



## Client Alerts

### California Compliant: Changes to California's Requirements for Reporting of Pay Data

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California requires all private employers having 100+ workers to submit an annual "pay data report" to the state's Civil Rights Department (CRD). Pay data reports must disclose the median and mean hourly rates paid to workers in specified "job categories," and within each job category, the hourly rates for subcategories of workers grouped by "each combination of race, ethnicity, and sex." In February, the CRD announced that for the 2023 reporting year (i.e., reports due in 2024), employers also must report "whether employees worked remotely" during the reporting period. Further, the CRD indicated that employers will no longer be able to say that the race, ethnicity, or sex of an employee hired through a labor contractor is "unknown."

#### Background – Pay Data Reporting

According to the CRD, California's legislature imposed pay data reporting requirements to "encourage [] employers to self-assess pay disparities along gendered, racial, and ethnic lines in their workforce and to promote voluntary compliance with equal pay and anti-discrimination laws." The state's Fair Employment and Housing Act prohibits discrimination "in compensation or in terms, conditions, or privileges of employment" because of a person's race, sex, ethnicity, or other protected basis. Labor Code Section 1197.5 also forbids employers from paying an employee less than someone of the opposite sex, or another race or ethnicity, if the employees do "substantially similar work."

Pay data reporting is required by Government Code Section 12999, which applies to private employers having 100+ employees (including part-time workers and individuals "hired through labor contractors"). This year, pay data reports must be submitted by May 8<sup>th</sup>. Information must be submitted online, using this [CRD portal](#) (companies cannot comply by sending emails or hard copies of documents). Digital templates for submissions via the portal, a user guide, FAQs, and training slides can be accessed [here](#). Employers can, but are not required to, "provide clarifying remarks regarding any of the information provided" to the CRD during the reporting process.

Civil penalties may be imposed against companies for failure to comply with Section 12999 (currently, \$100 "per employee" for an initial violation and \$200 "per employee" for a subsequent violation). The statute authorizes the CRD to request from the Employment Development Department a list of companies having 100+ employees to facilitate the CRD's enforcement of mandatory pay data reporting. To the extent that the CRD incurs costs in compelling an employer to comply with the statute, the CRD "shall be entitled to recover" its costs.

Section 12999 provides that pay reporting data "shall be considered confidential." The CRD cannot make "individually identifiable information" public "prior to the institution of an investigation or enforcement proceeding." It can, however, publish "aggregate results"; the CRD has said it will do so for the 2022 reporting year sometime in 2024.

#### Changes for Pay Data Reports in 2024

On February 1, 2024, the CRD published updated [guidance](#) for employers about pay data reporting. As before, the guidance addresses covered employers, the process for reporting, and a suggested sequence for "the basic steps an employer should follow" to fulfill its obligations. For this year, the CRD also:

- cautions employers **not** to use Excel or .CSV templates from previous reporting periods; new templates have been provided and "the portal will reject outdated versions."

- requires employers to disclose information about “remote workers.” The guidance defines a “remote worker” as someone who is “entirely” remote – “hybrid” workers do not fall within the definition. As applicable, businesses must determine “the number of workers who were remote workers” for “each [of its] establishment[s].” (An “establishment” is defined as “[a]n economic unit producing goods or services” – the CRD notes that “[m]ore than one establishment may exist in an office or other physical location,” and “[u]ltimately, it is for employers to decide which establishments it has,” but “[t]o the greatest extent possible ... employers should utilize the same establishments that they use for their federal EEO-1 reports.”)
- bars employers from responding that the sex, race, or ethnicity of a labor contractor employee is “unknown” (pay data reports submitted last year, for the reporting period 2022, permitted employers to do so in limited circumstances).
- confirms that the “pay bands” for reporting are the same as those used last year.

### Additional Resources

Senate Bill 1162 (approved by the Governor in September 2022) amended Section 12999 to require specific pay data reporting. The bill also added Labor Code Section 432.3, which among other things requires most employers to “include the pay scale for a position in any job posting.” Read more about both aspects of SB 1162 [here](#).

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