

# UK Regulator to Enforce Mandatory Gender Pay Gap Reporting

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International Employment

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The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (the “Regulations”) came into force in the UK on April 6, 2017 and require private sector employers with 250 or more employees to calculate and disclose mandatory gender pay gap information.

## Enforcement

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Until now, there has been some uncertainty about the consequences of a failure to comply with the Regulations. The explanatory notes to the Regulations indicated that a failure to comply would be an “unlawful act” in respect of which the Equality and Human Rights Commission (“EHRC”) - a UK public body promoting and enforcing equality and non-discrimination laws - could take enforcement action under its statutory powers. However, it had been unclear exactly what that would look like in practice.

On December 19, 2017, the EHRC published its draft plans for enforcement action in relation to the Regulations, and these provided some clarity as to its intentions. Consultation about the plans closes in early February 2018.

In summary, the plans state that the EHRC:

- Is committed to ensuring high levels of compliance in the first reporting year by raising awareness about the gender pay reporting obligations.
- Will engage with non-compliant employers informally in the first instance and in 2018/19 its focus will be on those employers who do not disclose any data at all, with enforcement action being taken in respect of the publication of inaccurate data, if it has capacity to do so.
- In pursuing informal resolution, will write to a non-compliant employer drawing its attention to the gender pay reporting obligations and seeking confirmation that the employer will comply within 42 days of the EHRC’s letter (in respect of the current reporting year) and on time in future reporting years. Where the employer meets these timescales, no further enforcement action will be taken.
- If an employer does not engage with this informal approach, will conduct an investigation to establish whether the employer has breached the Regulations and may issue a notice to enforce compliance. If an employer ignores such a notice, the EHRC may apply for a court order; failure to comply with such could result in an unlimited fine.

- During the course of an investigation, will offer an employer a chance to enter into an agreement under which the employer agrees to comply with its obligations under the Regulations. So long as the employer abides by the terms of the agreement, no further enforcement action would be taken.

## Comment

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It is clear from the consultation document that the EHRC is planning to take a reasonable approach, with informal action preceding any more serious measures. That said, the fact that it is becoming involved in the enforcement of the Regulations, with the potential to address inaccurate reporting of gender pay gap data, is a reminder to employers of the need both to comply with their obligations and also to ensure that the statistics uploaded to the government website are accurate.

Unfortunately, the results of the EHRC's consultation into its proposed enforcement plan are unlikely to be known until after the first reporting deadline under the Regulations (April 4, 2018). However, provided that employers are aware of their obligations and have processes and procedures in place for collecting, calculating and disclosing the appropriate data by the forthcoming reporting date, there should be no cause for concern.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Employment practice:

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