

GENDER PAY GAP INFORMATION REPORTING

FAQs FOR EMPLOYERS

[Updated 28.06.2022]

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SECTION 1 – Information for Employers and Payroll service providers

Q. What does the Gender Pay Gap Information Act 2021 mean for me?

The Gender Pay Gap Information Act 2021 introduced the legislative basis for gender pay gap reporting in Ireland. The Act requires organisations to report on their hourly gender pay gap across a range of metrics. The number of employees in your organisation will determine when you will be required to report on the gender pay gap in your organisation:

- +250 employees: 2022
- +150 employees: 2024
- +50 employees: 2025

Q. When were the gender pay gap reporting guidelines for employers issued?

Regulations under the Act came into operation on 31 May 2022 and are published in the Irish Statute Book at the following link <https://www.irishstatutebook.ie/eli/2022/si/264/made/en/pdf>.

The Regulations require organisations with over 250 employees to report on their gender pay gap in 2022 by reference to their employees on a snapshot date in June 2022.

The Department of Children, Equality, Disability, Integration and Youth has published guidance for employers on how gender pay gap calculations should be made.

Q. How is an employer defined for the purposes of these reporting obligations? Is it a single legal entity, or a group of companies under a single enterprise? How should the employer and employee be identified? If my organisation is part of a group, how does that affect our reporting obligations?

An “employer” for the purposes of these reporting obligations is defined in section 2 of the Employment Equality Act 1998 and means, in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment.

The employer should have reference to the caselaw under the Employment Equality Act 1998 in determining the persons who should be counted for the organisation for the purpose of gender pay gap reporting, for example in regard to persons employed in business entities outside of Ireland.

Where companies are part of a group, the above definitions should be referred to in determining whether to calculate the number of employees at individual company level or at group level. While the Regulations only oblige organisations with over 250 employees to report on their gender pay gap in 2022, employers are encouraged to take a broad view in assessing and reporting on their gender pay gaps.

Q. Why does the reporting only apply to companies with more than 250 employees this year?

The incremental rollout of the reporting requirements under the Gender Pay Gap Information Act 2021 is deliberate and based on consultations with both Unions and employer representative

groups, where it was agreed that this approach will allow smaller companies the time to learn from the larger companies who have capacity to undertake and publish wage surveys.

The legislation creates a new obligation on employers and it is important that they are supported in implementing this process. Employers should recognise their own gender pay gap, and take steps to address it, but it is counterproductive if employers are at risk of breaching their obligation as a result of an accelerated timeline.

Q. How is the number of employees to be calculated to determine whether or not the obligation applies to an employer?

An organisation should carry out a headcount of all persons employed by them on the snapshot date, including employees not rostered to work on that date and employees on leave.

The type of contract certain workers are engaged on will determine whether they are ‘employees’ and if you should include them in your organisation’s headcount and gender pay gap calculations.

Workers who are employees of your organisation on your snapshot date must be included in your headcount, and all employees who self-identify as male or female must be included in your gender pay gap calculations.

Q. Where an employee does not identify as either male or female, how is this reflected in the gender pay gap reporting?

In determining the number of employees in the organisation, all employees are counted.

In instances where an employee does not self-identify as either gender, an employer may omit the individual from the gender pay gap calculations.

It is important for employers to be sensitive to how an employee identifies in terms of their gender. The regulations do not define the terms ‘male gender’ and ‘female gender’ and the requirement to report your gender pay gap should not result in employees being singled out and questioned about their gender.

Q. Are there plans in place to ensure all companies, regardless of how many employees, will have to record their gender pay data?

The Gender Pay Gap Information Act 2021 currently will apply only to organisations with over 50 employees. It is estimated that this cohort represents over two-thirds of all employees in the State.

Q. What support is available to help employers complete their reports?

The Department of Children, Equality, Disability, Integration and Youth has published guidance for employers on how gender pay gap calculations should be made. Employers requiring help to complete their reports should first consult this guidance.

Should an employer have further queries they may contact the Department at genderequality@equality.gov.ie, citing “Gender Pay Gap Information Reporting 2022” in the subject line.

Q. What is the snapshot date for and when can it be?

Employers to whom the reporting obligations apply will be required to calculate and publish the gender pay gap information in respect of relevant persons employed by them on the chosen snapshot date, with the calculations to be based on those employees' remuneration for the 12 month period that precedes the snapshot date.

Employers are required to choose a snapshot date. The snapshot date must be in June but may be any date in June.

Employers will be required to produce their gender pay gap information within 6 months of their snapshot date. The deadline for publication of the employer's gender pay gap information is 6 months after their chosen snapshot date.

Therefore an employer who chooses 1 June as their snapshot date has a reporting deadline of 1 December. That employer calculates the number of employees by reference to those employed on 1 June 2022, and calculates those employees' remuneration in respect of the period from 2 June 2021 to 1 June 2022, inclusive.

Q. If the number of employees reduces after the snapshot date, is the employer still obliged to produce the report?

Yes, even where the number of employees reduces after the snapshot date, the employer is obliged to produce the report.

Employers will choose a 'snapshot' date in June 2022 and will base their reporting on the employees they have on that date. The report should be based on calculations on those employees' remuneration for the 12 month period that precedes the snapshot date.

A reduction in employees after the snapshot date will have no impact on the report.

Q. Which employees are to be included in calculating the gender pay gap information? Is it only the employees actually paid on the snapshot date, or those on the payroll on the snapshot date?

An organisation should carry out a headcount of all persons employed by them on the snapshot date, including employees not rostered to work on that date and employees on leave.

Q. How is an employee defined for the purposes of these reporting obligations? How do I account for apprentices, interns, students on work placement, partners, or owner-managers? What about employees who have left after the snapshot date and those who are new recruits?

An "employee", for the purposes of these reporting obligations, is defined in section 2 of the Employment Equality Act 1998 and means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and, where the context admits, includes a member or former member of a regulatory body.

The type of contract workers are engaged on will determine whether they are 'employees' and if you must include them in your organisation's headcount and gender pay gap calculations. The Workplace Relations Commission's case law may be consulted for guidance.

Workers who are employees of your organisation on your snapshot date must be included in your headcount, and in your gender pay gap calculations. This includes employees who were new recruits on the snapshot date, and also employees who left the organisation after the snapshot date.

While employers are only obliged under the Regulations to provide information in respect of their employees, employers are encouraged to take a broad view in assessing their gender pay gaps. For example, an organisation may decide to include partners in its gender pay gap reporting.

Q. How are employees on temporary contracts identified for the purpose of gender pay gap reporting? How should employees moving from temporary contracts to contracts of indefinite duration, and vice versa, during the reporting period be handled?

Regulation 2 provides that relevant employees for the purposes of gender pay gap reporting are the employees of a relevant employer on the snapshot date. The employment status of the employee as of the snapshot date should be noted, as regards whether they are on a temporary contract or a contract of indefinite duration. The employee's status on the snapshot date should be used when calculating the gender pay differences relevant to employees on temporary contracts, i.e. under Regulations 7.(1)(c) and 8.(1)(c).

Where employees moving between temporary contracts and contracts of indefinite duration is considered by the employer to be relevant to any gender pay differences in the organisation, the employer is encouraged to discuss this in the relevant report.

Q. How are full-time and part-time employees identified for the purpose of gender pay gap reporting? How should employees moving from part-time to full-time working, and vice versa, during the reporting period be handled?

Regulation 2 provides that relevant employees for the purposes of gender pay gap reporting are the employees of a relevant employer on the snapshot date, and provides a definition of part-time employee. The full-time or part-time employment status of the employee as of the snapshot date should be noted. The employee's status on the snapshot date should be used when calculating the gender pay differences relevant to part-time employees, i.e. under Regulations 7.(1)(b) and 8.(1)(b).

Where employees moving between full-time and part-time working is considered by the employer to be relevant to any gender pay differences in the organisation, the employer is encouraged to discuss this in the relevant report.

Q. Is information on job classifications needed when calculating the gender pay gap?

The Regulations do not require organisations to provide any information on job classifications at this time in reporting on their gender pay gaps.

Q. In calculating employees' pay, what must the employer take into account?

A step by step approach for calculation of organisations' gender pay gap metrics is set out in the "Guidelines for Gender Pay Gap Information Act 2021 - Updated Guidance Note for Employers on Reporting in 2022".

For each person employed on the snapshot date, it is suggested the employer begins by calculating the total ordinary pay and total bonus, identifies benefits-in-kind received and determines the total number of working hours worked for the reporting period for each person employed on the snapshot date. Based on this information, the employee's hourly remuneration can be calculated.

Please refer to the definitions of ordinary pay and of bonus remuneration in Regulation 2 and Regulation 5, and to the calculation of hourly remuneration in Regulation 3.

Ordinary pay includes allowances. Examples of allowances include payments in connection with relocation, and payments relating to the recruitment of an employee. Salary top-ups to staff on statutory leave such as maternity leave and paternity leave, should be included.

Travel and subsistence payments reimbursing employees for expenditure wholly and necessarily incurred by them in the course of their work is not included within the meaning of ordinary pay for the purpose of these Regulations.

Where ordinary pay or bonus remuneration is paid to employees in currencies other than the Euro, for example where employees may be working abroad, the Euro equivalent amount as recorded in the organisation's accounts should be used for the purpose of gender pay gap reporting.

Pay should be calculated before deductions at source. Examples of such deductions at source are taxes and employees' pension contributions.

Benefit in kind is not included in the calculation of either ordinary pay or bonus remuneration.

Q. In calculating employees' bonus remuneration, what must the employer take into account?

Please refer to the definitions of ordinary pay and of bonus remuneration in Regulation 2 and Regulation 5.

Examples of bonuses include money, vouchers, shares and share options.

In regard to bonuses in the form of shares, the bonus is deemed to be paid on the date on which it is provided to the employee, and at the value of the share when it was issued.

Where an employee receives bonuses and the bonus period is not the same as the reporting period being used for the calculation, then only the bonus relevant to the 12-month reference period should be included. If a bonus is paid within the 12-month period but includes a payment in respect of a period of time prior to those 12 months, that element should be excluded. Where the total bonus paid to an employee during the reporting period applies to a period greater than the reporting period, the employer is required to adjust the amount of the bonus to include only the proportion that is equivalent to the reporting period. Under Regulation 3.(a)(i), the employer is required to identify all amounts of bonus remuneration paid to the employee during the period of 12 months ending on the snapshot date. Regulation 3.(c) sets out how the bonus should be adjusted, where applicable, to exclude bonus pay in respect of periods of greater than 12 months.

For example, in Scenario 1, an employee receives an annual bonus of €2,000 on 31 December 2021, and quarterly commission of €1,000 in September and December 2021, and in March and June 2022. This comes to a total bonus of €6,000 during the relevant pay period from 1 July 2021 to the snapshot date of 30 June 2022. The bonus payments received therefore cover a period of 546 days from 1 January 2021 to 30 June 2022 inclusive, which is greater than the 365 days of the relevant pay period. However, as none of the individual bonus payments is in respect of a period greater than 365 days, no adjustment of the bonus remuneration is required.

In Scenario 2, on 1 September 2021 another employee in the same organisation received a retention bonus of €10,000 that became payable after 3 years continued employment with the organisation, a period of 1095 days. The adjusted bonus remuneration is $(€10,000/1095)*365 = €3,334$.

In Scenario 3, an employer pays bonuses annually in December in respect for a 12 month period up to the previous September. New employees who commenced with the organisation after September 2021 would not be entitled to a bonus until December 2022, and so receive no bonus remuneration in 2022. This can be explained in the employer's report.

Q. Should benefit in kind be included in calculating employees' pay?

Remuneration other than money is not included within the meaning of ordinary pay for the purpose of gender pay gap reporting. Please refer to Regulation 2 and Regulation 5.

The employer is not required to give a monetary value to benefits in kind. For the purposes of the Regulations, the employer is only required to calculate the proportion of male and of female employees who received benefits in kind.

Q. In calculating employees' hourly pay, how should the hours worked be calculated?

Please refer to Regulation 4 in regard to determining the total working hours.

The Regulations provide for three methods for calculating the total number of working hours worked by an employee. These are set out in more detail in paragraph D of the "Guidelines for Gender Pay Gap Information Act 2021 Updated Guidance Note for Employers on Reporting in 2022".

- The first method applies where the employee's working hours are fixed or do not vary from week to week over a period, and refers to the employee's contract of employment.
- The second method applies where the employee's working hours vary from week to week. Where the employee has worked for more than 12 weeks with the employer, their total hours are derived from their working hours in a 12 week period. Where the employee has worked for less than 12 weeks, their working hours are determined by the employer by reference to the average working hours expected under their employment contract and average working hours of other employees in comparable employment with the employer.
- The third method applies where the employee is paid on the basis of piecework.

Overtime hours and periods of paid leave, such as annual leave, sick leave, maternity leave, study leave, etc., are to be included in calculating the total working hours worked for an employee.

Q. How should a newly-recruited employee, who has not yet been paid, be treated?

A person who is a newly-recruited employee of the organisation on the snapshot date will be taken into account in determining its headcount, even where the person has yet to receive pay.

Under Regulation 3, hourly remuneration is only calculated in respect of employees who have received ordinary pay or bonus remuneration during the 12 month period up to and including the snapshot date. Accordingly, a new recruit who has yet to receive pay is not included in the calculation of hourly pay and subsequent gender pay gap calculations.

Q. How should the employer publish the information? Is there a specified format for the information to be published by the employer?

Regulation 6 sets out the manner and timing of publication of the information and relevant report. There is no specified format for the gender pay gap information to be published by the employer for the 2022 reporting cycle, other than that the gender pay gap information must be published on the employer's website or in some other way in a manner that is accessible to all its employees and to the public, and it must be available for a period of at least three years beginning with the date of publication.

Q. Does the employer have to submit the information to the Minister? Is there a central portal where all employer reports can be accessed?

For the 2022 reporting cycle, the information does not have to be submitted to the Minister.

Plans are in place to develop an online reporting system for the 2023 reporting cycle which will consist of a central portal where all employer reports will be uploaded and can be accessed publicly.

Q. If an employer has calculated and published gender pay gap figures before the introduction of reporting under the Gender Pay Gap Information Act 2021, can the employer continue to use the same report? If not, why not?

An employer which has previously published information relating to their organisation's gender pay gaps may continue to use the same report format, provided it meets all requirements for reports that are set out in the Regulations. This would include requirements in regard to the snapshot date and reporting date, and the specific metrics and statements to be provided, as summarised in the guidelines for employers.

Q. What is the reporting deadline for employers?

Employers will be required to produce their gender pay gap information within 6 months of their 'snapshot date'. The deadline for publication of the employer's gender pay gap information is 6 months after their chosen snapshot date. Therefore an employer who chooses 1 June as their snapshot date has a reporting deadline of 1 December.

Q. How often do employers have to report?

An employer must report their gender pay gap information annually.

Q. What happens if an employer fails to publish their report, or is late in publishing the report?

The Gender Pay Gap Information Act 2021 provides the Irish Human Rights and Equality Commission with the power to make an application to the Circuit Court or to the High Court for the granting of an order requiring the employer concerned to comply with the Regulations.

The 2021 Act also provides that an employee who claims that his or her current employer has failed to comply with Regulations may refer their employer to the Director General of the Workplace Relations Commission. The Director General shall investigate the complaint if he or she is satisfied that there is a prima facie case to warrant the investigation.

Q. Can I find out how my organisation's gender pay gap compares to that of other employers in my sector and region?

Plans are in place to develop an online reporting system for the 2023 reporting cycle.

It is anticipated that the system will allow members of the public to search for and view individual employers' returns, as well as returns for employers in given sectors and regions

SECTION 2 – Information for Employees / Members of the public

Q. What is the gender pay gap?

The gender pay gap is the difference on average across a population between men's and women's pay.

The gender pay gap is usually represented as the average difference in gross hourly earnings of men and of women, expressed as a percentage of men's average gross hourly earnings. A gender pay gap which is positive indicates that, on average across the employed population, women are in a less favourable position than men. Where the gender pay gap is negative, this indicates the reverse - that, on average, men are in a less favourable position than women.

Q. Is equal pay for men and women for equal work or work of equal value (i.e. "gender equal pay") the same as the gender pay gap?

The gender pay gap is not only about equal pay for equal work or work of equal value, which is required under the Employment Equality Acts, but about gender representation. Even if an employer has an effective equal pay policy, it could still have a gender pay gap if, for example, the majority of women are employed in lower-paid jobs.

Many factors can contribute to the existence of gender pay gaps. These include differences between men and women in educational attainment and qualifications, occupations, career progression, prevalence of fulltime and part-time working, and responsibility for caring roles.

In 2018, the gender pay gap in Ireland was 11.3% in favour of men. One of the reasons this is important is that, over a lifetime, inequalities between men and women's salaries can have a significant impact on women's earnings and pensions.

Q. Does my employer have to produce a gender pay gap report, and when can I see it?

The Gender Pay Gap Information Act 2021 introduced the legislative basis for gender pay gap reporting in Ireland. The Act requires organisations to report on their hourly gender pay gap across a range of metrics. The number of employees employed by your employer will determine whether your employer is required to report on the gender pay gap in the organisation:

- +250 employees: 2022
- +150 employees: 2024
- +50 employees: 2025

Employers to whom the reporting obligations apply will be required to calculate and publish the gender pay gap information in respect of relevant persons employed by them on the chosen snapshot date, with the calculations to be based on those employees' remuneration for the 12 month period that precedes the snapshot date.

Employers are required to choose a snapshot date. The snapshot date must be in June but may be any date in June.

Employers will be required to produce their gender pay gap information within 6 months of their snapshot date. The deadline for publication of the employer's gender pay gap information is 6

months after their chosen snapshot date. Therefore an employer who chooses 1 June as their snapshot date has a reporting deadline of 1 December.

Q. Why does the reporting only apply to companies with more than 250 employees this year?

The incremental rollout of the reporting requirements under the Gender Pay Gap Information Act 2021 applies initially to organisations of 250 or more employees, and gradually to organisations of 50 or more employees. This approach follows consultations with both Unions and employer representative groups, where it was agreed that this approach will allow smaller companies the time to learn from the larger companies who have capacity to undertake and publish wage surveys.

The legislation creates a new obligation on employers and it is important that they are supported in implementing this process.

Q. Where can I find my employer's gender pay gap report?

If your employer is required to report in the 2022 reporting cycle, the gender pay gap information must be published on the employer's website or in some other way in a manner that is accessible to all its employees and to the public, and for a period of at least three years beginning with the date of publication.

The publication deadline will fall in December 2022.

Plans are in place to develop an online reporting system for the 2023 reporting cycle.

Q. I believe my employer has discriminated against me in regard to pay, how can I make an equal pay complaint?

The Irish Human Rights and Equality Commission has developed a statutory Code of Practice on Equal Pay providing employees, employers and trade unions with practical guidance on the right to equal pay, eliminating pay inequality and resolving pay disputes. This Code of Practice is available at <https://www.ihrec.ie/new-codes-of-practice-to-tackle-pay-inequality-and-workplace-harassment/>

If you think you are not being paid equal pay for equal work or work of equal value, further information on your rights and means of redress under the Employment Equality Acts 1998-2021 is available to you from the following organisations –

- The functions of the Irish Human Rights and Equality Commission include providing information to the public in relation to human rights and equality, and providing practical assistance, including legal assistance, to persons in vindicating their rights. IHREC's Your Rights service may be contacted online at <https://www.ihrec.ie/your-rights/>, by phone at tel: + 353 (0) 1 8583000, or by email at YourRights@ihrec.ie.
- Information on making a complaint to the Workplace Relations Commission is available at https://www.workplacelrelations.ie/en/what_you_should_know/equal-status-and-employment-equality/employment%20equality%20and%20equal%20status/

- General information is also available from the Citizens Information Service at https://www.citizensinformation.ie/en/employment/equality_in_work/equal_pay.html

Q. I am a researcher. How can I access employers' gender pay gap data for my research?

For the 2022 reporting cycle, the gender pay gap information must be published on an employer's website or in some other way in a manner that is accessible to all its employees and to the public, and for a period of at least three years beginning with the date of publication.

The reporting deadline for the 2022 cycle will fall in December 2022.

Plans are in place to develop an online reporting system for the 2023 reporting cycle. It is anticipated that the system will enable members of the public to search for and view individual employers' returns on the database, both overall and by year, including browsing for returns.