



Updates on California Pay Reporting Requirements

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Seyfarth Shaw LLP

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Overview



- California enacted Pay Data Reporting Requirements
- Submission will be provided to Department of Fair Employment and Housing (DFEH)
- Pay Data Report will collect report pay and hours-worked data by establishment, job category, sex, race, and ethnicity
- Deadline: March 31, 2021 and annually thereafter
- Reporting is required pursuant to Government Code Section 12999 enacted in SB 973
- FAQs, User Guide, Excel Template and upload example are available at: <https://www.dfeh.ca.gov/paydatareporting/>
- Pay Data Reporting Portal will be available February 16th
- **IMPORTANT EEO-1 DIFFERENCE:** A Pay Data Report covers only a single employer

Who Must Report?



- Private employers with:
 - 100 or more employees during the Snapshot Period
 - Includes employees outside of CA
 - Includes part-time and temp employees on payroll
 - Includes employers owned by or affiliated with another company so that the enterprise has 100 employees
 - 100 employees on a “regular basis”
 - Required to file the EEO-1 Report
 - At least one employee living, working, or assigned to a location in California

Which Employees Should be Included and Where are They Included?



- Employees on the company payroll during the selected Snapshot Period (Oct 1 – Dec 31)
- All employees (including part-time and temporary workers on employer’s payroll):
 - work in California
 - assigned to California locations
 - If an employee is assigned to a California location but works at a client site outside of California, then that employee should also be included in the report
 - live in California, even if reporting to a location outside of California
- Include each employee separately by “establishment”
 - must be included in the establishment report to which the employee is assigned
 - may mean that non-CA “establishments” are included in reporting obligation; but only required to report on the CA workers in non-CA locations

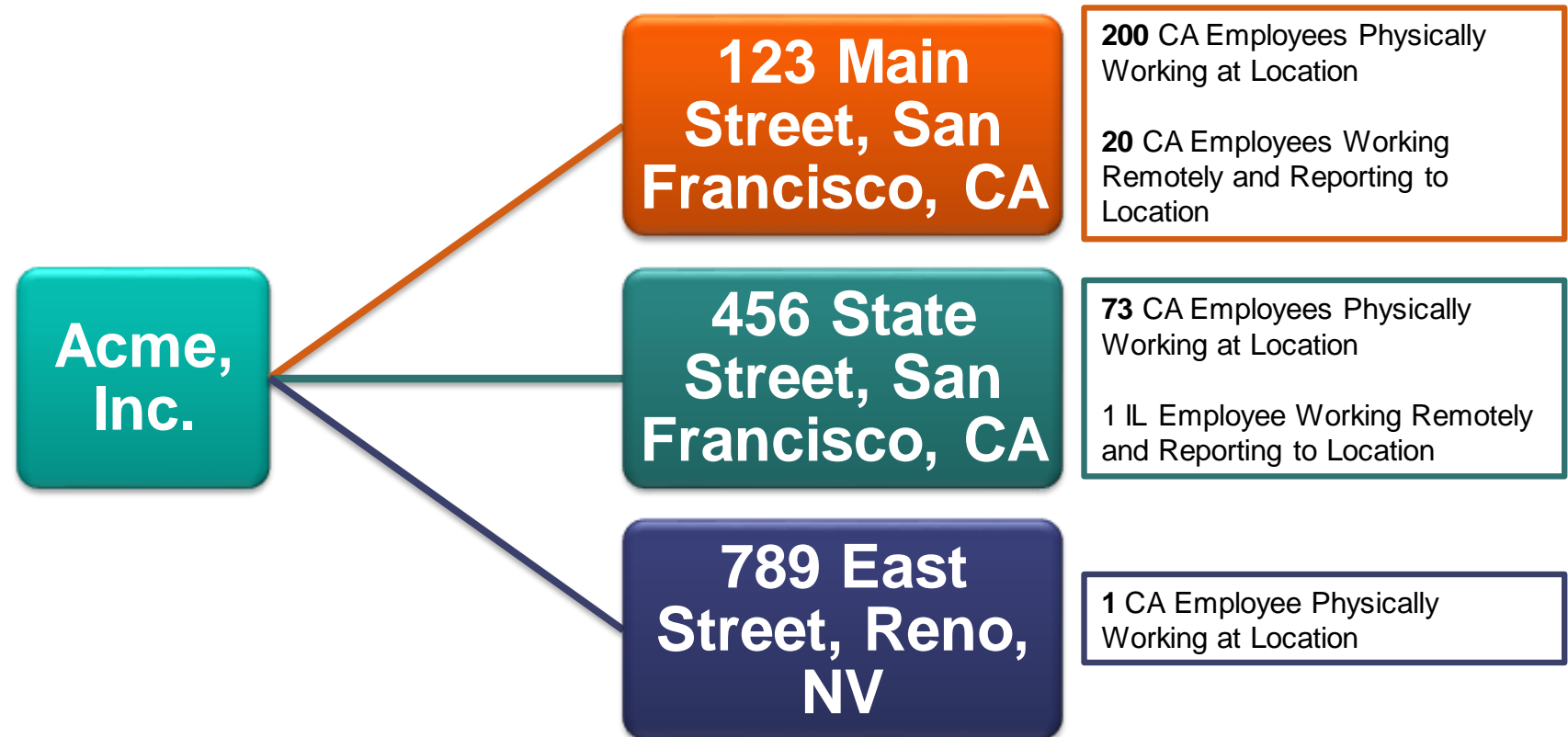
Multi-Establishment Reporting in Practice



Acme, Inc. = 295 Total Employees

- 200 physically work at 123 Main St., San Francisco, CA and live in CA
- 20 remote work, live in CA and report to 123 Main St., San Francisco, CA
- 73 physically work at 456 State St., San Francisco, CA
- 1 remote worker, lives in IL; reports to 456 State St., San Francisco, CA
- 1 worker physically works at 789 East St., Reno, NV and lives in CA

Where do they all get reported?



Where and How Must Information Be Reported?



- Pay Reporting Portal available on February 16, 2021
- Data will be provided to DFEH via uploading data or data input in fillable format
- Each pay data report covers only a single employer
- Multi-establishment employers provide all establishment level data in a single report.
 - The report must contain information for each location with a reportable employee
 - Even if there is only one reportable employee at the location!
 - No EEO-1 paralleled Type 6 reports
- Reports must be filed by **March 31**

What Information Must Be Reported?



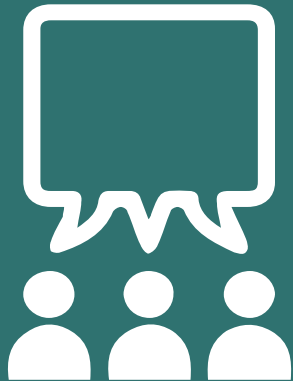
- Employers must report on all employees at each location
- Employees are grouped by:
 - job category,
 - pay band,
 - ethnicity
 - race
 - sex
- Within these employee groups employers must report:
 - total number of employees and
 - total hours worked in by all employees

Employer Information Required in Reports



- Snapshot Period Dates*
- Employer Name*
- Company Address*
- Headquarters Address
- Employer CA SEIN*
- Employer FEIN*
- Employer DUNS Number
- Is Employer a Contractor of State of CA?*
- Employer's Total U.S. Employees*
- Employer's Total U.S. Establishments*
- Employer's Total CA Employees*
- Employer's Total CA Establishments*
- Employer's Ownership, Affiliation, or Enterprise*
- Parent Company FEIN
- Parent Company Name
- Parent Company Address
- Affiliated FEINs
- Contact Information*
- Employer-Level Clarifying Remarks

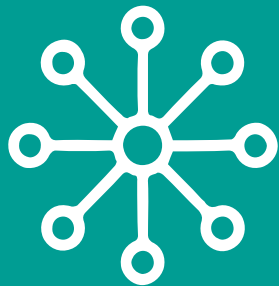
Employee Data Needed to Complete Reporting



- For employees included in Snapshot Period:
 - Establishment
 - EEO-1 Job Category
 - Race/Ethnicity,
 - Sex
 - If non-binary is provided, employers must report by race/ethnicity within each job category and pay band
 - W-2 Box 5 Wages; (Box 1 may be required for some)
 - Hours Worked and Paid Time Off in 2020
 - Non-Exempt: Hours actually worked and PTO (e.g., vacation, holiday, sick, paid LOA etc...)
 - Exempt: Average Hours Worked and PTO
 - 2020 Hire and Termination Dates (to capture partial year employees)

Pay: W-2 Box 5 Wages

- Place employees into approved pay bands based on W-2 Box 5 Wages (“Medicare Wages and Tips”)
 - Do not annualize wages for partial year employees
 - If an employee does not have wages reported in Box 5, use W-2 Box 1 for that employee and note this in the associated remarks field
 - If W-2 is corrected and this alters the employee’s pay band, the company should submit a corrected report, identify explain the correction in the remarks field
- **IMPORTANT EEO-1 DIFFERENCE:** The Report requires W-2 Box 5, not W-2 Box 1



Pay Bands

1. \$19,239 and under	4. \$30,680 – \$38,999	7. \$62,920 – \$80,079	10. \$128,960 – \$163,799
2. \$19,240 – \$24,439	5. \$39,000 – \$49,919	8. \$80,080 – \$101,919	11. \$163,800 – \$207,999
3. \$24,440 – \$30,679	6. \$49,920 – \$62,919	9. \$101,920 – \$128,959	12. \$208,000 and over

Hours Worked: “Time Paid”



Non-Exempt Employees

- Use timesheets or other records to report actual hours worked by the employee plus the hours the employee was on any form of paid time off paid by employer
- **IMPORTANT EEO-1 DIFFERENCE:** Hours that were paid are included in the hours worked calculations even if they are attributable to paid time off

Exempt Employees

- Actual hours worked by the employee + hours the employee received paid time off if such records are maintained, or
- Calculate each exempt employee’s total hours worked as:
 - (Days actually worked + Days of paid time off) x Average hours worked per day by the employee
- **IMPORTANT EEO-1 DIFFERENCE :** Do not use 20 hours or 40 hours as the average hours per week for each (e.g. some will be 35 some will be 20)

Reporting the Information

Portal Opens Feb. 16th



- After identifying the establishment, job category, pay band, hours worked, race/ethnicity, and sex of each employee in the Snapshot Period:
 1. Report the total number of employees within each establishment with the same job category, pay band, race/ethnicity, and sex;
 2. Report the total hours worked by this group of like employees

Name*	Address Line 1*	Address Line 2	City*	State*	ZIP Code*	Job Category*	Race/Ethnicity/ Sex*	Pay Band*	Number of Employees*	Total Hours*	Row-Level Clarifying Remarks
Acme Water Works - Inc - Station 1000 (AB66242)	1234 Main Avenue	Suite 500	Sacramento	CA	95825	1	C20	11	1	1987	
Acme Water Works - Inc - Station 1000 (AB66242)	1234 Main Avenue	Suite 500	Sacramento	CA	95825	2	C50	10	5	9050	
Acme Water Works - Inc - Station 1000 (AB66242)	1234 Main Avenue	Suite 500	Sacramento	CA	95825	2	B10	10	5	9112	
Acme Water Works - Inc - Station 1000 (AB66242)	1234 Main Avenue	Suite 500	Sacramento	CA	95825	5	B60	8	39	65286	
Acme Water Works - Inc - Station 1000 (AB66242)	1234 Main Avenue	Suite 500	Sacramento	CA	95825	5	C60	8	25	43950	
Acme Water Works - Inc - Station 2000 (AB66243)	505 Crocker Avenue		Rocklin	CA	95663	4	C40	9	7	65286	
Acme Water Works - Inc - Station 2000 (AB66243)	505 Crocker Avenue		Rocklin	CA	95663	5	D10	8	5	65286	
Acme Water Works - Inc - Station 2000 (AB66243)	505 Crocker Avenue		Rocklin	CA	95663	5	D20	8	13	65286	

PEO Considerations



- There are a few important considerations that Professional Employer Organizations (PEOs) and companies that utilize PEOs need to keep in mind:
 - PEOs may not submit reports that include multiple employers
 - PEOs may prepare and submit reports for companies, however, the company MUST certify the accuracy of the reports that are filed
- The ultimate responsibility for filing and ensuring that the filing is accurate rests with the company, not with the PEO

Reporting with an M&A Twist



- A simple rule of thumb: the company with employees on their payroll at the time of the snapshot has the reporting obligation
- If employees are on the company's payroll at the time of the Snapshot Period, the company has an obligation to report on them even if:
 - They weren't on the payroll for all of 2020; or
 - They aren't on the payroll as of March 31, 2021
- If the company does not have access to pre-acquisition employee information, the company may report only the hours and pay for the time that acquired employees were on the company's payroll

Data Privacy Concerns and Confidentiality



- The Pay Data Reports are protected from disclosure by the DFEH and DLSE in the same manner that the EEO-1 Reports are protected from disclosure by the EEOC
 - Information may not be made available to prior to the institution of an investigation or enforcement proceeding, and then, only to the extent necessary for purposes of the enforcement proceeding”
- DFEH may publish aggregate reports
- The lack of an establishment reporting minimum size could make it easy to identify the employee in the report
 - Since employees are grouped by having a number of factors in common, if only one employee exists in that grouping, very easy to identify the employee
- If a request is received, promptly notify the legal department and/or outside counsel for assistance

Takeaways

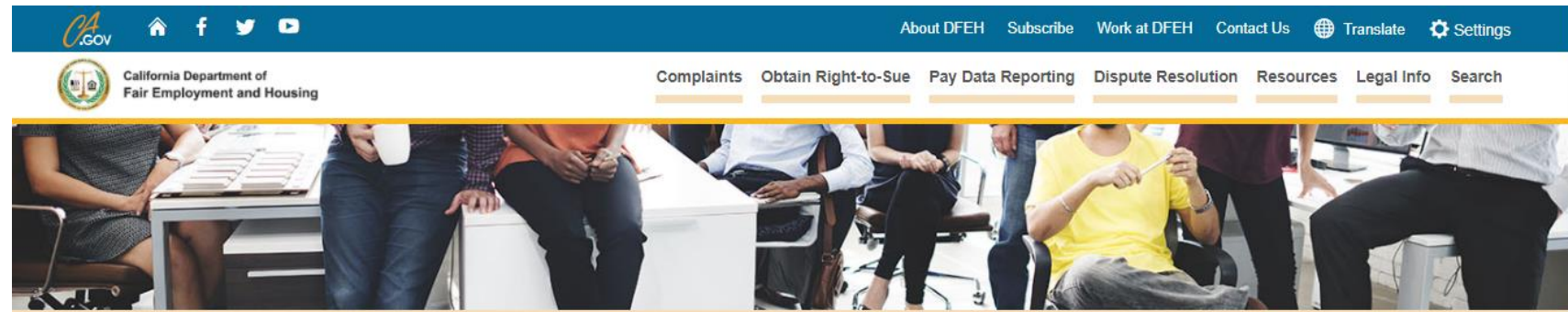


- Develop a comprehensive plan for completion
 - Significantly more onerous than EEO-1 Component 2
- Review information for accuracy
 - Is pay accurately recorded in payroll system?
 - Is exempt/non-exempt status updated?
 - Are EEO-1 Categories correct?
- Ensure senior leaders and legal are involved due to sensitive nature of data reporting
 - Continue to conduct a robust pay analysis, ideally under attorney-client privilege
 - Include legal teams who will have oversight over litigation to ensure that implications of the pay data reporting are understood and appropriately addressed

Visit the
Website Early
and Often



- Website: <https://www.dfeh.ca.gov/paydatareporting/>
- Portal available on February 16, 2021
- Log on and create a password as soon as the reporting portal is available



California Pay Data Reporting

California employers of 100 or more employees must report pay and hours-worked data by establishment, job category, sex, race, and ethnicity to the Department of Fair Employment and Housing (DFEH) by March 31, 2021 and annually thereafter. This reporting is required under Government Code section 12999 enacted in SB 973.

The buttons below link to the portal through which employers submit their data to DFEH (Pay Reporting Portal), a guide to using the portal (User Guide), a template that employers may use to submit their data (Excel Template), an example of a CSV submission (CSV Example), and answers to frequently asked questions (FAQs).

Pay Reporting Portal will be available on 2/16/21 and the User Guide, Excel Template and CSV Example will be available by 2/1/21.





Thank You!