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GENDER PAY GAP REPORTING AND THE COVID-19 PANDEMIC

Guide
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Guide

Gender pay gap reporting and the COVID-19 pandemic

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Acknowledgements

This guidance was prepared by Duncan Brown, principal associate at the Institute for Employment Studies, and updated by the CIPD.

1 Aims of this guidance

This guidance aims to:

- Help people professionals develop an understanding of how the unusual economic and employment conditions produced by the pandemic appear to be affecting gender pay gaps in the UK (see Section 3).
- Provide specific guidance to employers on how to report their 'snapshot' pay data by the due date at the end of the first quarter in 2022, especially how to deal with furloughed employees.

The guidance is also designed to help organisations ascertain and explain in their narrative reports any unusual variations and trends in their results which may occur as a result of COVID-related measures (see Section 4).

This document can only provide general guidance, and the legal information set out here is for guidance purposes only. If you are, or could be, involved in legal proceedings or have equal pay issues, you should seek professional legal advice from an appropriately qualified solicitor.

2 Introduction: why reporting is essential

Voluntary reporting for 2019/2020

COVID-19 has had a huge impact on our lives and has also affected the Government's approach to gender pay gap reporting. Following the first wave of the pandemic in March 2020, the Government Equalities Office (GEO) and the Equality and Human Rights Commission (EHRC) suspended enforcement of the gender pay gap deadlines for the 2019/20 reporting year.[1]

Both the EHRC and the CIPD strongly encouraged employers to upload the required statistics and produce their narrative report anyway. By the end of 2020, nearly 6,000 of the 10,000 or so employers required to report had done so voluntarily for their 2019 snapshot date, and almost 500 had uploaded their information for their 2020 snapshot date in advance of the compulsory reporting deadlines at the end of March/early April 2021.

In February 2021, the EHRC announced the postponement of any enforcement action against employers failing to report their 2020 statistics until 5 October 2021, but urged employers to report on time if they could, to show the steps they were taking to reduce long-term pay gaps.[2] Employers still had to report their data by 5 October 2021 and will have to again in March/April 2022.

Why reporting remains vital

There are eight reasons why employers should continue to measure and report their gender pay gap information annually, even where they fear the pandemic has distorted their figures:

1. To show genuine **commitment** to achieving gender equality: EHRC research found that almost two-thirds of potential recruits would consider an employer's gender pay gap figures before joining an organisation.[3]

2 To maintain **continuity** in the reported statistics and to monitor trends and patterns over time: gender pay gaps have multiple causes, and reducing them requires a sustained approach, adjusted according to progress achieved.[4]

3 To assess the **effectiveness** of action plans already being implemented to reduce any gaps: as Fiona Cannon, director of sustainability and inclusion at Lloyds Banking Group, explained, without the published annual data, the risk is that gender pay is liable to *'fall off the (boardroom) agenda quite quickly ... this is really hard work, you have to keep on it all the time.'*[5]

4 To maintain an **open approach** to pay management: research suggests this is associated with employees' perceptions of fair pay and lower gender pay gaps.[6]

5 To recognise the trend towards greater **pay transparency** in society and employer practices, with additional reporting requirements – including ethnicity pay reporting – likely to be introduced in the near future:[7] ethnicity pay reporting is already carried out voluntarily by leading employers, including the CIPD.

6 To continue to help realise the **benefits** of closing the gender pay gap, both for the national economy and individual organisations.

7 To help address the pandemic's **unequal impact** on women's earnings: this risks reversing the progress achieved in closing the gap in recent years (see Section 3 below).

8 To respond to a growing focus on **environmental**, **social and governance** (ESG) issues: these are likely to make a company's performance in inclusion and diversity more influential in corporate valuations in the future.[8]

3 COVID-19: how the pandemic is affecting gender pay gaps

The gendered impact

Women have been taking a disproportionate and unequal share of the economic hardship caused by COVID-19. They are more likely than men to be in the low-paid, precarious jobs and low-paying sectors hardest hit by the lockdowns.[9] Women also predominate in the keyworker roles not amenable to homeworking, notably care home workers and retail shop assistants.

The IES's UK labour market analysis of workers furloughed and made redundant by employers during 2020 concluded that *'low-income workers are bearing the brunt of the Coronavirus pandemic'* and these workers were *'more likely to be women, to be lone parents, to be from certain ethnic minority groups (Black, Pakistani or Bangladeshi), and/ or to have no qualifications'*. In terms of the decline in employment of 490,000 jobs which occurred in the first six months of the virus's impact in 2020, 90% of these jobs were part-time roles, which are overwhelmingly staffed by women, the majority of whom have been forced into 'economic inactivity'.[10]

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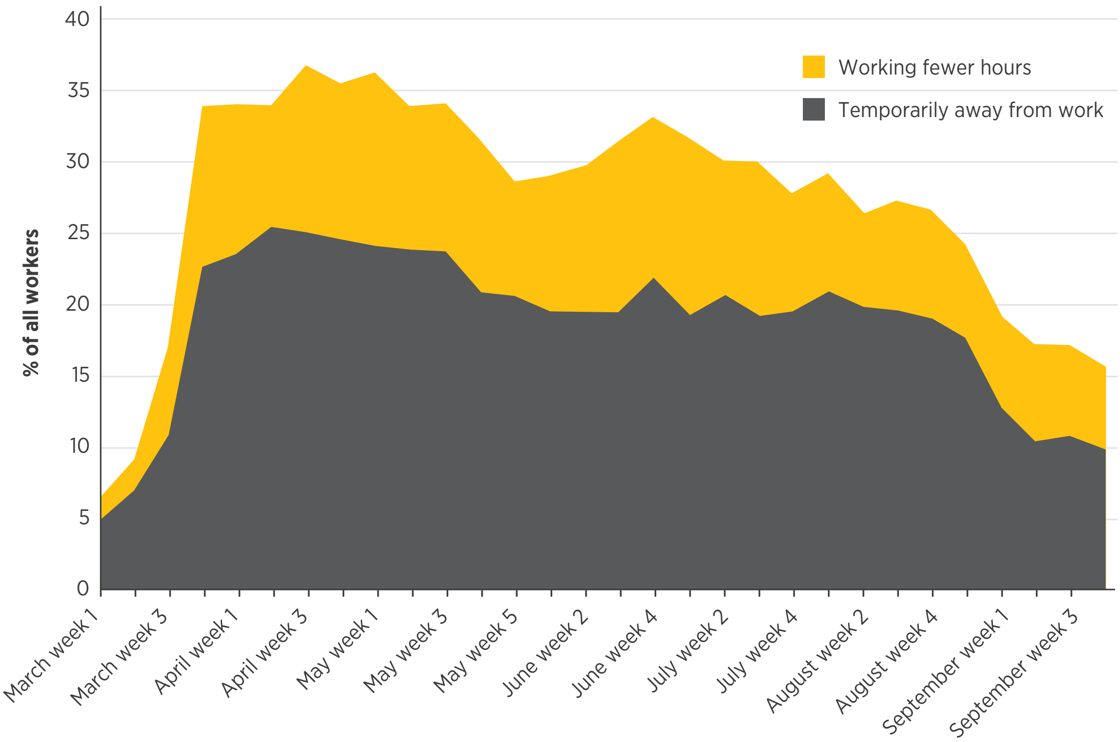
Figure 1: The proportion of UK workers not 'working normally' from March to September 2020



Source: IES analysis of quarterly Labour Force Survey

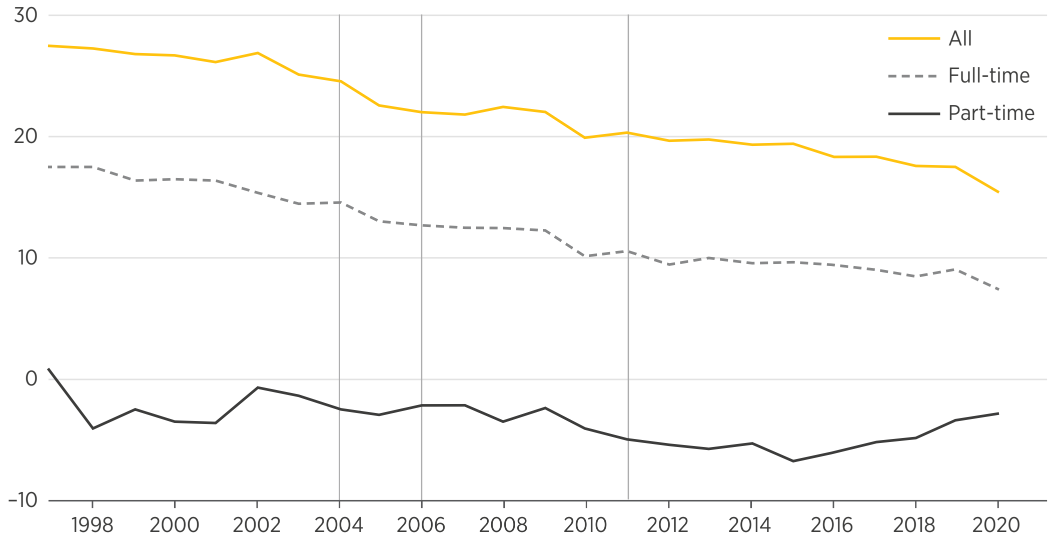
The furlough scheme has been extensively used in the private sector and in sectors most badly impacted by lockdowns, notably hospitality and non-food retail, areas of activity dominated by low-paid, part-time and predominantly female-held jobs. Section 4 below deals specifically with how employers should take account of furloughed employees in their annual gender pay gap calculations and narrative reports this year.

The unpredictable effects of the pandemic on gender pay gaps

This greater gender inequality might lead to the assumption that the UK's gender pay gap, and many of the gaps reported by individual employers, will have widened since the pandemic struck. The impact of the pandemic is actually more complex and varied.

Take the national gender pay gap, which the Government uses as its main metric to monitor its own performance in international league tables and to assess the impact of the compulsory reporting regulations. Perhaps surprisingly, the annual ONS analysis of the national gender pay gap, published in November 2020 but based on data at the end of the first quarter, revealed a significant if surprising reduction in the UK's median all-employee gap, down from 17.4% in April 2019 to 15.5% in 2020 (see Figure 2).[11]

Figure 2: The gender pay gap for median gross hourly earnings, April 1997 to April 2020 (%)



Source: (ONS)25

How, then, do we explain the continuing decline in the national gender pay gap despite the gendered impact of COVID-19?

At the time of its April 2020 data-gathering, the ONS found that approximately 8.8 million employees were furloughed under the Coronavirus Job Retention Scheme (CJRS), with many experiencing pay reductions. For the 2021 ONS data-gathering period, around 3.7 million employees were on furlough.[12]

Employers are required to remove furloughed employees on reduced pay from their calculations under the reporting regulations, whereas the estimates in the (ONS) bulletin *'include furloughed employees and are based on actual payments made to the employee from company payrolls and the hours on which this pay was calculated, which in the case of furloughed employees are their usual hours'*. In other words, they were treated as though their pay had not been reduced.

The ONS also believes that the bulk of both men and women furloughed and experiencing any pay reductions in the 2020 figures were low-paid workers, who were thereby experiencing a similar impact which was not differentiated by gender.

The Equality Trust's analysis six months later in November 2020 found a small average decline in the overall gender gap reported of 0.5%, but that the reported average bonus gap was up by almost 200%. It also reported that two-thirds of the 20 employers with the largest gender pay gaps in 2019 did not report voluntarily in 2020, including, for example, Sweaty Betty and Virgin Atlantic. Both these organisations had pay gaps of over 50%, so the absence of this type of employer with large gaps might have contributed to lowering the average gap across the remainder.

Others believe that the decline in national employment levels during COVID-19, occurring particularly in lower-paying female-dominated occupations, could have increased the average pay of those women still remaining in employment and captured by the national figures. This is hardly a desirable feature of the labour market, even if it temporarily reduces the national gap.

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This effect can be seen in the monthly average earnings statistics, where the ONS reported in January 2021 that *'current growth in average employee pay continued to strengthen, but this growth is increasingly being driven by compositional effects of a fall in the number and proportion of lower-paid employee jobs'*.[13]

However, the breakdown of the gender pay gap by occupational grouping and earnings level contained in the ONS's annual gender pay analysis in 2020 shows that the gap is widest in the highest-earning job category of managers, directors and senior officials. It has, though, reduced here since 2019, partly because of the growth in the proportion of women holding this type of role, and this fall continued in 2021.[14]

The significant variation in gaps in these more detailed national breakdowns, for example by sector (the gap is generally lower among public sector employers) and age (where there is now a small pay gap for younger women, but a significant and increasing difference for those over the age of 40), highlights the unpredictable variations that individual employers are likely to find in their own data. These will vary according to their organisation's profile of work and skills, location, employee demographics and the numbers and types of workers furloughed, placed on short-term working or made redundant, or having their earnings reduced in some other way over the past two years.

This emphasises the importance of individual employers analysing and reporting on their own situation in order to reduce their gender pay gaps. The specific details of calculating and explaining individual employer gender pay gaps under the reporting regulations for this year are considered in Section 4 below.

4 Reporting guidance: what and how to report

Our guide follows the detailed guidance set out by the Government,[15] the EHRC[16] and Acas[17] in support of the legislation. As it explains, employers need to:

- determine whether the regulations apply to your organisation and, specifically, whether you meet the minimum threshold of 250 'relevant employees' for compulsory reporting
- calculate the hourly pay rates for the men and women among your 'full-pay relevant employees'
- calculate the six measures of the gender pay gap an organisation is required to report (see below)
- finally, analyse your data, draft a narrative report to explain the causes of any gaps shown and an action plan of initiatives designed to close them (both narrative reports and action plans have so far remained voluntary under the legislation, but are published by the majority of the 10,000 or so employers reporting their figures annually).

The six measures are:

- the mean (average) gender pay gap in hourly pay
- the median gender pay gap using hourly pay
- the percentage of men and women receiving bonus pay

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- the mean gender gap in bonus pay
- the median gap in bonus pay
- the percentage of men and women in each hourly pay quarter* in a ranking of your employees from lowest- to highest-paid per hour.

*Government guidance now uses the term ‘quarter’ rather than the statistical term ‘quartile’ used in previous guidance.

COVID-19, and the furloughing of almost a third of the UK labour force in response, would never have entered even the worst nightmares of the government officials who developed the 2017 gender pay gap reporting legislation. Yet the figures reported by many employers in 2021 and 2022 will be affected by the pandemic and the support schemes intended to deal with it. The narratives of those organisations will need to explain this impact, and many of their action plans will need to specifically address the resulting effect on their gender pay gaps.

The furlough scheme closed 30 September 2021, meaning that millions of employees could have been furloughed on the snapshot dates being used to calculate gender pay gap reports for March/April 2022.[18]

In this section, we set out how to take account of the furloughing of any employees and other relevant pandemic-related changes taken in gender pay gap reporting calculations, narratives and plans.

Do the regulations apply to my organisation?

The regulations define the minimum threshold requirement of 250 or more employees in terms of ‘relevant employees’ on the snapshot date. The definition of an employee is that contained in the Equality Act 2010. This so-called ‘extended’ definition includes employees (those with a contract of employment), workers and agency workers (those with a contract to do work or provide services), apprentices, and some self-employed people, where they have personally to perform the work.

Relevant employees are counted on an individual basis, **not** as full-time equivalents. So, for example, each part-time employee, including job-sharers, employed by an employer on the relevant snapshot date, counts as one employee.

People furloughed, and therefore absent on the snapshot date, are nonetheless still employed and count toward the total number of ‘relevant employees’. This would also apply to those on sick leave or self-isolating on the snapshot date, or temporarily laid off, or on reduced hours or pay because of the lockdowns and the economic effects of the pandemic.

Apprentices under contract normally would be counted in the total, and if they are still in employment, they continue to do so. However, if their apprenticeship has been cancelled, as happened unfortunately in hundreds of organisations during the pandemic, then obviously they would not count if not employed on the snapshot date.

So, in terms of the number of relevant employees needed to meet the threshold requirement to report under the regulations, those on the furlough scheme on the snapshot date are treated exactly the same as other employees. But this may well not be the case when it comes to the next step – making the pay gap calculations.

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Furloughed employees and the gender pay gap measures

The regulations require the overall mean and median gender pay gaps in an organisation to be calculated using '**full-pay relevant employees**'. This definition excludes any employees who, during the relevant pay period running up to the snapshot date (typically the previous month or week), are being paid at a reduced rate or not being paid at all.

For example, these might be employees on sick leave being paid at a reduced rate or taking an unpaid period of paternity leave. In a normal year, therefore, there will be fewer 'full-pay relevant employees' than the 'relevant employee' total for most employers. But the gap between them would typically be small, would be similar each year and would normally be split fairly evenly between men and women.

COVID-19 and its impact are not in any sense normal. Significant numbers of employees in many key sectors have been on the furlough scheme on a reduced rate of pay, and different proportions of men and women may be evident in that furloughed population. Both the 2020 and 2021 snapshot dates were affected. This potentially could have a significant impact on the mean and median pay gaps that you calculate, and also on the quartile pay distribution that needs to be reported.

Under the updated government guidance, it is clear that **furloughed employees should generally be excluded from the three pay calculations**:

'Exclude from your list of full-pay relevant employees, those on "leave", and who are receiving less than full pay, including those on: annual leave; maternity, paternity, adoption, parental or shared parental leave; sick leave; special leave; ***furloughed leave under the Coronavirus Job Retention Scheme, unless their pay was topped up to their usual full pay****; any other forms of leave (for example, study leave or sabbaticals).'*

The exception here is where an employer furloughed their employees on 100% of their pay and made up the difference between the Government's contribution and the employees' normal pay. The furloughed employees on full pay would then be a 'full-pay relevant employee' and should be included in the pay calculations.

So, for these three pay statistics, furloughed employees will be generally classified as 'on leave' on reduced pay and so **furloughed employees should not be included in the calculations which are carried out on 'full-pay relevant employees'**. This applies for the calculation of the mean gender hourly pay gap, the median gender hourly pay gap and the percentage of men and women in each hourly pay quarter.

However, the logic will generally be different in terms of the other three measures, that is, in bonus pay eligibility and any gender differences in the mean and median bonus payments received over the 12 months prior to the snapshot date.

Furloughed employees and the gender bonus pay measures

The three bonus measures which need to be reported under the regulations – bonus eligibility between men and women, and mean and median payments actually made over the 12 months prior to the snapshot date to male and female employees – are calculated for 'relevant' rather than just 'full-pay relevant employees'. So, in these cases, **furloughed employees should normally be included in the gender bonus calculations**, whether they are furloughed on the Government's reduced-percentage rate or on their full pay rate through an employer top-up.

The Government Equalities Office has confirmed that *'any furloughed employees must be counted when establishing what the employer headcount is, and included in the gender pay*

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gap calculations when calculating the percentage of men and women receiving bonus pay; the average (mean) gender pay gap using bonus pay; the median pay gap using bonus pay'.

It is important to remember, for furloughed and for all employees, that these bonus payment measures should **only include payments actually received in the defined prior year**. If no bonus payment was paid to all or to some employees in the previous year, or a bonus plan has been suspended because of the COVID-19 pandemic, or a decision on payment delayed or deferred beyond the snapshot date, then no bonus payment should be recorded in these statistics.

Narrative reports and action plans

Both the Government and the CIPD have consistently emphasised the importance of organisations voluntarily providing a written narrative to accompany their gender pay gap statistics, primarily in order to explain the reasons for any gaps and to set out an action plan to address the causes revealed by an organisation's analysis.

As the Government's guidance explains:

'Adding a supporting narrative helps anyone reading your gender pay gap report understand your view of why a gender pay gap is present and what your employer has already done to analyse and close it.'

It is not possible to be prescriptive. The action you take will vary from one sector to another, and from one business to another.

Narratives also give the opportunity to explain any major and unusual changes in an organisation's circumstances which might produce a change in their gender pay gap figures compared with prior years. So, for example, an employer could have sold off part of its business with large numbers of female, lower-paid workers, which substantially reduced its gender pay gap purely because of the change in profile of the employee population. This could be explained in a narrative report.

Another organisation may have moved its formerly outsourced and generally female, lower-paid ancillary service staff back in-house as employees. This put those workers on improved pay and conditions but lowered the organisation's overall pay average for women in the organisation and so widened its gender pay gap compared with the previous year. Again, this can be explained in an accompanying narrative.

The pandemic years, however, have been different. Potentially many thousands of employers would have seen their employee population change, possibly radically, from the previous year. This could have been due to furloughing, or having to restructure or make redundancies because of the slump in the lockdown economy. And this is likely to have resulted in unpredictable and potentially significant shifts in an organisation's gender pay gap statistics, possibly worsening them compared with previous years.

Around a fifth of employers either postponed their annual pay reviews or froze pay levels for their staff as a result of COVID-19, which means the pay data used to calculate the statistics might be substantially the same as in the previous year.

So, how should an employer respond if its pay gap statistics have changed (and especially worsened) purely or largely on account of the pandemic? As in prior years, every organisation will need to do its own pay analysis to understand the causation of its pay gaps and how these are and will be addressed in future by their tailored plan of actions. But the following are some suggestions on the possible approaches employers could take:

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Try to isolate the specific impact of the pandemic on your six gender pay statistics
You could, for example, carry out an additional set of calculations including furloughed employees, particularly if you had large numbers of them, in order to make a more accurate comparison with gaps in prior years on a like-for-like basis. You could investigate your workforce profile, understand where the changes are located and whether your male and female populations have been affected differently.

A retail business, for example, might have closed shops and furloughed staff for a proportion of the last year, so this year's pay figures might only include its head office employees. This understanding will be critical to presenting and interpreting the pay gaps revealed this year.

The reporting legislation only specifies the minimum information you need to publish
There is nothing at all to stop you including this additional information in your annual published narrative report, if it helps to explain the trend in your published figures. Many employers already voluntarily publish their pay gap in each pay quartile, for example, as well as just the proportion of men and women; or you could include findings from an equal pay audit to demonstrate that your pay gap is not caused by paying men and women unequally for like work.

Look for changes in additional supporting data that might help explain your pay gaps
This data might become particularly pertinent this year in helping to explain any shifts compared with prior years. If, say, you have frozen recruitment, how might this have impacted your male and female pay averages? It is not uncommon for men in systems with pay ranges to sit at a higher point in their pay scales on average than women.

Or if a general pay freeze was implemented, there may have been some market-related adjustments made (which are often skewed towards male incumbents). Or perhaps pay was only frozen for higher-paid employees (which commonly have a higher proportion of male incumbents).

Investigate any changes in your bonus payments
Bonus gaps that measure variable pay have historically tended to change more from year to year, as well as on average displaying wider gender gaps than the other elements of compensation. So, in particular, investigate any changes in your bonus payments and how this may have impacted men and women in your organisation differently. Often more than one bonus plan will be aggregated into the overall bonus gap figure and it is not unusual for the gender coverage of each plan to vary – for example, with all employees members of a profit-sharing plan but a male skew often evident in the membership of sales incentive plans.

Boards and external audiences such as the press are often most interested in major shifts in the figures, particularly negative ones, so being able to explain this situation and show causation related to the pandemic will be particularly important for employers.

Consider additional or enhanced actions
All the indications are that the pandemic has widened inequality across the UK and, indeed, global economy, with women, ethnic minority and disabled employees particularly badly affected. So, consider additional or enhanced measures that you might want to take in your organisation to help address this. The pandemic, as Section 3 explains, has highlighted the focus on inequality and on an employer's ESG performance, including making improvements in the inclusion and diversity field. Significant gender pay gaps and lack of female representation at senior levels in individual organisations are being

viewed increasingly seriously by investors and other stakeholders, such as customers and employees, irrespective of the social and structural drivers of the gaps, upping the importance of employer actions to address them.

This could, for example, be done by extending your existing actions to expand your board talent pipeline and succession plans designed to increase female representation at board level further down the organisation to senior management and professional posts; or perhaps by introducing or extending gender-blind recruitment and selection processes, which have been shown in many research studies to improve the diversity of jobholders in the roles covered.

Review your flexible working arrangements
Check the effects of any changes in patterns of working during the pandemic on your pay gaps. The pandemic has had a huge impact on our working patterns, with a significant proportion of the workforce moving to homeworking or hybrid working over the past two years.

This appears to be having a varying effect on gender representation and future pay gaps. On the one hand, many perceived barriers to home and variable working hours have been shown to be without foundation as people have transitioned to carry out well-paid jobs away from the office. These jobs can be performed just as well, some would argue, by employees working varied hours and in varied locations.

But, on the other hand, working mothers appear to have taken on the bulk of additional caring and education responsibilities, forcing more women than men to cut their hours and pay and forcing some to drop out of employment altogether. COVID-19 made the need for employers to address these penalties even more urgent.

How have these global and UK-wide trends been manifest in your organisation? Have your female employees been forced to reduce their working hours and pay, and how has this affected your hourly gender pay gap? These will be important factors to consider this year for many employers, alongside any changes that result from them and any improvements to flexible working and parental support policies which could help close gender representation and pay gaps.

Communicate, communicate, communicate
Gender pay gap reporting isn't just about the figures you come up with; it's also about the story that those figures tell. **How you communicate your gender pay gap statistics is always vitally important.**

Perhaps most of all during the COVID-19 emergency, people professionals need to emphasise in their reports, to their boards and other important stakeholders, that achieving gender pay and wider equality for women with men is generally not an easy, short-term 'quick-fix' phenomenon. There are deep-rooted social and economic causes that are not easy for any individual employer to unpick and address.

So, in your narrative, highlight the longer-term trends in the pay gap statistics you have been reporting, reinforce and provide evidence for your genuine commitment at all levels to addressing them, and set out realistic goals and targets in terms of what can and needs to be achieved in the medium to long term, what plans and initiatives will close the gaps, and how you will monitor and report on them in future years.

5 Notes

1 Government Equalities Office. (2020) Employers do not have to report gender pay gaps. 24 March.

2 Equality and Human Rights Commission. Gender pay gap reporting.

3 EHRC. (2018) Gender pay gap determines women's choice of employer. 10 October.

4 Government Equalities Office. (2018) Reducing the gender pay gap and improving gender equality in organisations. 1 August.

5 *Financial Times.* (2020) Focus on UK gender pay gap slips after COVID-19. 7 October.

6 Government Equalities Office. (2018) Reducing the gender pay gap and improving gender equality in organisations. 1 August.

7 Women and Equalities Committee. (2022) 'No excuse' for lack of ethnicity pay gap statistics. 8 February.

8 J P Morgan. (2020) Why COVID-19 could prove to be a major turning point for ESG investing. 1 July.

9 Baska, M. (2020) Low-paid workers bearing the brunt of COVID fall in employment, study finds. *People Management*. 14 July.

10 See note 9.

11 ONS. (2020) Gender pay gap in the UK: 2020. 3 November.

12 ONS. (2021) Gender pay gap in the UK: 2021. 26 October.

13 ONS. (2021) UK labour market: January 2021. 26 January.

14 ONS. (2020) Gender pay gap in the UK: 2020. 3 November.

15 Government Equalities Office. (2022) Gender pay gap reporting: guidance for employers. 3 February.

16 Equality and Human Rights Commission. Gender pay gap reporting.

17 Acas. Gender pay gap reporting.

18 BBC. (2021) Numbers on furlough drop to new low. 9 September.

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