

CLIENT ALERT

DFEH Provides Additional Guidance on California Equal Pay Reporting Requirements and Posts a User Guide for Its Pay Data Reporting Portal

Feb.03.2021

As we reported in a prior [client alert](#), in 2020, California Governor Newsom signed [SB 973](#), which authorizes the California Department of Fair Employment and Housing (DFEH) to collect an “Annual Pay Data Report,” but the new legislation left a number of critical questions unanswered. SB 973 impacts private employers that employ 100 or more employees and that are already required to file an annual Employer Information Report (EEO-1) pursuant to federal law. Employers must report on all employees assigned to California establishments and any other California employee, including those teleworking from California but assigned to an establishment outside of California. The bill took effect January 1, 2021, with the first report due March 31, 2021.

The DFEH has been gradually updating its [Frequently Asked Questions](#) on SB 973, with its first round of answers on November 2 (see [client alert](#)), its second round of answers on November 23 (see [client alert](#)), and a third round of answers on January 9 (see [client alert](#)). On January 15, the DFEH provided additional guidance about which employees and “establishments” for which employers must submit information. Employers are instructed to submit a **single pay data report** and, contrary to DFEH’s prior guidance, employers are **not required to submit a consolidated report**.

Employers should group employees according to establishment, even if an establishment is outside of California. Employers **must** report on:

- A. All its employees assigned to California establishments, including any employees outside of California and whether or not they are teleworking, and
- B. Any other California employee, including those teleworking from California but assigned to an establishment outside of California.

Employers **may** report on its establishments and employees not covered by these categories if that option is less burdensome, but they are not required to do so.

On February 1, the DFEH posted a [User Guide](#) for its Pay Data Reporting Portal, which is expected to be available on February 16, 2021. Once the portal is live, employers can submit a pay data report either by uploading an Excel or .CSV file using templates provided on its website. The User Guide summarizes key similarities and differences between the California Pay Data Report and the federal EEO-1 survey.

Key Similarities of California Pay Data Report to Federal EEO-1 Survey

- Employers should use the same establishments that they use in the EEO-1 survey.
- Employers should follow the EEO-1 Instruction Booklet’s guidance on job categorization, race, and ethnicity.

Key Differences Between California Pay Data Report and Federal EEO-1 Survey

- Non-binary employees must be reported 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.
- Multiple-establishment employers do not report consolidated data.
- 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).

We will continue to update our clients on any new significant guidance from the DFEH. We also anticipate that Federal EEO-1 Component 2 reporting may be resuscitated by the incoming Biden Administration and we will update our clients on this topic, as well, if that occurs.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Kris D. Meade

Partner – Washington, D.C.
Phone: +1 202.624.2854
Email: kmeade@crowell.com

Rebecca L. Springer

Partner – Washington, D.C.
Phone: +1 202.624.2569
Email: rspringer@crowell.com

Suzanne E. Rode

Counsel – San Francisco
Phone: +1 415.365.7276
Email: srode@crowell.com