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California employers get ready: Pay data reporting starts soon

California employers with 100 or more employees must report pay and hours-worked data by establishment, job category, sex, race, and ethnicity to the state's Department of Fair Employment and Housing annually. The first pay data report is due by March 31, 2021.

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Authors

Nancy Vary, JD

Amy J. Heinze

Background

Senate Bill No. 973 ([SB 973](#)), enacted on September 30, 2020, targets pay disparities in California workplaces. Aimed at promoting compliance with state equal pay and antidiscrimination laws, it imposes a new reporting requirement on private employers that have 100 or more employees and are required to file an annual Employer Information Report (EEO-1) under federal law. The new law requires covered employers to submit certain pay and other data to California's Department of Fair Employment and Housing (DFEH) annually and authorizes the agency to enforce the state's Equal Pay Act in addition to the Fair Employment and Housing Act, which it already enforces.

Pay data reporting

Under the new law, covered employers must report required pay and hours-worked data by establishment (location), job category, pay band, sex, race, and ethnicity (collectively, pay data) on an annual basis beginning in 2021. Each pay data report will cover the prior calendar year (reporting year).

HOLD THE DATE: COVID relief legislation webinar

On March 30 at 1:00 p.m. ET, Buck's team of compliance experts will explore the impact of the latest and most far-reaching COVID legislation.

Covered employers

The new reporting requirement extends to employers with 100 or more employees located anywhere, as long as at least one employee is in California. The 100-employee threshold is measured by either a single pay period between October 1 and December 31 of the prior calendar year (snapshot

period), or by the regular employment of at least 100 employees during the reporting year. Both full-time and part-time workers as well as workers on paid or unpaid leave, furlough or other employer-approved leaves of absence are counted toward the 100-employee threshold. Independent contractors are not included in the count.

Report content

Each pay data report must include the following information for each establishment:

- Number of employees employed during the snapshot period of the reporting year by race, ethnicity, and sex in each of the following ten job categories: (A) executive or senior level officials and managers, (B) first or mid-level officials and managers, (C) professionals, (D) technicians, (E) sales workers, (F) administrative support workers, (G) craft workers, (H) operatives, (I) laborers and helpers, and (J) service workers
- Number of employees in the snapshot by race, ethnicity, and sex, whose W-2 earnings during the reporting year fall within each of the pay bands used by the U.S. Bureau of Labor Statistics in the Occupational Employment Statistics [survey](#)
- Total number of hours worked by each employee counted in each pay band during the reporting year (not just during the snapshot period) plus the hours during which the employee was on any form of employer-paid time off (such as vacation, sick, or holiday time)

For reporting purposes, employers must include all employees assigned to California establishments and/or working or teleworking within California during the snapshot period. Employees assigned to establishments outside of California and working outside the state may — but are not required to — be included in the report. Temporary services employers must report on workers placed on assignment at other companies if they are on the service provider’s payroll.

Alignment with EEO-1 reporting

Notably, California’s pay data reporting requirement allows employers to submit an EEO-1 to the DFEH to satisfy the new state obligation if it “contain[s] the same or substantially similar pay data information.” Since the EEO-1 survey is not currently collecting pay data (Component 2 data), the EEO-1 filing for 2020 will not satisfy the DFEH reporting due this month. (See our [February 12, 2020 FYI Alert](#).)

While the DFEH data collection system resembles the EEOC’s in a number of respects, it has some notable differences. Importantly, establishments, job categories, pay bands, race, and ethnicity are the same in both systems. Unlike the EEO-1 Component 2 data collection, however, California will require nonbinary employees to be reported in the same manner as male and female employees. Other key differences include how wages and hours worked are determined, as well as filing rules for parents and their subsidiaries, professional employer organizations, human resource outsourcing organizations, and multi-establishment employers. In addition, California will require information such

as whether the employer is a state contractor, the total number of U.S. employees and U.S. establishments, and the employer's ownership, affiliation, or enterprise.

Initial report due by March 31

The initial report, which covers 2020, must be submitted to DFEH on or before March 31, 2021. However, the DFEH indicates that it will consider requests for a one-month extension to April 30. Annual reports will have to be submitted to DFEH on or before March 31 of each subsequent year.

Employers must use the DFEH's Pay Reporting Portal, which opened last month, to report their pay data. DFEH will not accept reports by email or hard copy. Similarly, an employer seeking an extension must complete an online request form prior to March 31, 2021, providing the reason for the request and other required information.

Noncompliance

Employers can be liable for the costs associated with the DFEH's attempts to enforce California's new reporting requirements. While the new law does not currently include a private right of action, additional enforcement mechanisms may be added in the future.

In closing

California's new pay data reporting requirement is aimed at encouraging large employers to self-assess workforce pay disparities along gender, racial, and ethnic lines and to make needed changes. The reports are intended to identify wage patterns and allow for more targeted enforcement of California's equal pay and antidiscrimination laws. Now that the portal is open, California employers should prepare to submit required pay data by the March 31 deadline.

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