



HR Bulletin

E-Update 89 – October 2018

Ethnicity pay reporting

Now that the duty to report on the gender pay gap has been established, the Government is turning its attention to the reporting of the pay gap between employees of different ethnicities. Consultation is now underway, but don't hold your breath. This will be a much more complicated project than gender pay gap reporting and even with a fair wind, drafting and implementing a new law will take quite some time.

Let's be clear from the outset that there is a genuine problem here. There is good reason to believe that members of ethnic minorities are at a disadvantage in the workplace, and that this is reflected in their hourly rate of pay. A good employer will be aware of the risks of race discrimination and take steps to monitor how members of different groups are treated – how they progress through the organisation, how they fare in redundancy selection exercise and whether they are more likely to be accused of poor performance or misconduct. Being aware of how they are paid can be an important part of that overall picture.

The idea of requiring employers to report on pay by ethnicity of employees was suggested by Baroness McGregor-Smith in her 2017 report 'Race in the Workplace'. The Government's initial response was to promote what it called a 'voluntary, business-led approach' but it is clear that this has had little impact with only a very small number of employers choosing to publish data voluntarily. The Government is now convinced that the time has come for mandatory ethnicity pay reporting and has published a formal consultation on the issue.

Promoting equality and the elimination of discrimination is one thing – and public sector employers are already under a duty to do that. But introducing a law that actually requires the publication of specific information regarding the relative pay of employees of different ethnic origins, raises some considerable challenges. The first challenge is perhaps the most fundamental. In a diverse country, how do you categorise people, by ethnic origin? With gender pay gap reporting the Government was able to assume that an employer would know which of its employees were men and which were women – but that is clearly not the case with ethnicity. The Office for National Statistics uses 18 different classifications for the purposes of the census within the five overall groups of White, Asian, Black, Mixed and Other. Employers would have to rely on individual employees to identify for themselves which term best describes them. Some employers already do that, but the process is voluntary, and many employees do not choose to give that information. It is difficult to envisage the law making it mandatory to reveal your own ethnic origin, so this means that the figures produced by an employer are likely to be incomplete, making the figures less reliable.

The scheme could ask employers to divide their workforce simply into the categories of White and BAME (Black, Asian and Minority Ethnic), but while this would be less complex administratively, the resulting figures really wouldn't tell you much and the problem caused by incomplete information would still remain.

Another key difference between ethnic origin and gender is that while men and women are spread equally across the population, this is not the case for ethnicity. There are many areas of the country where the local working population is almost exclusively white – and any 'average' level of pay reported for non-white employees will in effect be determined by the pay of a very small number of individuals. How can the ethnicity pay gap be properly compared with that of an employer whose local working population is much more diverse?

There are other factors too which undermine the value of comparing simple averages. The ethnic minority population of the UK is, on average, younger than the white population. Pay is to some extent a function of age and so this factor too will distort any comparison. There is a similar problem with socio-economic group. Whereas men and women are equally distributed across society, that is clearly not the case with members of different ethnic minorities.

Given these issues, you have to wonder whether a law requiring employers to report their ethnicity pay gap will see the light of day anytime soon. To say that the Government has other priorities at the moment is something of an understatement and introducing this change for private sector employers would take primary legislation and use up valuable Parliamentary time. Producing the figures themselves would also be time consuming and impose an administrative burden on businesses just when they are trying to cope with whatever changes they need to make as a result of Brexit.

When it comes to the public sector however, primary legislation would not be needed. As with gender pay gap reporting the Government could simply issue regulations imposing a requirement to report on pay and ethnicity through the existing statutory duty to promote equality. Frankly the Government also has fewer qualms about imposing administrative burdens on local authorities than on businesses, so I wouldn't rule out this approach.

None of this is to say that comparing average pay between different ethnic groups is a pointless exercise, but the danger with a requirement to report specific figures – as we saw with gender pay gap reporting – is that an employer's whole approach to equality ends up being judged on the basis of a rather crude and potentially misleading figure.

To be fair to the consultation document, the difficulties with introducing a new law in this area are fairly set out and explained. What we do not see however is any real suggestion as to how these challenges might be met. Clearly the Government would welcome suggestions – and the consultation will remain open until 11 January next year.

Keep in Touch

Twitter - [@DazNewman](https://twitter.com/DazNewman)

Blog – darrennewman.wordpress.com