

Gender Pay Gap Reporting for Partners

The deadline for the second set of gender pay gap data (4 April 2019) is fast approaching and there has been an increasing trend towards professional partnerships publishing gender pay gap data on partner remuneration, so what should partnerships do for the next round of gender pay gap reporting?

As a reminder, LLPs and general partnerships are required under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (Regulations) to publish annual reports containing data on their gender pay gap if they have 250 or more employees. The report must cover the mean and median difference between pay and bonuses for men and women; the percentage of men and women who received a bonus; and the percentages of men and women in each of the four pay quartiles.

Although the number of partners has to be used to establish whether a firm has a headcount of 250 on the “snapshot date” (being 5 April of the relevant year), the Regulations do not require a firm to report on the pay of equity partners and LLP members; it only requires reporting on employees.

The House of Commons’ Business, Energy and Industrial Strategy Committee were highly critical of the exclusion of partners from gender pay gap reporting when it produced its report on the Regulations in August 2018. In the Committee’s view, the exclusion of partner remuneration made nonsense of the efforts to understand the scale of, and reasons behind, the gender pay gap. Indeed, when the Magic Circle law firms (on request by the Committee) provided gender pay gap figures for partners as well as their employees, it showed that

the gender pay gap was significantly higher than the figures reported for just employees.

Despite the Committee’s criticisms, the Government decided in January 2019 that it would not make it mandatory to report on the gender pay gap for partners. Instead, the Government plans to evaluate altering the guidance on gender pay gap reporting to introduce a voluntary reporting methodology for partners. Although there is no current appetite for making any changes to the gender pay gap regime (after just one full cycle of reporting), a statutory review must take place within five years of the introduction of the Regulations and therefore mandatory reporting may potentially be introduced at a later stage.

A number of firms have chosen to publish information on partner pay either separately or as part of the overall gender pay gap calculations even though it is not mandatory; most notably the Big Four audit companies following criticism in the press. The Law Society set out its view in its recent report, “Gender Pay Gap Reporting: setting the standard for the profession” (6 November 2018), that it is best practice to report on partner pay as well as employee pay to give members of the profession and the wider public increased confidence in pay reporting and enable an evidence-based plan to tackle inequalities.

There are difficulties in reporting on the gender pay gap for partners since partner pay is not comparable with employee pay; partners take a share of the profits whereas employees receive a fixed salary regardless of how the firm is performing. The way in which the Regulations require the gender pay gap statistic to be

calculated, namely by taking a snapshot of what the employees' monthly pay is for April would not be representative for partners as partners tend to not be paid a regular monthly amount.

If partner pay is to be reported on, firms should consider taking into account the total compensation paid to partners in the financial year rather than looking only at a single month snapshot (as provided for by the Regulations) as this would provide a better metric comparison. The Law Society's view is that three separate statistics should be produced: one for all the workforce (employees and partners together); one for employees only and one for partners only, and that these statistics should then be broken down further by job type (for example, legal and non-legal/business support roles) and then by level (for example, for legal roles, trainee, associate, senior associate, junior partner and senior partner) to make them more transparent.

For many firms, the gender pay gap figure will be significantly higher if partners are included because partnerships still tend to be male dominated at more senior levels. Firms may therefore be inclined not to report on partner pay as it is not mandatory. Firms will need to weigh up the following risks as these may outweigh the advantage of reporting a lower (more limited) figure:

- There may be adverse publicity for not reporting as increasingly more firms are doing so – an analysis of comparable firms in the marketplace should be undertaken to see who is reporting on partner pay and press coverage monitored;
- It may be more difficult to recruit and retain talent if a firm is not being transparent regarding partner pay nor seen as being truly proactive in closing any real or perceived gap; and
- Clients are becoming more interested in the values and culture of the firms they instruct; a firm not being transparent and taking meaningful steps to reduce any gap could impact on its ability to attract and retain clients.

If firms do decide to report on partner pay, firms should consider including a robust narrative explaining the data so that there is transparency on how the figures have been calculated. Firms

should also set out a detailed multi-year action plan with a combination of short, medium and long term actions explaining how they will address the pay gaps identified, for example, by conducting an examination of the firm's partner promotion process with third party external bias awareness experts and running courses to support the career progression of staff and partners.

Even if a firm decides not to include partners in its gender pay gap reporting, the firm may still wish to analyse partner remuneration in order to obtain a complete understanding of the issue and inform its efforts to tackle any gender imbalance.

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