

New Pay Data Reporting Requirements for California Employers

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On September 30, 2020, California Governor Gavin Newsom signed into law [SB 973](#), which imposes new pay reporting requirements on certain employers. The law, which takes effect on January 1, 2021, requires employers to file an annual pay data report by March 31 of each year. According to the California legislature, the collection of pay data will permit the state to “more efficiently identify wage patterns and allow for targeted enforcement of equal pay or discrimination laws.” The new law is in response to the Trump Administration’s order in August 2017, suspending an Obama-era wage gap initiative that required employers to submit a federal Employer Information Report (EEO-1) that includes pay data by gender, race, and ethnicity beginning in 2018.

Under the new law, California employers with 100 or more employees, who were required to file an annual EEO-1 report under federal law, are now required to submit a pay data report to the California Department of Fair Employment and Housing (DFEH), that mirrors the reporting requirements of the EEO-1 form. Specifically, the report must include: (1) the number of employees by race, ethnicity, and sex in each of ten broad job categories, and (2) the number of employees by race, ethnicity, and sex whose annual earnings (defined as W-2 income) fall within each of the pay bands established by the U.S. Bureau of Labor Statistics in the Occupational Employment Statistics survey. The report must also include total hours worked by each employee within a given pay band. For reporting purposes, employers will create and submit a “snapshot” pay period in which it counts all individuals who were on the employer’s payroll in any single pay period of the employer’s choice between October 1 and December 31.

Employers with multiple establishments must submit a report for each establishment and a consolidated report that includes all employees. Employers must also provide the data in a format that allows the DFEH to search and sort the information using readily available software. Employers may, but are not required to, provide “clarifying remarks” about information submitted in the report. The law also requires the DFEH to make the reports available to the Department of Labor Standards Enforcement upon request and to maintain the reports for a minimum of 10 years. Additionally, the law authorizes the DFEH to seek an order requiring non-reporting employers to comply.

The new law does not clarify if the reporting requirements apply to employers with more than 100 employees overall (including those employees outside of the state) or only to those employers with more than 100 employees in California. In addition, it is unclear if California employers will need to report data for all employees, even those who live outside of the state.

In light of these upcoming reporting requirements, California employers should start the process of evaluating whether they are in a position to generate the required data by the March 31, 2021 deadline. If you have questions regarding how to comply with California’s new pay data reporting requirements, please contact Kelley Drye’s Labor & Employment group.