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HR COMPLIANCE OVERVIEW

California FAQs on Workforce Pay Data Reporting Requirements

On Feb. 1, 2024, the California Civil Rights Department (CRD) issued updated answers to frequently asked questions (FAQs) about the state's requirement for large employers to report information about their workforce from 2023.

The updated FAQs provide information about Senate Bill 973 (SB 973), which requires employers with 100 or more employees (any of whom are working in California) to file reports about the employees' pay and work hours with the DFEH every year, and Senate Bill 1162 (SB 1162), which amended SB 973 effective Jan. 1, 2023. Among other changes, SB 1162 added requirements for employers to report on employees hired through labor contractors and to calculate and report mean and median hourly rates. It also removed the option for covered employers to file their federal EEO-1 reports with the state and changed the annual state deadline to the second Wednesday in May.

This Compliance Overview provides selected portions of the updated FAQs.

LINKS AND RESOURCES

- DFEH's FAQs on pay data reporting
- DFEH's Pay Data Reporting website
- Portal for employer submissions of pay data reports (employers that wish to submit a deferral request for the new labor contractor employee reporting requirement must register in the portal and fill out a deferral form there)
- User Guide for pay data report filers

Important Dates

Feb. 1, 2024

The first day employers may submit deferral requests for the new labor contractor employee reports that are due on May 8, 2024.

May 8, 2024

The deadline for employers to file data about their employees' pay and work hours from 2023 with the state.

May 8, 2025

The deadline for employers to file 2024 data. Employers subject to the law must file reports by the second Wednesday of May every year.

Reporting Basics

Required Information

The law requires reports on employee pay and hours worked by establishment, job category, sex, race and ethnicity.

Equal Pay Purpose

The purpose of the law is to advance and help the DFEH enforce the state's equal pay and anti-discrimination laws.

FAQs on California Workforce Pay and Data Reporting

IMPORTANT ANNOUNCEMENTS FOR 2023 REPORTING YEAR

The FAQs below have been updated to reflect the 2024 deadline for reporting 2023 pay data information. These FAQs also indicate that the portal and templates have been refined to improve user experience and emphasize that employers should not use templates or files from the prior year, as the portal will reject submissions based on outdated versions of the templates. For example, in the new Excel template, a user can now hover their cursor on a column heading to see relevant instructions. A training that overviews the pay data program and filing requirements is available here.

Labor Contractor Worker Reporting

In addition to the "Payroll Employee Report" that all private employers with 100 or more employees (with at least one employee based in California) must file, SB 1162 added the requirement that a private employer with 100 or more workers hired through labor contractors in the prior calendar year (with at least one worker based in California) must file a separate "Labor Contractor Employee Report" that covers workers hired through labor contractors in the prior calendar year. An employer submitting a Labor Contractor Employee Report submits one report that covers labor contractor workers at all of the employer's establishments. SB 1162 requires the employer's labor contractors to provide necessary data and information to the employer submitting the report. It also requires the employer to identify its labor contractors.

Mean and Median Rates

SB 1162 requires employers to calculate and report the mean and median hourly rate of its payroll employees or labor contractor employees, by establishment, pay band, job category, race/ethnicity and sex. There are columns in the updated Excel template and .CSV example for the reporting of this information.

Increased Penalties for Nonfilers

SB 1162 permits CRD to obtain a monetary penalty against any employer that fails to file a required report, as well as against any labor contractor that fails to supply necessary data to a client employer. Employers should be aware that CRD is actively pursuing non-filers (see, for example, Civil Rights Department Secures Nearly $100K Settlement to Resolve Cambrian Homecare, Inc. Pay Data Lawsuit). For more information, see FAQ "What are the penalties for employers that fail to file?"

Employees Outside of California

n a pay data report, employers must report on their workers assigned to California establishments and/or working within California. Employers may not report on workers who are working outside of California and are assigned to an establishment outside of California. For more information, see, for example, FAQ "Should an employer's Payroll Employee Report include only their California employees or all employees?"

Aggregate Results

In 2022 and 2023, CRD published aggregate results from the 2020 and 2021 Reporting Years. In 2024, CRD plans to publish aggregate results from the 2022 Reporting Year. CRD encourages employers to review these results, as well as to assess their own pay data reports and pay practices, in light of California's anti-discrimination and equal pay laws. Toward this goal, the portal provides an employer with visualizations of the certified data that the employer submitted to CRD.

I. INTRODUCTION

Why does California require large employers to report pay data to CRD?

By requiring large employers report pay data annually to CRD under SB 973, the California Legislature sought to encourage these 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. In addition, SB 973 authorized CRD to enforce the Equal Pay Act, which prohibits unjustified pay disparities between people of different sexes, races or ethnicities. The Fair Employment and Housing Act (FEHA), already enforced by CRD, prohibits pay discrimination. Employers' pay data reports allow CRD to identify wage patterns and allow for effective enforcement of equal pay or anti-discrimination laws, when appropriate.

In 2022, the Legislature passed SB 1162 to enhance the California pay data reporting law by, among other things, requiring private employers with 100 or more workers hired through labor contractors in the prior calendar year to report pay data for these workers.

How did SB 1162 change the pay data reporting system?

Effective Jan. 1, 2023, SB 1162 enhanced the California pay data reporting system in several major respects, including by:

- Requiring a private employer of at least 100 employees to file a Payroll Employee Report regardless of whether the employer files a federal EEO-1 report, removing a prior limitation that an employer is only obligated to file a Payroll Employee Report if the employer is required to submit a federal EEO-1 report.
- Requiring a private employer that has 100 or more employees hired through labor contractors within the prior calendar year to file a Labor Contractor Employee Report covering the employees hired through labor contractors in the prior calendar year. The employer must also disclose the ownership names of all labor contractors used to supply employees. Labor contractors are required to supply all necessary pay data to the employer.
- Requiring that Payroll Employee Reports and Labor Contractor Employee Reports include the mean and median hourly rate of employee groupings (that is, groupings of employees with the same establishment, pay band, job category, race/ethnicity, and sex).
- Changes the annual deadline for submitting pay data reports to the second Wednesday of each May.
- Authorizing CRD to obtain penalties against employers that fail to timely file their pay data reports, as well as against labor contractors that fail to provide data to client employers who must submit Labor Contractor Employee reports.

Senate Bill 1162 also eliminated the option for an employer to submit a federal EEO-1 report to CRD in satisfaction of its state pay data reporting requirement, and it changed the annual deadline for submitting pay data reports to the second Wednesday of each May.

In addition, SB 1162 requires certain employers to include pay scales on job postings. This requirement, which is separate from the pay data reporting system, is not enforced by CRD; it is enforced by the Labor Commissioner's Office (also known as the Division of Labor Standards Enforcement or DLSE) of the Department of Industrial Relations.

Will an employer's pay data be publicly available?

No, except as provided for under the law. Specifically, the law prohibits CRD, the Labor Commissioner's Office/DLSE, and their staff from making any individually identifiable information public in any manner whatever other than to the extent necessary for enforcement. For the purposes of this section, 'individually identifiable information' means data submitted pursuant to this section that is associated with a specific person or business."

In addition, the law provides that any individually identifiable information submitted to CRD is considered confidential information and not subject to disclosure pursuant to the California Public Records Act.

May CRD publish reports based on data aggregated from multiple employers?

CRD may develop, publish on an annual basis, and publicize aggregate reports based on the data obtained, provided that the aggregate reports are reasonably calculated to prevent the association of any data with any individual business or person. Thus far, CRD has published aggregate results from the 2020 and 2021 Reporting Years.

How long will CRD keep employers' pay data?

CRD must maintain pay data reports for "not less than 10 years."

How will CRD keep the data submitted by employers secure?

CRD's pay data reporting system uses end-to-end encryption for transmission and storage of all employer-submitted data. The system is housed in a secure government cloud environment that meets federal and state requirements for data protection. For more information, see FAQ "Will an employer's pay data be publicly available?"

II. FILING DEADLINE, PROCEDURE, CERTIFICATION AND COMPLIANCE

What is the deadline for employers to submit their pay data reports to CRD?

The deadline for filing pay data reports with CRD is the second Wednesday of May each year. For pay data reports covering Reporting Year 2023, the filing deadline is May 8, 2024.

If CRD has not received a required report by the deadline, it may seek a court order requiring the employer to comply with California's pay data reporting requirements. CRD is entitled to recover the costs associated with seeking the order for compliance and the court may assess a civil penalty against the employer or a labor contractor that failed to timely provide pay data to the employer.

How do employers submit their pay data reports to CRD?

Employers must use CRD's pay data portal to submit their reports. CRD will not accept reports by email or hard copy. To file a pay data report, an employer registers in the portal and provides information about their business, parent/affiliates (if any), and other information. Then, the employer creates and submits its Payroll Employee Report or Labor Contractor Employee Report, depending on the employer's reporting obligations. If an employer is obligated to submit both report types, the employer submits its Payroll Employee Report separate from its Labor Contractor Employee Report.

For reports covering Reporting Year 2023 (reports due May 8, 2024), use the templates, instructions, and other resources made available by CRD on Feb. 1, 2024. Do not use prior years' templates; the portal will reject earlier versions.

The information required in a Payroll Employee Report and a Labor Contractor Employee Report are nearly identical, but there are a few critical differences. Therefore, employers must be sure to use the correct template/instructions for each report type.

Who may certify an employer's pay data report?

In order to file a Payroll Employee Report or a Labor Contractor Employee Report, an official of the employer must certify that the employer's report is accurate and was prepared in accordance with CRD's instructions. While an employer may designate their own certifying official, the certifying official must have knowledge of the information contained in the report (or have had that information provided to them by individuals with knowledge contained in the report), have reviewed the report and can certify its accuracy, and be authorized to file the report on behalf of the employer.

While Professional Employer Organizations (PEOs), Human Resource Outsourcing Organizations (HROs) or labor contractors may assist in preparing and may file pay data reports with CRD on behalf of client employers, an official of the client employer, not from the PEO, HRO, or labor contractor, must certify the report. A certifying official may authorize another person to electronically file the certification on their behalf.

What are the penalties for employers that fail to file?

SB 1162 has added penalties for employers who fail to file required pay data reports. CRD has the power to seek an order requiring an employer who was obligated to file a report and failed to do so to file a required report. CRD is also empowered to seek civil penalties of $100 per employee against an employer that fails to file a required report, with the penalties increasing to $200 per employee for a subsequent failure to file a required report. These penalties are assessable against a labor contractor that has failed to provide required pay data to a client employer. CRD is also entitled to recover its costs in any enforcement action.

May a parent company submit a pay data report covering its subsidiaries?

Generally, a pay data report is purposefully designed to cover a single employer, its component establishments (if it has more than one establishment), and its payroll employees or labor contractor employees who are assigned to those establishments.

Multiple entities may constitute a single employer for the purposes of pay data reporting if they constitute an "integrated enterprise" within the meaning of cases interpreting Title VII of the Civil Rights Act of 1964. The four-factor integrated enterprise test includes consideration of interrelation of operations, common management, centralized control of labor relations, and common ownership or financial control.

Only affiliated entities that comprise an integrated enterprise may – but are not required to – file a combined pay data report covering multiple entities. In other words, affiliated companies must each separately file a pay data report when their level of affiliation or connection with other entities falls below the threshold for an integrated enterprise.

Affiliated entities constituting a single employer can choose whether to file a single pay data report covering all affiliated entities or, instead, to file multiple pay data reports for each separate legal entity.

III. FILING REQUIREMENTS – PAYROLL EMPLOYEE REPORTS

This part of the FAQs specifically concerns Payroll Employee Reports – one of the two report types an employer may be required to file. Part IV of the FAQs specifically concerns Labor Contractor Employee Reports – the second type of report an employer may be required to file.

III.A. OVERVIEW

What are the basic steps an employer should follow to create and submit its Payroll Employee Report?

The following is a basic overview of the process for Payroll Employee Reports; employers must follow CRD's specific instructions provided in the portal, user guide, template, and elsewhere in these FAQs.

1. Determine whether the employer is required to file a Payroll Employee Report for Reporting Year 2023. If the employer is required to file, proceed through the following steps.
2. Determine the employer's "Snapshot Period" to identify the employees who will be reported on.
3. Determine which establishments the employer has and gather information about each establishment.
4. For all employees in the Snapshot Period, identify each employee's establishment, pay band, job category, race/ethnicity, sex, pay, pay band and hours worked.
5. Within each establishment, group employees who have the same 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 that employee's job category, pay band, race/ethnicity, and sex.
6. Within each employee group in each establishment, calculate the total hours worked by the group.
7. Within each employee group in each establishment, calculate the group's mean hourly rate and the group's median hourly rate.
8. Within each employee group in each establishment, identify the number of workers who were remote workers during the Snapshot Period.
9. Gather additional information about the employer and its establishments.
10. Register in the portal and build the report.
11. Provide any clarifying remarks in the relevant field(s) and correct any errors identified by the portal.
12. Certify the final report and submit by May 8, 2024.

III.B. REPORTING YEAR AND SNAPSHOT PERIOD

For Payroll Employee Reports, what is the "Reporting Year"?

A pay data report must cover the prior calendar year, which, is referred to as the 'Reporting Year.'" For example, a Payroll Employee Report due to CRD in 2024 will contain pay data from calendar year 2023 for employees employed during the Snapshot Period; 2023 is the Reporting Year.

For Payroll Employee Reports, what is the "Snapshot Period"?

The "Snapshot Period" is a single pay period between October 1 and December 31 of the Reporting Year. Employers are free to choose the single pay period between October 1 and December 31 of the Reporting Year that will serve as their Snapshot Period. As explained more below, the Snapshot Period is used by employers to identify the employees to be reported on in the pay data report submitted to CRD.

Some employers have noted that they have different pay periods (for example, some employees are paid bi-weekly and some are paid monthly) and have asked for guidance on how to pick their Snapshot Period. It is important to understand the purpose of the Snapshot Period. The Snapshot Period is not the period of time for identifying an employee's pay or hours worked. Instead, the Snapshot Period is used by an employer only to identify its payroll employees who must be reported on in the employer's Payroll Employee Report; an employer must pick a fixed period of time to identify the employees to be reported on because an employer's employees will usually change over the course of the year. Importantly, when identifying the employees to be reported on, it does not matter whether an employee was paid during the Snapshot Period; it only matters whether the employee was employed during the Snapshot Period.

III.C. WHICH EMPLOYERS ARE REQUIRED TO FILE PAYROLL EMPLOYEE REPORTS

Which employers are required to submit Payroll Employee Reports to CRD?

A private employer that has 100 or more employees (anywhere as long as it has one employee in California) are required to submit a pay data report to CRD. An employee is "an individual on an employer's payroll, including a part-time individual, and for whom the employer is required to withhold federal social security taxes from that individual's wages."

An employer has the requisite number of employees if the employer either employed 100 or more employees in the Snapshot Period or regularly employed 100 or more employees during the Reporting Year. "Regularly employed 100 or more employees during the Reporting Year" means employed 100 or more individuals on a regular basis during the Reporting Year. "Regular basis" refers to the nature of a business that is recurring, rather than constant.

Employees located inside **and** outside of California are counted when determining whether an employer has 100 or more employees.

An employer with no employees in California during the Reporting Year would not be required to file a pay data report.

Part-time employees, including those who work partial days and fewer than each day of the work week, are counted the same as full-time employees.

Employees on paid or unpaid leave, including California Family Rights Act (CFRA) leave, pregnancy leave, disciplinary suspension, or any other employer-approved leave of absence, are counted.

An entity with fewer than 100 employees is required to file with CRD if the entity is affiliated with one or more other persons (including one or more entities acting in concert) such that they constitute an integrated enterprise, and the entire enterprise employs a total of 100 or more employees. In addition, an entity with fewer than 100 employees is required to file with CRD if it and another company or companies are centrally owned, controlled, or managed (such as central control of personnel policies and labor relations) so that the group legally constitutes an integrated enterprise, and the entire enterprise employs a total of 100 or more employees.

For the purposes of Payroll Employee Reports, when determining whether an employer has 100 or more employees, does the employer count temporary workers provided by a staffing agency or independent contractors?

For purposes of pay data reporting to CRD, the law defines "employee" to mean "an individual on an employer's payroll, including a part-time individual, and for whom the employer is required to withhold federal social security taxes from that individual's wages." Only employees who meet this definition are counted as "employees" for the purposes of the pay data report.

III.D. WHICH PAYROLL EMPLOYEES MUST BE REPORTED ON

Should an employer's Payroll Employee Report include only their California employees or all employees?

As explained above, an employer is required to file a Payroll Employee Report with CRD if the employer has 100 or more employees (inside and outside of California) and has at least one employee in California. When reporting to CRD, employers must include all employees assigned to California establishments or working within California. **Important update:** Unlike in years past, employers should not report employees who are working outside of California and are assigned to an establishment outside of California. Thus, CRD expects that a single-establishment employer in California will include on its Payroll Employee Report all employees (including any employees outside of California) whether or not they telework, because all of its employees report to a California establishment in this scenario.

Similarly, CRD expects that a multiple-establishment employer with establishments only in California will include in its report all employees (including any employees outside of California) whether or not teleworking.

For multiple-establishment employers with establishments inside and outside of California, the employer reports to CRD on its California establishments, all of its employees assigned to those establishments whether or not teleworking (including any employees working outside of California), and any other California employee (including those teleworking from California but assigned to an establishment outside of California). **Important update**: Unlike in years past, employers should not report on employees who are working outside of California and are assigned to an establishment outside of California.

If employees telework from a residence outside of California, but are assigned to an establishment in California, should they be included on the pay data report?

Yes.

If employees telework from a residence in California, but are assigned to an establishment outside of California, should they be included on the pay data report?

Yes. An employer's report must include establishments outside of California if any employee at that establishment is working from California during the Snapshot Period. In the employer's Payroll Employee Report, for reporting on that establishment, only those employees teleworking from California would be included. The employer may not report employees assigned to an establishment outside of California and working outside of California.

Employers that report on employees at a non-California establishment must be sure that the employer's "Total California Employees" in the Employer Detail section of the report matches the number of California employees reported in the Employee Detail section of the report by including both those teleworking in California assigned to a non-California establishment and those outside California assigned to a California establishment.

Should employees assigned to an establishment in California but who work at client sites outside of California be included in the employer's pay data report?

Yes.

Must employers report on employees who were employed during the Snapshot Period even if they were no longer active employees by the by December 31st of the Reporting Year?

Yes. Even if an employee resigned or their employment was otherwise terminated before December 31 of the Reporting Year, the employee must be reported on if the employee worked during the Snapshot Period.

Must employers report on employees who were employed at some point during the Snapshot Period even if they were not active employees for the entire Snapshot Period?

Yes. If an employee was hired, resigned, or their employment was otherwise terminated during the Snapshot Period, the employee must be reported on if the employee worked at any point during the Snapshot Period.

Should an employer's Payroll Employee Report include an employee who is on leave during the Snapshot Period?

For California pay data reporting, an employee is defined as "an individual on an employer's payroll, including a part-time individual, for whom the employer is required to withhold federal social security taxes from that individual's wages." Any person who meets this definition – including those on paid or unpaid leave – must be included in the employer's Payroll Employee Report (assuming the employee works in California or is assigned to a California establishment during the Snapshot Period).

Should an employer's Payroll Employee Report include an employee who works in California but reports to an establishment in a U.S. territory or outside of the United States?

For California pay data reporting, an employee is defined as "an individual on an employer's payroll, including a part-time individual, and for whom the employer is required to withhold federal social security taxes from that individual's wages." Any person who works in California during the Snapshot Period and who meets this definition must be included in the employer's pay data report.

If an employee lives in California but physically works at an establishment outside of California, does the employer need to report that employee?

No, **unless** the employee also works in California. For example, if such an employee regularly teleworks from California, the employee must be included in the pay data report.

Does a labor contractor or temporary services employer report on their employees who work for client employers?

Yes. In addition to reporting on its permanent employees, a labor contractor or temporary services employer must include in its Payroll Employee Report any employees who work for client employers. As applied to this situation, the law defines "employee" to mean "an individual on [the labor contractor's] payroll, including a part-time individual, and for whom the [labor contractor] is required to withhold federal social security taxes from that individual's wages."

IV. FILING REQUIREMENTS – LABOR CONTRACTOR EMPLOYEE REPORTS

This part of the FAQs specifically concerns Labor Contractor Employee Reports – the second of the two types of pay data report that an employer may be required to file. Part III of the FAQs specifically concerns Payroll Employee Reports – the first type of report an employer may be required to file.

IV.A. OVERVIEW

What are the basic steps an employer should follow to create and submit its Labor Contractor Employee Report?

The following is a basic overview of the pay reporting process for Labor Contractor Employee Reports; employers must follow CRD's specific instructions provided in the portal, user guide, template, and elsewhere in these FAQs (including the FAQ "How do employers submit their pay data reports to CRD?").

1. Determine whether the employer – that is, the client employer – is required to file a Labor Contractor Employee Report for Reporting Year 2023. If the employer is required to file, proceed through the following steps.
2. Determine the "Snapshot Period" for each labor contractor to identify the labor contractor employees who will be reported on. Labor contractor employees assigned to California establishments and/or who work from California must be reported on.
3. Determine which establishments the employer has and gather information about each establishment.
4. Determine which labor contractors the employer used, determine which establishments had labor contractor employees, and gather information about each labor contractor and each labor contractor employee. Labor contractors are required to supply necessary information to the client employer.
5. For all labor contractor employees in each labor contractor's Snapshot Period, identify each labor contractor employee's establishment, pay band, job category, race/ethnicity, sex, pay, and hours worked. Labor contractors are required to provide necessary information to the client employer.
6. Within each establishment, group labor contractor employees who have the same job category, pay band, and race/ethnicity/sex combination. Some groups may be a group of one if no other labor contractor employee in the establishment shares that labor contractor employee's job category, pay band, race/ethnicity and sex.
7. Within each employee group in each establishment, calculate the total hours worked by the group.
8. Within each employee group in each establishment, calculate the group's mean hourly rate and the group's median hourly rate.
9. Within each employee group in each establishment, identify the number of workers who were remote workers during the Snapshot Period.
10. Gather additional information about the employer and its establishments.
11. Register in the portal and build the report.
12. Provide any clarifying remarks in the relevant field(s) and correct any errors identified by the portal.
13. Certify the final report and submit by May 8, 2024.

IV.B. REPORTING YEAR AND SNAPSHOT PERIOD

For Labor Contractor Employee Reports, what is the "Reporting Year"?

The Reporting Year is the calendar year prior to the year in which a pay data report is submitted to CRD. For example, a Labor Contractor Employee Report due to CRD in 2024 will contain pay data from calendar year 2023 for labor contractor employees working for the client employer during the relevant Snapshot Period; 2023 is the Reporting Year.

For Labor Contractor Employee Reports, what is the "Snapshot Period"?

The "Snapshot Period" is a single pay period between October 1 and December 31 of the Reporting Year. As explained more below, the Snapshot Period is used by client employers and labor contractors to identify the labor contractor employees to be reported on in the pay data report submitted to CRD.

CRD recommends that a client employer, which is ultimately responsible for the Labor Contractor Employee Report, collaborate with each of its labor contractors to choose the single pay period between October 1 and December 31 of the

Reporting Year that will serve as their Snapshot Period for that labor contractor. If a client employer has more than one labor contractor, CRD encourages the use of the same Snapshot Period across labor contractors; however, the Snapshot Period does not need to be the same for each labor contractor a client employer uses, provided the Snapshot Period otherwise complies with these instructions.

Some employers have noted that they have different pay periods (for example, some employees are paid bi-weekly and some are paid weekly) and have asked for guidance on how to pick their Snapshot Period. It is important to understand the purpose of the Snapshot Period. The Snapshot Period is not the period of time for calculating a labor contractor employee's pay or hours worked. Instead, the Snapshot Period is used by a client employer only to identify its labor contractor employees who must be reported on in the employer's Labor Contractor Employee Report; an employer must pick a fixed period of time – per labor contractor – to identify the labor contractor employees to be reported on because an employer's labor contractor employees will usually change over the course of the year. Importantly, when identifying the labor contractor employees to be reported on, it does not matter whether a labor contractor employee was paid during the Snapshot Period; it only matters whether the labor contractor employee worked for the client employer during the Snapshot Period.

IV.C. WHICH EMPLOYERS ARE REQUIRED TO FILE LABOR CONTRACTOR EMPLOYEE REPORTS

Which employers are required to submit Labor Contractor Employee Reports to CRD?

A private employer that has 100 or more labor contractor employees within the prior calendar year (anywhere as long as it has one labor contractor employee in California) shall submit a separate pay data report to CRD covering the labor contractor employees in the prior calendar year.

- A "labor contractor employee" is an individual on a labor contractor's payroll, including a part-time individual, and for whom the labor contractor is required to withhold federal social security taxes from that individual's wages, and who performs labor for a client employer within the client employer's usual course of business.
- A "labor contractor" is an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business.

The client employer has the requisite number of labor contractor employees if the employer either had 100 or more labor contractor employees in the Snapshot Period—across all of its labor contractors, not per labor contractor – or regularly had 100 or more labor contractor employees during the Reporting Year. "Regularly had 100 or more labor contractor employees during the Reporting Year" means 100 or more labor contractor employees worked for the client employer on a regular basis during the Reporting Year. "Regular basis" refers to the nature of a business that is recurring, rather than constant.

Labor contractor employees located inside and outside of California are counted when determining whether an employer has 100 or more labor contractor employees.

An employer with no labor contractor employees in California during the Reporting Year would not be required to file a Labor Contractor Employee Report with CRD.

Part-time labor contractor employees, including those who work partial days and fewer than each day of the work week, are counted the same as full-time labor contractor employees.

Labor contractor employees on paid or unpaid leave, including California Family Rights Act (CFRA) leave, pregnancy leave, disciplinary suspension, or any other employer-approved leave of absence, are counted.

Workers whose earnings are reported on the Internal Revenue Service's (IRS) Form 1099 are not labor contractor employees under the law because no employer is required to withhold federal social security taxes from those individuals' earnings. Workers whose earnings are reported on IRS Form 1099 are not counted in determining whether a client employer has 100 or more labor contractor employees.

An entity with fewer than 100 labor contractor employees is required to file with CRD if the entity is affiliated with one or more other persons (including one or more entities acting in concert) such that they constitute an integrated enterprise, and the entire enterprise has a total of 100 or more labor contractor employees. In addition, an entity with fewer than 100 employees is required to file with CRD if it and another company or companies are centrally owned, controlled, or managed (such as central control of personnel policies and labor relations) so that the group legally constitutes an integrated enterprise, and the entire enterprise employs a total of 100 or more labor contractor employees. For more information on determining whether affiliated entities constitute an integrated enterprise, please see the FAQ "May a parent company submit a pay data report covering its subsidiaries?"

When determining whether a client employer has 100 or more labor contractor employees, is it the total across all labor contractors or per labor contractor?

A client employer has the requisite number of labor contractor employees if it has 100 or more total labor contractor employees hired across its labor contractors.

IV.D. WHICH LABOR CONTRACTOR EMPLOYEES MUST BE REPORTED ON

Should an employer's Labor Contractor Employee Report include only their California labor contractor employees or all labor contractor employees?

A client employer is required to file a Labor Contractor Employee Report with CRD if the employer has 100 or more labor contractor employees (inside and outside of California) and has at least one employee in California.

When reporting to CRD, client employers must include their labor contractor employees assigned to California establishments or working within California. Client employers may not report labor contractor employees who are working outside of California and are assigned to an establishment outside of California.

Thus, CRD expects that a single-establishment client employer in California will include on its Labor Contractor Employee Report all labor contractor employees (including any labor contractor employees outside of California) whether or not teleworking, because all of the labor contractor employees report to a California establishment in this scenario.

Similarly, CRD expects that a multiple-establishment employer with establishments only in California will include across its establishment-level data in its report all labor contractor employees (including any labor contractor employees outside of California) whether or not teleworking because in this scenario all of the employer's establishments are in California.

For multiple-establishment employers with establishments inside and outside of California, the employer reports to CRD on its California establishments, all of its labor contractor employees assigned to those California establishments whether or not teleworking (including any labor contractor employees working outside of California), and any other California labor contractor employee (including those teleworking from California but assigned to an establishment outside of California).

Employers may not report labor contractor employees who are working outside of California and are assigned to an establishment outside of California.

Should a client employer's Labor Contractor Employee Report include 1099 workers? (updated 4/6/2023)

Workers whose earnings are reported on IRS Form 1099 are not labor contractor employees under the law because no employer is required to withhold federal social security taxes from those individuals' earnings. Workers whose earnings are reported on IRS Form 1099 are not included in a client employer's Labor Contractor Employee Report.

If labor contractor employees telework from a residence outside of California, but are assigned to an establishment in California, should they be included on the pay data report?

Yes.

If labor contractor employees telework from a residence in California, but are assigned to an establishment outside of California, should they be included on the pay data report?

Yes. A client employer's report must include establishments outside of California if any labor contractor employee assigned to that establishment is working from California during the relevant Snapshot Period. In the employer's Labor Contractor Employee Report, for reporting on that establishment, only those labor contractor employees teleworking from California would be included. The client employer may not report labor contractor employees assigned to an establishment outside of California and working outside of California.

Employers that report on labor contractor employees at a non-California establishment must be sure that the employer's "Total California Labor Contractor Employees" in the Employer Detail section of the report matches the number of California employees reported in the Employee Detail section of the report by including both those teleworking in California assigned to a non-California establishment and those outside California assigned to a California establishment.

Should labor contractor employees assigned to an establishment in California but who work at client sites outside of California be included in the employer's pay data report?

Yes.

Must client employers report on labor contractor employees who worked for the client employer during the Snapshot Period even if they were no longer working for the client employer by the by December 31st of the Reporting Year?

Yes. Even if a labor contractor was not working for a client employer by December 31 of the Reporting Year, the labor contractor employee must be reported on if they worked during the Snapshot Period.

Must client employers report on labor contractor employees who worked for the client employer at some point during, but not all of, the Snapshot Period?

Yes. If a labor contractor employee worked at any point for the client employer during the Snapshot Period, the labor contractor employee must be reported on.

Should a client employer's Labor Contractor Employee Report include a labor contractor employee who is on leave during the Snapshot Period?

For California pay data reporting, a labor contractor employee is defined as an individual on a labor contractor's payroll, including a part-time individual, and for whom labor contractor is required to withhold federal social security taxes from that individual's wages, and who works for a client employer. Any person who meets this definition – including those on paid or unpaid leave, as the case may be – must be included in the client employer's Labor Contractor Employee report (assuming the labor contractor employee works in California or is assigned to a California establishment during the relevant Snapshot Period).

Should a client employer's Labor Contractor Employee Report include a labor contractor employee who works in California but reports to an establishment in a U.S. territory or outside of the United States?

For California pay data reporting, a labor contractor employee is defined an individual on a labor contractor's payroll, including a part-time individual, and for whom labor contractor is required to withhold federal social security taxes from that individual's wages, and who works for a client employer. Any person who works in California during the Snapshot Period and meets this definition must be included in the client employer's Labor Contractor Employee report.

If a labor contractor employee lives in California but physically works at an establishment outside of California, does the client employer need to report that worker?

No, **unless** the labor contractor employee also works in California. For example, if such a worker regularly teleworks from California, they must be included in the pay data report.

IV.E. ADDITIONAL INFORMATION

What is "labor . . . within the client employer's usual course of business," such that workers performing that labor are "labor contractor employees" who must be reported on?

A "labor contractor" is an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business.

A client employer's "usual course of business" means the regular and customary work of the client employer. "Regular and customary work" means work that is performed on a regular or routine basis that is either part of the client employer's customary business or necessary for its preservation or maintenance. "Regular and customary work" does not include isolated or one-time tasks.

An individual performing work within the client employer's usual course of business is a labor contractor employee if that individual is on a labor contractor's payroll and the labor contractor is required to withhold federal social security taxes from that individual's wages.

Because a labor contractor may not know whether any client is obligated to file a Labor Contractor Employee Report, is a labor contractor only required to provide data to a client employer upon a client's request for the data?

The law requires labor contractors to supply all necessary data to any client employer obligated to file a Labor Contractor Employee Report and permits any civil penalty to be awarded against a client employer for failure to file its report to be proportionally assessed against a labor contractor that failed to provide necessary data to that client employer.

CRD encourages client employers and their labor contractors to communicate early to ensure both client employers and labor contractors are able to meet their statutory obligations. Generally, a client employer is in the best position to know

if it is obligated to file a Labor Contractor Employee Report, but a labor contractor that supplies 100 or more workers to a client employer, including at least one California worker, knows or reasonably should know of the client employer's filing obligation.

When a labor contractor knows or reasonably should know that a client employer is obligated to file a Labor Contractor Employer Report, the labor contractor shall supply necessary data to the client employer whether or not the client employer requests that they do so.

When a labor contractor reasonably does not know whether a client employer is obligated to file a Labor Contractor Employee Report, the labor contractor need only supply data upon request. However, CRD encourages labor contractors to reach out to their client employers to inquire which, if any, has a filing obligation.

At times, labor contractors act as prime contractors and use subcontractors to help meet their clients' staffing requirements. For purposes of pay data reporting, is the prime contractor also a "client employer" required to file a Labor Contractor Employee Report?

For purposes of the 2023 Reporting Year (reports due May 8, 2024), prime contractors who use subcontractors to supply workers to an ultimate client employer are not themselves considered "client employers" required to file Labor Contractor Pay Data Reports. Instead, the client employer of the prime contractor is also treated as the client employer for the subcontractor.

If a labor contractor uses a subcontractor to supply employees to a client employer, is the prime labor contractor or its subcontractor required to provide the client employer with the data needed to complete its Labor Contractor Employee Report?

If a labor contractor uses subcontractors to supply employees to a client employer, the prime contractor and the subcontractor each have an independent legal obligation to provide the client employer data needed to complete its Labor Contractor Employee Report, and the prime contractor also has the obligation to ensure the subcontractor supplies necessary data.

It would be for the contractors to decide, based on the terms of their contract and the circumstances of each individual situation, which labor contractor, if not both, should provide the necessary data to the client employer that is obligated to file the Labor Contractor Employee Report, so long as the client employee is supplied all necessary data.

Important: The subcontractor's data should not be merged with the prime contractor's data. For reporting purposes, the prime contractor and subcontractor are separate labor contractors.

If a labor contractor uses a subcontractor to supply employees to a client employer, should the prime contractor and the subcontractor merge their data, or should the client employer merge the prime contractor's and subcontractor's data?

No. Do not combine the prime contractor's data with subcontractor's data. For reporting purposes, the prime contractor and subcontractor are separate labor contractors.

V. FILING REQUIREMENTS

V.A. ESTABLISHMENTS AND REMOTE WORKERS

What does "establishment" mean?

Some employers have one establishment and others have multiple establishments. The law defines "establishment" to mean "an economic unit producing goods or services." For example, 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.

Ultimately, it is for employers to decide which establishments it has, following the definition of "establishment" provided above. CRD cannot assist employers in identifying their establishments. To the greatest extent possible, while following the guidance above, employers should utilize the same establishments that they use for their federal EEO-1 reports.

For California pay data reporting, a multiple-establishment employer's headquarters is a distinct establishment, reported in the same manner as other establishments.

What does it mean for an employee to be "assigned to" an establishment?

Employers should assign payroll employees to the establishment where the employer reports the employee for federal EEO-1 purposes, for consistency with federal reporting and to facilitate reporting for employers.

To the extent employers need additional guidance, CRD advises employers to assign employees to the establishment to which the person formally reports during the Snapshot Period. If an employee reports to more than one establishment during the Snapshot Period, employers should assign the person to the establishment to which they report for the majority of their work.

Because employers are required to report to CRD on all employees assigned to California establishments and/or working within California, an employer may not avoid reporting on employees actually working in California by formally assigning them to an establishment outside of California.

Are there different types of pay data reports depending on whether the employer has one or multiple establishments?

No. Whether an employer has only one establishment or multiple establishments, each employer submits a single Payroll Employee Report and/or a single Labor Contractor Employee Report, depending on which of these reports the employer is required to file.

A multiple-establishment employer must report on all of its establishments, including those with fewer than 50 employees, in the same manner, because Government Code section 12999 does not differentiate between establishment size. In other words, CRD does not permit employers to submit what was known in the federal EEO-1 survey as a "Type 6" list of establishments of fewer than 50 employees.

Does SB 1162 mean that multiple-establishment employers have to submit a separate report for each establishment?

No. The California pay data reports are purposefully designed to consolidate all of an employer's relevant data. For that reason, Senate Bill 1162 conformed the law to the system built by CRD. As explained in the previous FAQ, a multiple-

establishment employer submits a single Payroll Employee Report and/or a single Labor Contractor Employee Report, depending on which of these reports the employers is required to file.

If an employer has two establishments in California and two establishments outside of California, does the employer need to submit a pay data report for all four establishments?

Employers only need to report on (1) California establishments and (2) establishments to which employees who work in California report.

If an employer has multiple California establishments – some with 50 or more employees and some with fewer than 50 employees – does the employer only report for establishments with 50 or more employees?

No. Such an employer must report on all of its California establishments, including those with fewer than 50 employees, in the same manner, because the law does not differentiate between establishment size.

How should an employer report on an employee who, during the Reporting Year, started out in one establishment and ended the year in a different establishment?

The employer should report the employee according to their assigned establishment in the Snapshot Period. The employer should **not** split up this employee's pay or hours by establishment.

How should an employer report on an employee who, during the Reporting Year, started out in a California establishment but, during the Snapshot Period, was assigned to an establishment outside of California?

If this payroll employee/labor contractor employee was working within California during the Snapshot Period, the employer is required to report to CRD on this employee even though the employee is assigned to an establishment outside of California. If an employee neither worked in California nor was assigned to an establishment in California during the relevant Snapshot Period, the employee should not be included an employer's report.

Who is a "remote worker" in a pay data report?

New for Reporting Year 2023, employers must report the number of employees in an employee group who worked remotely. For purposes of pay data reporting, "remote worker" refers to employees (payroll employees or labor contractor employees) who are entirely remote, teleworking, or home-based, and have no expectation to regularly report in person to a physical establishment to perform their work duties. Employees in hybrid roles or (partial) teleworking arrangements expected to regularly appear in person to perform work at a particular establishment for any portion of time during the Snapshot Period would not be considered remote workers for pay data reporting purposes.

If an employee who was remote the first six months of the year transitioned to a hybrid or in-person role during the second six months of the year, should the employee be reported in a pay data report as a remote worker?

Employers should use the Snapshot Period when determining whether to classify an employee as a remote worker. If an employee was expected to report in person to a physical establishment during the Snapshot Period, regardless of whether they work remotely at other times of the year, the employee should not be reported as a remote worker.

How does an employer identify the establishment of employees who are entirely remote?

For an employee who works entirely remotely, follow the guidance in the FAQs "What does 'establishment' mean?" and "What does it mean for an employee to be 'assigned to' an establishment?" to identify the appropriate establishment for the employee. If that guidance does not produce an answer for a particular employee, report the employee as assigned to the employer's headquarters, recalling that for California pay data reporting, a multiple-establishment employer's headquarters is a distinct establishment reported in the same manner as other establishments.

How do I determine an establishment's "major activity"?

Employers are required to report each establishment's major activity as part of their pay data reports. The major activity reported for each establishment should be sufficiently descriptive to identify the industry and product produced or service provided. If an establishment is engaged in more than one activity, describe the activity at which the greatest number of employees work. Employers can use the North American Industry Classification System (NAICS) as guidance in describing major activities.

Should a labor contractor, when filing its own Payroll Employee Report, assign employees to its own establishment(s) or the establishment(s) of the client employer?

Not only does a labor contractor need to supply necessary data to a client employer filing Labor Contractor Employee Report, a labor contractor may also be obligated to file its own Payroll Employee Report if it has 100 or more payroll employees (and at least one in California), including those who work for client clients.

When a labor contractor files a Payroll Employee Report, it should report using its own establishment(s) to which its employees were assigned. These establishments can be client employer worksites where the treatment of such a site as an establishment of the labor contractor employer otherwise comports with the rules for assigning employees to establishments. For additional information, see the FAQ "What does it mean for an employee to be "assigned to" an establishment?"

Should a labor contractor use the client employer's establishment when providing the necessary data for the client employer's Labor Contractor Employee Report?

Yes. When a labor contractor provides data for a client employer's Labor Contractor Employee Report, the labor contractor should indicate the client employer's establishment(s) to which the labor contractor employees were assigned. A client employer's Labor Contractor Employee Report must provide information on the client employer's establishment(s) to which labor contractor employees were assigned. Client employers should use their best efforts to provide information on their establishments to their labor contractors in advance of the labor contractor supplying data to the client employer.

V.B. JOB CATEGORIES, RACE/ETHNICITY, SEX

How should employers assign employees to a job category?

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

1. Executive or senior level officials and managers
2. First or mid-level officials and managers
3. Professionals
4. Technicians
5. Sales workers

6. Administrative support workers
7. Craft workers
8. Operatives
9. Laborers and helpers
10. Service workers

All jobs must be assigned to one of these ten categories. For additional guidance, employers can follow the guidance issued by the EEOC on job classifications, including Appendix E of the EEO-1 Component 1 Data Collection Instruction Booklet. (Please email PayDataReporting@calcivilrights.ca.gov for a copy of this instruction booklet if it is not available through the hyperlink above.)

How should employers report employees' race and ethnicity?

Employers should follow the EEOC's longstanding instructions for race and ethnicity identification. Specifically, employers must report employees according to these seven race/ethnicity 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

CRD recognizes the limitations of these categorizations, but is initially adopting these from the EEO-1 survey for consistency with federal reporting and to facilitate reporting by employers. Similarly, CRD is initially adopting the EEOC's method for race/ethnicity identification.

Employee self-identification is the preferred method of identifying race/ethnicity information. If an employee declines to state their race/ethnicity, employers must still report the employee according to one of the seven race/ethnicity categories, using (in the following order): current employment records, other reliable records or information, or observer perception. CRD recognizes the risk of inaccurate racial identification based on observer perception alone; this method should only be used after making a good faith effort to obtain race/ethnicity information from the employee or from other reliable records. When an employer uses observer perception, CRD encourages employers to utilize the clarifying remarks field to state they have done so, stating for example: "The race/ethnicity of [number] employees in this employee grouping is being reported based on observer perception."

Important: For the 2023 Labor Contractor Employee Reports, employers must report the race/ethnicity of labor contractor employees. Last year, for the 2022 Reporting Year, CRD permitted employers to report "unknown" race/ethnicity for a particular labor contractor employee in certain circumstances, but CRD cautioned "employers and labor contractors that they should not expect this option in the future and should implement plans to obtain accurate information from employees for subsequent reporting years."

How should employers report employees' sex?

Under the Gender Recognition Act of 2017 (Senate Bill 179), California officially recognizes three genders: female, male, and non-binary. Therefore, employers should report employees' sex according to these three categories. CRD requires employers to report non-binary employees in the same manner as male and female employees.

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 self-identified pronouns.

Important: For the 2023 Labor Contractor Employee Reports, employers must report the sex of labor contractor employees. Last year, for the 2022 Reporting Year, CRD permitted employers to report "unknown" sex for a particular labor contractor employee in certain circumstances, but CRD cautioned "employers and labor contractors that they should not expect this option in the future and should implement plans to obtain accurate information from employees for subsequent reporting years."

V.C. PAY

Which pay bands should an employer use?

For the 2023 Reporting Year (pay data reports due to CRD in 2024), the pay bands are:

1. $19,239 and under
2. $19,240 – $24,959
3. $24,960 – $32,239
4. $32,240 – $41,079
5. $41,080 – $53,039
6. $53,040 – $68,119
7. $68,120 – $87,359
8. $87,360 – $112,319
9. $112,320 – $144,559
10. $144,560 – $186,159
11. $186,160 – $239,199
12. $239,200 and over

Importantly, the pay bands for the pay data reports due to CRD in 2024 (covering Reporting Year 2023) are the same pay bands used last year. You must use the pay bands listed above, which reflect the most recent pay bands established by the U.S. Bureau of Labor Statistics in the Occupational Employment and Wage Statistics survey.

What measure of pay should employers use to assign employees to the appropriate pay band?

To identify the particular pay band in which to count an employee, the employer must "calculate the total earnings, as shown on the Internal Revenue Service Form W-2," for each employee in the Snapshot, for the entire Reporting Year. Employers must use "W-2 Box 5 – Medicare wages and tips" for the entire Reporting Year. However, if any employee has wages not reported in Box 5, as may be the case for an H-2A visa holder, for example, use W-2 Box 1 for that employee and note this in the associated clarifying remarks field.

Important: If a labor contractor employee has worked for more than one client employer over the course of the calendar year, their W-2 Box 5 wages should be allocated respectively to each client employer, based on the wages for work performed for that client employer, for the purposes of reporting on their pay.

Unlike the federal EEO-1 Component 2 collection from 2017 and 2018, in which the EEOC required employers to use W-2 Box 1, CRD is generally requiring W-2 Box 5.

Should employers calculate and report annualized earnings for employees who did not work the entire Reporting Year?

No. The employer must use the W-2 Box 5 income of an employee, regardless of whether the employee worked the full calendar year. Employers should **not** annualize an employee's earnings if they did not work the entire Reporting Year.

If an employee's W-2 is corrected, what should an employer do?

If an employee's W-2 is corrected **before** the employer submits its pay data report to CRD, the employer should report the corrected W-2 information. If an employee's W-2 is corrected **after** the employer submits its pay data report to CRD, and the correction would put the employee in a different pay band than originally reported or would otherwise require a correction on the employer's pay data report, the employer should promptly enter the pay data reporting portal, decertify the incorrect report, and submit a corrected report, identifying the corrected cells and explaining the correction in the relevant clarifying remarks field(s).

V.D. HOURS WORKED

How are employees' total hours worked calculated?

When calculating the total hours worked of a **non-exempt** employee, employers should utilize timesheets (or other records) to calculate the actual hours worked by the employee **plus** the hours the employee was on any form of paid time off for which the employee was paid by the employer (such as vacation time, sick time, or holiday time). Non-exempt employees are those covered by orders of the California Industrial Welfare Commission or the federal Fair Labor Standards Act (FLSA).

When calculating the total hours worked of exempt employee, employers should utilize either timesheets (or other records) to calculate the actual hours worked by the employee plus the hours the employee was on any form of paid time off for which the employee was paid by the employer (such as vacation time, sick time, or holiday time), if such records are maintained. Otherwise, employers should calculate each exempt employee's total hours worked by multiplying the total number of days actually worked during the Reporting Year plus the total number of days on any form of paid leave for which the employee was paid by the employer (such as vacation time, sick time, or holiday time), by the average number of hours worked per day by the employee. If the employer records the number of hours worked by some exempt employees but not others, the employer may report the actual hours worked for the tracked employees and may use a proxy for those whose hours are not tracked. "Proxy" refers to the number of hours calculated from the formula detailed above for calculating an exempt employee's hours when the employee does not keep timesheets (or other records).

Using the proxy formula requires the employer to calculate an exempt employee's hours worked individually. Therefore, there is not necessarily one set proxy for all full-time employees or all part-time employees.

CRD is requiring employers to include time during which the employee was on any form of paid time off for which the employee was paid by the employer, because such pay will be included on the employee's W-2.

Important: If a labor contractor employee has worked for more than one client employer over the course of the calendar year, their hours worked should be allocated respectively to each client employer, based on the hours of work performed for that client employer.

May an employer use the "federal proxy" for calculating the hours worked by exempt employees who do not keep records of their hours?

Employers may use a proxy methodology for calculating the hours worked by exempt employees who do not keep records of their hours. Employers are to calculate such an employee's total hours worked by multiplying the total number of days actually worked plus the total number of days on any form of paid leave for which the employee was paid by the employer (such as vacation time, sick time, or holiday time), by the average number of hours worked per day by the employee.

To identify the average number of hours worked per day by a particular employee, CRD does not expect an employer to retroactively track the employee's hours. Instead, CRD expects the employer to make a reasonable estimation based on available information. A reasonable estimation may be 8 hours per day for a full-time employee and 4 hours per day for a part-time exempt employee. Therefore, CRD's approach is not inconsistent with the EEOC's approach in the EEO-1 Component 2 collection from 2017 and 2018. In that collection, the EEOC permitted employers to "report a proxy of 40 hours per week for full-time exempt employees and 20 hours per week for part-time exempt employees, multiplied by the number of weeks the employees were employed during the EEO-1 Component 2 reporting year."

Should employers calculate and report annualized hours for employees who did not work the entire Reporting Year?

No. Employers should not annualize the hours worked for employees who did not work the full Reporting Year.

What does an employer do after calculating the total hours worked and collecting other required information of each employee who worked during the Snapshot Period?

Once an employer has identified the job category, pay band, hours worked, race, ethnicity, and sex of each of its employees in the Snapshot Period, the employer counts the number of employees within each establishment (or, the establishment for single-establishment employers) with the **same** job category, pay band, race, ethnicity, and sex, and aggregates the hours worked by this group of like employees. If an employee does not share the same job category, pay band, race, ethnicity, or sex of any other employee in the establishment, the employer would report a count of one and that employee's total hours worked alone.

V.E. MEAN AND MEDIAN HOURLY RATES

What does SB 1162 require with respect to mean and median hourly rates?

Effective January 1, 2023, SB 1162 requires that all Payroll Employee Reports and Labor Contractor Employee Reports include the mean and median hourly rate of all groupings of employees with the same establishment, job category, race/ethnicity, and sex.

How do I calculate an employee's hourly rate?

Employers must calculate each employee's individual hourly rate before calculating the mean and median hourly rates. The hourly rate is derived from an employee's total annual earnings for the entire Reporting Year, as shown on the Internal

Revenue Service Form W-2 Box 5. To calculate the hourly rate, divide the employee's W-2 Box 5 income by the number of hours the employee worked.

If an employee has wages not reported in Internal Revenue Service Form W-2 Box 5, as may be the case for an H-2A visa holder, for example, use W-2 Box 1 for that employee's total annual earnings and divide that amount by the number of hours the employee worked.

How do I calculate the mean hourly rate?

Employers report the mean hourly rate for each grouping of employees with the same establishment, pay band, job category, race/ethnicity, and sex combination. The mean hourly rate is calculated by adding the individual hourly rates for each employee in the group, then dividing that sum by the number of employees in the group.

If there is only one employee grouped in the same establishment, pay band, job category, race/ethnicity, and sex combination, that employee's hourly rate is reported as the mean hourly rate.

How do I calculate the median hourly rate?

Employers are required to report the median hourly rate for each grouping of employees with the same establishment, pay band, job category, race/ethnicity, and sex combination. 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 grouped in the same establishment, pay band, job category, race/ethnicity, and sex combination, that employee's hourly rate is reported as the median hourly rate.

If the number of employees in the same establishment, pay band, job category, race/ethnicity, and sex combination is an even number, the median hourly rate is calculated by arranging the hourly wages of each employee in the group from smallest to largest and taking the mean of the two middle numbers. If there are only two employees in the same category, the median hourly rate would be the same as the mean of their two hourly rates.

Where do I report the mean and median hourly rates?

There are columns in the newly updated Excel template and .CSV example for the reporting of the mean and median hourly rates.

V.F. ADDITIONAL INFORMATION

What is a "private" employer? If our company is publicly traded on a stock market, are we required to comply with California's pay data reporting requirement?

A "private employer" refers to any employer that is not a government employer. Regardless of whether the employer is publicly traded, a non-government employer is required to comply with California's pay data reporting requirements if it has the threshold number of payroll employees or workers hired through labor contractors.

I did not file an EEO-1 Report last year. Does that mean I do not need to file a pay data report with CRD?

No. A private employer that meets the threshold number of payroll employees or labor contractor employees is subject to California's pay data reporting requirement, regardless of whether it is required to file an annual EEO-1 Report pursuant to federal law.

I don't file EEO-1 Reports, but instead file other types of reports with the federal government. Does that mean I do not need to file a pay data report with CRD?

No. A private employer that meets the threshold number of payroll employees or labor contractor employees is subject to California's pay data reporting requirement, regardless of whether it is required to file an EEO-1, EEO-3, EEO-4, EEO-5, IPEDS, or other type of report/data with the federal government.

May an employer submit a federal EEO-1 Report or other federal report to CRD to satisfy its obligation under Government Code section 12999?

No. SB 1162 removed the possibility that an employer may submit its federal report, such as an EEO-1 report or IPEDS data, in lieu of California pay data reports.

Do private colleges and universities need to file a Pay Data Report?

Yes, private colleges and universities are required to file a Payroll Employee Report if they employ 100 or more employees and have at least one employee in California, and separately a Labor Contractor Employee Report if they have 100 or more workers hired through labor contractors. This obligation is the result of SB 1162's removal of the requirement that only employers required to file an EEO-1 report were required to file pay data reports. Public colleges and universities remain exempt, as they are not "private employers" within the meaning of the pay data reporting requirements.

How do I know if an employer is a contractor with the state of California?

An employer is a state contractor if it has a contract with the state of California, which is information that each individual employer would have. The terms "state contract" and "contractor" are defined as follows:

- "Contract" or "state contract" means all types of agreements, regardless of what they may be called, for the purchase or disposal of supplies, services or construction to which a contract awarding agency is a party. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders. It also includes supplemental agreements or contract modifications with respect to any of the foregoing.
- "Contract awarding agency" or "awarding agency" means any department, agency, board, commission, division or other unit of the State of California, which is authorized to enter into state contracts
- "Contractor" means any person having a contract with a contract awarding agency or a subcontract for the performance of a contract with such an agency.

VI. PROFESSIONAL EMPLOYER ORGANIZATION (PEO) / HUMAN RESOURCE OUTSOURCING ORGANIZATION (HRO)

Can my PEO prepare and submit my company's California pay data report?

While it is the client employer's responsibility to comply with Government Code section 12999 and to certify the accuracy of its own company's pay data report(s), a PEO may prepare and file pay data report(s) with CRD on behalf of a client

employer. However, an official of the client employer, not from the PEO, must certify the accuracy of the report. A certifying official may authorize another person to electronically file the certification on their behalf.

The answer would be the same for a variation of this question concerning an HRO.

May a PEO submit a pay data report to CRD that covers more than one employer?

No. CRD will not accept any pay data report that covers more than one employer. Therefore, a PEO may not submit a pay data report that covers more than one employer, including the PEO itself. If subject to California's pay data reporting requirement itself, the PEO's own report would only cover the PEO and its own establishments and employees.

The answer would be the same for a variation of this question concerning an HRO.

My company recently changed from one PEO to another PEO. Which PEO should prepare the pay data report for my company?

It is the client employer's responsibility to comply with the law and to certify the accuracy of its pay data report. The client employer is in the best position to determine which PEO, if either, can prepare an accurate report for the full Reporting Year. If neither PEO is able to prepare an accurate report for the full Reporting Year, the client employer is not excused from its obligations under Government Code section 12999.

The answer would be the same for a variation of this question concerning an HRO.

If a PEO is only contracted with a portion of a client employer, would the PEO be responsible for filing a pay data report for the entire client employer?

It is the client employer's responsibility to comply with the law and to certify the accuracy of its pay data report. If the client employer's PEO cannot prepare an accurate report that covers all of the client employer's establishments and/or employees that need to be reported on, the client employer is not excused from its obligations under the law.

The answer would be the same for a variation of this question concerning an HRO.

My company is an HRO and we process payroll for a number of clients – both under our FEIN as well as under the clients' FEINs in some circumstances. We have many smaller clients (below the 100 employee threshold) that we process payroll for under our (the HRO's) FEIN. Is our HRO required to file for any of our clients?

No. It is the client employer's responsibility to comply with the law and to certify the accuracy of its pay data report.

For a client employer that is subject to California's pay data reporting requirement, the client employer's pay data report must include its employees on whom it is required to report, even if some or all of those employees were paid under the HRO's FEIN.

A client employer that uses an HRO's FEIN for payroll purposes is not required to file if the client employer is otherwise not subject to California's pay data reporting requirement (for example, because the employer does not meet the threshold number of employees).

An HRO that is subject to California's pay data reporting requirement must include its own employees in its pay data report.

The answer would be the same for a variation of this question concerning a PEO.

My company is a production company in the entertainment industry which uses a motion picture payroll services company to pay the talent and crew whom we select, hire and manage on our projects. The motion picture payroll services company pays our talent and crew under the payroll company's FEIN. Do we file a Payroll Employee Report or Labor Contractor Employee Report for our talent and crew employees paid by the motion picture payroll services company?

In this scenario, the payroll services company would be treated as a PEO or HRO. Therefore, the production company employer would file a Payroll Employee Report, rather than a Labor Contractor Employee Report, for talent and crew employees paid by its motion picture payroll services company, but whom the production company selected, hired, and managed.

VII. ACQUISITIONS, MERGERS, AND SPINOFFS*

**Relates only to lawful organizational changes registered with California or other government authority*

In August 2023, our company, which had 75 employees inside and outside of California, acquired another company with 50 employees outside of California. Are we required to file a pay data report and, if so, for which employees and establishments?

Yes. For Reporting Year 2023, this employer is not required to combine pay and hours-worked data from both before and after the acquisition, but the employer may do so. In other words, the employer can report pay and hours worked either for the full Reporting Year by combining both companies' data from before and after the acquisition, or only the post-acquisition data. In either option, the employer must be consistent with how pay and hours-worked data are reported. If pay from both before and after the acquisition are reported, report hours-worked data from both before and after the acquisition. But, if pay is only reported for the period after the acquisition, report hours-worked data only for the period after the acquisition. Employers should note and explain the approach taken in the relevant clarifying remarks field(s).

The answer would be the same for a variation of this question concerning a merger.

Our company acquired another company in July 2023, but we do not have access to the acquired company's pay data. How should we file our pay data report?

Assuming this employer is subject to California's pay data reporting requirement (pre- or post-acquisition), for Reporting Year 2023 the employer may report pay and hours-worked data from only after the acquisition, ensuring that both the pay and hours-worked data are post-acquisition. And, note and explain the missing data in the remarks field(s).

The answer would be the same for a variation of this question concerning a merger.

My California company is a January 2023 spinoff of another company. Our former parent company is the owner of our employee's data from 2023. Which company is responsible for the spinoff's pay data report covering 2023?

Assuming this employer is subject to California's pay data reporting requirement (pre- or post-acquisition), for Reporting Year 2023 the employer may report pay and hours-worked data from only after the acquisition, ensuring that both the pay and hours-worked data are post-acquisition. Employers should note and explain the missing data in the relevant clarifying remarks field(s).

The answer would be the same for a variation of this question concerning a merger.

My California company is a January 2024 spinoff of another company. Our former parent company is the owner of our employee's data from 2023. Which company is responsible for the spinoff's pay data report covering 2023?

Assuming the former parent company is subject to California's pay data reporting requirement, the former parent company's pay data report submitted to CRD in 2023 (covering Reporting Year 2023) would include all of that company's employees during the Snapshot Period, including any employees now working for the spinoff. In 2025, assuming the spinoff is subject to California's pay data reporting obligation, the spinoff would file a pay data report covering its employees from Reporting Year 2024.

VIII. TECHNICAL ISSUES

I am having technical issues. What should I do?

The EEOC has created a user guide (with screen shots) to assist with common technical issues. Please use the following link: https://calcivilrights.ca.gov/pdr-users-guide.