

California Pay Equity Data Collection Legislation Closer to Passing

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Currently, certain employers are required under federal law to file annual Employer Information Reports (EEO-1) with the Equal Employment Opportunity Commission. These EEO-1s must contain data regarding demographics of the employer's workforce. Accordingly, employers covered by federal EEO-1 reporting requirements were required to file EEO-1 [Component 1](#) data from 2018 by May 31, 2019, and must still submit [Component 2](#) EEO-1 (pay and hours worked) data for their workforces by September 30, 2019. Not to be outdone, the State of California is poised to impose a similar requirement on employers.

In June, we [reported](#) that California employers may soon be required to report pay equity data that they collect from their employees. California's [Senate Bill \(SB\) 171](#), which the Senate passed on May 22, 2019, is now one step closer to being law. Currently it is pending in the California Assembly and has gone through several rounds of committee review and amendments. The bill would require certain employers to "submit a pay data report to the Department of Fair Employment and Housing that contains specified wage information." The report would need to categorize employees into 10 general job classifications and disclose the number of employees by race, ethnicity, and sex who fall into pay bands set by the U. S. Bureau of Labor Statistics.

According to the bill, a private employer with 100 or more employees that needs to file an EEO-1 report under federal law must submit a pay data report including wage information to the Department of Fair Employment and Housing (DFEH). The first deadline for California employers to submit the data would be March 31, 2021. Subsequent reports would be due "on or before March 31 each year thereafter."

If it became law, the bill would require the DFEH to maintain the pay data reports for at least 10 years and make the reports available to the Division of Labor Standards Enforcement (DLSE). The DFEH would be permitted to seek an order requiring any employer that does not submit the required report to comply with the law. The bill would prohibit officers or employees of the DFEH or the DLSE from making public "any individually identifiable information obtained from the report prior to the institution of certain investigation or enforcement proceedings, as specified." The information would also be exempted from public records requests under the California Public Records Act.

September 13, 2019, is the deadline for the bill to pass in the Assembly, and then the governor has until October 13, 2019, to sign or veto the bill.

Key Takeaways

If SB 171 passes, California employers will be required to submit pay equity data to the state agency beginning in two years. Employers that must already comply with federal EEO-1 reporting may not experience much additional reporting burden.

However, the federal EEO-1 pay equity requirements have been controversial, and it is possible that political or judicial action could negate those regulations. If that happens on the national level and if SB 171 passes into law, then California employers would bear the unique burden of reporting pay equity data to the government.

Furthermore, California employers may expect to see an increase in pay equity enforcement action from the state agency. State regulators could evaluate the data and then contend that an employer is paying members of different races, ethnicities, or genders in an unlawful way.

In light of other recent [changes in California pay equity law](#), California employers may expect to see more class-action litigation on pay equity issues. Many employers are conducting periodic pay audits to ensure there are no mistakes with regard to compensation.

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National Law Review, Volume IX, Number 228

Source URL: <https://natlawreview.com/article/california-pay-equity-data-collection-legislation-closer-to-passing>