



California Pay Data Reporting – What Employers Need to Know

2021 brought a slew of new laws for California Employers, but one of the most complicated and easy to miss is the new Pay Data Reporting Requirements. California law (Government Code section 12999) requires private employers with 100 or more U.S. employees (and at least one employee in California) to annually submit data on the pay, hours worked, and demographics of their employees to the California Department of Fair Employment and Housing (DFEH). By March 31st, employers must submit their reports covering the prior calendar year.

The California Pay Data Report requires an employer to group its employees by job category, pay band, race, ethnicity, and sex, and then report to DFEH the number of employees within each group and the total hours worked by the employees in that group, among other information. For employers with more than one establishment, employers must organize and report their data by establishment (location).

The DFEH also compels employers to report gender information under California’s Gender Recognition Act, including three genders: male, female and non-binary based on employee self-identification.

The 100-employee “limit” is measured by either (i) “Snapshot Period”, a single pay period between October 1 and December 31 of the year prior or (ii) regular employment of 100 or more employees during the prior year. It includes part-time workers, workers on paid or unpaid leave, furlough or other employer-approved leaves of absence.

The DFEH Provides the following guidance in measuring the snapshot period and on reporting which can be found in more detail in their Employer Guide:

1. Select a single pay period between Oct. 1, 2020 and Dec. 31, 2020 (“Snapshot Period”)
 - a. An “employee” is an individual on an employer’s payroll, including a part-time individual, whom the employer is required to include in an EEO-1 Report and for whom the employer is required to withhold federal social security taxes from that individual’s wages
 - b. All of the employer’s employees assigned to a California establishment and/or working within California during the Snapshot Period must be included in the employer’s Pay Data Report
2. Identify or calculate each employee’s:
 - a. Establishment
 - b. Job category
 - c. Race, ethnicity, and sex



- d. Earnings in 2020 (not just during the Snapshot Period), as shown in Box 5 (Medicare wages and tips) of the employee's IRS Form W2, and the employee's corresponding pay band
 - e. Number of hours worked in 2020 (not just during the Snapshot Period)
 - Include the number of hours the employee was on any form of paid time off for which the employee was paid by the employer, such as vacation time, sick time, or holiday time
 - For employees who did not work their entire year, do not annualize their hours worked
3. Within each establishment, group employees by job category, pay band, race/ethnicity/sex, and then calculate the total number of employees in each group and the total hours worked in 2020 by the employees in each group
- a. If no other employees share the same categories as an employee, the employee is reported as a group of 1 and is reported in the same fashion as groups of more than 1 employee (note: California pay data reports are not publicly available)
 - b. There are 2,520 possible combinations of job category, pay band, and race/ethnicity/sex:
 - 10 job categories x 12 pay bands x 21 race/ethnicity/sex combinations = 2,520
 - c. Gather other required employer and establishment level information, as well as any explanatory information that may need to be noted in the remarks fields

EEOC-1 versus California Pay Data Report

There are similarities between the Federal EEOC-1 Reporting and California Pay Data Report. They include:

1. Employers can use the same establishments that they use in the EEO-1 survey
2. Employers can follow the EEOC guidance on job categorization, race, and ethnicity

However, there are more differences than similarities. Those include:

1. California Pay Data Report requires that Non-binary employees be reported in the same manner as male and female employees
 - a. An employee's pay is reported from W-2 Box 5. If any employee has wages not reported in Box 5, as may be the case for an H-2A visa holder for example, use W-2 Box 1 for that employee and note this in the associated remarks field



- b. An employee's hours worked in 2020 includes any hours the employee was on any form of paid time off for which the employee was paid by the employer (such as vacation time, sick time, or holiday time) during 2020
- c. Multiple-establishment employers report all establishments, including those with fewer than 50 employees, in the same manner by providing the number of employees and total hours worked for each employee group assigned to the establishment.
 - i. DFEH does not permit employers to submit what is known in the federal EEO-1 survey as a "Type 6" list of establishments of fewer than 50 employees
- d. Multiple-establishment employers do not report consolidated data
- e. If an employee's W-2 is corrected after the employer submits its Pay Data Report, and the correction would put the employee in a different pay band than originally reported or would otherwise require a correction on the employer's report, the employer should promptly submit a corrected pay data report, identifying the corrected cells and explaining the correction in the remarks field(s)

While Employers are not required to report on Independent Contractors, Employers should make sure that they have all employees properly classified.

Compliance Extensions Will Be Limited

The DFEH will consider requests for a very short deferral of compliance due to the pandemic. An employer seeking an Enforcement Deferral Period must complete the online request form before March 31, 2021, providing the reason for the request and other required information for a one-month deferral to April 30, 2021.

Liability

Employers who do not comply with California's requirements can be liable for the costs associated with the DFEH's attempts to order compliance.

DFEH Link for Employer Resources

For information about which employers are required to file with DFEH, along with answers to other frequently asked questions (FAQs), visit: <http://www.dfeh.ca.gov/paydatareporting/faqs> or <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2021/01/CA-Pay-Data-Reporting-User-Guide.pdf>



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Ms. Long is the Chair of the Employment Law Practice Group and Hospitality Practice Group. Ms. Long provides innovative employment advice to businesses throughout California. Her practice includes handling Class Actions and PAGA Claims, wage and hour claims, claims of employment discrimination, wrongful termination, and breach of employment contract cases in all venues, including actions before the DFEH, Labor Commissioner, and the EEOC. Her experience includes both trial and arbitration experience on matters relating to employment including compensation issues, mandatory leaves of absence, reasonable accommodations, and reductions-in-force for individuals, companies and local government.