

## CLIENT ALERT

### DFEH Begins to Provide Some Answers to Questions About California's New Annual Pay Data Reporting Requirements

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As we reported in a prior [client alert](#), California Governor Newsom recently 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. Employers with multiple establishments in California must submit a report for each "establishment" and a consolidated report that includes all employees. The bill takes effect January 1, 2021, with the first report due March 31, 2021.

As written, SB 973 leaves a number of critical questions unanswered. On November 2, 2020, the DFEH provided some answers to [Frequently Asked Questions](#), including the following information:

- DFEH is endeavoring to create a system that closely resembles the system the EEOC utilized, to the extent permitted by state statute.
- DFEH is in the process of securing an independent contractor to provide the necessary IT infrastructure, including an employer submission portal, on DFEH's website.
- DFEH intends to issue standard forms for employers to submit their pay data reports.

The DFEH reports that it will regularly update its FAQ webpage with guidance. For now, the DFEH has identified topics for which it intends to provide future guidance on Annual Pay Data Report requirements, including "Required Content," "Pay," "Hours Worked," "Multi-Establishment Employers," "Acquisitions and Mergers," and "Spinoffs."

DFEH's FAQs fail to address some of the key issues that arose due to the ambiguity of the law signed by Governor Newsom, including the following:

- Whether employers with fewer than 100 employees working at locations in California, but with a combined total of more than 100 employees working in locations inside and outside California, are required to submit an Annual Pay Data Report;
- Whether employers subject to SB 973 are required to provide data only as to employees who work in locations in California, and whether employers with employees outside of California (in addition to inside of California) are required to provide data on the non-California employees; and
- Whether employers should calculate hours for full- or part-time exempt employees in the same manner provided under the Federal EEO-1 component two reporting that was required.

We recognize many employers need answers now to understand whether the new requirement applies to them and, if so, to begin establishing a process for collecting data to ensure compliance by the deadline of March 31, 2021 – just five months away.

In an effort to obtain answers to critical questions sooner, we have submitted a request to the DFEH to provide answers to the key issues identified above.

We will continue to update our clients on any new significant guidance from the DFEH, either provided in response to our request or posted on the DFEH's FAQ webpage.

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

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