

December 2025

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## Legislative Update

# NYC Council Overrides Mayor's Veto and Enacts New Pay Reporting Requirements

By [Felicia A. Davis](#), [Kenneth W. Gage](#), [Emily R. Pidot](#), [Blair Robinson](#), [Carson H. Sullivan](#), [Sara B. Tomezsko](#) and [Elise Wurtman](#)

### **NYC Council Overrides Mayor's Veto and Enacts New Pay Reporting Requirements**

On Dec. 4, the New York City Council overrode Mayor Eric Adams' veto of two bills (Int. No. 982-A and 984-A) that will require private employers with 200 or more employees in New York City to report employee pay data by race and gender. These bills also require a yet-to-be-designated agency to conduct a citywide pay study using the reported data and recommend action plans to address pay disparities. Many states have enacted pay reporting and transparency legislation in recent years, but this law is one of the first to require a pay equity study and recommendations for plans to address disparities.

#### **Int. No. 982-A — Annual Pay Data Reporting**

Private employers with 200 or more employees in New York City, including those who work on a full-time, part-time or temporary basis, will in the future be required to report to a designated agency pay data based on race and gender, following similar reporting requirements outlined in EEO-1 Component 2.

Employers' reporting obligations may arise any time between now and the end of 2028, depending on how quickly the mayor designates an agency before the Dec. 4, 2026, deadline and how quickly that agency publishes, within one year of its designation, the required standardized fillable forms to collect pay data from covered employers. Within one year of the date the agency publishes its standardized form, and each year thereafter, covered employers must submit information about their current workforce covering each of the categories required for the EEO-1 Component 2. In addition to the demographic information for employee race/ethnicity, sex and job category included in EEO-1 Component 1, Component 2 data collection includes information on W-2 income earnings, aggregated into pay bands. The legislation grants the yet-to-be-designated-agency discretion to modify the categories of information collected as appropriate. Employers will have the option to submit additional explanatory comments regarding the submitted data.

The legislation expressly requires the agency to allow employers to submit the pay data "anonymously." At the same time, however, all employers must submit a signed statement by an authorized agent both identifying the employer and attesting to the accuracy of the information in the report. Implementing regulations or interpretive guidance may provide some much-needed clarity to reconcile this tension or specify the extent to which anonymity is preserved in light of the certification requirement. For example, the designated agency is required to publish on its website the names of all covered employers not in

compliance, provided those employers have previously received a notice of noncompliance and opportunity to cure.

Noncomplying employers will be given notice and a period of “at least 30 days” to remedy the violation. Though the statute suggests that employers may be given a longer period to come into compliance in some instances, employers must act within 30 days of receiving service of summons to avoid civil penalties. Those who fail to provide evidence of compliance within that 30-day window will be subject to a civil penalty of \$1,000 for a first offense. Subsequent violations carry a higher penalty of \$5,000. It is unclear from the legislation whether employers who cure within the 30-day window will nonetheless be identified as noncompliant on the designated agency’s website.

### **Int. No. 984-A — Citywide Pay Study**

No later than one year after covered employers report their pay data, and annually thereafter, the designated agency will work with the Commission on Gender Equity and the Mayor’s Office of Equity and Racial Justice to conduct a pay equity study. The annual study will utilize employers’ reported data to evaluate any compensation disparities in gender and race or ethnicity. If such disparities exist, the study should identify industries where such disparities are deemed “prevalent” and observed trends in occupational segregation (if any).

Within six months of completing the study, the agency must deliver its findings to the mayor and the speaker of the City Council. The submitted findings must include, at a minimum:

- The agency’s analysis of employers’ reported data and identification of any pay disparities
- A description of every statistical method used to analyze the data
- Recommended action plans for employers to address any disparities identified through the study

The agency must also publish the covered employers’ submitted data, but in a manner that does not reveal any particular covered employer’s or employee’s identifying information. The data will be published “in the aggregate,” but it is not clear from the legislation how the data will be aggregated (e.g., whether citywide or broken down by industry, pay band or some other metric). The agency will also publicize the recommendations delivered to the mayor and the speaker of the City Council for addressing any observed pay disparities.

### **Effect on Employers**

Although the legislation is now in effect, employers are not required to report their pay data until the reporting process is developed. Employers with 200 or more employees in New York City should stay apprised of the milestones required to trigger reporting compliance. In the meantime, employers should lay the foundation for compliance by ensuring they have adequate practices in place to collect accurate data that will meet the reporting requirements. Employers may also wish to conduct privileged pay studies in advance of any reporting deadlines to identify and address unexplained differences in pay.

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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 lawyers:*

**Los Angeles**

Felicia A. Davis  
+1-213-683-6120  
[feliciadavis@paulhastings.com](mailto:feliciadavis@paulhastings.com)

Elise Wurtman  
+1-213-683-6168  
[elisewurtman@paulhastings.com](mailto:elisewurtman@paulhastings.com)

**New York**

Kenneth W. Gage  
+1-212-318-6046  
[kennethgage@paulhastings.com](mailto:kennethgage@paulhastings.com)

Emily R. Pidot  
+1-212-318-6279  
[emilypidot@paulhastings.com](mailto:emilypidot@paulhastings.com)

Blair Robinson  
+1-212-318-6075  
[blairrobinson@paulhastings.com](mailto:blairrobinson@paulhastings.com)

Sara B. Tomezsko  
+1-212-318-6267  
[saratomezsko@paulhastings.com](mailto:saratomezsko@paulhastings.com)

**Washington, DC**

Carson H. Sullivan  
+1-202-551-1809  
[carsonsullivan@paulhastings.com](mailto:carsonsullivan@paulhastings.com)

**Paul Hastings LLP**

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