

Further anomaly detected in Gender Pay Gap Regulations

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A second potential difficulty for employers calculating their gender pay gaps has been raised – this time regarding salary top-ups for maternity and parent’s leave.

Following the publication of the gender pay gap rules (*Employment Equality Act 1998 (Section 20A) (Gender Pay Gap Information) Regulations 2022*) on June 3, a potential issue with the adjusted bonus payments feature was raised by employment solicitor, Síobhra Rush.

Ms Rush, partner with the Lewis Silkin law firm, noted the rules on calculating bonuses and commission payments that are paid on a different frequency to the normal pay period (e.g., quarterly bonuses) “could lead to some strange results in practice” (see [IRN 22/2022](#)).

Another potential quandary for employers has now been spotted by Ms Rush, regarding salary top-ups for statutory benefits, such as maternity, paternity and parent’s leave.

A Guidance document, published by the Department of Children and Equality, prior to signing of the Regulations (see [IRN 19/2022](#)), confirmed that “any salary top-ups for statutory leaves like maternity leave/paternity leave/parent’s leave” come within the definition of Ordinary Pay.

However, the Regulations do not include this provision. Ms Rush explains this could mean that if an employee on maternity leave worked only one month in the year, but was paid top-up pay for the full year, then the calculation of their hourly rate of pay will lead to an inflated hourly rate.

In this circumstance, she says an employer has three options: (1) Don’t include the salary paid to employees on statutory/sick leave (as in the UK); (2) Include the number of employees on paid statutory leave and do the calculation as above leading to an inflated hourly rate; or (3) apply a notional number of working hours for the employees on statutory leave. The Department was contacted for comment.