

California Pay Data Reporting Due March 31, 2021

March 26, 2021

By [Elizabeth Bright](#) and [Amy S. Ramsey](#)

[Senate Bill 973](#), codified as California Government Code section 12999, requires private employers with 100 or more employees nationwide to report pay and demographic data to the Department of Fair Employment and Housing (“DFEH”) by **March 31, 2021**, and annually thereafter.

The law targets pay disparities in California workplaces and is aimed at promoting compliance with state equal pay and antidiscrimination laws. The required report consists of a “snapshot” of one pay period of pay data identifying the number of employees by race, ethnicity, and sex who work in one of 10 different job categories.

Who Must Report?

California’s pay data reporting requirements apply to employers who:

- have 100 or more employees nationwide, and
- have at least one employee in California.

In determining whether the 100-employee threshold is met, employers must include full-time and part-time workers, as well as workers on employer-approved leaves of absence. Independent contractors are not included in the count.

An employer with fewer than 100 employees is required to report if the employer is owned or affiliated with another entity and the total number of employees of both entities is 100 or more.

Although the DFEH has not addressed this issue, employees of entities outside of the United States likely do not count as part of the 100-employee threshold because, for California pay data reporting, an “employee” is defined as “an individual on an employer’s payroll, including a part-time individual, whom the employer is required to include in an EEO-1 Report and for whom the employer is required to withhold federal social security taxes from that individual’s wages.”

How Do Employers Report?

The report must be submitted using the DFEH's [Pay Data Submission Portal](#). Employers must submit the report via the online portal. The DFEH will not accept reports by email or hard copy.

The DFEH has released detailed guidance and resources to assist employers, including a User Guide, a reporting template in the form of an Excel spreadsheet with step-by-step instructions, and Frequently Asked Questions ("FAQs"). These resources are available at <https://www.dfeh.ca.gov/paydatareporting/>.

What Information Must Be Reported?

Employers must select one pay period between October 1 and December 31 of the reporting year to serve as the "snapshot period" for the report's contents.

The report must include the number of employees by race, ethnicity, and sex in each of 10 job categories and within each of the ["pay bands" used by the U.S. Bureau of Labor Statistics Occupational Employment Statistics classifications](#). The 10 job categories are as follows:

1. Executive or senior level officials and managers.
2. First or mid-level officials and managers.
3. Professionals.
4. Technicians.
5. Sales workers.
6. Administrative support workers.
7. Craft workers.
8. Operatives.
9. Laborers and helpers.
10. Service workers.

Can an Employer Receive an Extension to Report?

Yes. In light of the COVID-19 pandemic, the DFEH will consider an employer's request to defer compliance with the reporting requirement. To request an extension, an employer must submit its request before March 31, 2021, using the form provided [here](#) and providing the reason for the request and other required information.

If the DFEH has not received a required report by the deadline, it can seek an order requiring the employer to comply with the pay data reporting requirements and is entitled to recover the costs associated with seeking the order for compliance.

What California Employers Should Do Now

To meet the fast-approaching deadline, employers should consider taking the following steps:

- Determine whether the 100-employee threshold is met.

- Properly classify which employees need to be included in the report. For example, employees who telework from a different state but report to a California office must be included in the pay data report.
- Review company databases to determine whether the information that needs to be reported is readily accessible and, if it not, assign appropriate staff to create an accurate and usable database. Remind the staff working on the project that all pay and other information in the database is to be kept confidential.
- Consider using as the company’s “snapshot” a pay period that best represents pay equity among employees.
- Request a reporting extension if necessary.
- Consult with counsel to determine whether a pay equity audit should be conducted.
- Review DFEH guidance, FAQs, and other resources discussed above.

For more information about this Advisory, please contact:

[Elizabeth Bright](#)
Los Angeles
310-557-9565
ebright@ebglaw.com

[Amy S. Ramsey](#)
Los Angeles
310-557-9526
aramsey@ebglaw.com

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

About Epstein Becker Green

Epstein Becker & Green, P.C., is a national law firm with a primary focus on health care and life sciences; employment, labor, and workforce management; and litigation and business disputes. Founded in 1973 as an industry-focused firm, Epstein Becker Green has decades of experience serving clients in health care, financial services, retail, hospitality, and technology, among other industries, representing entities from startups to Fortune 100 companies. Operating in locations throughout the United States and supporting domestic and multinational clients, the firm’s attorneys are committed to uncompromising client service and legal excellence. For more information, visit www.ebglaw.com.