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LABOUR & EMPLOYMENT

[1835 words]

Tackling gender wage disparity

by Richard Summerfield

Issues surrounding gender and sexual discrimination have become increasingly prominent in recent years.

“Equal pay and pay equity have moved to the forefront of regulatory, political, litigation and shareholder focus,” says Mike Delikat, a partner at Orrick. “As a result, companies are responding by analysing where they stand on pay equity in their workforce and haven taken steps to reduce pay gaps.”

Regardless of these efforts, and though women are entitled to the same perks, advancements, pay and other benefits as their male counterparts, too often they are not treated equally in the workplace. Unfortunately, many organisations are failing the women they employ.

In the US, though the gender wage gap has narrowed since 1980, it has remained relatively stable over the past 15 years. There is also evidence to suggest that the gap has narrowed in the UK over the last 20 years, by 9.4 percent according to the UK government. “It is difficult to celebrate this, however, when the size of the gap has remained relatively static since 2011,” says Hayley Johnson, a senior associate at Slater & Gordon. “These statistics tell us that progress is slow; more action is needed and the status quo is not resulting in significant change.”

Stagnation of the gender wage gap is clear. In 2018, women earned 85 percent of what men earned, according to an analysis of median hourly earnings of both full- and part-time workers by the Pew Research Center. Though certain aspects can explained by measurable factors, such as educational attainment, occupational segregation and work experience, there are many other elements, such as gender discrimination, which may be much harder to measure, but still have an impact on the persistence of the gender wage gap.

There have been improvements for younger employees, however. “According to the Office of National Statistics (ONS), the picture is slowly improving: the gender pay gap for full-time employees is close to zero for those aged between 18 and 39 years,” says Justine Woolf, director of consulting at Innecto Reward Consulting. “However, this does not take into account that women are much more likely to work more flexibly or part-time to balance their parental responsibilities – the so-called ‘motherhood penalty’.”

Undoubtedly, enforced reporting has improved public awareness and education on the difference between the gender pay gap and equal pay issues. Business leaders in particular are taking notice, given their commercial imperative to recruit and retain the best talent regardless of gender. However, the ‘motherhood penalty’ still persists. The penalty is a catch-all phrase used to describe all manner of challenges experienced by female employees – and indeed their employers – when it comes to reaching the higher echelons of business. “The precise challenges vary from business to business and from employee to employee, but this is recognised as a key factor that perpetuates the gender pay gap,” notes Jennifer Millins, a partner at Mishcon de Reya LLP. “Grappling with this multifaceted challenge is something that all businesses should be doing.”

Legislative developments

Companies and governments alike are coming under increased pressure to do more about gender wage disparity and momentum is gathering. “The current pressure to address what has been a persistent issue for over 50 years comes from a variety of sources: boards and senior leadership dedicated to fair pay, aggressive shareholders demanding fair pay, media attention, high profile lawsuits such as the one by the US women’s national soccer team, and new laws that make it more difficult for employers to defend pay differences and that require public disclosure of pay data by gender,” explains Stephanie E. Lewis, co-chair of the pay equity resource group at Jackson Lewis P.C.

Groundbreaking legislative measures in jurisdictions including the UK have begun to expose the full extent of the gender pay gap. In an age where companies are required to publish their gender disparity data, it is imperative that they take a proactive approach to redressing the balance, particular if they wish to attract and retain top talent and avoid embarrassing legal action.

Iceland, for example, has been at the forefront of tackling gender discrimination for some time. Though the country has had an equal pay act since 1961, Icelandic women still earn, on average, between 14 percent and 20 percent less than men. In 2018, the country became the first to legally enforce equal pay. Under the new legislation, within four years from January 2018, any public or private body in Iceland employing more than 25 people that has not been independently certified as paying equal wages for work of equal value will face daily fines.

There are many lessons to be learnt from efforts undertaken by Iceland and other countries. “In terms of the further change required to address the ongoing pay inequality in the workplace, the UK government may want to consider a number of steps,” says Ms Johnson. “These include penalties for non-compliance with gender pay gap reporting, the re-introduction of equal pay questionnaires to ensure women have access to the information they need to challenge any pay inequality, a period of paid leave for the secondary carer, when becoming a family has a baby and the introduction of quotas to ensure our boardrooms and workplaces are as diverse as the society we live in.”

Clearly, there is much more work to be done, and though companies have some way to go before gender wage disparities are a thing of the past, it would be naïve to think that the current

situation is borne out of intentional discrimination, at least not all of the time. “Most employers strive to make pay-setting decisions fairly and without regard to gender,” says Ms Lewis. “However, market forces drive pay differences. For example, if women make less than men in their prior positions and salaries are set competitively to pay ‘what it takes’ to get the best talent, legacy pay disparities can unintentionally be brought into an organisation. Many of the recent state and local fair pay laws in the US expressly prohibit reliance on prior salaries in setting starting pay, so that employers do not inadvertently carry forward an existing pay gap. Companies should conduct proactive pay equity audits on a regular basis to catch and correct these types of unintentional pay gaps.”

“Some states in the US which have outlawed asking questions on salary history are starting to see some positive progress in redressing the imbalance in pay at hire, but this will only take us so far,” explains Ms Woolf. “There are many reasons why we have a gender wage disparity, not all down to the fact the typically males will ask for higher salaries or women do not feel empowered or confident to ask for a pay rise. We are trying to change societal perceptions that cannot be changed overnight.”

#MeToo

Societal perceptions and pressures have emerged in recent years to highlight a number of issues surrounding gender. One of the most notable developments has been the emergence of the #MeToo movement, which sharpened the focus on gender issues in the workplace. “While harassment and pay are different issues, there is a greater willingness as a result of the #MeToo movement to pursue pay equity issues, both in court and at the legislative level,” says Mr Delikat.

“The #MeToo movement has coincided with both the introduction of gender pay regulations in the UK and some high-profile equal pay claims, such as those against large supermarkets and the BBC,” says Ms Millins. “This has created a perfect storm of media coverage around the issue of workplace gender equality in all its forms. There is a sense of enormous frustration that almost half a century on from legislation outlawing discrimination and harassment against women in the workplace, it persists and with such apparent prevalence. The legislation is firmly in place to protect women against both sex discrimination and harassment, and this heightened media coverage has raised awareness among employees of their rights and potential remedies if they feel they have been discriminated against. I have also seen a marked change in how employers handle allegations of sexual harassment and unequal pay as a result. Investigations are increasingly thorough and businesses are much less tolerant of bad behaviour by senior employees.”

According to Mr Johnson, there is no clear evidence to suggest that the #MeToo movement has impacted on gender pay disparity, there have been some concerning suggestions that it could result in men being afraid to hire female staff. “Evidence shows that women are more likely to be paid less and are at greater risk of being sexually harassed in the workplace. This harassment is often carried out by men in higher positions of power and pay, demonstrating that the gender pay gap has much further reaching implications than the issue of unbalanced pay cheques.”

Future developments

In the future, additional regulation could have a significant impact. Recent gender pay regulations in the UK have been a welcome development but their requirements are limited and there is no penalty for companies that do not change their pay practice, other than potential reputational impact. “More regulation could force change and I would not rule out seeing the US-style banning of salary history or the Icelandic model, if we do not see significant progress in the next few years,” says Ms Woolf.

Going forward, there will be additional pressure on businesses to highlight their plans to tackle wage disparity. “They should publish clear action plans,” says Ms Millins. “Employees will likely vote with their feet and steer clear of businesses with big pay gaps and a poor record on diversity and equality. The merits or otherwise of transparency will also continue to be debated as employees increasingly question their comparative pay.”

“Companies are keenly aware of pay equity disparities after considering all appropriate factors that go into setting pay and are making progress toward assuring that women are paid 100 percent of what men are paid, when controlling for appropriate factors,” says Mr Delikat. “The future evolution will be more on reducing the gross unadjusted pay gap by providing pathways to move women into higher paying roles and retain them in the workplace.”

At the current rate of progress, it could take 100 years to close the gap, points out Ms Johnson. To accelerate the process, that there are a number of measures companies can take. For example, unless there are clear reasons as to why it is not possible, all jobs should be advertised as having flexible, part time or job share option. Companies should also consider equalising shared parental pay with maternity pay, providing tougher enforcement of the gender pay gap regulations, and introducing quotas in sectors and boardrooms where women are underrepresented. Finally, women and men at the top of organisations must focus on closing the gap and recognising the benefits of ensuring they are diverse on all levels.

Regulatory action aside, companies must take steps to improve and address their own internal pay gaps. Increasing transparency, offering flexible working options and promoting diversity and equality are just the start of that process.

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