

NEW CALIFORNIA EEO PAY REPORTING LAW TO GO INTO EFFECT MARCH 31, 2021

Labor & Employment Law Update

By John Hayes on October 20, 2020

On September 30, 2020, California Governor Gavin Newsom signed into law Senate Bill 973. This new pay reporting law applies to private employers in California: (a) with 100 or more employees; *and* (b) that are required to file an annual Employer Information Report (EEO-1) pursuant to federal law. Beginning March 31, 2021, and on an annual basis, covered employers will have to provide California's Department of Fair Employment and Housing (DFEH) with pay data by specified job categories and by race, ethnicity and sex. We previously reported on this anticipated legislation, amongst other employment law developments in California, in a prior blog post.

This legislation was enacted in response to the decision by the Equal Employment Opportunity Commission (EEOC) to stop pay data collection, also known as EEO-1 Component 2 reporting, in September 2019. In the final bill, the California Legislature explained the underlying public policy:

(a) Despite significant progress made in California in recent years to strengthen California's equal pay laws, the gender pay gap persists, resulting in billions of dollars in lost wages for women each year in California.

(b) Pay discrimination is not just a women's issue, but also harms families and the state's economy. In California, in 2016, women working full time, year-round made a median 88 cents to every dollar earned by men and, for women of color, that gap is far worse.

(c) Although there are legitimate and lawful reasons for paying some employees more than others, pay discrimination continues to exist, is often "hidden from sight," and can be the result of unconscious biases or historic inequities.

The California law is modeled after the discontinued EEO-1 Component 2 reporting requirement. Specifically, the annual report to the DFEH must include the number of employees—and the total hours they worked—by race, ethnicity, and sex in each of the job categories in the federal EEO-1 report:

(A) Executive or senior level officials and managers;

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(B) First or mid-level officials and managers;

(C) Professionals;

(D) Technicians;

(E) Sales workers;

(F) Administrative support workers;

(G) Craft workers;

(H) Operatives;

(I) Laborers and helpers; and

(J) Service workers.

“Employee” as defined in the bill means an individual on an employer’s payroll, including a part-time individual, whom the employer is required to include in an EEO-1 Report, for whom the employer is required to withhold federal social security taxes from that individual’s wages, and whose annual earnings fall within each of the 12 pay bands used by the U.S. Bureau of Labor Statistics in the Occupational Employment Statistics Survey (from \$19,239 and under to \$208,000 and over).

Employers with multiple establishments must submit a report for each establishment and a consolidated report that includes all employees. It should also be noted that employers have the option to provide clarifying remarks concerning the information in the report, should they choose to do so.

Some significant questions remain; however, including what will the reporting form look like, how many employees an employer must have in California to be covered, and whether an employer must report on employees who only worked in California for a short time. Moreover, since the data requested will not take into account both common and organization-specific variables that explain pay differentials (e.g., time with company, education, training, experience, merit, etc.), there is concern among employers that this will lead to increased scrutiny and investigations based on false claims of pay inequities.

Thus, employers with *any number* of employees in California should begin to examine their pay data, compensation philosophies, and current pay structures to determine if legitimate, non-discriminatory business reasons for any discrepancies exist—or to determine if remedial measures are warranted—prior to the first reporting deadline of March 31, 2021. Although this legislation is specific to California employers, it also is a spur to action to employers outside that state to proactively review and understand how their pay data would appear should they be investigated for pay disparity claims, or should other states follow

California and implement similar legislation.

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