

LABOR & EMPLOYMENT

>> FAQ

CALIFORNIA EMPLOYERS' DEADLINE TO SUBMIT PAY DATA IS FAST APPROACHING

Last fall, the California legislature passed [Senate Bill 973](#), which requires employers with 100 or more employees to submit pay data to the California Department of Fair Employment and Housing (DFEH) **by March 31, 2021**, and by March 31 each year thereafter.

The DFEH has since issued [FAQS](#) to assist employers in complying with the new reporting mandate.

Davis & Gilbert Labor & Employment attorneys [Jason Pruzansky](#) and [Sharon Cohen](#) summarize key questions and answers about the California pay data reporting requirements.

1. Q: Which employers are required to submit the pay data?

A: The pay data reporting requirement applies to employers that must file an EEO-1 report and either regularly employed 100 or more employees during the reporting year or employed 100 or more employees in the Snapshot Period covered by the report (discussed further below). This includes part-time employees, as well as employees on a paid or unpaid leave.

Employees located inside and outside of California are counted towards the 100 employee threshold. For example, an employer with 50 employees inside California and 50 employees outside of California during the reporting year would be required to submit a report. Accordingly, employers with 100 or more employees nationwide with at least one California employee are required to submit a report.

2. Q: How can employers submit the report?

A: Employers will be able to submit the pay data report on the DFEH website through a portal that will soon be available. **The DFEH anticipates that this portal will be available on February 15, 2021.**

The DFEH also intends to issue a user guide and template for employers to submit their reports. Once the portal is live, employers can submit their report by either uploading an Excel or .CSV file using the DFEH's template (which is the suggested method) or using the portal's fillable form.

Employers can monitor the DFEH's website [here](#) to see when the portal and forms are available and for the most up-to-date DFEH guidance.

THE BOTTOM LINE

Employers with 100 or more employees who have at least one California employee should promptly begin compiling and aggregating the requisite pay and hours data in order to be in a position to submit such data to the DFEH in advance of the **March 31, 2021 deadline**.

3. Q: What must the report include?

A: The report should cover the prior calendar year (i.e. the reporting year). For example, the 2021 report will cover 2020. The report should cover a “Snapshot Period” of a single pay period that employers can choose between October 1 and December 31 of the reporting year.

The report must include the following information:

- >> The number of employees by race, ethnicity and sex in each of the following job 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
 - Service workers
- >> The number of employees by race, ethnicity and sex, whose annual earnings fall within each of the pay bands below. For purposes of determining an employee’s pay band, employers should refer to the employee’s “W-2 Box 5” for the reporting year.

- \$19,239 and under	- \$62,920 – \$80,079
- \$19,240 – \$24,439	- \$80,080 – \$101,919
- \$24,440 – \$30,679	- \$101,920 – \$128,959
- \$30,680 – \$38,999	- \$128,960 – \$163,799
- \$39,000 – \$49,919	- \$163,800 – \$207,999
- \$49,920 – \$62,919	- \$208,000 and over
- >> The total number of hours worked by each employee in each pay band during the reporting year.
- >> The reporting year and the dates of the Snapshot Period.
- >> The employer’s name, address, headquarters’ address (if different), EIN, NAICS code, Duns and Bradstreet number, number of employees and establishments inside and outside of California,



whether the employer is a California state contractor and the name and address of the employer's parent companies (if applicable).

- >> For multiple-establishment employers, each establishment's name, address, number of employees, and major activity.
- >> A certification that the information contained in the report is accurate and prepared in accordance with Government Code section 12999 and DFEH's instructions, and the name, title, signature and date of signature of the certifying official.
- >> The name, title, address, phone number and email address of the employer's point-of-contact for the report.

Employers may, but are not required, to also include clarifying remarks with the report.

4. Q: **How should employers calculate an employee's annual hours?**

A: Employers should utilize time records and also count hours the employee was on any form of paid time off (e.g. vacation time, sick leave or holiday time).

If an employer does not maintain time records for exempt employees, the employer can calculate the employee's hours worked by multiplying the total number of days the employee actually worked during the reporting year plus any paid days off by the average number of hours the employee worked per day.

Employers should not annualize the hours worked for employees who did not work the full reporting year.

5. Q: **What should multiple-establishment employers submit?**

A: Multiple-establishment employers must report all of their establishment-level data in a single report. They do not report consolidated data. The DFEH does not permit employers to submit what is known in the federal EEO-1 report as a "Type 6" list of establishments of fewer than 50 employees. For purposes of report due on March 31, 2021, employers should utilize the same establishments that they use for their EEO-1 reports.

6. Q: **Do non-California employees need to be included in the report?**

A: Employers must include their employees working in California, as well as those assigned to California establishments. Accordingly, employees who telework from a non-California residence who are assigned to an establishment in California must be included on the pay data report.

This means that a single-establishment employer located in California should include all employees (including any employees outside of California) whether or not teleworking. Similarly, a multiple-establishment employer



with establishments only in California should include all employees (including any employees outside of California), whether or not teleworking. For establishments outside California, employers have the option to either only report the California employees who report to the non-California establishment, or they can choose to include all employees assigned to that non-California establishment.

California employees teleworking *from* California also must be included in the report even if they are assigned to an establishment outside of California.

7. Q: What are the penalties for failing to submit the report?

A: The DFEH may seek an order requiring the employer to comply with these requirements and can recover the costs associated with seeking such an order.

8. Q: Will an employer's report be publicly available?

A: While the DFEH is prohibited from publicizing any individually identifiable information that is submitted by employers, they may publish aggregate reports based on the submitted pay data so long as it is reasonably calculated to prevent the association of any data with any individual business or person. The DFEH may also make the pay-data report available to the California Division of Labor Standards Enforcement upon request.

FOR MORE INFORMATION

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