

California Legislature Pushes for More Pay Transparency

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California enacted its Pay Data Reporting law in 2020 as a response to the Trump Administration ordering the EEOC to halt its annual pay data collection. The California law largely mirrored the federal law but instead required private employers who must file an annual Employer Information Report (EEO-1) pursuant to federal law to submit the annual data to the California Department of Fair Employment and Housing (DFEH). It covered the same size of employers (100+ employees that already file a form EEO-1), required the same data disclosures, including the number of employees by race, ethnicity, and sex in specified job categories, and even allowed California employers to submit to the DFEH the same or substantially similar data they submitted to the EEOC in the EEO-1 form.

California [Senate Bill 1162](#), however, diverges from federal law and places additional requirements on California employers. The bill expands the law's scope to cover not only employers that already file a form EEO-1 but all employers with 100 or more employees, with at least one California employee. It also requires these employers who hire workers through labor contractors within the prior calendar year to submit additional pay data reports. The bill includes additional pay data disclosure requirements to report the median and mean hourly rate based on race, ethnicity, and sex within each job category. Significantly, employers will no longer be able to submit an EEO-1 report to the DFEH to comply with the section.

Existing law permits the DFEH to develop, publish on an annual basis, and publicize aggregate reports, provided that the aggregate reports are reasonably calculated to prevent the association of any data with any individual business or person. The new law may go farther and require the state to publish the pay data report from each private employer on an internet website available to the public. Whether this provision survives to the final vote has yet to be decided.

The bill has already passed the California Senate and must make its way through the California Assembly before it goes to the Governor's desk for approval. Employers with 100 or more employees should pay close attention to the new reporting obligations as the bill also would allow the DFEH to seek civil penalties of \$100.00 per employee if the DFEH does not receive the report for the initial violation and \$200.00 per employee for subsequent violations.

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