

AMENDED IN SENATE APRIL 10, 2025

SENATE BILL

No. 464

Introduced by Senator Smallwood-Cuevas

(Principal coauthors: Senators Richardson and Weber Pierson)

(Principal coauthors: Assembly Members Bonta, Bryan, Elhawary, Gipson, Jackson, McKinnor, Ransom, Sharp-Collins, and Wilson)

February 19, 2025

An act to amend Section 12999 ~~of~~ *of, and to add Section 12999.1 to,* the Government Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 464, as amended, Smallwood-Cuevas. Employer pay data.

Existing law establishes the Civil Rights Department within the Business, Consumer Services, and Housing Agency to enforce civil rights laws with respect to housing and employment and to protect and safeguard the right of all persons to obtain and hold employment without discrimination based on specified characteristics or status.

Existing law requires a private employer that has 100 or more employees to submit an annual pay data report to the Civil Rights Department that includes the number of employees by race, ethnicity, and sex in specified job categories, whose pay falls within federal pay bands, and within each job category the median and mean hourly rate for each combination of those characteristics as specified.

This bill would ~~also require public employers with 100 or more employees to submit the annual pay data report beginning in 2027. The bill would~~ require an employer to collect and store any demographic information ~~it gathers~~ *gathered by an employer or labor contractor* for the purpose of submitting the pay data report separately from employees' personnel records.

This bill would also expand the demographics for the reporting requirements to also include sexual orientation and require the report to include information by sexual orientation about the number of employees in specified job categories, whose pay falls within federal pay bands, and within each job category the median and mean hourly rate for each combination of the specified characteristics. The bill would require that the information regarding an employee's ~~or applicant's~~ sexual orientation be collected only if voluntarily disclosed by the ~~employee or applicant~~ employee.

Existing law authorizes the department, if it does not receive the pay data report, to seek an order requiring an employer to comply with these provisions. Existing law provides that upon the request of the department, a court may impose a civil penalty upon any employer for failure to file the required report, which shall be payable to the Civil Rights Enforcement and Litigation Fund.

This bill would require a court to impose a civil penalty against an employer that fails to file the report if requested to do so by the department.

Existing law makes it unlawful for any officer or employee of the department to make public any identifiable information before an investigation or enforcement proceeding involving that information, and then only to the extent necessary for the purposes of that proceeding.

This bill would, notwithstanding that provision, require the department to publish private employer reports provided that the publication is reasonably calculated to prevent the association of any data with any individual person.

Commencing May 2027, this bill would also require public employers with 100 or more employees to submit an annual pay data report with specified information, including demographic data provided by employees relative to ethnicity, race, disability, veteran status, gender, gender identity, and sexual orientation organized by job category as listed in the civil service pay scale, as specified.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 12999 of the Government Code is amended to read:

12999. (a) (1) On or before the second Wednesday of May 2023, and on or before the second Wednesday of May of each year thereafter, a private employer that has 100 or more employees shall submit a pay data report to the department covering the prior calendar year, which, for purposes of this section, shall be referred to as the “Reporting Year.”

(2) On or before the second Wednesday of May 2023, and on or before the second Wednesday of May of each year thereafter, a private employer that has 100 or more employees hired through labor contractors within the prior calendar year shall submit a separate pay data report to the department covering the employees hired through labor contractors in the prior calendar year. The private employer shall also disclose on the pay data report the ownership names of all labor contractors used to supply employees. A labor contractor shall supply all necessary pay data to the private employer.

~~(3) On or before the second Wednesday of May 2027, and on or before the second Wednesday of May of each year thereafter, a public employer that has 100 or more employees shall submit a pay data report to the department covering the prior calendar year, which, for purposes of this section, shall be referred to as the “Reporting Year.”~~

~~(4) An employer shall collect and store any demographic information it gathers for the purpose of submitting the pay data report as required by this section separately from employees’ personnel records. For~~

~~(3) Any demographic information gathered by an employer or labor contractor pursuant to this section shall be collected and stored separately from employees’ personnel records.~~

(4) For purposes of collecting the information required to be reported pursuant to paragraph (1) of subdivision (b), information regarding an employee’s ~~or applicant’s~~ sexual orientation shall be collected only if voluntarily disclosed by the employee ~~or applicant~~ to the employer by the employee themselves.

(b) The pay data report shall include the following information:

- 1 (1) The number of employees by race, ethnicity, sex, and sexual
2 orientation in each of the following job categories:
- 3 (A) Executive or senior level officials and managers.
 - 4 (B) First or mid-level officials and managers.
 - 5 (C) Professionals.
 - 6 (D) Technicians.
 - 7 (E) Sales workers.
 - 8 (F) Administrative support workers.
 - 9 (G) Craft workers.
 - 10 (H) Operatives.
 - 11 (I) Laborers and helpers.
 - 12 (J) Service workers.
- 13 (2) The number of employees by race, ethnicity, sex, and sexual
14 orientation, whose annual earnings fall within each of the pay
15 bands used by the United States Bureau of Labor Statistics in the
16 Occupational Employment Statistics survey.
- 17 (3) Within each job category, for each combination of race,
18 ethnicity, sex, and sexual orientation, the median and mean hourly
19 rate.
- 20 (4) For purposes of establishing the numbers required to be
21 reported under paragraph (1), an employer shall create a “snapshot”
22 that counts all of the individuals in each job category by race,
23 ethnicity, sex, and sexual orientation, employed during a single
24 pay period of the employer’s choice between October 1 and
25 December 31 of the “Reporting Year.”
- 26 (5) For purposes of establishing the numbers to be reported
27 under paragraphs (2) and (3), the employer shall calculate the total
28 earnings, as shown on the Internal Revenue Service Form W-2,
29 for each employee in the “snapshot,” for the entire “Reporting
30 Year,” regardless of whether or not an employee worked for the
31 full calendar year. The employer shall tabulate and report the
32 number of employees whose W-2 earnings during the “Reporting
33 Year” fell within each pay band.
- 34 (6) The employer shall include in the report the total number
35 of hours worked by each employee counted in each pay band during
36 the “Reporting Year.”
- 37 (7) The report shall include the employer’s North American
38 Industry Classification System (NAICS) code.
- 39 (c) For employers with multiple establishments, the employer
40 shall submit a report covering each establishment.

1 (d) The report shall include a section for employers to provide
2 clarifying remarks regarding any of the information provided. An
3 employer is not required to provide clarifying remarks.

4 (e) The information required by this section shall be made
5 available in a format that allows the department to search and sort
6 the information using readily available software.

7 (f) If the department does not receive the required report from
8 an employer, the department may seek an order requiring the
9 employer to comply with these requirements and shall be entitled
10 to recover the costs associated with seeking the order for
11 compliance. Upon request by the department, a court shall impose
12 a civil penalty not to exceed one hundred dollars (\$100) per
13 employee upon any employer who fails to file the required report
14 and not to exceed two hundred dollars (\$200) per employee upon
15 any employer for a subsequent failure to file the required report.
16 Any penalty under this subdivision shall be payable to the Civil
17 Rights Enforcement and Litigation Fund established under Section
18 12907. If the employer is unable to submit a complete and accurate
19 report because a labor contractor has not provided the pay data as
20 required under paragraph (2) of subdivision (a), the court may
21 apportion an appropriate amount of penalties to any labor
22 contractor that has failed to provide the pay data to the employer.

23 (g) It shall be unlawful for any officer or employee of the
24 department or the Division of Labor Standards Enforcement to
25 make public in any manner whatever any individually identifiable
26 information obtained pursuant to their authority under this section
27 prior to the institution of an investigation or enforcement
28 proceeding by the Division of Labor Standards Enforcement or
29 the department under Section 1197.5 of the Labor Code or Section
30 12940 involving that information, and only to the extent necessary
31 for purposes of the enforcement proceeding. For the purposes of
32 this section, “individually identifiable information” means data
33 submitted pursuant to this section that is associated with a specific
34 person or business.

35 (h) Any individually identifiable information submitted to the
36 department pursuant to this section shall be considered confidential
37 information and not subject to disclosure pursuant to the California
38 Public Records Act (Division 10 (commencing with Section
39 7920.000) of Title 1).

1 (i) (1) Notwithstanding subdivision (g), the department may
2 develop, publish on an annual basis, and publicize aggregate reports
3 based on the data obtained pursuant to their authority under this
4 section, provided that the aggregate reports are reasonably
5 calculated to prevent the association of any data with any individual
6 business or person.

7 (2) Notwithstanding subdivision (g), the department shall publish
8 private employer reports provided that the publication is reasonably
9 calculated to prevent the association of any data with any individual
10 person.

11 (j) The department shall maintain pay data reports for not less
12 than 10 years.

13 (k) For purposes of this section, the following definitions shall
14 apply:

15 (1) “Employee” means an individual on an employer’s payroll,
16 including a part-time individual, and for whom the employer is
17 required to withhold federal social security taxes from that
18 individual’s wages.

19 (2) “Labor contractor” means an individual or entity that
20 supplies, either with or without a contract, a client employer with
21 workers to perform labor within the client employer’s usual course
22 of business.

23 (3) “Establishment” means an economic unit producing goods
24 or services.

25 (l) Upon request by the department, no later than 60 days from
26 the date of the request, the Employment Development Department
27 shall provide the department with the names and addresses of all
28 businesses with 100 or more employees in order to ensure
29 compliance with this section.

30 (m) The amendments made to this section by Senate Bill 1162
31 of the 2021–22 Regular Session of the Legislature shall not affect
32 the requirement of employers to file reports in 2021 and 2022
33 pursuant to this section as it read on December 31, 2022, or the
34 department’s authority to pursue those employers on and after
35 January 1, 2023.

36 *SEC. 2. Section 12999.1 is added to the Government Code, to*
37 *read:*

38 *12999.1. (a) On or before the second Wednesday of May 2027,*
39 *and on or before the second Wednesday of May of each year*
40 *thereafter, a public employer that has 100 or more employees shall*

1 *submit a pay data report to the department covering the prior*
2 *calendar year, which, for purposes of this section, shall be referred*
3 *to as the “reporting year.”*

4 *(b) The pay data report shall include demographic data provided*
5 *by employees relative to ethnicity, race, disability, veteran status,*
6 *gender, gender identity, and sexual orientation organized by job*
7 *category as listed in the civil service pay scale.*

8 *(1) Demographic data disclosed or released pursuant to this*
9 *subdivision shall disclose only aggregated statistical data and*
10 *shall not identify any individual.*

11 *(2) Any individually identifiable information submitted to the*
12 *department pursuant to this section shall be considered confidential*
13 *information and not subject to disclosure pursuant to the California*
14 *Public Records Act (Division 10 (commencing with Section*
15 *7920.000) of Title 1).*

16 *(c) For purposes of this section, “public employer” means:*

17 *(1) The state and every state entity, including, but not limited*
18 *to, the Legislature, the judicial branch, including judicial officers,*
19 *and the California State University.*

20 *(2) Any political subdivision of the state, or agency or*
21 *instrumentality of the state or subdivision of the state, including,*
22 *but not limited to, a city, county, city and county, charter city,*
23 *charter county, school district, community college district, joint*
24 *powers authority, joint powers agency, and any public agency,*
25 *authority, board, commission, or district.*

26 *SEC. 3. The Legislature finds and declares that Section 2 of*
27 *this act, which adds Section 12999.1 to the Government Code,*
28 *imposes a limitation on the public’s right of access to the meetings*
29 *of public bodies or the writings of public officials and agencies*
30 *within the meaning of Section 3 of Article I of the California*
31 *Constitution. Pursuant to that constitutional provision, the*
32 *Legislature makes the following findings to demonstrate the interest*
33 *protected by this limitation and the need for protecting that*
34 *interest:*

35 *In order to protect the privacy of public employees, while also*
36 *gathering useful data, it is necessary that individually identifiable*
37 *information submitted to the Civil Rights Department remain*
38 *confidential.*

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