Mind the Gap!
The Gender Pay Gap Information Bill 2019 due to be signed into law before the year is out.

On 7 July 2021, the Gender Pay Gap Information Bill 2019 (the "**Bill**")[1] was passed by both houses of the Oireachtas and is due to be signed into law by the President before the end of the year. This article summarises key changes that the Bill will introduce, and outlines steps employers can take to ensure compliance with the proposed legislation once enacted.

What is the gender pay gap?

Firstly, it is important to understand what is meant by the term *'gender pay gap'*, as it is often confused with the concept of equal pay for equal work. While paying a woman less than a man for carrying out the same work solely based on their gender is illegal, the gender pay gap is different. It refers to the difference between the average earnings of a man and a woman based on the gross hourly earnings of all paid employees. The Central Statistics Office last released statistics on the gender pay gap in 2017 when it was 14.4%, slightly lower than the EU average.[2] Ultimately, Ireland and the EU want to close the gender the pay gap and if employers can commit themselves to complying with the reporting obligations set out in the Bill, this is certainly a good first step in reaching this goal.

What are the changes introduced by the Bill?

Under the Bill, certain employers will be required to report on the following differences in male and female remuneration:

- Mean and median hourly remuneration for full-time and part-time employee;
- Mean and median bonus remuneration of employees;
- The proportion of employees who have received a bonus or benefits in kind; and
- The proportion of employees within each of four quartiles.

In addition, employers will be required to explain how an employee's remuneration is calculated, the reasons for the differences and the measures (if any) that they intend to take to reduce the gap or to eliminate it completely.

What organisations will be affected by the Bill?

The Bill requires both public and private sector employers over a certain size to publish the differences in pay between female and male employees, including any bonuses they receive.

Initially, organisations with over 250 employees will be affected by the Bill. After year two, this will be reduced to over 150 employees and after year three, to over 50 employees. Organisations with less than 50 employees will not be affected by the Bill.

When will the Bill come into effect?

It is not exactly clear when the Bill will come into effect. However, the Bill has passed through the various stages of debate in the Seanad and the Dáil and it is due to be signed into law before the end of 2021.

What are the consequences for failing to comply with the Bill once enacted?

If an organisation fails to comply with the specific reporting obligations under the Bill, the Irish Human Rights and Equality Commission (the "**IHREC**") has the power to make an application to the Circuit Court or the High Court. The IHREC can seek an order from the Court, which would require the organisation to meet the reporting requirements as set out under the Bill if they did not initially do so.

In addition, an employee who feels that their employer has not complied with the reporting regulations set out under the Bill, may refer this complaint to the Workplace Relations Commission (the "**WRC**"). The WRC will investigate the complaint if it is satisfied that it warrants an investigation. The Bill sets out the investigation process and confirms both parties' right of appeal to the Labour Court once a decision has been issued by the WRC.

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[1] The Gender Pay Gal Information Bill 2019
[2] Government Press Release: Cabinet Approves Gender Pay Gap Legislation

There is no provision under the Bill which permits the WRC to award compensation or impose a fine for failing to comply with the Bill. As such, the main cost to organisations will be the damage to its reputation both externally in terms of negative publicity and employee confidence.

What can employers do now to comply with the Bill?

Given the detailed reporting requirements under the Bill, we would caution against a *'wait a see approach'* and advise employers to explore the following preparatory measures:

(i) Confirm the size of your organisation to determine when you will come within scope of the Bill and be required to comply.

(ii) Identify the potential gender pay gaps within your organisation. This can be addressed by conducting a preliminary audit of staff remuneration, including bonuses and benefits in kind (including statutory leave), to compare the average gross pay of women compared with men, and how such disparities can be remedied. This should also specifically include a review of the part-time employees, who more than often are over-represented by female staff.

(iii) Consider specific vulnerabilities your organisation may have when it comes to complying with the Bill. For example, it is widely known that certain industries, such as fashion or beauty are female dominated, while other industries such as construction or engineering can be more male dominated. Such employers should immediately begin to familiarise themselves with the Bill and consider any long-term strategies to reduce the pay gap and ensure compliance.

(iv) Investigate the reasons for any pay disparity and how the organisation can justify pay increases to bridge any gap in pay. For example, whether further training can be introduced to support promotion opportunities or flexible/remote working options for part-time employees. This will also assist the organisation in providing a clear narrative when it is required to provide its report.

For further advice on the Gender Pay Gap Information Bill 2019 and how it may impact your business, please contact Bláthnaid Evans or Sheila Spokes of Leman Solicitors on +353 1 639 3000 or visit www.leman.ie.