

CALIFORNIA RELEASES NEW GUIDANCE ON PAY DATA REPORTING: 4 KEY CHANGES FOR EMPLOYERS TO NOTE

Insights
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California employers with at least 100 employees are likely familiar with the pay data reporting requirements that were enacted in 2020. Recent amendments under SB 1162, however, make some significant changes for 2023. You may have noticed that SB 1162's job posting requirements (which we discussed [here](#) and [here](#)) have garnered the most attention – at least until now. But don't forget to review the updated FAQs on pay data reporting, which were recently issued by the California Civil Rights Department (CRD). What are the four main pay data reporting changes that will affect your business in 2023 and beyond?

1. New Deadline for Pay Data Reports

In previous years, pay data reports had been due by the end of March. However, [SB 1162](#) changed this deadline so that reports will now be due the second Wednesday of May each year. This year, the deadline for filing pay data reports will be **May 10**.

While the CRD (which was formerly the Department of Fair Employment and Housing) has only updated their FAQs so far to reflect the changes made by SB 1162, the department has indicated that it plans to provide updated report templates and other documents, and that the portal to receive pay data reports will open on February 1.

2. Mean and Median Hourly Rates

The most significant data set change made by SB 1162 is a new requirement for employers to calculate and report the

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mean and median hourly rate of employees by establishment, job category, race/ethnicity, and sex. The updated FAQs provide a detailed explanation of how employers are to make these calculations.

It is important to note that you will be required to calculate each employee's individual hourly rate before calculating the mean and median hourly rate for each grouping of employees within the same establishment, job category, race/ethnicity, and sex. This will be a significant administrative burden on employers, so you should begin the planning process now.

3. Increased Penalties for Noncompliance

Previously, the CRD was authorized to take civil action against an employer that failed to submit pay data reports, obtain an injunction requiring them to do so, and recover the costs for bringing such an action. However, SB 1162 adds civil penalties of \$100 per employee for the failure to submit pay data reports, which increases to \$200 per employee for subsequent violations. The FAQs have been updated to reflect these new civil penalties.

4. "Labor Contractor" Employee Reports

The most significant change made by SB 1162 is the requirement that employers with 100 or more employees hired through "labor contractors" must submit a separate pay data report covering such employees hired in the prior calendar year. Of course, this is in addition to the pay data report employers will need to submit for their own workforces. Although employers were mainly left in the dark about this new requirement, the updated FAQs provide some much-needed information on this new requirement.

As an initial matter, the CRD now refers to the pay data reports that an employer will file on its own employees as "payroll employee reports." The reports filed on employees from labor contractors are referred to as "labor contractor employee reports." Employers reviewing the CRD FAQs and future additional guidance will need to understand the difference between these two terms.

As discussed above, the CRD expects to provide new versions of pay data reporting resources by February 1. So, you should keep an eye out for these additional templates and resources and additional guidance and clarification.

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In the meantime, the updated FAQs provide some initial clarification of the “labor contractor employee report” requirements, including the following:

- Labor contract employees located inside and outside of California are counted for purposes of determining whether an employer has 100 or more labor contractor employees.
- You should also count part-time labor contractor employees and those on paid or unpaid leave — including the California Family Rights Act leave, pregnancy leave, disciplinary suspension, or any other employer-approved leave of absence.
- Employers will only need to submit one labor contractor report, even if they have multiple labor contractors.
- Like payroll employee reports, the report will need to group the labor contract employees who have the same job category, pay band, race/ethnicity, and sex.
- Like payroll employee reports, employers will need to calculate the labor contract employee group’s mean and median hourly rate.
- The Snapshot Period for the labor contractor employee reports will be a single pay period between October 1 and December 31 of the reporting year. The CRD recommends that the client employer collaborate with each of its labor contractors to choose the single pay period between October 1 and December 31 of the Reporting Year.
- However, the Snapshot Period is not the period to be utilized for calculating the labor contractor employee’s pay or hours worked.

While these updated FAQs are helpful and answer some of the outstanding questions about the “labor contractor” employee reporting requirements, many questions remain. For example, SB 1162 defines a “labor contractor” to mean someone who supplies a client employer with workers to perform labor within the client employer’s “usual course of business.” The updated FAQs repeat the statutory definition but shed no additional light on how this term should be interpreted (for example, in accordance with AB 5 and the “ABC test” for determining employee/independent contractor status.)

Conclusion

We will continue to monitor updates from the CRD on pay data reporting requirements and required report formatting. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. Our attorneys can assist you in preparing your company's pay data reports. Any questions may be directed to your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Pay Equity Practice Group](#).