
Ins and Outs of Pay Data Reports for Large Employers — Due May 10

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California has had equal pay laws on the books for decades, beginning when the Equal Pay Act went into effect in 1949.

In recent years, however, the state has focused greater attention on pay equity issues, passing the [Fair Pay Act](#) in 2016, which bolstered Equal Pay Act protections, and enacting a pay data reporting law in 2021 that requires large employers with 100 or more employees to report specific pay and demographic information to the California Civil Rights Department (CRD) each year in an effort to reduce unlawful pay disparities.

California's requirements were similar to pay data reporting required by the Equal Employment Opportunity Commission (EEOC). In fact, when the law first took effect, covered employers were allowed to submit their federal EEO-1 report to CRD to satisfy their state requirements. This year, however, that's not the case.

Signed in September 2022 and effective this year, SB 1162 revised and expanded the state's pay data reporting requirements. Among notable changes, the law:

- Added new report data requirements;
- Eliminated the option to satisfy state requirements by submitting a federal EEO-1 report;
- Required separate pay data reports for employers with 100 or more employees hired through labor contractors; and
- Moved the annual due date from March 31 to the second Wednesday of May, meaning **this year, reports are due on May 10.**

Read on for an overview of California pay data reporting, including which employers are required to file, what information must be included and resources available to employers.

Which Employers Have to Report?

This year, there are two types of reports employers may be required to submit to the CRD:

- Employers with 100 or more employees on their direct payroll must submit a **payroll employee report**.
- Employers with 100 or more workers hired through labor contractors must submit a **labor contractor employee report**.

These are separate reports with distinct coverage thresholds; labor contractor employees don't count toward the threshold for payroll employee reports, and vice versa. For example, if an employer has 60 payroll employees and 50 labor contractor employees, employers do not add these numbers together for purposes of either report. An employer is only required to submit a report if they have 100 or more payroll employees or 100 or more labor contractor employees.

Payroll Employees

A payroll employee is exactly what it sounds like: an employee who's on an employer's payroll, whether full time or part time, and for whom the employer is required to withhold federal Social Security taxes from wages. This includes employees on paid or unpaid leave.

Employers must count both California-based and out-of-state employees, meaning that an employer with 27 employees working in California and 73 employees working in other states, for example, meets the 100-employee threshold and is required to submit a report to the CRD.

For purposes of employer coverage, an employer has the requisite number of employees if the employer either employed 100 or more employees in the "snapshot period" (discussed below) or regularly employed 100 or more employees during the reporting year.

"Regularly employed" means the employer employed 100 or more individuals on a regular basis, even when the nature of the business is seasonal. For example, in an industry that typically has a three-month season during a calendar year, if an employer employed 100 or more employees during that season, it would be required to file a pay data report with the CRD.

An employer with fewer than 100 employees may be required to file with the CRD if the entity is;

- Affiliated with another company; or
- Owned, controlled or managed with another company such as that they could constitute an integrated enterprise and the entire enterprise employs 100 or more employees.

The CRD's [pay data reporting FAQs](#) address integrated enterprises and parent company issues in more detail.

Labor Contractor Employees

A labor contractor is an individual or entity that supplies, either with or without a contract, workers to perform labor within a client employer's usual course of business — typically through temporary/staffing agencies.

A labor contractor employee is the worker who's performing labor for the client employer, but is on the labor contractor's payroll. This includes part-time individuals and those for whom the labor contractor is required to withhold federal Social Security taxes.

A client employer is required to submit a labor contractor employee report to CRD if the employer either had 100 or more labor contractor employees in the snapshot period or regularly had 100 or more labor contractor employees during the reporting year.

Employers must count both California-based and out-of-state labor contractor employees. Part-time labor contractor employees are counted the same as those who are full time.

An employer is required to submit a report if it has 100 labor contractor employees across all of its labor contractors, not 100 employees per labor contractor.

What Information Is Required?

Employers that meet the reporting threshold will compile their reports based on their snapshot period, which is a single pay period between October 1 and December 31 of the reporting year (2022) of the employer's choosing. This snapshot period is used to identify the payroll employees and labor contractor employees included in the pay data reports.

An employer's payroll employee report must include all of its employees — and a labor contractor employee report must include all labor contractor employees — assigned to California establishments and/or working within California during the snapshot period.

For example, if an employer has 1,000 payroll employees across multiple establishments in California, the report would include all 1,000 employees, reported by establishment. If 100 of those employees worked remotely from other states but were assigned to California establishments, the report would include the remote workers.

If, on the other hand, an employer has 1,000 employees across the country but only 50 employees live in California and are assigned to a California establishment, the report would include those 50 employees. The remaining 950 employees living out of state and assigned to out-of-state establishments would not be included in the report, though they are counted for purposes of coverage described above. The same principles apply for labor contractor employees.

For all California payroll employees and labor contractor employees in the snapshot period, employers must identify each employee's establishment, job category, race/ethnicity, sex, pay, pay band, hours worked and hourly rate.

Employers must then group employees who have the same establishment, job category, pay band and race/ethnicity/sex combination. Some groups may be a group of one if no other employee in the establishment shares the same combination.

The following provides a basic explanation of each of the required information categories, but employers should review the CRD's [pay data reporting FAQs](#), which provide much more detail on the nuances of these requirements, along with helpful examples.

Additionally, for labor contractor employee information, client employers should work with their labor contractors to obtain this information. Labor contractors are required to provide this information to client employers.

Establishments

An "establishment" is defined as an "economic unit producing goods or services." For example, per CRD guidance, an establishment could be a factory, office, store, mine or a team of workers who work entirely remotely and do not have a physical office.

More than one establishment may exist in an office or other physical location, and employers determine which establishments it has. The CRD states employers should strive to use the same establishments they use for their federal reporting.

Multi-establishment employers must report all of their establishment level data in a single report.

Job Categories

Employers should assign each payroll employee or labor contractor employee to one of the following job categories:

- Executive or senior level officials and managers;
- First or mid-level officials and managers;
- Professionals;
- Technicians;
- Sales workers;
- Administrative support workers;
- Craft workers;

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- Operatives;
 - Laborers and helpers; and
 - Service workers.

Race and Ethnicity

The CRD uses the EEOC's categories for race and ethnicity identification. Employers must report payroll employees or labor contractor employees according to these seven categories:

- Hispanic/Latino
- Non-Hispanic/Latino White
- Non-Hispanic/Latino Black or African American
- Non-Hispanic/Latino Native Hawaiian or Other Pacific Islander
- Non-Hispanic/Latino Asian
- Non-Hispanic/Latino American Indian or Alaskan Native
- Non-Hispanic/Latino Two or More Races

Employee self-identification is the preferred method of identifying race/ethnicity information. If an employee declines to provide that information, employers are still required to report the employee according to one of the categories above and may use employment records, other reliable records or observer perception. CRD guidance states that observer perception should only be used as a last resort after making a good faith effort to obtain the information from records.

For labor contractor employee reports only, the CRD permits employers to report unknown race/ethnicity when that information is unknown and can't reasonably be obtained before the filing deadline.

Gender Categories

California officially recognizes three genders: female, male and nonbinary. Employers should assign each payroll employee or labor contractor employee to one of those categories.

Employee self-identification is the preferred method of identifying sex information. If an employee declines to state their sex, employers must still report the employee according to one of the three sex categories using current employment records, or other reliable records or information such as an employee's own pronoun.

For labor contractor employee reports only, the CRD allows employers to report unknown sex for a labor contractor employee when the information is unknown and can't reasonably be obtained

before the filing deadline.

Pay and Pay Bands

For the 2022 reporting year, the pay bands are:

- \$19,239 and under
- \$19,240 – \$24,959
- \$24,960 – \$32,239
- \$32,240 – \$41,079
- \$41,080 – \$53,039
- \$53,040 – \$68,119
- \$68,120 – \$87,359
- \$87,360 – \$112,319
- \$112,320 – \$144,559
- \$144,560 – \$186,159
- \$186,160 – \$239,199
- \$239,200 and over

To determine which pay band to assign employees, employers should use IRS *Form W-2* Box 5. If someone has wages not reported in Box 5, employers can use Box 1 for that employee and note that in their report. If someone didn't work the entire year, employers shouldn't annualize their wages.

For labor contractor employee reports, if a labor contractor employee worked for more than one client employer over the course of the calendar year, their wages should be allocated to each client employer.

Hours and Hourly Rates

Employers should identify the number of hours each payroll employee and labor contractor employee worked in 2022, not just the snapshot period. For labor contractor employees that worked for more than one client employer, their hours should be allocated to each employer they worked for.

When calculating the total hours worked, employers should use timesheets or other records to calculate actual hours worked plus the hours the employee was on any form of paid time off during which the employee was paid (e.g., sick leave, vacation, etc.). The CRD requires

employers to include paid time off because that pay is reported on the *Form W-2*.

Additionally, beginning this year, employers must report the mean and median hourly rate for each grouping of employees with the same establishment, job category, race/ethnicity and sex combination. To do that, employers should first calculate each individual's hourly rate by dividing their wages by the number of hours worked. Once the hourly rates are calculated, employers can determine the mean hourly rate by adding the individual hourly rates for each employee in the group and dividing that sum by the number of employees in the group.

CRD guidance states the median hourly rate is calculated by ordering the hourly wages of each employee in the group from smallest to largest and selecting the middle number. If there is only one employee in the group, then their hourly rate is reported as the mean and median hourly rate. CRD [pay data reporting FAQs](#) provide guidance and examples for this new requirement.

Additional Information

In addition to all the information above, employer reports must include the following information:

- California and federal Employer Identification Number.
- North American Industry Classification System (NAICS) code.
- Duns & Bradstreet number.
- Number of employees inside and outside of California.
- Number of establishments inside and outside of California, and whether the employer is a California state contractor. If applicable, the name and address of the employer's parent company or parent companies.
- If the organization is a multi-establishment employer, each establishment's name, address, number of employees and major activity.
- A certification that the information contained in the pay data report is accurate and prepared in accordance with Government Code section 12999 and the CRD's instructions.

Submission and Resources

Employers must submit their reports through the [pay data reporting portal](#) on the CRD's website, which is now open. Reports are due on May 10, 2023, however, the CRD is accepting enforcement deferral requests from employers for their labor contractor employee reports. Once granted, employers will have until July 10, 2023, to submit their labor contractor employee reports. Employers can submit deferral requests through the CRD's pay data reporting portal. Enforcement deferral is *not* available for payroll employee reports.

Employers are strongly encouraged to review the CRD's [pay data reporting website](#) and resources

when compiling their payroll employee and labor contractor employee reports. There, employers can access the portal, a detailed user guide, and sample Excel and .csv templates. Also available are frequently asked questions that address many of the subtleties and nuances employers may encounter in this process, including topics not addressed here, such as preparation by Professional Employer Organizations and Human Resources Outsourcing Organizations; how to address acquisitions, mergers, and spinoffs; and other substantive and technical issues.