

California Civil Rights Department Updates FAQs on Pay Data Reporting

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When [Senate Bill \(SB\) 1162](#) was signed in 2022, much of the focus was on the new pay transparency requirements. However, the bill also amended pay data reporting requirements in California. Under the amendments covered employers would need to submit separate pay data reports for employees hired through labor contractors. In addition, reporting would need to include the median and mean hourly rate for each combination of race, ethnicity, and sex for each job category for both traditional employees and those hired through labor contractors. But that was as much detail as the initial bill provided.

At the end of 2022, the Labor Commissioner's Office (DLSE) published [FAQs for the pay transparency](#) portion of SB 1162. The Civil Rights Department (CRD) has now published updated [FAQs for Pay Data Reporting](#).

The updated Pay Data Reporting FAQs provide clarity that many employers were waiting for, including the following new information:

- The FAQs clarify that employers must submit a separate pay data report for workers hired through a labor contractor when the work performed is within the client employer's usual course of business. This aligns with the reporting obligation to mirror the state's "[ABC test](#)" to evaluate if a potential independent contractor is an employee under California law.
- **Confirmation of the Snapshot Period for "employees hired through labor contractors."** As with payroll employees, the "Snapshot Period" for labor contractor employees is a single pay period between October 1 and December 31 of the Reporting Year. There was uncertainty about whether this period would be broader due to the often transitory nature of labor contractor employees.
- **Mechanics of reporting "employees hired through labor contractors."** Employers must list the number of contractors hired (and the aggregate number of hours they worked in 2022)

by establishment, job category, race/ethnicity, sex, and pay band.

- **Methods of calculating the median and mean hourly wages.** The calculation is based on the employee's total hours worked and total pay received in 2022—it does not use the employee's hourly wage in the employer's Human Resource Information System (HRIS) data.
- **The pay data that labor contractors must provide to employers for “employees hired through labor contractors.”** Employers are expected to only report the portion of a labor contractor employee's annual wages and hours worked attributable to work performed for that employer. It is the labor contractors' burden to divide this pay and hours worked information for the employer.
- **Obligation to provide race/ethnicity and sex data for “employees hired through labor contractors.”** While the legislation clearly provides that labor contractors must provide employers with the necessary pay data for the labor contractor employee report, there was ambiguity on whether this would include demographic information. According to the Pay Data FAQs, the obligation to collect and report on labor contractor employee race/ethnicity and sex data seems to fall on the employer. Although, the FAQs make clear that the Civil Rights Division is permitting employers to report unknown race/ethnicity or sex for labor contractor employees when that information is unknown and not reasonably obtainable before the filing deadline—but this leeway is not expected in future years.

The FAQs also include other information related to employers covered by the pay data reporting requirements and respond to other questions related to how to report that was published prior to the amendments to the data reporting requirements.

In addition to the FAQs, the [CRD's pay data reporting page](#) includes a user guide for the portal, excel templates, and related resources for employers, and additional pay data reporting resources are expected by February 1, 2023.

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