

Ireland Update: Tackling the Gender Pay Gap and Pay Transparency

Summary

The Irish Gender Pay Gap Information Act 2021 (the "Act") amends the existing Employment Equality Acts 1998 – 2015 (the "Employment Equality Acts") to require medium and large employers to analyse, explain, prepare to resolve and publish information on pay differences between female and male employees, regardless of the nature of their work. It was signed into law earlier this week but the legislation has not yet commenced.

The new obligations provided for under the Act will be introduced on a staggered basis, beginning with larger employers. Employers with less than 50 employees will not be subject to obligations under the Act until 2024.

Employers across both the private and public sector will be required to publish specific information in respect of pay differences. Even where men and women are carrying out different work, employers must publish information on the differences in pay between men and women across their business.

Where differences are identified, the Act provides that employers will need to publish statements explaining the difference and outlining what measures the employer has taken or will take to narrow the gender pay gap.

What is the gender pay gap?

The gender pay gap is easily confused with equal pay, which is a legal requirement that men and women be paid equally for similar work. Equal pay for equal work is already protected under the Employment Equality Acts and provides employees with an avenue of redress if they can demonstrate that someone of the opposite sex is being paid more for the same work.

The gender pay gap refers to pay differences between men and women across various different roles within an organisation. The publication of information in respect of the gender pay gap in an organisation can reveal, among other things, how factors such as caring responsibilities, part-time working needs and unconscious bias can result in a pay divide between men and women and it can reveal stark differences in seniority between the genders.

According to the latest Eurostat figures, the national gender pay gap in Ireland is 14.3%. This is marginally less than the 14.9% EU average. With more businesses required to publish information on pay differences, employers will need to be prepared to gather data, analyse it, devise solutions to narrow the gender pay gap and share all of this information publically.

Who is obliged to publish information?

Initially only employers with over 250 employees will be required to publish gender pay gap information. The Minister for Children, Equality, Disability, Integration and Youth (the "Minister") can outline the frequency of publication (which will not be more frequent than once a year) by way of regulations.

Number of Employees	Publication Obligation
250+	One to two years from the date of Regulations
150 – 249	Two years from date of Regulations
50-149	Three years from the date of Regulations
1-49	Exempt

The term 'Employer' is not defined within the Act and further details as to how the number of employees that an employer has is to be calculated will be set out in the regulations.

What does the obligation to publish information entail for employers in Ireland?

The Act requires employers to publish information relating to the gender pay gap in their business, to explain why it exists and their proposals for narrowing any identified gender pay gap. The Minister will prescribe by means of regulation, the form and manner of this publication in order to bring such information to the attention of the employees to whom the information relates and the public.

This will include the mean and median differences in:

- Hourly pay;
- Bonus pay;
- Part-time employee pay; and
- Temporary contract pay.

Employers must also publish the percentage of male and female employees in receipt of bonuses and benefits in kind, and the percentage of employees who fall within each of the income pay bands. The mean figure is calculated by adding up the wages of all employees and dividing that figure by the number of employees, whereas the median figure is the numerical midpoint of a range of all employees' wages from smallest to largest. The median figure arguably better captures the full scope of the gender pay gap as the mean figure may be skewed by a low number of highly paid employees.

Where the employer does not have access to the information needed to publish details on pay differences and such information is under the control of a payroll provider for example, the Act requires the other person to give the information to the employer. Where personal data is used by the employer to comply with their obligations, the Act requires the employer to anonymise the personal data before publication.

Where a difference is identified, an employer must publish a statement outlining the reasons for any pay differences and details of any measures that are being taken or will be taken to reduce or eliminate such differences.

Redress

Employees can refer a claim to the Workplace Relations Commission (the "WRC") alleging that their current employer has failed to comply with the regulations issued under the Act. The WRC has the power to investigate a complaint and issue an order directing compliance. Since the Supreme Court decision in *Zaleski v. An Adjudication Officer and Others*, decisions will no longer be anonymised and this may result in negative publicity for an employer. The WRC can also issue a notice requiring the complainant or respondent to provide further information to the WRC to facilitate the investigation.

The Irish Human Rights and Equality Commission can also apply for a Circuit Court or High Court Order requiring compliance with the requirements of the Act in respect of publishing information if it has reasonable grounds for believing that there has been a failure to comply.

What should employers do to prepare?

Although many employers may not be subject to the obligations for some time, there will be materially increased scrutiny on the issue of gender pay gap and it is important to be prepared.

This could have implications for businesses in terms of two key areas:

- Attracting and retaining talent; and
- Satisfying clients and customers that the diversity and inclusion programmes operated by the business are meaningful, fit for purpose and operating to reduce any identified gender pay gap.

Employers should consider what measures can be taken now in advance of any requirement to publish information to tackle any structural issues or working practices which may start to narrow the gender pay gap within the organisation.

Employers should investigate whether they have the resources to comply with the publication requirements under the new legislation. Accurate information on gender pay differences will require involving various departments within your organisation - such as human resources, payroll and accounts - and employers should start reviewing current pay data to ensure that it is capable of thorough analysis. In some instances, employers may need to seek external support where in-house capability is not available.

It is important to liaise with the relevant departments within your organisation to develop a plan for how gender pay reporting will be executed. Certain software and data management systems may need to be updated in order to provide the data breakdown required.

How the Maples Group Can Help

We can advise and support on gender pay gap reporting obligations.

For further information, please liaise with your usual Maples Group contact or any member of the Maples Group Employment team below.

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July 2021

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