

The value of undertaking voluntary equal pay audits

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Gender pay gap reporting

We are fast approaching the annual 4 April reporting date under the Gender Pay Gap Reporting Regulations which came into force on 6 April 2017. Under these regulations employers with 250 or more employees on 5 April each year must report and publish their gender pay gap information by submitting a report to the Government's Gender Pay Gap service and on their own website by 4 April of the following year. The regulations impose four ways of reporting the difference in mean and median pay between male and female employees and importantly for the financial services sector, bonus differences between them based on pay data during a particular pay period which includes the snapshot date of 5 April. The gender pay gap is a measure of the difference between men and women's average earnings across an organisation and is expressed as a percentage of men's earnings. In October 2021, the ONS survey shows that the overall gender pay gap was 15.4%, although it is much higher across the financial services industry.

Voluntary equal pay audits

There are many benefits for tackling head-on any pay gap which this reporting obligation reveals. Employers should take this opportunity to address any issues and be proactive in tackling any potential risks that the report reveals by considering carrying out an equal pay audit of their current pay structures. An equal pay audit will look at whether men and women in the same employment performing equal work are receiving equal pay as required under the Equality Act 2010. An equal pay audit will help to identify whether there are any equal pay issues and if so, the employer can investigate whether there are any reasons that justify the pay differential. If there is no justification, then the employer should consider what measures need to be put in place to deal with any disparities.



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Depending on the outcome of the audit, the employer can also look at recruitment strategies to tackle any bias as well as developing new strategies to attract a more balanced workforce. They should also review their promotion processes, mandatory gender equality and unconscious bias training and showcasing successful women to promote equality internally and externally.

All of this has many benefits:

- The process underpins competitiveness as the pay indicators for each level detailed in the audit report can be used to establish the value of roles in the external job market and ensure that the employer is competitive.
- It eradicates pay differentials in genuinely identical roles and roles of equal value.
- Employees will be reassured that they are being fairly rewarded, internally and externally.
- There is reduced reputational risk.
- The employer can demonstrate a policy of equal pay for equal work.

If problems do emerge as a result of the audit, steps should be taken to minimise the impact of equal pay claims that could go back over six years. Taking these steps will also have the added advantage of providing a defence to any equal pay claim which might be brought in the meantime.

Mandatory equal pay audits

In 2014, the Equal Pay Audit Regulations came into force. Under those regulations, tribunals are required to order employers who have been found in breach of equal pay law to carry out an equal pay audit. There are some exemptions and exceptions which include that an audit within the meaning of the regulations has been completed by the employer in the preceding three years (which is another reason to consider undertaking a voluntary audit).

The recent remedy decision in the high-profile case Macken v BNP Paribas is understood to be one of the first cases where an employment tribunal has ordered an equal pay audit under the regulations. Ms Macken was awarded over £2million in compensation following her successful claims for equal pay, sex discrimination and victimisation. BNP Paribas argued exemptions applied including that it had begun to address the equal pay issues and was carrying out an annual equal pay review and that the disadvantages of the audit would outweigh the benefits. However, the tribunal disagreed as BNP Paribas had provided little information as to the methodology of its equal pay review, it only included base salary, not bonuses, and it produced no evidence as to how the disadvantages outweighed the benefits. In addition, it had continued with its opaque pay system which meant that it was likely that other women had been affected.

The tribunal set out the requirements for the audit including that it must cover gender pay information for anyone who was an employee between 1 January and 31 December 2021 and should include all elements of salary and variable compensation. BNP Paribas has until 30 June 2022 to complete the audit which must be published on its website and remain there for 3 years.

Summary

Equal pay audits and gender pay reporting both address the issue of disparity of pay between men and women but concern themselves with different aspects. However, taking action as a result of the outcome of an equal pay audit will also contribute to reducing any gender pay gap and provide a defence to an equal pay claim.

Undertaking an equal pay audit on a voluntary basis enables the employer to take control and conduct the review in private which will ensure that the risk of bad publicity and employee dissatisfaction can be minimised. It also means that employers can decide to make voluntary statements that may accompany the final report.

If your organisation is interested in undertaking an equal pay audit or you would like any further information please do contact **Emily Chalkley, Senior Associate, Charles Russell Speechlys** at Emily.chalkley@crsblaw.com who works alongside **Lucy Heath, HR and People Consultant and Data Analyst.**