

CLIENT ALERT

California Implements Its Own Version of Equal Pay Reporting

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On September 30, 2020, California Governor Gavin Newsom signed [SB 973](#), which authorizes the California Department of Fair Employment and Housing (DFEH) to collect an “Annual Pay Data Report.” This new requirement affects 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. The bill takes effect January 1, 2021, with the first report due March 31, 2021. The reporting requirements are very similar to the requirements of the EEO-1 “Component 2” data collection implemented during the Obama Administration that required employers to report pay and hours data by gender, race and ethnicity. SB 973 was enacted in response to the Trump Administration’s decision to eliminate the Obama Administration’s data collection.

The Annual Pay Data Report must include two categories of information:

- First, employers must report the number of employees by race, ethnicity, and sex in each of the ten federally identified job categories: executive and mid-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. This is the same data currently required in the federal EEO-1 report.
- Second, employers must report (a) the number of employees by race, ethnicity, and sex whose annual earnings fall within each of the pay bands used the U.S. Bureau of Labor Statistics in the Occupational Employment Statistics survey, and (b) the total number of hours worked by each employee counted in each pay band.

Employers may use a workforce snapshot for any single pay period between October 1 and December 31 of the reporting year to establish the numbers to be reported. Employers should determine the pay band for each employee based upon the actual annual W-2 earnings for the employee, regardless of whether the employee has worked for the entire reporting period. SB 973 does not provide guidance on how to calculate hours for either full-time or part-time exempt employees, for whom many employers do not track actual hours worked.

Employers with multiple establishments in California must submit a report for each establishment and a consolidated report that includes all employees. “Establishment” means “an economic unit producing goods or services.”

As written, SB 973 leaves critical questions unanswered. First, SB 973 does **not** specify whether only California employees must be included in the pay report. Second, it does **not** clarify whether the reporting requirements apply to employers with 100 or more employees overall or to employers with 100 or more employees just in California. Additional guidance on these points may be forthcoming.

The DFEH, the agency responsible for enforcing California’s anti-discrimination laws, will coordinate enforcement of the collection of data with the Division of Labor Standards Enforcement (DLSE), the agency responsible for enforcing California’s Equal Pay Act (EPA). The DFEH is authorized to go to court to seek an injunction to compel an employer to file an Annual Pay Data Report and to recover the DFEH’s costs to do so.

In order to prepare for these new reporting requirements, employers should review their reporting capabilities to ensure that they are able to compile the necessary data. The aggregated data required to be reported by SB 973, like the aggregated data formerly required by “Component 2” of the EEO-1 at the federal level, will not provide a meaningful window into whether an employer’s pay practices are discriminatory. However, employers should conduct privileged pay equity analyses to identify any areas of potential concern under the California Equal Pay Act, which was revised significantly in 2015.

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

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