

### **Mythbusters: What Do the Gender Pay Results Really Mean?**

The gender pay gap figures have been a hot topic over the past few weeks as the 2018 deadline for reporting has passed. With approximately 1,500 qualifying employers still needing to report, what is the emerging picture?

Many of those who have published have had to deal with delicate publicity situations in which imperfect statistics, incendiary headlines and confusion have created a perfect storm. The data indicates that the national average pay gap is 9.8% with financial services, education and construction industries reporting gaps significantly above this average.

As the dust settles, we try to dispel some myths surrounding the gender pay gap statistics and analyse what the information is likely to mean long term.

***Myth: A significant gender pay gap means that men and women are not being paid equally.***

**Fact:** The gender pay gap and equal pay are two separate but equally important issues. It is illegal to pay men and women different amounts for doing the same job and equal pay is not something that the gender pay gap figures highlight. Disparity in gender pay figures tends to be a sign that companies have more higher-paid male workers than female. As companies are required to report on their gender pay gap over a number of years, the emphasis should be on what they will now do to narrow this gap and show long-term progress.

***Myth: The gender pay gap statistics for 2018 have just been released.***

**Fact:** The snapshot date for private and voluntary sector organisations is 5 April of each year. Companies then have 12 months from this date in which they can publish the information according to the prescribed format. The first snapshot date was 5 April 2017, meaning that the information that has just been released therefore reflects the position of the gender pay gap in companies on 5 April 2017.

***Myth: Bonus figures are not affected by part-time employees.***

**Fact:** Pro-rated bonuses paid to part-time employees are not converted into full-time equivalent figures under the gender pay gap rules, the actual amount of the bonus is included in the calculation. This means that if an employer has a significant number of female part-time employees, the figures could potentially distort the bonus gap. The Government suggests organisations deal with this in their supporting statement which accompanies the pay data.

***Myth: Partnership information must be included in gender pay gap calculations.***

**Fact:** Under the gender pay gap rules, partners who are deemed to be self-employed do not need to be included in gender pay gap figures. Although companies can choose to include partners in their calculations, and numerous companies are under pressure to do so, many have not. By removing the top-earning partners from the equation, especially if they are mostly male, figures show a lesser gap than they likely would otherwise.

***Myth: It will be expensive to get rid of the gender pay gap.***

**Fact:** Information about the gender pay gap should help organisations assess the overall levels of gender equality as well as identify what can be done to rectify any imbalances. Changes tend to involve looking at attitudes and practices rather than financial expenditure. There may even be some benefits, as policy developments could result in an improvement in staff retention, saving companies money. Additionally, it is estimated that closing the gender pay gap by 2025 could add £150 billion to UK GDP, providing a wider economic benefit.

**Long-Term Implications**

As organisations will be reporting on the gender pay gap over a number of years, the real value in the statistics will arguably be in their ability to illustrate the reduction of the gender pay gap. Although each industry will have its own specific factors at play, the focus is likely to be on whether the gap is shrinking and if companies are implementing measures to achieve this goal.

**Termination Payments: PILON the Changes**

On 6 April 2018, the rules regarding the taxation of some termination payments changed. Here we look at the new rules and the potential impact that they could have on future termination payments and employment contracts.

**All Change?**

The new regime applies to all payments in lieu of notice (PILON) paid on termination of employment. Whereas previously it was usually the case that if you did not have a PILON in the contract, you would not have to tax monies paid in lieu of notice (up to the 30,000 cap). Under the new rules, the intention is to tax (and subject to class 1 NICs) as earnings the basic pay an employee would have earned if the employee had worked his or her notice in full.

**The New Rules**

After some initial confusion, the government has now clarified that the new taxation rules only apply where both the termination and payment take place on or after 6 April 2018.

Tax will be payable on the basic pay that an employee should have received during the remainder of their notice period. This basic pay figure should include the value of any salary sacrifice amounts but sums excluded from basic pay, such as over-time, commission, bonuses and benefits in kind should not be included.

In order to calculate the amount of pay taxable, one of two calculations set out in the legislation will need to be performed. The calculation required depends on whether or not the following are expressed in months or days in the contract of employment:

- 1) the regularity with which the employee is paid;
- 2) the length of the notice period required to be given by the employer (by law or in the contract);  
and
- 3) the amount of unworked notice.

If an employee is paid monthly, and both the notice period and unworked notice period are expressed as whole months, then the calculation can be done using monthly pay. If not, basic pay must be calculated using a daily rate averaged over the last pay period worked, which will be more complicated and will be affected by the number of days in the month preceding the termination.

**Effect: Include a PILON Clause**

It will now almost always make sense to include a PILON in your contracts, since that will mean that where you are only paying notice on termination, you will not need to carry out the calculation above. However, employers should note that where they are paying notice plus an ex gratia sum the

calculation above must be carried out since using the statutory formula could result in a slightly different amount to be taxed.

## One to Watch: EHRC Recommendations for Ending Sexual Harassment in the Workplace

The Equality and Human Rights Commission has issued a new report titled '[Turning the tables: Ending sexual harassment at work](#)', which raises concerns about sexual harassment in the workplace. The Commission found that existing obligations and guidance for employers are not adequately protecting workers from sexual harassment. Currently, these are just recommendations; however, given the current climate, this could be one to watch.

The report sets out recommendations which aim to bring about changes in workplace culture, forcing employers to take on more responsibility for preventing harassment, to promote greater transparency surrounding harassment incidents and to strengthen the protection available for harassment victims by recommending new laws.

Key recommendations made by the Commission include:

- the introduction of a mandatory duty requiring employers to protect workers which, if breached, would constitute an unlawful act for the purposes of the Equality Act 2010;
- the production of a statutory code of practice that sets out the steps employers need to take to comply with the mandatory duty, with a possible 25% uplift in compensation when an employer breaches the code;
- the development of an online tool which facilitates the reporting of sexual harassment;
- the introduction of safeguards to restrict the use of confidentiality clauses to prevent disclosure of past acts of harassment;
- the collection of data from individuals across England, Scotland and Wales every three years to determine the prevalence and nature of sexual harassment at work in order to publish a report and action plan;
- the extension of limitation periods for bringing a sexual harassment claim to six months from the latest of (1) the act; (2) the last in a series of acts; or (3) the exhaustion of any internal complaints procedure;
- an increase in employers transparency by ensuring they publish their sexual harassment policy on their external website, along with the steps being taken to implement and evaluate it; and
- ACAS targeted sexual harassment training for managers, staff and workplace sexual harassment 'champions'.

It remains to be seen how the Government will respond to these recommendations; however, companies should ensure that they have an easily accessible anti-harassment policy in place, clear reporting procedures and trained staff that are able to correctly handle reports of harassment. These measures will help to ensure that both businesses and employees are protected.

## A Summary of the Statutory Rates and Compensation Limits for 2018/2019

As the rates change every year on 6 April, Katten has prepared the following helpful summary to ensure that you are using the most up-to-date figures:

### Statutory Payments for Time Off Work

(Each Week)

April 2018

Maternity/adoption pay prescribed rate (max.)

£145.18

Paternity pay (max.)	£145.18
Shared parental pay (max.)	£145.18
Sick pay	£92.05

### **Statutory National Minimum Wage**

<b>(Hourly)</b>	<b>1 April 2018</b>
Apprentices	£3.70
Age 16 – 17	£4.20
Age 18 – 20	£5.90
Age 21 – 24	£7.38
National Living Wage (Age 25+)	£7.83

### **Key Compensation Limits**

<b>(Maximum Unless Stated)</b>	<b>6 April 2018</b>
Week's pay	£508
Statutory redundancy payment (up to 30 weeks' pay)	£15,240
Unfair dismissal basic award (up to 30 weeks' pay)	£15,240
Unfair dismissal compensatory award	£83,628
Automatically unfair dismissal basic award (min.)	£6,203
Breach of right to be accompanied: up to 2 weeks' pay	£1,016
Breach of flexible working regulations: up to 8 weeks' pay	£4,064
Failure to give written particulars of employment: 2 or 4 weeks' pay	£1,916 or £2,032
Breach of contract claim in employment tribunal	£25,000
Failure to inform or consult: collective redundancy	90 days' pay
Failure to inform or consult: TUPE transfer	13 weeks' pay

## **Pensions: Increases in Auto-Enrolment Contributions**

From 6 April 2018, employers have to increase the minimum contributions they make to their auto-enrolment pension scheme. The total minimum employer pension contribution increased from 2% to 5% for qualifying earnings. A second increase, as set out in the table below, is also due to take effect on 6 April 2019.

If minimum contribution levels are not increased in line with legal requirements, the pension scheme in question will no longer be a 'qualifying scheme' for existing members and cannot be used for auto-enrolment. Employers who already pay above the minimum amount or do not use schemes for auto-enrolment purposes do not need to take any action in relation to these changes.

The table below shows the minimum contributions that employers and their staff need to pay and set out key dates. Both employers and employees can choose to pay more than the minimum if they wish.

Key Compensation Limits	Employer Minimum Contribution	Staff Contribution	Total Minimum Contribution
Old rates up to 5 April 2018	1%	1%	2%
Current rates from 6 April 2018 to 5 April 2019	2%	3%	5%
6 April 2019 onwar	3%	5%	8%

## Injury to Feelings Compensation: Updated Vento Bands

The Vento bands (named after the *Vento* case) are used to calculate awards for injury to feelings in discrimination and other employment claims. The bands have increased in order to take into account changes in the Retail Price Index.

For claims presented in England and Wales on or after 6 April 2018, the following bands apply:

- Lower Band (less serious cases): £900 – £8,600
- Middle Band (for cases that do not merit an award in the upper band): £8,600 – £25,700
- Upper Band (the most severe cases): £25,700 – £42,900
- Exceptional circumstances: Awards can exceed £42,900

For more information about these issues or if you would like to discuss an employment-related matter, please contact: [Christopher Hitchins](#) at +44 (0) 20 7776 7663 or [Sarah Bull](#) at +44 (0) 20 7770 5222.

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