

Publications

California Employers Must Report Pay Data by March 31, 2021

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The New Year brings new reporting obligations for California employers. Under California Senate Bill 973, employers with 100 or more employees (anywhere in the country) must report pay and hours-worked data by establishment, job category, sex, race, and ethnicity to the California Department of Fair Employment and Housing (DFEH) by March 31, 2021, and annually thereafter. California will retain employers' information as confidential, but may (and likely will) publish reports aggregating the data with employer-identifying information removed. The state may initiate an action to ensure compliance.

This reporting is similar to that previously required by the Obama Administration on the EEO-1 form, which the Trump Administration ceased, and which the Biden Administration is likely to reinstitute. A federal court ordered the EEOC to collect the pay data for 2017 and 2018. Since then, the EEOC has stopped doing so. Thus, an employer's EEO-1 report will have some – but, importantly, not all – of the information California requires.

Below, we outline the general aspects of DFEH's pay reporting requirements. There are also special considerations for employees who are teleworking and for those who move from one location to another during the year (whether inside or outside of California or both).

Technical Reporting Requirements

Information will be reported online using the state's "Data Submission Portal" (available on 2/15/21). The DFEH will make a "User Guide" and "Template" for reporting the data available by 2/1/21.

Reporting Requirements for Multi-Establishment Employers

Multiple-establishment employers report all of their establishment-level data in a single report, and, unlike with the EEO-1 form, do not report consolidated data.

For employers with establishments inside and outside of California, the employer: (a) must report on all of its employees assigned to its California establishments (including any employees outside of California) whether or not teleworking, and any other California employee (including those teleworking from California but assigned to an establishment outside of California); and (b) **may** report on its establishments and employees not covered by (a).

Required Content

An employer will report employee information for a “reporting year” based on the employees who appear on its payroll during the “snapshot period.” The reporting year is the calendar year (e.g., 2020). The snapshot period is a single pay period between October 1 and December 31 selected by the employer to identify the employees on whom to report.

The DFEH’s template specifies the required information, which includes:

1. For each establishment, the number of employees by race, ethnicity, and sex in these categories: Executive or senior level officials and managers; First or mid-level officials and managers; Professionals; Technicians; Sales workers; Administrative support workers; Craft workers; Operatives; Laborers and helpers; and Service workers. Employers should use the same classifications as when submitting the EEO-1 report and the same race/ethnicity categories as with the EEO-1. For reporting sex, however, California officially recognizes three genders: female, male, and non-binary. Employers must report according to these three categories.
2. For each establishment, the number of employees by race, ethnicity, and sex, whose annual earnings fall within these pay bands (as shown on the [W-2 Box 5](#), for each employee in the snapshot, regardless of whether the employee worked for the full calendar year): \$19,239 and under; \$19,240 – \$24,439; \$24,440 – \$30,679; \$30,680 – \$38,999; \$39,000 – \$49,919; \$49,920 – \$62,919; \$62,920 – \$80,079; \$80,080 – \$101,919; \$101,920 – \$128,959; \$128,960 – \$163,799; \$163,800 – \$207,999; \$208,000 and over.
3. For the entire reporting year, the total number of hours worked by each employee plus the 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 non-exempt employees, employers are directed to use timesheets or other records. For non-exempt employees, employers may either use timesheets or other records, or calculate each exempt employee’s total hours worked by multiplying the total number of days actually worked during the Reporting Year plus the total number of days on any form of paid time off, by the average number of hours worked per day by the employee.

Contact your Vorys lawyer if you have questions about the new pay data reporting requirements.