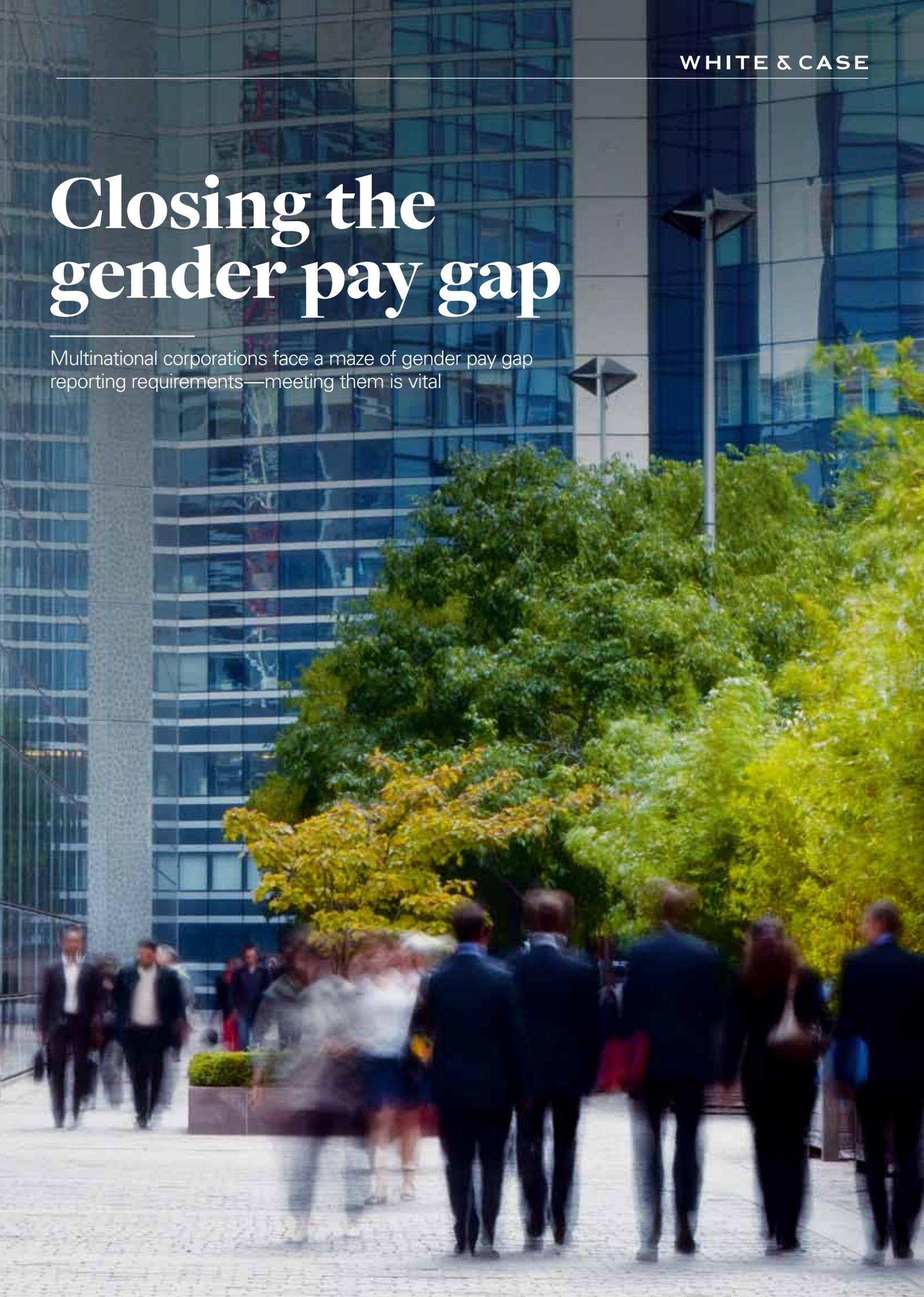


# Closing the gender pay gap

Multinational corporations face a maze of gender pay gap reporting requirements—meeting them is vital



# Closing the gender pay gap

The gender pay gap is an issue that is racing up the political and boardroom agendas around the world. **Stephen Ravenscroft** of global law firm White & Case discusses the practical and operational challenges for multinational companies facing a fast-changing legal and regulatory environment when it comes to monitoring and reporting their gender pay gap statistics

**T**he landscape for gender pay gap reporting is shifting fast, and multinational corporations face a maze of new obligations in the different countries in which they operate. This myriad of legislation and regulation poses practical and operational challenges.

There is no one standard international approach and there are big differences in the types of data that will need to be collected, how the information is reported and published, and penalties for failing to comply.

Those that fall foul of the rules could—depending on the jurisdiction—face fines or the risk of being named and shamed, with all the reputational damage that could bring.

## Equality and pay

Data from the Organisation for Economic Co-operation and Development (OECD) show gradual progress is being made towards equality. But according to PwC's Women in Work Index 2017, on average, women still earn 16 per cent less than men.

The causes of the pay gap are deep-seated, often linked to women working in less remunerative sectors, taking career breaks and filling more part-time roles, and form part of a broader debate about equality involving not just the sexes, but also race and social mobility issues.

The mounting evidence that closing the gender pay gap can have

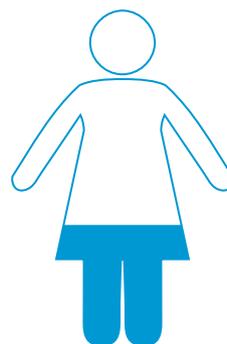


**US\$11,000**

Global average annual earnings, women

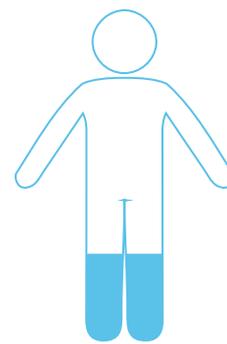
Source: Global Gender Gap Index 2016, World Economic Forum

## Percentage of women and men working fewer than 35 hours per week



**34.2%**

of employed women\*



**23.4%**

of employed men

Source: International Labour Organisation; *Women at Work Trends 2016*.

\*Estimates based on data from 100 countries



**The causes of the pay gap are deep-seated, often linked to women working in less remunerative sectors, taking career breaks and filling more part-time roles**

a beneficial effect on an individual company's performance and the broader economy is driving a wave of new legislation as governments respond to the need to tackle gender pay inequalities. For some, addressing the pay divide has been a longstanding priority, while others are playing catch-up.

Scandinavian countries that have advanced family-friendly policies with a wide range of support mechanisms for women in the workplace are often

held up as a light of how things can be done well. In the private sector, tech companies have been at the forefront of the debate. Facebook and Microsoft announced that they had closed the gender pay gap on US Equal Pay Day in 2016.

### Understanding the numbers

Approaches to gender pay reporting vary vastly between countries—from minimal legislation in Japan to wide-ranging and complex requirements in France, and it is vital that companies understand the legal requirements of each jurisdiction in which they operate. The laws in the country of their headquarters, which drive strategy across the business, may be very different from those in other countries where the business employs personnel.

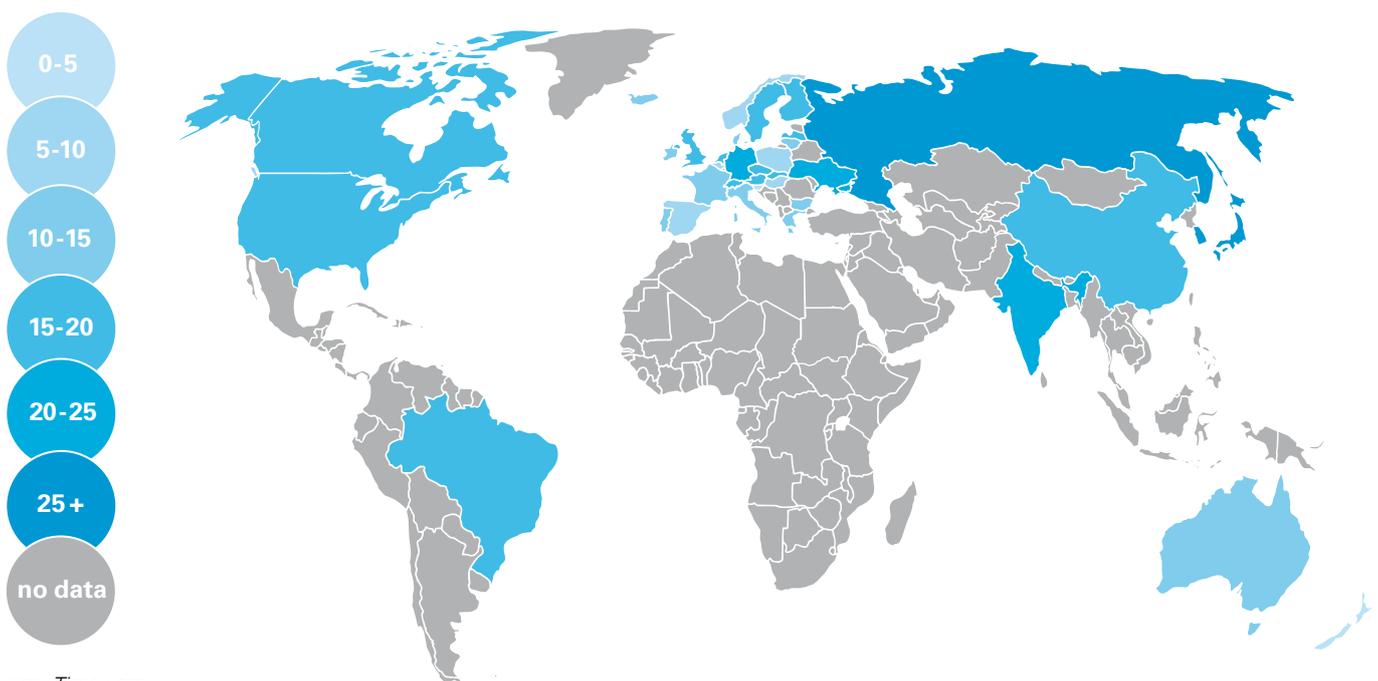
Thresholds for employee numbers covered by legislation differ, from 10 in Sweden to 500 in certain cases in Germany. In the UK, where new laws on gender pay gap reporting come into force in April 2017, the threshold is set

## Gender pay data audit: A checklist

- Identify who will be responsible for obtaining and analysing the data
- Assign a senior person or director to have overall supervision and sign-off responsibility
- Understand the legislation and what is required in each country
- If data is tracked centrally, check for discrepancies between countries, and drill down to detect patterns or explanations for discrepancies by location, business units and seniority
- Consider what types of personnel are covered by the rules
- Define what counts as 'pay' and consider if a monetary value can be placed on non-cash benefits
- Check if adjustments are needed for bonuses and for what period
- Ensure data is up to date, particularly where a snapshot is required
- Consider the impact of recognised factors, such as part-time versus full-time work, career breaks and parental leave
- Prepare a narrative and understand your story
- Think about how you will engage with internal and external audiences
- Consider how the results can be used to improve your internal HR processes, such as recruitment and promotion
- Benchmark against competitors
- Start early!

Source: White & Case

## Percentage pay gap around the world



Source: Time.com

# At a glance: Gender pay gap reporting requirements in the US, the UK, Sweden, Germany, France and Japan

Question	 France	 Germany
<b>National gap between men and women's median pay.</b> Source: OECD, Eurostat, 2015	15%	22%
<b>Legal obligations for private employers to collect and/or publish information on the gender pay gap? When did these come into force and which employers are affected?</b>	Companies with more than 50 employees must collect information, but there is no obligation to publish.	A draft bill to improve transparency on pay is in its early stages, affecting employers with more than 200 employees. Extra obligations for those with over 500 employees.
<b>What kind of information must be collected and published, and how often?</b>	Depending on company size, information includes recruitment, leave, salary, promotion, age and seniority, training and qualifications.	Information to include gender split and measures to promote equal treatment and pay.
<b>What sanctions are levied on employers who fail to comply with their legal obligations?</b>	Possible fines for failing to consult the Works Council, negotiate an in-house agreement or set up an action plan.	No specific legal sanctions, but there is an assumption that failure to meet reporting obligations will carry a fine.
<b>What types of employees are covered under the rules?</b>	All employees.	The draft bill will apply to all regular employees, not freelancers.
<b>Does the employer have to collect and publish separate figures for full-time and part-time employees?</b>	No.	Not specified, but reporting obligations include numbers of full and part-time staff.
<b>How must the information be published?</b>	No obligation to publish, but must be passed to Works Councils.	Sent to the Commercial Register.
<b>Is there a requirement for the accuracy of the information to be verified by a representative of the employer? If so, who?</b>	Should be accurate and verified by legal representative or HR manager.	Not specified.
<b>What other legal obligations do employers have to promote gender equality and/or equal pay?</b>	General legal obligation not to discriminate because of gender, and various legal regulations.	Constitution promotes equal rights. The employer also has to comply with the general legal obligation not to discriminate because of gender.

**Source:** White & Case

at 250 employees per company (not in aggregate across a group of companies).

Large corporations will meet the trigger points in many countries in which they operate. But common themes and methodology for collecting and analysing data will apply regardless of the country in which such obligations may occur. The first step in the process is to decide which group of individuals will be responsible for co-ordinating the complex exercise of gathering and monitoring data. The team will likely



**95**

Number of years, on average, needed to close the pay gap at current rates

**Source:** OECD

be led by a senior HR professional and will include representatives from many departments including payroll, HR, benefits and legal. A board-level director may be required to take overall responsibility for the process due to the high sensitivity of the data involved.

A year ago, Dow Jones, the US-based news and information company, carried out a group-wide pay equity review, covering not just gender but also minority groups, which has laid out some of the groundwork for meeting

legislation in the UK and elsewhere.

“For a multinational organisation like ours, a lot of practice comes from outside the UK, so it wasn't just a policy-driven decision for us,” explains Meredith Van Eeuwen, EMEA HR director at Dow Jones. “This was a global push: a top-down initiative paired with transparency, openness and a cultural change.”

For many companies, compiling the raw data from various parts of the organisation will be a major task in itself. Even defining which employees

 <b>Japan</b>	 <b>Sweden</b>	 <b>United Kingdom</b>	 <b>US*</b>
26%	14%	17%	19%
No specific law covering the gender pay gap.	Since January 2017, new rules have applied to employers with more than 10 employees.	New laws come into force in April 2017 for all employers with at least 250 employees.	From March 2018, employers with at least 100 staff will be required to file pay data according to gender.
N/A.	Annual salary analysis including pay gap and measures necessary to correct gaps.	Annually, including mean and median average pay, split into four quartiles and including information on bonuses. Narrative encouraged, but not mandatory.	Annual disclosure, covering 12 pay bands, including job categories, gender, race and ethnicity.
N/A.	If the official requests for information are not met, punitive damages are possible.	No formal sanctions, but the public can check online to see if employers have complied.	Companies can be compelled by court to report. False reporting can lead to fines.
N/A.	All employees.	All ordinary employees, some casual workers and contractors, but not agency workers.	All full- and part-time employees, but not casual workers or agency staff.
N/A.	Not specified, but our interpretation is that it includes full or part-time.	No. Data collected should include both full-time and part-time employees.	Yes.
N/A.	Does not have to be published, but must be provided to the unions.	On the employer's website and uploaded to a government website.	Submitted to the Equal Employment Opportunity Commission. Aggregated data.
N/A.	No explicit obligation.	Yes. Data must be signed off as accurate by a senior employee, director or partner.	Must be certified as accurate, no requirement to be verified.
Companies with more than 300 staff must collect data on proportion of female employees.	General legal obligation not to discriminate because of gender.	General legal obligation not to discriminate because of gender.	Various federal, state and local laws.

\*Requirements may change as the Trump administration moves forward with efforts to reduce federal regulations.

are included is not straightforward. In the UK, for instance, some types of casual staff and contractors are counted while agency workers are not.

There is also no single definition of 'pay', and the concept of what constitutes 'pay' can vary not just between countries and companies, but even between different functions in an organisation. Does it mean basic hourly pay, or does it also include overtime and bonuses? If bonuses are awarded as shares or options, should they be included when they incur a tax charge?

And what about non-cash benefits and allowances, such as cars and travel, childcare and parental leave? These are fundamental issues that need to be clarified on a country-by-country basis.

#### Getting the message right

Collating the figures is only part of the process. That's when the hard work begins. By trawling through the figures and looking across the business and different territories, companies should seek to uncover discrepancies and provide explanations. For example,

in some organisations, the divide might be because of the high proportion of women in administrative jobs compared to a higher proportion of men in senior management roles.

Geography can also play a part, not just between different countries but also within them. London salaries are typically higher than in the UK regions and this could skew the figures if management roles—dominated by men—are concentrated in the capital and administration is done elsewhere. In the US, for instance, rules on pay data

that come into force in March 2018 also demand information about job category, sex, race and ethnicity. This requires a sophisticated system for analysing job grades and categories, but it is only by going into this level of detail and drilling down into the data that companies can draw out an understanding of the results and explain any discrepancies.

One of the main reasons that women's pay lags that of men is a difference in work-life patterns that sees them spend more time out of the workforce.

Women also make up a higher proportion of part-time workers whose pay is generally lower than that of full-time colleagues. Scandinavian countries score highly on gender pay gap rankings because there is a relatively high number of women in full-time work, which in turn is a reflection of affordable childcare that helps women get back into the workforce.

### Bridging the gap

However, as important as 'why' the gap exists is what steps an organisation will take to address the gap as part of a wider HR strategy, says Matthew Moth, founding partner of strategic communications consultancy Madano.

"Organisations must think hard about the levers that they can use to drive change over time, as it will be tracked, says Moth. "This may be quite different from sector to sector, but will include areas such as recruitment policies, training, education, tools to understand the impact of decisions on gender pay gaps and communication tools to help employees return to work more easily." Wholesale industry changes may also be necessary to create balance in sectors where there is a heavy gender bias, he adds.

There are serious potential risks for those who ignore their reporting obligations. In some countries, there are legal consequences for failing to comply. The US can impose penalties, France has already fined companies for not meeting existing obligations and in certain circumstances, companies that fall foul of the rules can find themselves

## Business strategies for gender parity



Set targets and measure progress



Development, leadership training for women



Transparent career paths, salary structures



Build awareness of benefits among managers



Promote work-life balance



Support women's integration into the value chain



Demonstrate leadership commitment



Offer/support flexible work

Source: *The Future of Jobs*, World Economic Forum



## Collating the data is only part of the process. That's when the hard work begins

barred from bidding for public sector contracts. The UK legislation will oblige companies to publish their gender pay information annually and advises that they also issue a narrative explaining the results. And while there are no specified penalties, the publication of results opens the potential for naming and shaming poor performers.

Deciding how to present and manage the messaging of gender pay gap reporting for a wide range of audiences is very important. Sophisticated companies will see the value in



**US\$20,000**

Global average annual earnings, men

Source: Global Gender Gap Index 2016, World Economic Forum

providing a narrative that brings the raw data to life for existing and prospective employees, stakeholders, other businesses and the wider community.

Companies should see gender pay gap reporting as an important tool to look at the data across different locations, business units, subsidiaries and even management levels.

Many organisations will likely go beyond simply meeting specific legal requirements, seizing the opportunity to gain a better understanding of their business and to improve performance. It will also provide a valuable blueprint for addressing other issues around diversity, equality and social responsibility, and a key benchmark by which companies will be judged. Armed with the data and the narrative, companies can apply the adage 'what gets measured gets managed' and absorb the results into their HR processes.

There is a growing awareness that a gap on a CV from a career break can

slow pay progression. Google's policy of basing salaries on the market rate for a job rather than an applicant's previous salary has meant that women enjoy bigger pay raises on joining the company than male counterparts.

In January 2017, Philadelphia became the first US city to ban employers from asking for applicants' salary history.

There are big variations in what information is made public. Where the results are made public, companies will be able to benchmark themselves against their peers, not just in their pay gap performance, but in the way that they present the results and the narrative. They should go beyond offering an explanation for any discrepancies and set out plans to address the causes.

#### The wider business case

The impact of these reports could be profound. It is easy to understand why a woman faced with two similar potential employers would choose the one that

has the most compelling evidence and narrative of its willingness to tackle the gender pay gap.

"Whether or not companies are doing it because they are bound by law, they should think strategically about what they hope to get out of the process and start communicating that internally and externally," Van Eeuwen advises.

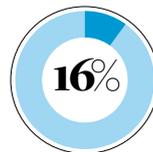
"This is a much bigger issue than how a company is perceived internally right now and a generation is coming through that will see this as a major issue when it comes to the recruitment process."

Indeed, gender pay gap reporting should be viewed as one measure in the wider agenda—not simply the end in itself, says Moth.

"It is not thinking about how year one will 'appear' once you have crunched the data, but how that performance is going to track over time and the measures that you are implementing to shift that performance year-on-year towards your goal," he says. "It is about



## One of the main reasons that women's pay lags that of men is a difference in work-life patterns



The average gender pay gap between men and women  
**Source:** PwC Women in Work Index

creating a framework into which gender pay gap reporting fits."

For some organisations, it may make sense to create a three-year horizon for change and then demonstrate how performance is evolving annually, suggests Moth.

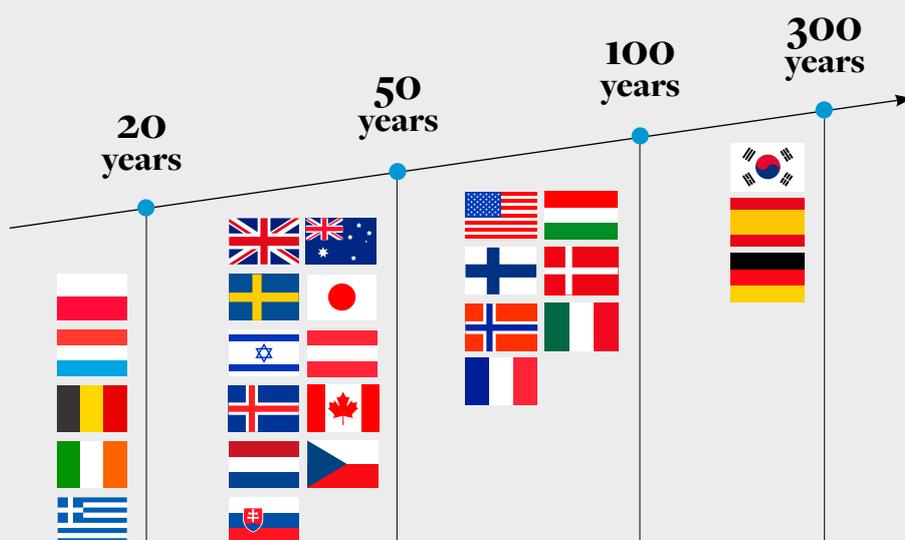
"Other initiatives can be completed in shorter time frames, for example an education programme about unconscious bias, but the size and complexity of the organisation needs to be considered," he cautions.

In an age when companies are highly sensitive about their corporate and social responsibilities, a carefully written statement setting out an action plan will be valued by suppliers and clients who want to be seen to be dealing with partners that adopt an ethical approach.

It will help monitor recruitment, pay and career progression and, where necessary, develop policies such as setting gender diversity targets, introducing gender-balance interview panels and eliminating unconscious bias in salary reviews and promotions.

If companies want to tackle root causes of the gap, they should look at ways of helping women to return to work more quickly through support for childcare, improved provisions for shared parental leave and opportunities for flexible working. It will not solve the problem overnight and may not eliminate the divide entirely, but the gender gap reporting exercise will give senior management a vital tool for measuring progress.

### If historic trends continue, the pay gap would close in...



Source: PwC analysis, OECD, Eurostat

**Stephen Ravenscroft**

Partner, London

**T** +44 20 7532 2118

**E** sravenscroft@whitecase.com

**Alexandre Jaurett**

Partner, Paris

**T** +33 1 55 04 58 28

**E** ajaurett@whitecase.com

**Henrik Patel**

Partner, New York

**T** +1 212 819 8205

**E** henrik.patel@whitecase.com

**Henrik Röger**

Partner, Hamburg

**T** +49 40 35005 264

**E** hroeger@whitecase.com

**Jun Usami**

Partner, Tokyo

**T** +81 3 6384 3272

**E** jusami@whitecase.com

**Henrik Wireklint**

Associate, Stockholm

**T** +46 8 506 32 331

**E** henrik.wireklint@whitecase.com

[whitecase.com](http://whitecase.com)

© 2017 White & Case LLP