

Employment Matters



Mind the Gender Pay Gap!

From April 2017 onwards, all organisations with a headcount of 250 or more must publish annual figures about its gender pay gap.

The 'gender pay gap' is the difference between the average earnings (including bonuses) of men and women, expressed relative to men's earnings.

The Lowdown

- Employers in the private and voluntary sector must base its pay data on staff employed on a 'snapshot date' of 5 April each year, starting from April 2017.
- Organisations in the public sector must use 31 March as its snapshot date.
- Workers and some self-employed people are included in the definition of "Employees".
- Reporting on gender pay is a different requirement from carrying out an equal pay audit.
- There are six calculations you have to carry out, including mean and medium averages relating to pay and bonuses, the proportion of males receiving bonus payments vs females, and the proportion of males vs females when divided into four groups ordered from lowest to highest pay.
- The results must be published on the employer's website and a particular [Government Website](#) within 12 months.
- A director (or equivalent) must sign the declaration of accuracy before approving a gender pay gap report.
- Crucially, employers have the option to provide a narrative with its calculations. You can use this to explain the challenges, successes and any plans for long-term results.
- There are currently no penalties for non-compliance but the Government is keeping this under review. However, the negative publicity from industry press, competitors and potential recruits for failure to publish is likely to be extremely damaging. For this reason, businesses of all sizes might consider publishing its results too.

We Can Help

We can assist by providing legally privileged support and insight on the first cut of the numbers. This will help protect you from disclosing results in any potential discrimination or equal pay claims that might be submitted in the future.

We will review the data, report on potential justifications and identify any high risk areas. We also can help provide tailored advice to address and remedy any key issues that you might uncover.

The Apprenticeship Levy—Maximise Your Returns

Who Pays and How Much?

The UK Government is aiming to create three million apprenticeships by 2020 and introduce new apprenticeship standards. From 6 April, all employers with a wage bill of more than £3 million are required to pay an annual 'Apprenticeship Levy' of 0.5 percent to fund the initiative.

The levy is paid by employers into a central pot, and each employer can then access its own account via an online portal known as the 'Apprenticeship Service'. Once an employer sets up its online account this will allow it to use the credits it gains from paying the Levy to choose and fund apprenticeship training.

EXAMPLE

The amount you have available to spend is calculated on a monthly basis as follows:

- Your Levy is 0.5 percent of your gross annual payroll (e.g., £4m), less a £15,000 allowance.
- You will receive £5,496 of levy credit per year.
- The balance is then divided by 12 and rounded down to the nearest pound. This gives a monthly levy payment of £416 (rounded down).
- Assuming 100 percent of your pay bill goes to employees in England, £416 is multiplied by 100 percent. The government tops that up by 10 percent, which gives you £458 (rounded up) to spend each month.

How To Use the Cash

Levy funds can be used (1) to employ apprentices, or (2) to upskill existing employees up to a funding-band maximum for each apprenticeship. The funding maximum will vary on the level and length of the apprenticeship you choose and is set by the Government. The Government has listed the range of approved apprenticeship schemes online, which are provided by specialist training providers.

If you haven't already done so, you can now [create an account](#) for the Apprenticeship Service to receive Levy funds, manage your apprentices and pay your training provider.

Maximise Your Returns

Increasing the number of apprenticeships also may increase the range of skills within your workforce, enabling you to create a new talent pool that addresses any skills shortage. There is no obligation to have a strict 'job description', so apprentices can be used flexibly throughout the business.

Are the Motivations for Making a Data Subject Access Request (DSAR) Relevant?

Guidance

The Court of Appeal recently refused to exercise its discretion under the Data Protection Act 1998 (the DPA) to order data controllers to take further steps in data subject access compliance. The case sets out helpful guidance on (1) what is personal data; (2) the DPA domestic purposes exemption; (3) the purpose or motivation for a DSAR; (4) proportionality of searches; and (5) the exercise of court discretion.

The court made clear that:

- a data controller's implied obligation to search for documents is limited to what is reasonable and proportionate; and
- data controllers cannot object to a DSAR made in connection with actual or contemplated litigation.

Purpose and Motivations for the DSAR

The court also explained that in exercising its discretion, it will look at a number of factors, including the requester's motivations in order to strike the right balance between data subject access rights and data controller interests.

The "absence of a legitimate reason" for the DSAR may have a bearing on the exercise of the discretion, "even though a collateral purpose of assisting in litigation is not an absolute bar".

Beware! Motives and the overall conduct of the requester may have adverse cost consequences in litigation.

How Much Compensation for Breaching the Right to Be Accompanied? Just £2, According to a Recent Employment Tribunal Case.

The Facts

In *Gnahoua v Abellio London Ltd*, a bus company refused to allow a bus driver to be accompanied to his disciplinary appeal meeting by either of two brothers who also were union officials. The brothers were both banned from attending workplace meetings because of their previous vexatious and threatening conduct, which included falsifying the date of a witness statement.

In coming to its decision, the tribunal followed previous Employment Appeal Tribunal (EAT) caselaw stating that provided the companion is an employed trade union official, a certified trade union official or a colleague, the employee has an absolute right to be accompanied by a chosen companion. However, the EAT also suggested that where an employee has not suffered any loss or detriment on account of not having said companion, a nominal amount of compensation might be payable.

In this instance, the bus driver had not suffered any loss or detriment, and the bus company was found to have conducted the disciplinary hearing comprehensively (albeit breaching the right to accompanied).

What Have We Learned?

The case does not belittle the importance of an employees' unfettered right to be accompanied at a disciplinary or grievance hearing; however, it does make clear that where an individual has suffered no loss, the employee will not be entitled to substantial damages.

Three Changes to Tier 2 (General) Visas

The Tier 2 visa is the main route for skilled workers coming to the UK to work. In order to apply for this visa, individuals must have a job offer and a certificate of sponsorship from a UK employer with a valid Tier 2 sponsorship licence.

From 6 April:

1. The Tier 2 visa salary threshold will increase to £30,000 for migrants who are "experienced workers".

2. All employers who sponsor skilled workers on a Tier 2 visa will have to pay a levy of £1,000 per worker (£364 for small employers and charities).
3. The Government is planning to introduce a requirement that workers coming to the UK on a Tier 2 visa into specified posts in the education, social care and health sectors must obtain criminal records certificates from the countries that they have lived in the previous 10 years.

Heads Up! Statutory Payments Increase

From 6 April:

- **Family Friendly:** The weekly rate of statutory maternity, paternity and shared parental pay has increased to £140.98 for weeks commencing on or after 2 April 2017.
- **Sick Pay:** The weekly rate of statutory sick pay has increased to £89.35.
- **Redundancy:** For the purposes of calculating a redundancy payment (age, weekly pay, length of service), 'weekly pay' has increased to £489.

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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