

Employers with Employees in California, Are You Ready to Report Your EEO Pay Data?

Labor & Employment Law Update

By Sara Zorich on February 19, 2021



In follow up to our previous blog, the March 31, 2021 deadline is quickly approaching for employers to provide their California Pay Data Report to the California Department of Fair Employment and Housing (DFEH). Required reporting applies to private employers who meet the following three (3) requirements: (1) 100 or more total employees, (2) required to file a federal EEO-1 report and (3) at least 1 employee in California.

DFEH recently updated its FAQ's related to the California EEO reporting requirements. The FAQ's, along with DFEH's

User Guide, make it clear that employers must carefully review their reporting requirements and data for submission. The DFEH User Guide notes that the California requirements are NOT the same as the previous EEOC proposed rules or the current Federal EEO-1 reporting requirements. The California Pay Data Report requirements have a number of significant differences employers must be aware of, for example:

- Non-binary employees must be reported in California in the same manner as male and female employees.
- An employee's pay is reported from W-2 Box 5.
- 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.

- Multiple-establishment employers must 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. For example, for multiple-establishment employers with establishments inside and outside of California, the employer: (A) **must report** to DFEH on its California establishments, all of its employees assigned to those 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** to DFEH on its establishments and employees not covered by (A).
- If an employee's W-2 is corrected after the employer submits its California Pay Data Report to DFEH, 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).

As stated, the California Pay Data Report must be submitted by March 31, 2021. In light of COVID-19, DFEH is allowing an employer to request a deferral of enforcement and if approved DFEH is providing the employer until April 30, 2021 to file its Pay Data Report. All requests for such deferral of enforcement must be filed with DFEH no later than March 31, 2021.

In light of these new California reporting requirements and the similar currently pending legislation in Illinois, employers should proactively review and understand how their pay data would appear should they be investigated for pay disparity claims.

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