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Reporting Pay Data to the California Department of Fair Employment and Housing

On September 30, 2020, California enacted [SB 973](#), which requires large private employers to report specific pay data to the Department of Fair Employment and Housing (“DFEH”) **by March 31, 2021**, and annually thereafter. SB 973 is designed to identify hidden yet persistent racial and gender pay gaps that can result from unconscious biases or historical inequities. The rule allows for effective enforcement of equal pay or anti-discrimination laws. As of February 16, 2021, employers can now submit their 2020 pay data at the [Pay Reporting Portal](#).

WHO IS REQUIRED TO REPORT? Private employers with 100 or more U.S. employees and at least one employee in California at any time during the reporting year and who are required to file an annual federal EEO-1 are required to report to DFEH.

“Employee” includes individuals on an employer’s payroll for whom employers withhold federal social security taxes, teleworking employees, part-time employees, employees working inside and outside of California, and individuals on paid and unpaid leave, including CFRA, pregnancy leave, disciplinary suspension, or any other employer approved leave of absence.

Employers select a “Snapshot Period,” which is a single pay period between October 1 and December 31 of the reporting year, to identify the employees to be reported since employees will usually change over the course of a year.

WHAT MUST BE INCLUDED IN THE REPORT?

- [1] Number of employees by race, ethnicity, and sex in the following ten categories: executive or senior-level officials and managers, first or mid-level officials and managers, professionals, technicians, sales workers, administrative support workers, craft workers, operatives, laborers and helpers, and service workers;
- [2] Number of employees by race, ethnicity, and sex whose W-2 earnings fell within each [pay band](#) established by the U.S. Bureau of Labor and Statistics;

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- [3] Total number of hours worked by each employee counted in each pay band during the reporting year;
- [4] Employer's North American Industry Classification System ["NAICS"] code.

HOW IS THE DATA TO BE REPORTED? DFEH provides a [User Guide](#) explaining how an employer should create and submit its report. Uploading an [Excel](#) or [.CSV file](#) consistent with DFEH templates is recommended, but employers may also manually enter their information using the portal's fillable form.

WHAT ARE OTHER EMPLOYER CONSIDERATIONS?

- Use the three genders California recognizes, as self-identified by the employee: female, male, and nonbinary.
- Employers may request an [enforcement deferral request](#) before the March 31, 2021 deadline.
- Before submitting any optional commentary with the report, be sure to consult with a Stokes Wagner attorney.

Additional information, including information for employers with multiple establishments inside and outside of California, can be found at the [FAQ page](#).

THIS DOCUMENT PROVIDES A GENERAL SUMMARY AND IS FOR INFORMATIONAL/EDUCATIONAL PURPOSES ONLY. IT IS NOT INTENDED TO BE COMPREHENSIVE, NOR DOES IT CONSTITUTE LEGAL ADVICE. PLEASE CONSULT WITH COUNSEL BEFORE TAKING OR REFRAINING FROM TAKING ANY ACTION.

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