HR COMPLIANCE OVERVIEW

California FAQs on Workforce Pay and Data Reporting Requirement

Employers that have any employees in California may be subject to a new state law that requires annual reporting, according to answers to frequently asked questions (FAQs) issued by the state's Department of Fair Employment and Housing (DFEH) on Feb. 16, 2021.

The FAQs provide this and other information about Senate Bill 973 (SB 973), which requires employers to file information about their employees' pay and work hours with the DFEH every year, starting in 2021. Specifically, the new requirement applies to every private employer that:

- Has 100 or more employees, at least one of whom works (teleworking or not) in California; and
- Is required to file the federal Employer Information Report (EEO-1) with the U.S. Equal Employment Opportunity Commission (EEOC).

This Compliance Overview provides selected portions of the DFEH's 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
- User Guide for pay data report filers
- 2021 Deferral Request Form

Important Dates

Feb. 16, 2021

First day the portal for employers to submit 2020 pay and work hour data to the DFEH became available.

March 31, 2021

Deadline for employers to file data about their employees' pay and work hours from 2020 with the state.

March 31, 2022

Deadline to file 2021 data. Employers subject to the new law must file reports by March 31 every year.

Reporting Basics

Required Information

The new 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.

I. Introduction

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

The new law requires employers of 100 or more employees to report to DFEH pay and hours-worked data by establishment, job category, sex, race and ethnicity (hereinafter "pay data"). By creating a system by which large employers report pay data annually to DFEH, the state sought to encourage these employers to self-assess pay disparities along gendered, racial and ethnic lines in their workforce and promote voluntary compliance with equal pay and anti-discrimination laws. In addition, SB 973 authorized DFEH to enforce the California Equal Pay Act, which prohibits unjustified pay disparities. The California Fair Employment and Housing Act, already enforced by DFEH, prohibits pay discrimination. Employers' pay data reports will allow DFEH to more efficiently identify wage patterns and allow for effective enforcement of equal pay or anti-discrimination laws, when appropriate.

Where is California's pay data reporting requirement codified in law?

The pay data reporting requirement is contained in Government Code section 12999. In addition, DFEH intends to issue regulations implementing this statute consistent with DFEH's existing regulations (California Code of Regulations, Title 2, Division 4.1).

Will an employer's pay data be publicly available?

The new law prohibits DFEH, the California Division of Labor Standards Enforcement (DLSE) and their staff from making "public in any manner whatever any individually identifiable information obtained pursuant to their authority under this section prior to the institution of an investigation or enforcement proceeding by [DFEH and/or DLSE] under Section 1197.5 of the Labor Code or Section 12940 involving that information, and only to the extent necessary for purposes of the enforcement proceeding. 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" (defined above) submitted to DFEH shall be considered confidential information and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

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

The law states that "[DFEH] may develop, publish on an annual basis, and publicize aggregate reports based on the data obtained pursuant to their authority under this section, provided that the aggregate reports are reasonably calculated to prevent the association of any data with any individual business or person."

How long will DFEH keep employers' pay data?

DFEH must maintain pay data reports for at least 10 years.

How will DFEH keep the data submitted by employers secure?

DFEH'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.

Does the federal government already collect pay data from large employers?

The EEOC was ordered to and did collect these data for 2017 and 2018. Since then, the EEOC has stopped collecting these data.

II. Filing Requirements

Will DFEH's pay data reporting system be similar to the one used by the EEOC to collect EEO-1 Component 2 data?

To ease reporting by employers, DFEH is endeavoring to create a system that closely resembles the EEOC's system to the extent permitted by state statute.

What is the deadline for employers to submit their pay data report(s) to DFEH?

Employers must submit their pay data reports to DFEH on or before March 31, 2021, and then on or before March 31 each year thereafter.

May an employer receive an extension to file its pay data report after the March 31 deadline?

The deadline for filing a pay data report with DFEH is annually on March 31. If DFEH has not received a required report by the deadline, DFEH "may seek an order requiring the employer to comply with [California's pay data reporting] requirements and shall be entitled to recover the costs associated with seeking the order for compliance."

In light of the COVID-19 pandemic and the newly required pay data reporting under California law in 2021, DFEH will consider an employer's request that DFEH defer seeking an order for compliance with respect to a report due by March 31, 2021.

To request that DFEH defer seeking such an order for compliance (known as an "enforcement deferral period"), an employer must fill out DFEH's online request form before March 31, 2021, providing the reason for the request and other required information. DFEH will not consider requests submitted through any other method, such as email or phone. Nor will DFEH consider a request submitted by a third party on behalf of an employer, such as a Professional Employer Organization (PEO); the employer itself must submit the request, and any approved enforcement deferral period will apply only to that employer. The request form is available here. An employer that is granted a deferral will have through April 30, 2021, to file its report with DFEH. Employers are advised to not expect that DFEH will, in future years, similarly defer seeking an order for compliance.

How do employers submit their pay data reports to DFEH?

DFEH's pay data submission portal is available as of Feb. 16, 2021. The user guide for the portal and DFEH's report template (including detailed instructions and examples) are also available now. Now that the portal is live, an employer may submit its pay data report either by uploading an Excel or .CSV file using DFEH's template (suggested method) or by using the portal's fillable form.

Employers must use the online portal to submit their reports. DFEH will not accept reports by email or hard copy.

Multiple-establishment employers must report all of their establishment-level data in a single report. Multiple-establishment employers do not report consolidated data. That is because a multiple-establishment employer must report on all of its establishments, including those with fewer than 50 employees, in the same manner, because the law

does not differentiate between establishment size. In other words, DFEH does not permit employers to submit what is known in the federal EEO-1 survey as a "Type 6" list of establishments of fewer than 50 employees.

What are the penalties for employers who fail to file?

If DFEH does not receive the required report from an employer, it may seek an order requiring the employer to comply with these requirements and may be entitled to recover the costs associated with seeking the order for compliance.

III. Required Content

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 pay data report submitted to DFEH in 2021 will contain pay and hours-worked data from calendar year 2020 for employees employed during the Snapshot Period; 2020 is the Reporting Year.

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 DFEH.

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 calculating an employee's pay or hours worked. Instead, the Snapshot Period is used by an employer only to identify its employees who must be reported on in the employer's pay data 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.

For example, assume an employer has the same 200 employees for all of October 2020, and 100 employees are paid bi-weekly and 100 employees are paid monthly. Assume further the employer picks October 1 to October 15 as its Snapshot Period. For its pay data report, the employer would report on all 200 employees because they were all employed by the employer during the Snapshot Period, even if 100 of them did not receive pay in the Snapshot Period selected.

Which employers are required to submit pay data reports to DFEH?

The requirement applies to any private employer that has 100 or more employees and is required to file an annual EEO-1 Report pursuant to federal law. An employee is "an individual on an employer's payroll, including a part-time individual, whom the employer is required to include in an EEO-1 Report 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 chosen by the employer; 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. For example, in an industry that typically has a three-month season during a calendar year, an employer that employed 100 or more employees during that season regularly employed the requisite number of employees and would be required to file a pay data report to DFEH, if the employer is also required to file an EEO-1 Report.

Employees located inside and outside of California are counted when determining whether an employer has 100 or more employees. For example, an employer that had 50 employees inside California and 50 employees outside of California during the Reporting Year would be required to submit a pay data report to DFEH. An employer with no employees in California during the Reporting Year would not be required to file a pay data report with DFEH.

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. For example, for counting purposes, an employer has 100 employees when 60 individuals work every day and 40 individuals work alternate days to fill 20 positions, and there are no more than 80 individuals working on any working day. 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.

Consistent with federal EEO-1 filing requirements, an employer with fewer than 100 employees is required to file with DFEH if the company is owned or affiliated with another company, or there is centralized ownership, control or management (such as central control of personnel policies and labor relations) so that the group legally constitutes a single enterprise, and the entire enterprise employs a total of 100 or more employees.

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

The term "private employer" refers to any employer that is not a government employer. Regardless of whether the employer is publicly traded, a private employer is required to comply with California's pay data reporting requirement if it has the threshold number of employees (inside and outside of California), at least one employee in California, and is required to file an EEO-1 Report.

When determining whether an employer has 100 or more employees, does the employer count temporary workers provided by a staffing agency or independent contractors?

The law defines "employee" to mean "an individual on an employer's payroll, including a part-time individual, whom the employer is required to include in an EEO-1 Report and for whom the employer is required to withhold federal social security taxes from that individual's wages." If any temporary worker provided by a staffing agency or any independent contractor meets this definition of "employee," then that individual is counted.

Is an organization that files a federal EEO-3, EEO-4, or EEO-5 Report, and does not file an EEO-1 Report, subject to California's pay data reporting requirement?

No. California's pay data reporting requirement only applies to employers that are required to file EEO-1 Reports.

I did not file an EEO-1 Report in 2020 because the EEOC postponed the EEO-1 survey last year. Does that mean I do not need to file a pay data report with DFEH?

No. A private employer that meets the threshold number of employees is subject to California's pay data reporting requirement if it is required to file an annual EEO-1 Report pursuant to federal law. In determining whether an employer

is required to file an annual EEO-1 Report, the question is not whether the employer actually filed such a report or when the employer filed it. Thus, an employer must file a California pay data report with DFEH for Reporting Year 2020 (by March 31, 2021) if the employer is subject to EEO-1 reporting requirements under law, regardless of whether and when the employer actually files its federal report.

Are there different types of pay data reports?

Whether a single-establishment employer or multiple-establishment employer, each employer will submit a single pay data report to DFEH.

Multiple-establishment employers must report all of their establishment-level data in a single report. Multiple-establishment employers do not report consolidated data. That is because 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, DFEH does not permit employers to submit what is known in the federal EEO-1 survey as a "Type 6" list of establishments of fewer than 50 employees.

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

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

California's pay data report is purposefully designed to cover a single employer, its component establishments (if it has more than one establishment), and its employees who are assigned to those establishments. For a parent company and subsidiaries that are required to file with DFEH, the parent company may – but is not required to – submit a pay data report covering itself and its subsidiaries only if the companies constitute a single legal entity. In such a filing, the parent company would be the "employer" in Section I of the report, and Section II would cover all of the parent company's and subsidiaries' establishments and employees being reported on (with the applicable FEIN and SEIN provided in the clarifying remarks field for each row).

Alternatively, the parent company and subsidiaries may each submit its own pay data report. In such a filing by a subsidiary, for example, the subsidiary would be the "employer" in Section I of the report (and the parent company would be identified in the specified fields in Section I), and Section II would cover the establishments and employees of the subsidiary.

If a parent company and its subsidiaries do not constitute a single legal entity, each separate company must file a separate report.

Should an employer's pay data report only include their California employees or all employees?

When reporting to DFEH, employers:

- **Must** include their employees assigned to California establishments or working within California; and
- **May** include their other employees.

Thus, DFEH expects that a single-establishment employer in California will include on its pay data report all employees (including any employees outside of California) regardless of whether they are teleworking.

Similarly, DFEH expects that a multiple-establishment employer with establishments only in California will include across its establishment-level data in its report all employees (including any employees outside of California) regardless of whether they are teleworking.

For multiple-establishment employers with establishments inside and outside of California, the employer:

(A) Must report to DFEH on its California establishments, all of its employees assigned to those establishments (including any employees outside of California) whether or not teleworking, and any other California employees (including those teleworking from California but assigned to an establishment outside of California); and

(B) May report to DFEH on its establishments and employees not covered by (A). DFEH is providing employers with these options because one option may be less burdensome for employers than the other in light of federal EEO-1 reporting.

For example, if an employer has one establishment in California with 50 employees (with three workers telecommuting from Nevada during the Snapshot Period) and one establishment in Nevada with 50 employees (with three workers telecommuting from California during the Snapshot Period), the employer would submit a report with:

(1) Establishment-level data for their California establishment that covers all 50 employees, including those teleworking from Nevada; and

(2) Establishment-level data for their Nevada establishment that covers either only the employees teleworking from California or all 50 employees assigned to the Nevada establishment.

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. For an establishment outside of California, the employer's reporting would cover either only those employees teleworking from California and who are assigned to a single establishment outside of California or all employees assigned to that establishment outside of California. DFEH is providing employers with these options because one option may be less burdensome for employers than the other in light of EEO-1 reporting.

For example, if an employer has 100 employees assigned to an establishment in Oregon (five of whom are teleworking from California during the Snapshot Period) and 100 employees assigned to an establishment in Arizona (five of whom are teleworking from California during the Snapshot Period), the employer would submit a report with:

(1) Establishment-level data for the Oregon establishment that covers either the five employees teleworking from California or all 100 employees at the establishment; and

(2) Establishment-level data for the Arizona establishment that covers either the five employees teleworking from California or all 100 employees at the 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 December 31 of the Reporting Year?

Yes. Even if an employee resigned or was terminated before December 31 of the Reporting Year, the employee should be reported on if the employee was employed during the Snapshot Period.

Does a temporary services employer report on the temporary staff that they place on assignment at other companies?

In addition to reporting on its permanent employees, a temporary services employer must report on the workers that it places on assignment at other companies if those workers are the "employees" of the temporary services employers. The law defines "employee" to mean "an individual on an employer's payroll, including a part-time individual, whom the employer is required to include in an EEO-1 Report and for whom the employer is required to withhold federal social security taxes from that individual's wages." Thus, a temporary services employer must report to DFEH on those workers assigned to client employers but who are on the payroll of the temporary services employer and who are required to be included on the temporary services employer's EEO-1 Report.

How should employers assign employees to a job category?

Employers should assign each employee to one of the ten job categories listed in Government Code section 12999(b)(1). All jobs are considered as belonging in one of these ten categories. For consistency with federal EEO-1 reporting, employers should follow the EEO-1 Job Classification Guide or other guidance issued by the EEOC on job classification.

Which pay bands should an employer use?

Even though California has a higher minimum wage than is established under federal law, employers' pay data reports must utilize the pay bands established by the U.S. Bureau of Labor Statistics (BLS) in the Occupational Employment Statistics survey.

How should employers report employees' race and ethnicity?

For consistency with federal EEO-1 reporting, employers should follow the EEOC's longstanding instructions for race and ethnicity identification. Specifically, employers must report employees according to the following 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

DFEH recognizes the limitations of these categorizations, but is initially adopting these from the EEO-1 survey for consistency with federal reporting and to ease reporting burden on employers. 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 this order — current employment records, other reliable records or information, or observer perception.

How should employers report employees' sex?

California officially recognizes three genders: female, male and non-binary. Therefore, employers should report employees' sex according to these three categories. 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 own pronoun. Unlike the EEO-1 Component 2 data collection from 2017 and 2018, DFEH requires employers to report non-binary employees in the same manner as male and female employees.

May an employer submit a federal EEO-1 Report to DFEH to satisfy its obligation under the California law?

Yes, but only if the EEO-1 Report "contain[s] the same or substantially similar pay data information required" by the state law. Because the EEO-1 survey is not collecting pay data at this time, no EEO-1 Report filed with the EEOC for Reporting Year 2020 will satisfy this standard.

Some employers have inquired whether they are permitted to submit reports to DFEH using the scripts/programs they developed for the EEO-1 Component 2 collection from 2017 and 2018. DFEH has endeavored to build a reporting system that closely resembles the EEO-1 Component 2 collection in order to ease burden on employers. However, as explained in these FAQs, the California requirements differ in certain ways from the EEO-1 Component 2 collection from 2017 and 2018. Therefore, employers must use DFEH's template or the fillable form on DFEH's portal to create and submit their reports.

IV. Pay

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

In addition to identifying the job category, race, ethnicity, and sex of each of its employees in the Snapshot Period, the employer assigns those employees to the appropriate pay bands within each job category. 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. For purposes of the pay data reports due to DFEH by March 31, 2021, 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 remarks field.

Unlike the federal EEO-1 Component 2 collection from 2017 and 2018, in which the EEOC required employers to use W-2 Box 1, DFEH 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 the employee did not work the entire Reporting Year. For example, if an employee started work on July 1, 2020, with an annual salary of $100,000, and her

2020 W-2 Box 5 income is $50,000, the employee should be counted in the pay band encompassing $50,000, not $100,000.

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 DFEH, 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 DFEH, 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 submit a corrected pay data report to DFEH, identifying the corrected cells and explaining the correction in the remarks field(s).

V. Hours Worked

How are employees' total hours worked calculated?

In addition to identifying the job category, pay band, race, ethnicity, and sex of each of its employees in the Snapshot Period, the employer calculates the total hours worked by each of those employees.

When calculating the total hours worked of a non-exempt employee for the purposes of the pay data reports due to DFEH by March 31, 2021, employers should use 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 covered by orders of the California Industrial Welfare Commission and/or the federal Fair Labor Standards Act (FLSA).

When calculating the total hours worked of an exempt employee for the purposes of the pay data reports due to DFEH by March 31, 2021, employers should use 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 some exempt employees' hours worked but does not record other exempt employees' hours worked, 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 (for example, 2,080 hours for full-time employees and 1,040 hours for part-time employees).

Unlike the federal EEO-1 Component 2 collection from 2017 and 2018, in which the EEOC required employers to exclude time on paid leave when calculating hours worked, DFEH 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.

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. For example, if a full-time exempt employee (who does not maintain records of her hours) worked on average eight hours per day, worked for 98 days, and took two days of paid sick leave during the Reporting Year, the employer would calculate and report the employee's hours by multiplying eight by 100 (800 hours).

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

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.

VI. Multiple Establishment Employers

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

The term "establishment" is defined as "an economic unit producing goods or services." For purposes of the pay data reports due to DFEH by March 31, 2021, employers should use the same establishments that they use for their EEO-1 reports. DFEH recognizes that the federal EEO-1 approach to establishments may not reflect all modern work arrangements, but DFEH is initially adopting the federal EEO-1 approach for consistency with federal reporting and to ease the reporting burden on employers. For California pay data reporting, a multiple-establishment employer's headquarters is a distinct establishment reported in the same manner as other establishments.

For purposes of the reports due to DFEH by March 31, 2021, employers should assign employees to the establishment where the employer reports the employee for federal EEO-1 purposes, for consistency with federal reporting and to ease the reporting burden on employers.

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

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

If a California employer has multiple 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. The employer must report on all of its 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 California establishment and ended the year in a different California establishment?

The employer should report the employee according to their 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 employee was working within California during the Snapshot Period, the employer is required to report to DFEH on this employee even though the employee is assigned to an establishment outside of California. If this employee was not working from California during the Snapshot Period, the employer may, but is not required to, report to DFEH on this employee.

How does an employer report employees who are entirely remote?

For an employee who is entirely remote, follow the guidance in FAQ "What does 'establishment' mean? 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 at 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.

VII. Professional Employer Organization (PEO) / Human Resource Outsourcing Organization (HRO)

A PEO usually files the EEO-1 Report for my company ("client employer" from the PEO's perspective). Can my PEO prepare and submit my company's California pay data report, too?

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, a PEO may prepare and file a pay data report with DFEH on behalf of a client employer. However, an official of the client employer, not from the PEO, must certify the accuracy of the report. The answer would be the same for a variation of this question concerning an HRO.

May a PEO (or HRO) submit a pay data report to DFEH that covers more than one employer?

No. DFEH 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 the law. 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 required to be reported on, 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.

VIII. Acquisitions, Mergers and Spinoffs*

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

In August 2020, 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 2020, 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 post-acquisition. 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. And, note and explain the approach taken in the 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 2020, but we do not have access to the acquired company's pay data?

Assuming this employer is subject to California's pay data reporting requirement (pre- or post-acquisition), for Reporting Year 2020 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 2021 spinoff of another company. Our former parent company is the owner of our employee's data from 2020. Which company is responsible for the spinoff's pay data report covering 2020?

Assuming the former parent company is subject to California's pay data reporting requirement, the former parent company's pay data report submitted to DFEH in 2021 (covering Reporting Year 2020) would include all of that company's employees during the Snapshot Period, including any employees now working for the spinoff. In 2022, assuming the spinoff is subject to California's pay data reporting obligation, the spinoff would file a pay data report covering its employees.