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Revised California Pay Reporting Requirements (SB 1162)

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Agenda

- 01** Background
- 02** Key Changes to Pay Data Reporting Under CA SB 1162
- 03** Required Reporting Content
- 04** Practical Takeaways

Refresher On California Pay Data Report Requirements



- California Pay Data requirements were implemented in 2020. First filing was due March 2021.
 - ✓ Applied to employers with 100 or more employees nationwide with at least one employee in California who were required to file an EEO-1 Report; and
 - ✓ Covered only employees of private employers
- SB 1162 introduced February 17, 2022; Signed into law September 27, 2022
- FAQs were released on ~ January 20th
- Technical User Guide released ~ January 29th (Version 5.1 released on February 1st)
- Excel Template materials – expected February 1st

Key Changes to Pay Data Reporting Under CA SB 1162

New Timing

- Second Wednesday in May
- In 2023, the deadline is May 10th

New Scope

- Requires reporting even if employer does not have an EEO-1 filing requirement
- Covers employees & “labor contractor” workers

New Pay Data

- Median hourly rate
- Mean hourly rate

New Report

- In addition to changes to the Payroll Employee Report, there is a new “Labor Contractor” report

California Now Requires Two Pay Data Reports

- *Payroll Employee Report*
 - *covers the W-2 workers employed during the selected Snapshot Period*
- *Labor Contractor Report*
 - *covers the W-2 “labor contractor” workers that performed work for a “client employer” within the client employer’s “usual course of business” during the selected Snapshot Period*

Key Definitions

- ★ • **Client Employer** – A private individual, entity, or other person as defined by Government Code section 12925 (including one or more entities acting in concert) that has workers hired through labor contractors
- **Labor Contractor** – 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
- ★ • **Labor Contractor Employee** – An individual on a labor contractor's payroll, including a part-time individual, for whom 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
- **Labor Contractor Employee Report** – The type of pay data report by which a client employer annually reports data on their labor contractor employees

Key Definitions

- **Employee** – 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
- **Employer** – A private individual, entity, or other person as defined by Government Code section 12925 (including one or more entities acting in concert) that is obligated to file a Payroll Employee Report and/or a Labor Contractor Employee Report
- ★ • **Payroll Employee** – 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
- **Payroll Employee Report** – The type of pay data report by which employers annually report to CRD data on their payroll employees

Snapshot Period: Important Date Range That Anchors Coverage Issues & Scope of Employees

Payroll Employee Report

- Single Pay Period between October 1st and December 31st of the Reporting Year

Labor Contractor Employee Report

- Single Pay Period between October 1st, and December 31st of the Reporting Year
- Client Employer and Labor Contractors may collaborate to select Snapshot Period
- Client Employer may use same Snapshot Period across Labor Contractors, but are not required to do so

Threshold Question: Who Must File?

Payroll Employee Report

Private Employers with:

1. 100 or more **employees** employed during the Snapshot Period or “regularly employed” 100 or more employees during reporting year, **and**
2. at least one **employee** working within California or assigned to a California establishment
 - For purposes of the threshold question only, the employee count includes employees outside of CA
 - Includes part-time and temp employees on payroll

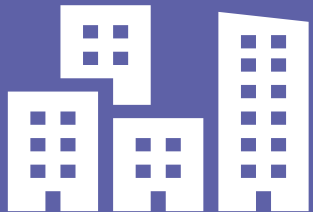
Labor Contractor Employee Report

Client Employers with:

1. 100 or more **labor contractor employees** across all labor contractors during the Snapshot Period or “regularly employed” 100 or more during the reporting year **and**
2. at least one **labor contractor employee** working within California or assigned to a California establishment
 - For purposes of the threshold question only, the Labor Contractor Employee count includes LCEs outside of CA

“Regularly employed” applies to certain industries that have recurring, rather than constant operations

Integrated Enterprise



- Entities with fewer than 100 employees or labor contractor employees will report only if part of an “integrated enterprise” with more than 100 employees or labor contractor employees in total
- To determine if an integrated enterprise, consider the following factors:
 - a. interrelation of operations,
 - b. common management,
 - c. centralized control of labor relations, and
 - d. common ownership or financial control.
- **Note:** Each legal entity must file separate reports. Affiliated entities may *only* file together if part of an “integrated enterprise”

Who Is Included in Report(s)?

Payroll Employee Report

Employees:

1. Employed during Snapshot Period and
 - a. Assigned to California establishments *or*
 - b. Working from California
 - Includes employees assigned to California establishments but who work at a client site outside of California

Labor Contractor Employee Report

Labor Contractor Employees:

1. Who worked for Client Employer during Snapshot Period and
 - a. Assigned to California establishments *or*
 - b. Working from California
 - Includes labor contractor employees assigned to California establishments but work at a client site outside of California

Only Employees who were employed during the snapshot period are included in either report

Information to Report by Establishment?

Payroll Employee Report

Number of employees at each establishment by:

1. Race/Ethnicity/Sex
2. EEO-1 Job Category (based on Job title)
3. Pay Band (Based on W-2, Box 5 Wages)
4. Hours Worked
5. Mean and Median Hourly Rate

Labor Contractor Employee Report

Number of labor contractor employees at each Client Employer establishment by:

1. Race/Ethnicity/Sex
 2. EEO-1 Job Category (based on Job Title)
 3. Pay Band (Based on W-2, Box 5 Wages)
 4. Hours Worked
 5. Mean and Median Hourly Rate
- Pay and Hours Worked to be apportioned by labor contractor for each client employer
 - **2022 reporting only:** CRD will not assess penalties for failing to include race, ethnicity, and gender data in Labor Contractor Reports

“

***Wow – this is a lot of information!
How do we capture and produce
the data needed for the labor
contractor report?***

”

Data Gathering Options For Labor Contractor Reporting

Option 1: Request that Labor Contractors provide “summarized” data in the format defined by CRD. Client Employers will then be able to add the data collected from each Labor Contractor into the report. Would require that Labor Contractors have information regarding the Client Employer’s (1) legal entity; and (2) establishment (location)

Option 2: Collect employee level data from Labor Contractors

Both options require discussions and collaboration between Client Employers and their Labor Contractor partners!

California Pay Data Reporting Portal – User Guide



- The employer would fill in the Pay Data Report Template (Excel) as follows:
 - The example contains only a partial excerpt from the contents of the Pay Data Report Template.
 - See Appendix A: Building the CA Pay Data Report Excel File for a complete and detailed example.

Payroll Employee Report

Section II.A - Establishment Information			Section II.B - Employee Detail						
Establishment Name*	Address Line 1*	Total Number of Employees at Establishment*	Job Categories*	Race/Ethnicity/Sex*	Pay Band*	Number of Employees*	Mean - Hourly Rate*	Median - Hourly Rate*	Totals Hours*
Establishment A	Atlantic Ave	70	5	B60	6	30	40	35	120,000
Establishment A	Atlantic Ave	70	4	A20	8	40	50	45	100,000

Labor Contractor Employee Report

Section II.A - Establishment Information			Section II.B - Employee Detail			
Establishment Name*	Address Line 1*	Total Number of Employees at Establishment*	Labor Contractor Name*	Labor Contractor FEIN*	Snapshot - Begin Date	Snapshot - End Date
Establishment A	Atlantic Ave	70	Pete's Team	123456789	12/1/2022	12/15/2022
Establishment A	Atlantic Ave	70	Pete's Team	123456789	12/1/2022	12/15/2022

California Pay Data Reporting Portal – User Guide



- The employer would fill in the Pay Data Report Template (Excel) as follows
 - The example below contains only a partial excerpt from the contents of the Pay Data Report Template
 - See Appendix A: Building the CA Pay Data Report Excel File for a more complete and detailed example

Payroll Employee Report

Section II.A - Establishment Information			Section II.B - Employee Detail						
Establishment Name*	Address Line 1*	Total Number of Employees at Establishment*	Job Categories*	Race/Ethnicity/Sex*	Pay Band*	Number of Employees*	Mean - Hourly Rate*	Median - Hourly Rate*	Totals Hours*
Establishment A	Atlantic Ave	70	5	B60	6	30	40	35	60,000
Establishment A	Atlantic Ave	70	4	A20	8	40	50	45	80,000
Establishment B	Pacific Ave	30	7	C40	7	15	39	37	30,000
Establishment B	Pacific Ave	30	3	A10	8	10	52	47	20,000
Establishment B	Pacific Ave	30	8	C10	7	5	42	37	10,000

Labor Contractor Employee Report

Establishment Name*	Total Number of Employees at Establishment*	Labor Contractor(s) Name*2	Labor Contractor(s) FEIN*3	Snapshot - Begin Date	Snapshot - End Date	Job Category	Race/Ethnicity/Sex	Pay Band	Number of Employees*	Mean - Hourly Rate*	Median - Hourly Rate*	Total Hours*
Establishment A	70	Pete's WorkForce	123456789	12/1/2022	12/15/2022	4	C60	8	30	57.00	56.88	3,200
Establishment A	70	Pete's WorkForce	123456789	12/1/2022	12/15/2022	5	D10	3	40	15.00	12.50	1,600
Establishment B	30	Ann's Temp Agency	341580040	11/1/2022	11/15/2022	1	C20	11	10	115.00	115.00	1,987
Establishment B	30	Ann's Temp Agency	341580040	11/1/2022	11/15/2022	2	C50	10	5	90.00	88.75	9,050
Establishment B	30	Ann's Temp Agency	341580040	11/1/2022	11/15/2022	2	B10	10	15	85.00	86.75	9,112

Employer Information Required for *Payroll Employee Reports*



- Employer Name
- Employer FEIN
- Employer CA SEIN
- Employer NAICS
- Employer Address
- Is Employer a Contractor of State of CA?
- Snapshot Period Dates
- Employer's Total U.S. Establishments
- Employer's Total U.S. Employees
- Employer's Total CA Establishments
- Employer's Total CA Employees
- Employer's Ownership, Affiliation, or Enterprise
- Contact Information
- Certifying Official

Establishment Information Required for *Payroll Employee Reports*



- Establishment Name
- Establishment Address
- Establishment NAICS
- Establishment Major Activity
- Total Employees at Establishment
- Was Pay Report Filed for Establishment Last Year?
- Was EEO-1 Report Filed for Establishment Last Year?
- Is this Establishment Employer's HQ?

Labor Contractor Information Required for Labor Contractor Employee Reports



- Labor Contractor Name
- Labor Contractor FEIN
- Labor Contractor Snapshot Dates

Employee Data Needed to Complete Reporting

Payroll Employee Report

1. Race/Ethnicity/Sex
2. EEO-1 Job Category
3. W-2 Box 5 Wages
 - Do not annualize wages for partial year employees
4. Hours Worked
 - **Non-Exempt:** Actual hours worked and PTO (e.g., vacation, holiday, sick, paid LOA)
 - **Exempt:** Actual hours worked and PTO or Average Hours Worked and PTO
5. Mean and Median Hourly Rate

Labor Contractor Employee Report

1. Race/Ethnicity/Sex
2. EEO-1 Job Category
3. W-2, Box 5 Wages
 - Gather/report only the wages applicable to each Client Employer
4. Hours Worked
 - Actual hours worked by the employee for Client Employer
 - If a labor contractor employee worked for more than one client employer, hours worked should be allocated accordingly
5. Mean and Median Hourly Rate

PEO Considerations



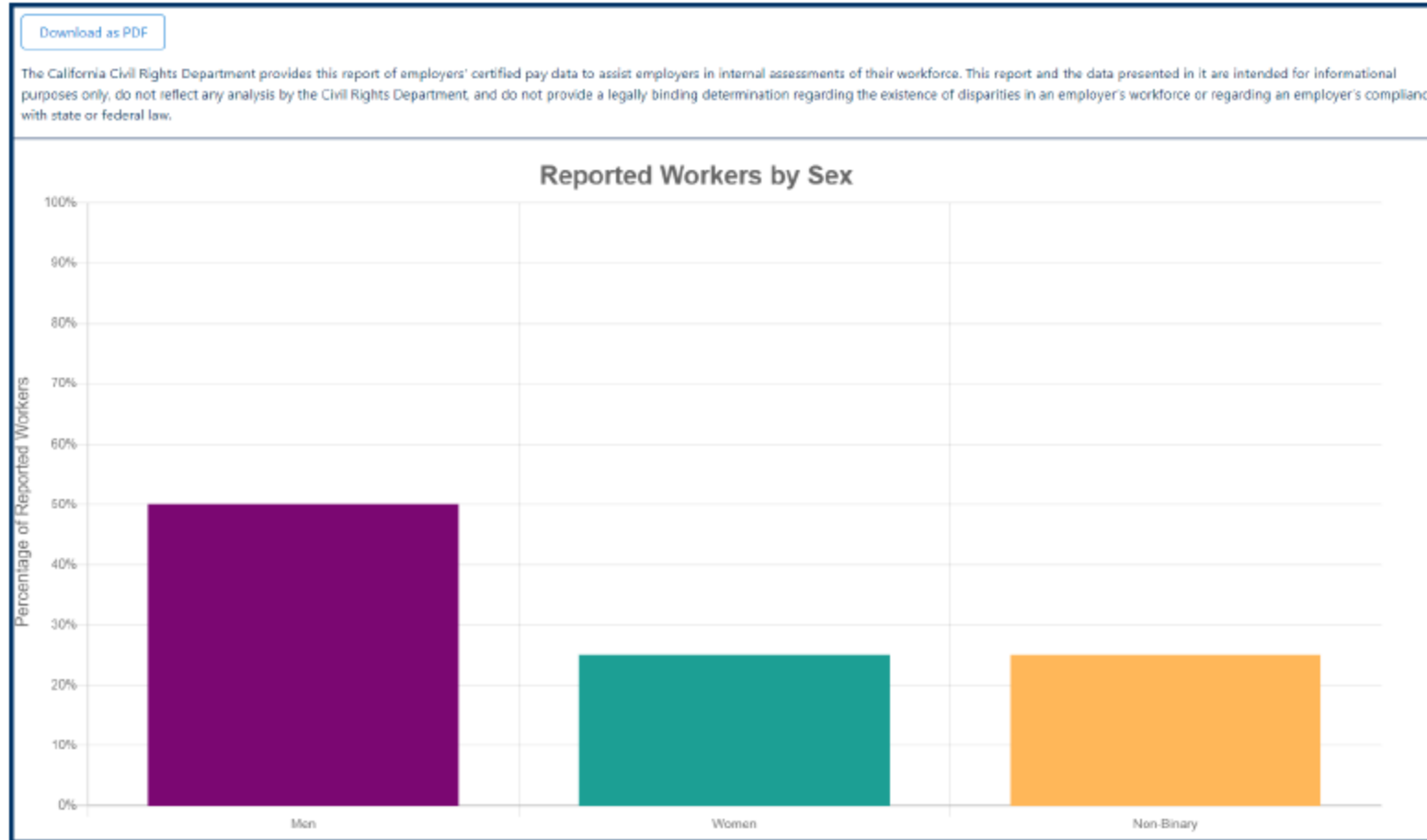
- There are a few important considerations that Professional Employer Organizations (PEOs) and companies that utilize PEOs need to keep in mind:
 - PEOs may not submit reports that include multiple employers
 - PEOs may prepare and submit reports for companies, however, ***the company must certify***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

Data Privacy Concerns and Confidentiality



- Pay Data Reports are protected from disclosure by the CRD and DLSE in the same manner that the EEO-1 Reports are protected from disclosure by the EEOC
 - Information may not be made available prior to the “institution of an investigation or enforcement proceeding by CRD or DLSE . . . , and only to the extent necessary for purposes of the enforcement proceeding”
- CRD publishes aggregate reports
- After certification, CRD will generate charts showing geographical representation of data
- While not directly related to report preparation, it is important that in-house legal teams are generally aware of this reporting obligation. May be requested by litigants in discovery. If so, it is important for litigation teams to understand the scope, structure and limitations of reporting requirements.

3.8.1 Certification and Submission Charts



Certification and Submission

- After certification is complete the Pay Data Portal will produce a **graphical** representation of your pay data.
- An email with proof of certification will be sent to the point of contact.
- A series of charts that represent your company's Pay Data will be included.

Actions Available

- Select "Download as a PDF" to download a PDF of this graphic report.

Enforcement of Pay Data Reporting Requirements



- CRD may bring claim for non-compliance
- CRD may seek an order requiring the employer to comply with these requirements and seek costs
- A court may impose civil penalties
 - \$100 per employee for failure to file
 - \$200 per employee for subsequent failures to file
- Labor contractor “shall supply” all necessary pay data to the Client Employer
 - Per FAQs “pay data” is defined as “all the data that must be reported to CRD in a pay data report, including but not limited to pay rates and demographic information about employees”
 - Penalties can be assessed against Labor Contractor who fails to provide pay data to Client Employer resulting in the inability to submit a “complete and accurate report”

Practical Takeaways



- Construct team of internal stakeholders to assist in identifying in scope labor contractors and data collection requirements
- Coordinate and collaborate with all relevant labor contractors identified regarding:
 - Snapshot dates to be utilized
 - Labor Contractor Employees to be reported and the Client Employer establishments to which they are assigned
 - What data is currently shared that may provide information to the level of detail required
 - Timelines for data production or report generation
- Consider data transfer process between employers and labor contractors to ensure data protections are in place
- Evaluate how labor contractor data will be compiled, distilled and formatted into CRD format
- Consider ongoing change management requirements to ensure more efficient and potentially fulsome reporting in future years

Visit the Website



- Website: <https://calcivilrights.ca.gov/paydatareporting/>
- Portal and templates expected to be available on February 1, 2023
- Log on and create a new password if needed; familiarize yourself with portal if new to reporting

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California Pay Data Reporting

2022 Pay Data Reports are due 5/10/2023

California employers of 100 or more employees and/or 100 or more workers hired through labor contractors must report pay and hours-worked data by establishment, job category, sex, race, and ethnicity to the Civil Rights Department (CRD) annually. This reporting is required under Government Code section 12999, as amended by Senate Bill 1162.

The buttons below link to the portal through which employers submit their data to CRD (Pay Data Reporting Portal), a guide to using the portal (User Guide), Excel Templates that employers may use to submit their data (Excel Templates), examples of CSV submissions (CSV Examples), and answers to frequently asked questions (FAQs).

Pay Data Reporting Portal	User Guide	Excel Templates	CSV Examples	FAQs
Pay Data Reporting Results	Reply to Notice and/or Submit Pay Data Related Questions	Pay Data in the News		



Questions?