

**Update on outstanding questions (24/8/22)**

Calculations	
<p><b>What should be included for total hours worked? Should it cover normal hours, overtime and paid leave – such as annual leave, sick leave, maternity leave etc?</b></p>	<p>The total number of working hours of a relevant employee is determined in line with Regulation 4, with 3 methods provided depending on the employee’s circumstances. Further information is provided in paragraph D of the Updated Guidance Note for Employers, and on page 8 of the FAQs for employers.</p> <p>In calculating the total working hours of an employee,</p> <ul style="list-style-type: none"> <li>• overtime hours are to be included;</li> <li>• periods of <u>paid leave</u>, such as annual leave, sick leave, maternity leave, study leave, etc, are also to be included, as if the employee was not on leave; and</li> <li>• periods of leave during which the employee <u>receives no pay</u> from the employer are to be excluded in calculating the total working hours of an employee.</li> </ul>
<p><b>The ordinary pay definition in the guidelines includes sick leave and top ups for maternity leave etc. – however these elements are not mentioned in the regulations – as such can we omit these from the calculation?</b></p>	<p>An employee who was absent from work on leave has that period included in determining the working hours of that employee if they received pay from the employer during that period.</p> <p>Some employers continue to pay employees while they are on leave, such as on sick leave, maternity leave, paternity leave, parent’s leave, or parental leave. Such payments from the employer to the employee relating to their employment should be included.</p>
<p><b>Salary – confusing as to whether we should use actual salary paid during the period or annual salary – this directly correlates to the need for hours worked data to be correct.</b></p>	<p>Regulation 3 should be referred to in calculating hourly remuneration. This requires the employer to identify all amounts of ordinary pay and bonus remuneration actually paid to a relevant employee during the relevant pay period, adjusting to exclude from the amount of ordinary pay any amount done or carried out during a period other than the relevant pay period, and adjusting the bonus remuneration as set out in Regulation 3 and in Regulation 5.</p>

<p><b>How do we determine the hourly remuneration – is this all the payments from the previous 12 months divided by the hours worked and paid leave, over the previous 12 months?</b></p>	<p>The hourly remuneration paid to a relevant employee is determined in line with Regulation 3. This includes, at Regulation 3.(b) and (c), amounts of ordinary pay and of bonus remuneration that are to be excluded for this purpose.</p> <p>Further information on this calculation is provided in paragraph E of the Updated Guidance Note for Employers (updated as of 28 June 2022), while paragraphs B and C advise on what should be included in determining ordinary pay and bonus pay for the relevant period. Please see the response to the previous question on determining the total number of working hours of a relevant employee.</p>
<p><b>Company does not have 100% data for all employees – those who are overtime eligible accurately complete their timesheets, whereas non overtime eligible employees do not always complete these.</b></p> <p><b>Can we take a mix of “contractual” hours worked for all employees who are not overtime eligible (260 days / 7.8 hours per day) – as annual leave is paid and then for overtime eligible employees – taking the same approach, plus the actual overtime hours – where this has a direct impact on their pay. This would ensure that the salaried elements of their hours are captured consistently and then where hours have a direct impact on the pay – adding this into hours worked.</b></p>	<p>Regulation 4 provides a range of methods by which the total number of working hours of a relevant employee is to be determined. The employer should apply the most relevant method for relevant employee.</p> <p>For example, the first method provides for the situation where the working hours for an employee do not differ from week to week. The second method sets out how the employee’s hours might vary from week to week.</p>
<p><b>If someone is on a day’s unpaid leave, as these hours are not worked, are we correct in saying that both the pay and hours would be excluded from the calculation?</b></p>	<p>Only hours for which the employee receives pay from the employer are taken into account in calculating hourly remuneration. Hours not worked and not paid by the employer are excluded from calculation of total working hours and from calculation of hourly pay.</p>
<p><b>For someone on half pay (for example as part of a sick pay policy), do we report half the hours or full hours?</b></p>	<p>An employee who was absent from work on sick leave has that period included if they received pay from the employer. This is still the case if the employee was on reduced pay (e.g., half-pay, or a pension rate of pay), paid directly or indirectly by the employer. The number of working hours of an employee on paid sick leave is the same, irrespective of whether the employer pays full pay or reduced pay.</p>

<p><b>For maternity leave – we understand that we are not including the social welfare portion of maternity pay just the company top-up but for paid maternity leave do we report normal working hours (which will skew the numbers?)</b></p> <p><b>Say an employee earns a monthly salary of €5000 and the organisation tops up to full salary throughout maternity leave – how should this be reflected – what should be included/excluded and how should the hourly rate be calculated when they are technically not working?</b></p>	<p>Some employers continue to pay employees while they are on leave, such as on sick leave, maternity leave, paternity leave, parent’s leave, or parental leave. Where the employee is on leave and receives social welfare payments associated with statutory leaves, such as maternity benefit, paternity benefit, and parent’s benefit, where such benefits are returned to the employer in line with a mandate from the employee, such payments are not to be included in calculations.</p> <p>For example, an employee who is on a period of maternity leave for which they receive maternity benefit (the rate of payment of which is currently €250 per week for 26 weeks) may receive top up payments from the employer to bring the employee up to their full salary throughout their maternity leave. Where the employee has signed over this social welfare benefit to the employer, it should not be included again in calculating the employee's ordinary pay.</p> <p>An employee who was absent from work on leave has that period included in determining the working hours for that employee if they received pay from the employer during that period.</p>
<p><b>While the FAQs state that periods of paid leave such as sick leave etc. are to be included in calculating total working hours for an employee – how is this done given the figure will not make sense?</b></p> <p><b>In our example initially employees receive full salary. Any illness benefit payments are mandated to the organisation and are processed through payroll.</b></p> <p><b>Employees on long term sick leave may have their salary reduced to half rate of pay and then zero rate of pay or pension rate of pay depending on the amount of service they have accrued (or pension rate of pay if they have 5 years’ service). Also, if an employee is absent but still receiving a form of pay, how do we calculate the hourly rate if they are technically not working?</b></p>	<p>An employee who was absent from work on sick leave has that period included if they received pay from the employer. This is still the case if the employee was on reduced pay (e.g., half-pay, or a pension rate of pay), paid directly or indirectly by the employer. The number of working hours of an employee on paid sick leave is the same, irrespective of whether the employer pays full pay or reduced pay.</p> <p>Periods of paid leave (i.e., hours not worked but for which the employee receives pay), such as annual leave, public holidays, sick leave, maternity leave, study leave, etc., are to be included in calculating the total number of working hours worked for of an employee - as if the employee was not on leave.</p> <p>An employee who is in receipt of illness benefit may also be in receipt of sick pay from the employer. Where the employee has signed over illness benefit payments to the employer, this social welfare benefit should not be included again in calculating the employee's ordinary pay.</p>

<p><b>Approach to employees on long-term income continuance – can we remove them from reporting where their pay comes from external insurer?</b></p>	<p>Only hours for which the employee receives pay from the employer count in calculating hourly remuneration. Hours not worked and not paid by the employer are excluded from calculation of total working hours and from calculation of hourly pay.</p> <p>An employee who was absent from work on sick leave has that period included if they received pay from the employer. This is still the case if the employee was on reduced pay, paid directly or indirectly by the employer. The number of working hours of an employee on paid sick leave is the same, irrespective of whether the employer pays full pay or reduced pay.</p>
<p><b>There is an inconsistent approach to how employee decisions impact pay – e.g., someone who makes AVC's does not have this deducted from their paid value but programmes for example that allow employees to buy/sell vacation indicates we should deduct or add any impact to salary paid. How is this a true picture of the gender pay gap?</b></p>	<p>Regulations 2 &amp; 3 set out the calculation of ordinary pay and hourly remuneration, which are based on basic pay, allowances, overtime, shift premium pay and pay for piecework, before any statutory deductions are made.</p> <p>Pay should be calculated before deductions as source. Examples of such deductions at source are taxes and employees' pension contributions.</p> <p>Department are happy to look into this further, if more information is available.</p>

Bonuses, Stocks, Shares & Securities	
<p>Can you clarify:  <b>A snapshot date of June 30<sup>th</sup> but annual bonus 2021 paid in payroll of April 30<sup>th</sup>, 2022, for bonus period Jan-Dec 2021 – how do we treat the different time periods?</b></p> <p><b>Do we include the full payment in the bonus calculation (as it was paid in the relevant period prior to the snapshot date) or only the part that was relevant to the snapshot reference period?</b></p>	<p>Where the bonus period is not the same as the reporting period being used for the calculation, then only the bonus relevant to the 12-month reference period should be included.</p> <p>If a bonus is paid within the 12-month period but includes a payment in respect of a period of time <b>GREATER THAN</b> 12 months, that element should be excluded. For example, in Scenario 1, an employee receives an annual bonus of €2,000 on 31 December 2021, and quarterly commission of €1,000 in September and December 2021, and in March and June 2022. This comes to a total bonus of €6,000 during the relevant pay period from 1 July 2021 to the snapshot date of 30 June 2022. The bonus payments received therefore cover a period of 546 days from 1 January 2021 to 30 June 2022 inclusive, which is greater than the 365 days of the relevant pay period. However, as none of the individual bonus payments is in respect of a period greater than 365 days, no adjustment of the bonus remuneration is required. ...</p> <p><b>So, in the situation you describe, an annual bonus should be included in its entirety as it refers to the same number of days as the relevant pay period.</b></p>
<p><b>Regulation is contradictory as to whether it is the granted value during the year or the vested value during the year – cannot be both as this will result in double counting in future years.</b></p>	<p>Regulation 5(2) specifies how the value of remuneration in the form of shares (which includes share options and interests in shares) is to be determined for the purpose of calculating hourly remuneration. The value is deemed to be the value of the share when it was issued.</p> <p>The remuneration is deemed to be paid when the shares (or share options, or interests in shares) are provided to the employee. This should occur only once in respect of any particular share (or share option, or interest in shares).</p> <p>Any subsequent activity in respect of the shares (or share options, or interest in shares) – for example the conversion of a share option into shares – is not relevant for the purpose of calculating hourly remuneration under the Regulations.</p>

<p><b>Can you clarify what is to be included in ordinary pay, bonus pay or BIK as there is a lot of confusion based on the below description:</b></p> <p><b>Under bonus calculations it mentions: “Bonus pay should include all bonuses awarded to an employee for the period in question. This would include bonus payments in the form of money, vouchers, securities, securities options, or interests in securities, or, which relate to profit sharing, productivity, performance, incentive or commission”</b></p> <p><b>And under “Benefit in Kind: “benefits in kind” includes any non-cash benefit of monetary value provided to an employee. This would include the provision of a company car, voluntary health insurance, stock options or share purchase schemes.”</b></p>	<p>It is not proposed to provide an exhaustive list as the Regulations and guidelines provide definitions of ordinary pay and bonuses, and further indicative examples are included in the guidelines and FAQs. However, if there is difficulty with specific categories, the Department would be happy to assist where possible.</p> <p>Bonus remuneration is construed in accordance with Reg.5, which sets out both the form and the purpose for which bonus remuneration is paid, while stating it excludes benefits in kind. The examples of bonuses given in Reg.5 include share options and interests in shares, and Reg.5(2) specifies how the value of such remuneration in the form of shares is to be determined for the purpose of calculating hourly remuneration - which is deemed to be the value of the share when issued and paid when provided to the employee.</p>
<p><b>The company has stock options which are awarded as part of our annual merit cycle (these awards are related to performance and retention). Can I confirm should we therefore be counting these stock awards under the Bonus pay element? Or should they fall under Benefit in Kind only?</b></p>	<p>Benefit in kind is defined in Reg.2 as including "any non-cash benefit of an estimated monetary value", and employers are not obliged at present under these Regulations to estimate the monetary value of such benefit and include it in calculating employees' pay.</p>
<p><b>We have interpreted the guidance to mean that our two share purchase schemes which employees choose to sacrifice part of their ordinary pay/bonus payments into share schemes are a Benefit in Kind and would therefore not be included in the bonus pay section. Is this correct?</b></p>	<p>Where an employer determines remuneration provided to an employee in the form of share options or shares is a benefit in kind rather than a bonus, it would be expected that the employer would explain their decision in their report by reference to the definition of benefit in kind and how this affects calculation of the gender pay gap in the organisation.</p>
<p><b>Our employees are given the option to buy shares with their bonus, they also have the option to do salary sacrifice up to the same amount. How would this be reported?</b></p>	<p>Pay should be calculated before deductions at source. Examples of such deductions at source are taxes and employees' pension contributions, and may include voluntary surrender of pay, and employee share purchase options funded through salary sacrifice arrangements.</p>
<p><b>Can you issue guidance on ESPP – to include any potential gain as a benefit but this will fluctuate based on employee decisions on whether or not to participate and how much – which is outside control of employer</b></p>	<p>Employers should consider whether their ESPPs (Employee Share Purchase Schemes) function as ordinary pay, bonus remuneration, or benefits in kind, and treat them accordingly for the purpose of these Regulations. For example, benefit in kind is defined in Regulation 2 as including "any non-cash benefit of an estimated</p>

	monetary value", and employers are not obliged at present under these Regulations to estimate the monetary value of such benefit and include it in calculating employees' pay.
<b>Contract types</b>	
<b>A staff member has just moved to FT from PT earlier - do I pro-rate her salary for the 12-month period – is it 6 months at PT/6 months at FT - or assume current now FT salary only?</b>	<i>The full-time or part-time employment status of the employee as of the snapshot date should be noted. The employee's status on the snapshot date should be used when calculating the gender pay differences relevant to part-time employees, i.e., under Regulations 7. (1)(b) and 8. (1)(b). Where employees moving between full-time and part-time working is considered by the employer to be relevant to any gender pay differences in the organisation, the employer is encouraged to discuss this in the relevant report.</i>
<b>Company has a large number of temporary employees employed directly by us; do we include them in the report?</b>	<i>Regulation 2 provides that relevant employees for the purposes of gender pay gap reporting are the employees of a relevant employer on the snapshot date. The employment status of the employee as of the snapshot date should be noted, as regards whether they are on a temporary contract or a contract of indefinite duration. The employee's status on the snapshot date should be used when calculating the gender pay differences relevant to employees on temporary contracts, i.e., under Regulations 7. (1)(c) and 8. (1)(c). Where employees moving between temporary contracts and contracts of indefinite duration is considered by the employer to be relevant to any gender pay differences in the organisation, the employer is encouraged to discuss this in the relevant report.</i>

<b>Categories of staff</b>	
<b>Is it correct that expatriates working in Ireland need to be included in calculations?</b>	The definitions of employee and employer in section 2 of the Employment Equality Acts 1998-2021 and any caselaw under the Acts should be referred to in determining whether a particular person is an employee of a particular organisation for the purpose of these Acts.
<b>Is reporting limited to employees located in Ireland or do we include people who are seconded overseas? Is it the Irish contract that is relevant regardless of where they are paid?</b>	
<b>Group A has employees working overseas in other jurisdictions but have Irish contracts – are they counted? Similarly, employees working here in Ireland but on UK contracts are they counted?</b>	In general, in determining organisation headcounts and calculating the pay gap metrics, employees working abroad should be included in the calculation if they receive remuneration from the organisation which is producing the report. Similarly, employees working in Ireland should not be included if they do not receive remuneration from the organisation which is producing the report.
<b>How do we treat new joiners in the 12-month snapshot period who have received some payment? Presume their hourly rate should be based on the actual hours worked (based on hire date) versus full year figures?</b>	<p>A person who is a newly recruited employee of the organisation on the snapshot date will be taken into account in determining its headcount, even where the person has yet to receive pay, but is excluded from calculation of hourly pay and subsequent gender pay gap calculations.</p> <p>Where such an employee has received some payment in the reporting period, but did not work for the full 12 months, that they have only worked for part of the year will be accounted for in determining the total number of working hours and hourly remuneration for this employee.</p> <p>The FAQs are being updated to include further examples, such as the above.</p>
<b>Does a ‘relevant employee’ include a temporary employee for the purposes of calculating hourly remuneration as page 3 of the Regulations (2) only refers to “includes a part-time employee”?</b>	<p>Employees on temporary contracts are included.</p> <p>The definitions of employee and employer in section 2 of the Employment Equality Acts 1998-2021 and any caselaw under the Acts should be referred to in determining whether a particular person is an employee of a particular organisation for the purpose of the Acts.</p>



<b>Top-up payments</b>	
<b>What working hours figures should be used during a statutory leave absence given they are not actually working?</b>	<p>Periods of paid leave (i.e., hours not worked but for which the employee receives pay), such as annual leave, public holidays, sick leave, maternity leave, study leave, etc., are to be included in calculating the total number of working hours worked for of an employee - as if the employee was not on leave.</p> <p>Periods of leave during which the employee receives no pay from the employer are to be excluded in calculating the total working hours of an employee.</p>
<b>Non-binary reporting</b>	
<p><b>Are there plans for inclusion of intersex/transgender statistics in reporting GPG going forward? How are employers to navigate confidentiality of employee gender/sex status and reporting?</b></p> <p><b>Are there plans to include non-binary and transgender employees in future - or at least to acknowledge their omission? Like employees who identify as women, non-binary and transgender employees are likely to experience barriers in accessing economic empowerment of the kind that this legislation is trying to tackle. Might the Department guidelines/FAQ explicitly acknowledge this?</b></p>	<p><i>In determining the number of employees in the organisation, all employees are counted. In instances where an employee does not self-identify as either gender, an employer may omit the individual from the gender pay gap calculations. It is important for employers to be sensitive to how an employee identifies in terms of their gender. The regulations do not define the terms 'male gender and 'female gender' and the requirement to report your gender pay gap should not result in employees being singled out and questioned about their gender.</i></p>
<b>Publishing</b>	
<b>Will the Department provide a template to ensure all reporting organisations are reporting the same way given the lack of clarity around some of the definitions?</b>	<p>It is not proposed to prescribe a template for organisations' reports. The form and manner of publication is set out in Regulation 6, and Regulations 7 to 10 set out the information to be published.</p>
<b>We understand that a company can present a report as a group (rather than as 4 separate legal entities with 250+ employees) however, can this report be presented overall with a narrative on the group or within the group report is there an expectation for 4 separate calculations for the entities to be outlined distinctly?</b>	<p>Regulation 6 requires each relevant employer to publish information in a report.</p> <p>Where companies are part of a group of related enterprises, the definitions of employer and employee in section 2 of the Employment Equality Acts 1998-2021 and any caselaw under the Acts should be referred to in determining</p>

	<p>whether a particular person is an employee of a particular organisation for the purpose of the Acts, and in determining whether to calculate the number of employees, and calculate and report on gender pay gap information, at individual company level or at group level.</p> <p>A group of employers that has reported and published gender pay gap information separately for a number of legal entities within their corporate structure can also voluntarily report and publish combined figures for the entire group.</p>
<p><b>If a company publishes its report on its website, and has to publish its report on the central portal from 2023, can it remove its 2022 GPG report from its own website at the point? If so, do they also have to upload their 2022 report to the central report when it goes live?</b></p>	<p><i>The gender pay gap information must be published on the employer's website or in another manner accessible to all employees and the public and it must be available for a period of at least 3 years from date of publication. As such even when uploaded to the portal it will be required on the company website or in the other accessible manner for 3 years.</i></p> <p><i>Plans are in place to develop an online reporting system for the 2023 reporting cycle which will consist of a central portal where all employer reports will be uploaded and can be accessed publicly – the expectation is that all reports would be uploaded.</i></p>