

Insights

LABOUR'S PROPOSED EMPLOYMENT LAW REFORMS: OUR THIRD AND FINAL WEEKLY PRE-ELECTION GUIDE

ETHNICITY AND DISABILITY PAY GAP REPORTING

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SUMMARY

Following last week's insight on employment status, we focus this week, just before the election, on the issue of Ethnicity and Disability (E&D) Pay Gap Reporting.

WHAT GAP IS THERE TO REPORT ON?

National ONS statistics show that, between 2012 and 2022, UK-born white employees earn more on average than most employees from ethnic minority groups. This is an across-the-board figure, and without mandatory reporting there is no way of knowing how this plays out from employer to employer.

As regards disability, in November 2023 the TUC reported there was a 14.6% pay gap between disabled and non-disabled employees, with female disabled employees being particularly disadvantaged. A larger ONS survey in 2021 gave a gap of 13.8%, with similar disparities between men and women.

By comparison, in April 2023 the ONS found the gender pay gap to be 7.7% across the board, although the gap was more pronounced amongst higher-paid employees.

So, in very broad terms, the E&D gap is twice as large as the Gender Pay Gap. Labour's policy is to close that gap, partly by introducing equal pay legislation for ethnic minority groups and disabled people. E&D reporting is part of that.

MANDATORY E&D PAY GAP REPORTING – HOW WILL IT HAPPEN?

At the time of writing, Gender Pay Gap Reporting has been mandatory for large employers (250+) since 2017, but E&D Pay Gap Reporting remains voluntary. In 2023 this was confirmed in part by the

government which declined to make Ethnicity Pay Gap Reporting mandatory.

Labour's proposal is to introduce legislation to make E&D Pay Gap Reporting mandatory for large employers (250+). The plan is to put equal pay for ethnic minority groups and disabled people on a similar footing to equal pay for women. The proposed Race Equality Act will cover ethnicity and will presumably include provisions for equal pay. In terms of disability, it is not so clear, but we believe it will be a statutory measure, perhaps adding to the Equality Act 2010 or similar.

However this is achieved, it will be a significant enhancement of employee/worker rights, and large employers could find complying with these obligations tricky, which we cover below.

LARGE EMPLOYERS ONLY?

If introduced, mandatory E&D pay gap reporting will only apply to large employers, those employing 250 employees or more.

At the start of 2023, ONS figures revealed the number of private sector businesses in the UK to be 5.6 million, with only 8,000 being large employers. In terms of numbers of employers, this means that over 99% of private sector companies are small to medium sized businesses (SMEs). However, large businesses are also the largest employers, employing around 31% of UK employees, but this still means that around 61% of private sector employees will be excluded from mandatory E&D reporting.

The rationale behind the concentration on large employers is that they have the capacity and resources to take on the task of both Gender and E&D Reporting. In other European countries some limits are different, such as Spain where the limit is 50+ as opposed to 250+, although the manner of reporting is slightly different. Perhaps over time the numbers/limits will be reduced.

ETHNICITY INFORMATION

This might be the biggest issue for employers, examples are:

- **Gathering information #1** – in April 2023 the government published guidance for employers who wanted voluntarily to carry out Ethnicity Pay Gap Reporting. The Government Analysis Function made available “harmonised standards” for ethnicity information. However, gathering ethnicity information can be tricky - some staff might not want to disclose their ethnicity, and/or believe the ethnicity categories are inadequate (see below) and this is not an issue that can be forced. Employees might argue for example that their ethnicity has nothing to do with their job. The Equality and Human Rights Commission carried out research, albeit not limited to large employers, which revealed over 50% of employers felt there are hurdles to collecting data on ethnicity and disability, 32% said that it was too invasive and 20% said that the collection of this type of data is onerous. If ethnicity and disability data is not collected on recruitment, some large employers will need to carry out the exercise from scratch;

- **Gathering information #2** – even with individuals who are willing to disclose ethnicity voluntarily, some may not identify or be happy with the proposed categories of ethnic groups, which should be chosen carefully. The government’s harmonised standard categories were compiled in 2011 and may require reviewing 13 years later in 2024. Determining ethnic groups and deciding how to compare pay across them is not necessarily straightforward. In some circumstances anonymity is required when collecting ethnicity data. This might raise issues, including GDPR issues, where there is a question of potential ability to identify individuals where the ethnic group is particularly small within an organisation;
- **Gathering Information #3** – disability in some cases might be more sensitive than ethnicity - and again cannot be forced. Staff with conditions that they believe may involve stigma or judgment (or both) might be reluctant to disclose disabilities; and
- **The role of DEI** – some large organisations have carried out pilot schemes in this area and it is clear that organisations with good DEI practices and an inclusive, psychologically safe environment will have a better opportunity of collecting the most data on ethnicity and disability. Individuals are more likely to disclose potentially sensitive information if they feel safe in doing so.

This is one of Labour’s most ambitious pledges and it is expected there will be substantial consultation before any legislation comes into force. At least some of the groundwork was carried out for the April 2023 report.

Finally, Labour needs to win the election for any of this to apply, and we won’t know that until the early hours of Friday.

RELATED CAPABILITIES

- ESG Governance, Compliance and Reporting

MEET THE TEAM



David von Hagen

London

david.vonhagen@bclplaw.com

+44 (0) 20 3400 3576

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