

# Overcoming the secrecy behind pay inequality

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# Overcoming the secrecy behind pay inequality

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Last week Massachusetts become the first US state to take steps to ban employers from asking applicants about their current salary during the interview process. This legislation is being introduced to tackle the gender pay gap within the state. At present, women in Massachusetts are paid 82 cents for every dollar earned by their male counterparts. Given that women traditionally earn less than men, women are arguably

likely to start off on lower salaries. Companies therefore seek to benefit from this imbalance by asking about current salary levels – let's face it, what company would pay more than they need to in order to get their chosen candidate?

The law, which is due to take effect on 1 July 2018, also provides that companies can no longer ban employees from discussing their salaries. Whilst it is unlikely that HR will tell women in Massachusetts how much 'John from accounts' is earning in comparison to themselves given confidentiality and data protection issues, it is hoped that permitting frank discussions between employees will lead to women feeling more empowered to push for pay rises.

So what is the position in the UK?

Well, gender pay equality is still a real issue. Despite the introduction of the Equal Pay Act 46 years ago, women on average earn just over 19% less than men. To put this in stark terms, the Fawcett Society (a charity which campaigns for gender equality and women's rights) estimates that this year, women will effectively stop earning relative to men on 10 November 2016.

The UK does have a raft of equality laws, but nothing so far to prevent employers from asking candidates about current salaries.

However, whilst companies can request that employees keep their salaries confidential, section 77 of the Equality Act 2010 makes pay secrecy clauses in contracts of employment unenforceable to the extent that it prevents an employee from finding out whether or to what extent there is a connection between pay and a particular protected characteristic, e.g. to find out if pay is connected to his/her gender, age, race, sexual orientation or disability.

Section 77 also makes it unlawful to victimise an employee for making or seeking disclosures about this connection between

pay and gender or other protected characteristic.

So, if a woman asks her male colleagues about how much they are paid because she is concerned that she is being paid less for carrying out the same or similar work, it would be unlawful for the employer to sanction her in any way for asking the question.

In addition, the government has recently published the draft Equality Act 2010 (Gender Pay Gap Information) Regulations 2016 to attempt to redress the gender pay gap issue. This will require companies with over 250 employees to publish information about pay and bonuses on a yearly basis, with the first reports due in April 2018.

The upcoming gender pay reporting duties oblige companies to publish:

1. overall gender pay gaps, showing the mean and median pay for both sexes;
2. the number of men and women in each of the 4 pay bands (lowest to highest salaries) to show how pay differs at different levels of seniority; and
3. information on pay gaps relating to bonuses and the proportion of males/females who received a bonus.

However, before we can all start rejoicing, the draft Regulations do not contain any enforcement provisions or sanctions. It seems, therefore, that the government is relying upon negative publicity to drive companies with a large gender pay gap to reduce this. Whilst it might be preferable to give women enforceable rights, the publicity approach may not be as toothless as it seems. In a government consultation on this, 84% of women aged between 16 and 30 said they would consider a company's gender pay gap when applying for a job and 80% would compare data across companies when applying.

It is hoped that these measures, not only in the UK but also across the pond, will redress this seemingly worldwide issue

at a faster rate. This may not be difficult in practice given that Frances O'Grady, General Secretary of the TUC, has estimated that in the UK it will take another 47 years to reduce the gap at the current rate of progress.

### [Samantha Prosser, Solicitor](#)

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