



# California Employers Have 3 Short Months to Report Pay Data: Your 3-Step Compliance Plan

Insights

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Attention, California employers: You only have three short months to report last year's pay data to the state, and you need a plan of action in order to comply with this stringent law. The good news is that the state just published detailed FAQs to help guide employers through the process. The better news? Your FP attorneys have combed through all 20,000 words of detail and come up with a simple three-step plan for you to come into compliance.

## Key Developments

- The deadline to report your 2023 pay data is **May 8, 2024**. There is no deferral period and you must submit all reports by this date.
- [The California Civil Rights Division \(CRD\) published updated FAQs for pay data reporting](#) on February 1.
- The agency also opened the [portal for reporting](#) on February 1.

## What's New?

You might be familiar with the original pay data law passed in 2020, [which affects private employers with 100 or more employees](#). You may also be familiar with the 2022 amendments that [expanded the data reporting requirements and added penalties for nonfilers](#). Those changes also increased obligations for the manufacturing, warehousing, and hospitality industries – and all others that rely on labor contractor employees – by requiring a separate pay data report for labor contractor employees, among other changes.

But there are a few critical updates to catch up on. The CRD made changes to the reporting templates, which require new or additional information than was required last year.

### ***Remote Workers***

Three new data fields were added to the reporting requirement to collect remote worker data:

- The number of employees that do not work remotely;
- The number of remote employees located in California;

- The number of remote employees outside of California assigned to a California establishment.

For purposes of pay data reporting, “remote worker” is limited 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 who work a hybrid schedule or partial teleworking arrangements where they are 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.

Employers should use the Snapshot Period to determine whether an employee falls under the definition of “remote worker” for purposes of pay data reporting. For employees who may have been fully remote for part of the year but transitioned to a hybrid or in-office role for the other part of the year, whether they were a “remote worker” is determined by the Snapshot Period. If an employee was expected to report in person to a physical establishment during the Snapshot Period, whether or not they work remotely at other times of the year, the employee should not be reported as a remote worker.

### ***Reporting “Unknown” for Demographic Information is No Longer Permitted***

For the reporting year 2022, the CRD allowed employers to report “unknown” race/ethnicity for labor contractor employees in certain instances. This is no longer permitted. You will need to seek this information from your labor contractors in order to include it on the reports.

### **Penalties for Noncompliance**

There are penalties for employers who fail to comply with the pay data reporting requirements. Penalties for nonfilers include civil penalties of \$100 per employee, with the penalties increasing to \$200 per employee for a subsequent failure to file a required report. These penalties are also assessable against a labor contractor that has failed to provide required pay data to a client employer in a timely fashion.

### **3 Steps to Take**

#### **1. Determine whether you need to file a Payroll Employee report or a Labor Contractor Employee report, even if you are based outside of California.**

In addition to the Payroll Employee Report, 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. 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.

You should first review whether you will need to file a pay data report this year, either for payroll employees or labor contractors. Employers who did not file an Employee Payroll report last year based on having fewer than 100 employees should review whether your headcount has changed, necessitating a report to be filed this year. In addition, review whether you have used 100 or more labor contractor employees (and at least one California employee), which would necessitate filing a Labor Contractor Employee report.

Employers based outside of California with 100 or more employees who have even 1 employee in California are required to file a pay data report.

## **2. Identify your labor contractors and request the required labor contractor pay data report information.**

You should identify your labor contractors and send out written communications to request the information needed to complete the Labor Contractor Employee report. While labor contractors are required to comply with these requests – and there are penalties for not doing so – the obligation to file the report falls on the employer using the labor contractors. Ensure your written request for information from labor contractors is sent out as soon as possible to allow them to timely gather the information, especially without the possibility of responding “unknown” for demographic information.

## **3. Prepare a plan for submitting your pay data report(s) before the May 8 deadline.**

Designate the individual or team of individuals who will have responsibility for ensuring all information is gathered for the Payroll Employee and Labor Contractor Employee reports and file the reports by the May 8 deadline. You should get started on this early to ensure compliance and get any questions about the new requirements answered well before the deadline.

## **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](#).

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