



BBC pay disclosure – could its stars be poached?

21 Jul 2017

**Rebecca Webster**

-  [bbc pay](#)
-  [employment](#)
-  [employment law](#)
-  [gender pay gap](#)
-  [gender pay reporting](#)
-  [poaching](#)
-  [recruitment](#)
-  [restrictive covenant](#)
-  [salary](#)
-  [solicitation](#)

Much of the press coverage of the BBC's recent disclosure of its top earners' salaries has focused on the apparent gender imbalance in the figures. This is a timely discussion not least because, although the BBC's obligation to publish details of staff salaries over £150,000 comes from a new royal charter, all companies with over 250 employees will now need to report on their own gender pay gap in accordance with the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017, with the first reports due by 4 April 2018.

However, another interesting aspect of the BBC's disclosure, which has perhaps received less attention, is that the BBC argued against the requirement on the grounds that disclosing details of individuals' salaries would leave the BBC vulnerable to its stars being poached by competitors. It has been widely acknowledged that the BBC pays less than the market rate, and other broadcasters will now know exactly by how much. Whether the BBC's fears will be realised remains to be seen. However, there are a number of steps which employers can take to protect themselves if they are concerned their employees could be poached:

- speak to employees about their concerns and consider whether improved pay or benefits, or other 'perks' such as training or flexible hours, could persuade employees to stay;
- review any post-termination restrictive covenants in their employment contracts to work out what their obligations are. Also make sure that when you offer employment contracts to key staff you tailor their restrictive covenants to maximise the chances of enforceability. In order to be enforceable, these provisions should protect a legitimate business interest, and go no further than is reasonably necessary to protect that interest;
- be alert for unusual activity among employees, such as unexplained phone calls between staff, meetings away from the office and a sudden interest in their terms of employment;
- if there is a concern that a group of staff may leave together, monitor employees' email, phone and other records for discussions about jumping ship. Any such monitoring needs to be reasonable and in accordance with the Data Protection Act 1998, preferably following an established policy. Care must be taken not to breach the employer's duty of trust and confidence (not least because this would prevent the employer from relying on any post-termination restrictive covenants); and
- if there is known interest from a particular competitor, put them on notice of the employee's contractual obligations. This may not prevent the poaching but is likely to assist in obtaining an injunction if this becomes necessary.

If an employee has already been poached, employers should consider taking the following steps:

**The Guardian** 
@guardian BBC pay: key questions behind the disclosures [trib.al/MUmMfX](https://www.theguardian.com/tribal/MUmMfX)

9:53 AM - 20 Jul 2017

  24  26 

- requiring the employee to return any confidential information;
- placing the employee on garden leave for the remainder of their notice period; and
- seeking an injunction to prevent them from working for a competitor if they are in breach of a restrictive covenant in doing so. It is important to do this as soon as possible, and preferably before the employee joins the poacher, to avoid their new employment becoming the status quo. Helpfully, the courts have held that “springboard” injunctions (which prevent an employee from benefiting from an unfair advantage gained by breaching their obligations to a former employer) may be obtained not only in relation to the misuse of confidential information, but also other breaches of employee duties such as the duty of good faith and fidelity.

Recent posts from Freshfields Risk



Rolls-Royce, Robots and the Risks of Brexit - the Serious Fraud Office's 2016-17 Annual Report
Kim Sofroniou



United States efforts to hold foreign (i.e., non-U.S.) officials responsible and accountable for receiving bribes
Daniel Cendan



Whistleblowing: three recent developments
Chantelle Nicholas



Pension rights of same sex partners: equality via judicial intervention
Alison Chung



The Taylor Review of Modern Working Practices: Good Work or Room For Improvement?
David Mendel

[Find a lawyer](#)

[What we do](#)

[Our thinking](#)

[Careers](#)

[About us](#)

[Freshfields Network](#)

[Accessibility](#)

[Legal notices](#)

[Privacy](#)

[Cookies](#)

[Ts&Cs](#)

[Responsible procurement](#)

Follow us



 **Freshfields Bruckhaus Deringer**