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DFEH Launches Pay Data Reporting Portal and Issues Additional FAQs in Advance of the March 31 Reporting Deadline

By [George W. Abele](#), [Felicia A. Davis](#), [Laura E. Zabele](#) & Amy Chau

The Department of Fair Employment and Housing (the “DFEH”) has launched its [California Pay Data Reporting Portal](#) for employers to submit pay data reports under California’s new pay reporting statute, California Government Code section 12999 (enacted SB 973). As a reminder, the law requires private employers with 100 or more employees to submit an annual pay data report to the DFEH on or before March 31, 2021 (and by March 31 each year thereafter). See our prior alerts [here](#) and [here](#) for more information.

The DFEH is requiring employers to use the Portal to submit their reports, either by uploading an Excel or .CSV file or by using the fillable form in the Portal itself. A template Excel file, sample .CSV file, and Portal “User Guide” are available on the DFEH’s new California Pay Data Reporting homepage at <https://www.dfeh.ca.gov/paydatareporting/>.

In addition, the DFEH has issued new and updated FAQs, available [here](#). The new FAQs address issues such as pay, hours worked, reporting for multiple-establishment employers, and extensions on the upcoming deadline. Below are some of the highlights:

Can employers receive an extension on the March 31 reporting deadline?

After underscoring the March 31, 2021 deadline, the FAQs advise that the DFEH will consider requests to defer compliance in light of the COVID-19 pandemic and the fact that the reporting requirements are new. To make an “Enforcement Deferral Request,” employers **must** utilize the DFEH’s online request form [here](#) and submit their request before March 31, 2021. If the DFEH grants the request, employers will have through April 30, 2021 to submit their reports. The FAQs caution, however, that employers should “not expect that DFEH will, in future years, similarly defer seeking an order for compliance.”

Can employers submit a federal EEO-1 Report to satisfy their compliance obligations?

The FAQs note that the DFEH “has endeavored to build a reporting system that closely resembles the EEO-1 Component 2 collection in order to ease burden on employers.” Nevertheless, the FAQs highlight a number of ways in which DFEH’s requirements differ from the EEO-1 Component 2 collection from 2017 and 2018, as follows:

- Assigning employees to pay bands: In their reports to the DFEH, employers must assign employees to pay bands within each job category by calculating their total earnings for the entire Reporting Year. To do so, the FAQs advise that employers **must** use “W-2 Box 5 – Medicare wages and tips” unless the employee has wages not reported in Box 5, in which case employers may use W-2 Box 1. This advice contrasts with the EEO-1 Component 2 collection from 2017 and 2018, in which the EEOC required employers to use Box 1.
- Calculating employees’ total hours worked: Employers must also calculate the total hours worked by each employee in their reports, and the FAQs explain how employers should do so for both exempt and non-exempt employees. In either case, however, the DFEH is requiring employers to **include** time during which the employee was on any form of paid time off. This is another distinction from the EEO-1 Component 2 collection in 2017 and 2018, in which the EEOC required employers to **exclude** paid time off when calculating hours worked.
- Reporting employees’ sex: Under the Gender Recognition Act of 2017 (SB 179), California officially recognizes three genders: female, male, and non-binary. Accordingly, and unlike the EEO-1 Component 2 data collection from 2017 and 2018, the FAQs note that employers must report non-binary employees in the same manner as male and female employees in their reports.
- Reporting multiple establishments: The DFEH notes that it has slightly updated some answers in the FAQs “to reduce the potential for confusion” with respect to reporting on multiple establishments; namely, multiple-establishment employers must submit a single report containing all establishment-level data, but will **not** submit consolidated data in that report. In other words, the FAQs explain, the DFEH does not permit employers to submit what is known in the federal EEO-1 survey as a “Type 6” list of establishments of fewer than 50 employees.

In sum, although the law allows employers to submit a federal EEO-1 report if it “contain[s] the same or substantially similar pay data information required” (Gov. Code § 12999(g)), the FAQs note that, because the EEO-1 survey is not collecting pay data at this time, “no EEO-1 Report filed with the EEOC for Reporting Year 2020 will satisfy” the Government Code standard. Moreover, the FAQs instruct that, due to the additional differences noted above, employers **must use** the DFEH’s template or the fillable form on the Portal to create and submit their report.

As the March 31, 2021 deadline approaches, employers should continue to consult their counsel regarding their obligations under the new pay reporting statute and prepare to submit their reports in a timely fashion (or request an extension). If you have questions about the new law or pay equity generally, please contact any member of our Pay Equity Practice Group.

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If you have any questions concerning these developing issues, Please do not hesitate to contact any of the following Paul Hastings Los Angeles Lawyers:

Los Angeles

George W. Abele
1.213.683.6131
georgeabele@paulhastings.com

Felicia A. Davis
1.213.683.6120
feliciadavis@paulhastings.com

Amy Chau
1.213.683.6121
amychau@paulhastings.com

Elena R. Baca
1.213.683.6306
elenabaca@paulhastings.com

Jeffrey F. Webb
1.213.683.6210
jeffwebb@paulhastings.com

Laura E. Zabele
1.213.683.6127
laurazabele@paulhastings.com

Paul Hastings LLP

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