

California Updates Its Pay Data Reporting Requirements – Reports are due by March 31, 2021!

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[SB 973](#), enacted on September 30, 2020, requires private employers of 100 or more employees (with at least one employee in California) to report pay and demographic data to the Department of Fair Employment and Housing (DFEH) by March 31, 2021 and annually thereafter. The DFEH recently has updated its [FAQs](#) to provide more details about the reporting process and has indicated it will further provide a User Guide and reporting Template by February 1, 2021.

The information that eligible employers must report includes two components:

1. The number of employees by race, ethnicity, and sex in ten different job title 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; and
2. The number of employees by race, ethnicity and sex, whose annual earnings fall within each of the pay bands used by the U.S. Bureau of Labor Statistics in the Occupational Employment Statistics survey (the current ranges may be found on page 4 [here](#)).

Employers must choose the single pay period between October 1 and December 31 of the “Reporting Year” (the prior calendar year) that will serve as their “Snapshot Period.”

Highlights from the updated guidance are as follows:

Required content

- Employers should report employees’ sex according to three categories: female, male, and non-binary.
- A temporary services employer must report on the workers that it places on assignment at other companies if those workers are the “employees” of the temporary services employer (that is, on the payroll of the temporary services

employer).

- California's pay data reporting requirement only applies to employers that file EEO-1 reports.
- Employers may submit a federal EEO-1 Report to the DFEH to satisfy their obligation only if the EEO-1 Report "contain[s] the same or substantially similar pay data information." Cal. Gov't Code § 12999(g). No EEO-1 Report filed with the U.S. Equal Employment Opportunity Commission (EEOC) for Reporting Year 2020 will satisfy this standard since the EEO-1 survey is not currently collecting pay data.

Calculating pay and hours worked

- Employers should not annualize earnings for employees who did not work the entire Reporting Year.
- Employers must include paid time off in the hours worked calculation, unlike the federal EEO-1 Component 2 collection from 2017 and 2018 in which the EEOC required employers to exclude time on paid leave when calculating hours worked.
- When employers create their snapshot and assign employees to a particular pay band, employers should use Form W-2's Box 5 (Medicare wages and tips) for reporting pay.

Multi-establishment employers

- A California employer with multiple establishments must report on all of its establishments, including those with fewer than 50 employees.
- A multiple-establishment employer's headquarters is a distinct establishment reported in the same manner as other establishments.
- For the pay data reports due to the DFEH by March 31, 2021, employers should utilize the same establishments that they use for their EEO-1 reports and assign employees to the establishment where the employer reports the employee for EEO-1 purposes.
- Employers with multiple establishments must report all of their establishment-level data in a single report. They must include their employees assigned to California establishments and/or working within California. Multiple-establishment employers may report non-California employees.
- If employees telework from a residence in California, but are assigned to an establishment outside of California, an employer's report must include establishments outside of California if any employee at that establishment is working from California during the Snapshot Period. For an establishment outside of California, the employer has two options: 1) to report only those employees

teleworking from California and who are assigned to a single establishment outside of California or 2) to report all employees assigned to that establishment outside of California.

We will continue to monitor the DFEH updates to the pay data reporting process. For further information on the reports due in less than 90 days (i.e., on March 31, 2021), please contact [Tony Oncidi](#) or [Kate Gold](#) in Proskauer's Los Angeles office.

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