private and public sector employers and will initially only affect employers with 250 + employees. The Act widens the scope to employers with 150 + employees on or after the second anniversary of the regulations and to employers with 50 + employees on or after third anniversary of the regulations. There will be no requirement on employers with less than 50 employees to report.

What information needs to be reported?

The Act requires in-scope employers to report on the difference in male and female remuneration as follows:

- Mean and median hourly remuneration for full-time and part-time employees
- Mean and median bonus remuneration
- Percentage of all employees who have received a bonus or benefits in kind.

The Act also indicates that additional regulations may be enacted to provide further clarity on:

- The class of employer, employee and pay to which the regulations apply
- How the remuneration of employees is to be calculated
- The form, manner and frequency in which information is to be published

In addition, in-scope employers will be required to publish, concurrently with the above gender pay gap information, the reasons for such differences and the measures (if any) taken or proposed to be taken by the employer to eliminate or reduce such differences.

The Minister has indicated that a central website onto which employers will be required to upload their information will be established.

How will the reporting obligations be enforced?

An employee who claims that their employer has failed to comply with the requirement to publish gender pay gap information may make a complaint to the Workplace Relations Commission (the “**WRC**”). The WRC will investigate the complaint and may order a specified course of action on the part of the employer to ensure compliance. There is no provision for financial compensation to the employee or for a fine to be imposed.

The Act also provides that where the Irish Human Rights and Equality Commission (“**IHREC**”) is satisfied that it has reasonable grounds for believing that an employer has failed to comply with the requirement to publish gender pay gap information, as provided for in the regulations, it may apply to the Circuit Court or the High Court

for an order requiring the employer to comply. An employer that fails to comply with a Circuit Court or High Court order will be in contempt of that Court.

IHREC may itself carry out, or invite a particular undertaking, group of undertakings or the undertakings making up a particular industry or sector, to carry out an equality review or prepare and implement an equality action plan. It will be for IHREC to decide whether to exercise these powers following a request by the Minister.

Regulations

While the Act paves the way for gender pay gap reporting in Ireland, many of the finer details of the reporting obligations are left to be prescribed by the regulations. The Minister confirmed that it is his intention that the regulations, giving effect to the proposals contained in the Act, will be published and in force by the end of this year, and it is likely therefore that the reporting process will begin in 2022.

What can employers do to prepare for Gender Pay Gap Reporting?

There are a number of steps that employers can now take to prepare for gender pay gap reporting.

- **Stakeholders** – reporting will require the input of a number of stakeholders, ranging from internal departments such as payroll and human resources, to external legal counsel and public relations advisors. Employers should identify, inform, engage with and educate their stakeholders early, to ensure all parties work efficiently and effectively together.
- **Resources** – employers should ensure that they have the required resources within the organisation to carry out gender pay gap reporting, including the technology and software which will be required to collate the data and carry out the calculations.
- **Collate and Analyse the Data** - start collating the data. Carrying out a “dry run” will enable an organisation to (i) identify any technology supports or staff training that may be needed and to (ii) identify and diffuse any potential equal pay or discrimination issues early.
- **Legal Input** - employers should also be mindful of their data protection obligations when calculating and reporting on their gender pay gap. Taking legal advice at an early stage is key, not only in terms of advising in respect of potential legal and data protection issues, but also ensuring that the process followed and output of such an initial review can be protected from disclosure (on the basis of legal privilege).
- **Communications Strategy** – employers should consider their communications strategy, both within their organisation and externally to the general public, in relation to the existence of a gender pay gap within their organisation, and the measures being taken or proposed to be taken to reduce any gender pay gap identified.

How we can help?

The McCann FitzGerald Employment, Pensions and Incentives team are available to answer any queries you may have in relation to the provisions of the Gender Pay Gap (Information) Act 2021 and can provide guidance and assistance to help employers prepare for their pay gap reporting obligations.

Further information is available from



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Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.



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