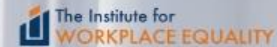


DATE: January 26, 2021
TIME: 3:00 – 4:00 P.M. ET



EEO-1 Resurrected: What Employers Need to Know About California's New Pay Data Reporting Requirements

David Cohen · Erin Connell
dcohen@dciconsult.com · econnell@orrick.com

Scope and Usage of the Information

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The Institute For Workplace Equality

Employer Membership Association, formed to assist the contractor community in responding to rapidly changing compliance challenges. The Institute provides national training programs and webinars addressing the latest EEOC and OFCCP developments and strategies for effective compliance.

For more information on The Institute, visit:
www.theinstitute4workplaceequality.org



Institute Membership Offers Many Benefits

- Our leadership team has unique insights, access, and regularly interacts with OFCCP and EEOC national and regional leadership. As of August 10, 2020, we have signed an MOU with the OFCCP.
- We are collaborative and keep employers current and connected to what is happening in Washington, D.C.
- We have a well-established faculty made up of Nationally renowned experts from many firms
 - Our distinguished leaders are comprised of leading EEO attorneys, practitioners, and statisticians from top law firms and consulting practices on EEO/AA
 - Our faculty and partners have a breadth of knowledge and expertise across all industries, including: Defense/Aerospace, Financial services, Food Services, Healthcare, Higher education, Hospitality , Pharmaceutical, Tech *and more*
- Advisory Board members are senior leaders in their organizations, and have broad experience and expertise in the areas of EEO, diversity and inclusion, OFCCP compliance, compensation, and related matters

Institute Membership Offers Many Benefits – Cont.

- We write white papers addressing our members' compliance concerns and priorities
- Provide opportunities for our members to collaborate and attend brainstorming sessions with OFCCP
- Semi-annual meetings with The Institute Advisory Board, OFCCP Director and National leadership
- Monthly members only roundtables on cutting edge issues
 - Examples:
 - Changing OFCCP enforcement priorities
 - EEO legal developments
 - EEO-1 pay data reporting challenges
 - Quickly growing patchwork of pay equity laws in the U.S. and abroad
- Practical key takeaways summarized after each call so that members can share updates easily within their organizations

Agenda

*Introduction to
California SB 973*

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Data Submitted

2

*Future
Considerations*

3

*Next Steps for
Employers*

4

Introduction

Background and Status of the EEO-1 Component 2

- California's Pay Data Collection is Based On Component 2 of the EEO-1
- California, Maryland, and Minnesota sued EEOC for blocking “state and local agencies access to employment information”
 - October 30th, 2020
- Plaintiffs state this information is used to help flag organizations to investigate for potential discriminatory practices
 - States that EEOC changed the scope of the information released from the reports without consulting FEPA or conducting notice and comment procedures

California SB 973 Summary

- Signed into law September 30, 2020
 - Takes effect January 1, 2021
 - First reports are due March 31, 2021 and then annually on March 31 thereafter
- Encourages employers to assess pay disparities based on race, ethnicity, and gender
 - User guide and template available by February 1, 2021
 - Data submission portal available on February 15, 2021
 - <https://www.dfeh.ca.gov/paydatareporting/>

Oversight of the Reporting

- The California Department of Fair Employment and Housing will receive the pay data reports
- Failure of non-compliance will require employers to cover all costs with seeking order for compliance
- DFEH will keep the data confidential “except to the extent necessary for purposes of an enforcement proceeding.”
- “DFEH may develop, publish on an annual basis, and publicize aggregate reports.”
- Still waiting for more clarification on FAQs and reporting procedures

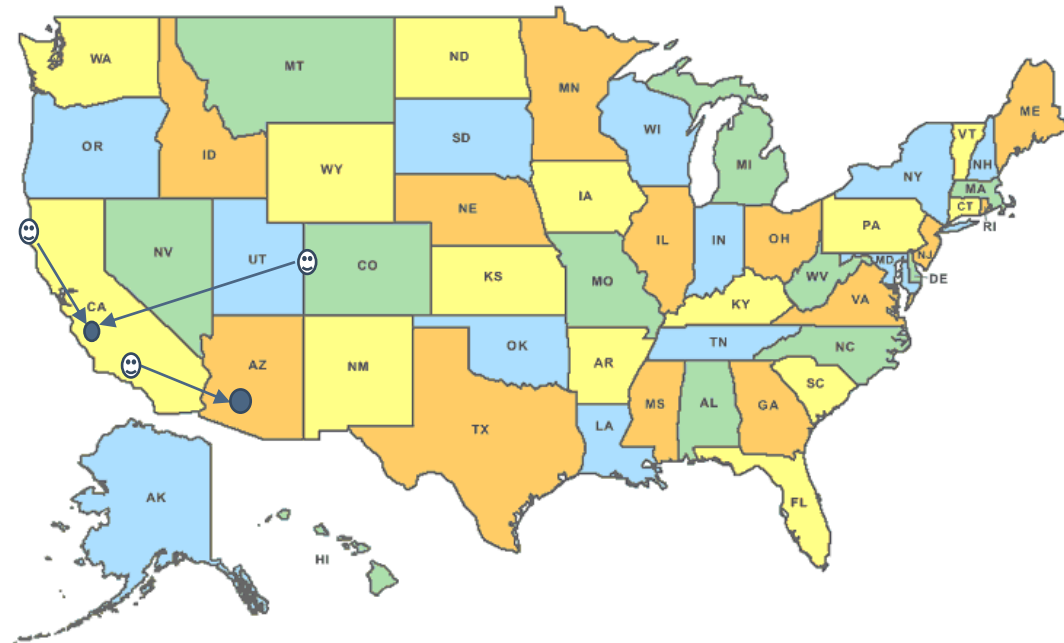
Data Submitted

Who Must Submit?

- Businesses with at least 100 employees who are required to file an EEO-1 and have at least one California employee
 - Both California employees and non-California employees will count towards the 100
 - If employer has at least 100 employees as of data snapshot or regularly employs 100 employees throughout the year
- SB 973 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.”
 - All employees within employer’s payroll system
 - This could include temporary employees

Reports Submitted

- Data must be submitted for:
- Employees at each brick and mortar establishment where California employees report
 - all employees who sit in California (either at a California establishment or a teleworker based in California regardless of where they report to)
 - out of state teleworkers who report into a California establishment (and would be in the California EEO-1 report)
- No specific headquarters report



Snapshot Period

- The employer can select the snapshot period from October 1 to December 31 of the prior year
- All employees that were employed at any time during the snapshot period at a California establishment must be reported
 - Even if employee moved out-of-state during the snapshot period

What Must be Submitted?

- Number of employees in each EEO-1 category by sex, race, and ethnicity by pay category
 - 12 pay bands established by the U.S. Bureau of Labor Statics (BLS) in the Occupational Employment Statistics survey
 - The FAQs also requires employers to report non-binary employees (if available) in the same manner as male and female employees.
- Employees are assigned to a pay band based on their **W2 Box 5** earnings
 - W-2 Box 5 earnings (Medicare wages and tips)
 - Wages minus pre-tax benefits, such as:
 - Health Savings Account (up to \$6,750 + \$1,000 if 55 or older)
 - Health Care Flexible Spending Account (up to \$2,750)
 - Dependent Care Flexible Spending Account (up to \$5,000)
 - Employee contribution to group insurance plan
 - 401K and other retirement benefits are included
 - There is no limit on the amount taxed for Medicare

Box 5 Example

	Tinkers	Evers	Chance
Years Experience	20	20	20
Age	48	49	55
Sex	Male	Male	Female
Base Salary	\$50,000	\$50,000	\$50,000
Health Savings Account	\$0	\$6,750	\$7,750
Dependent Care	\$0	\$5,000	\$5,000
Box 5 Earnings	\$50,000	\$38,250	\$37,250

Pay Band Example

	Russel	Lopes	Garvey
Hours Worked in 2020	2080	2080	40
Base Salary	\$50,000	\$50,000	\$50,000
Sex	Male	Male	Female
Box 5 Earnings	\$50,000	\$50,000	\$962
Pay Band	6	6	1

Example

Band	Box 5 Salary
1	\$19,239 and under
2	19,240 - \$24,439
3	\$24,440 - \$30,679
4	\$30,680 - \$38,999
5	\$39,000 - 49,919
6	\$49,920 - \$62,919
7	\$62,920 - \$80,079
8	\$80,080 - \$101,919
9	\$101,920 - \$128,959
10	\$128,960 - \$163,799
11	\$163,800 - \$207,999
12	\$208,000 and over

Garvey (40 hours)

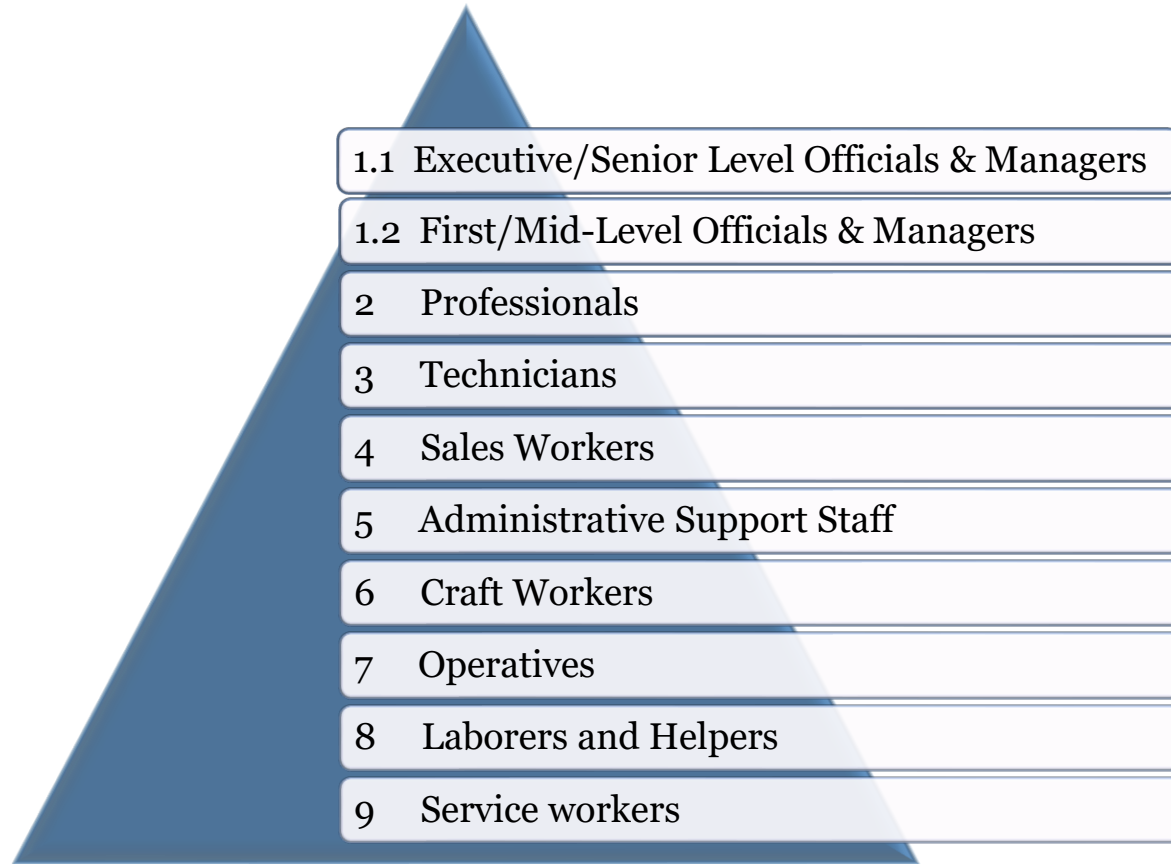
Russel (2,080), Lopes (2,080)

Who Must Submit? (Cont.)

- Hours worked for all employees in EEO-1 category by sex, race, and ethnicity by pay category
- Hours worked is defined as actual hours worked plus all hours from paid time off (paid by employer)
 - Must be for the full filing year (i.e., 2020)
- Calculating hours for Exempt & Non-Exempt employees
 - Non-exempt employees
 - =***actual hours worked + PTO hours***
 - Exempt employees (two options):
 - =***actual hours worked + PTO hours***, or
 - If actual hours information is not available:
 - =***(days worked + PTO days)***
****Average number of hours per day***

EEO-1 Categories

Employment data must be reported by **10 job categories**. To simplify and standardize the method of reporting, all jobs are considered as belonging in one of ten broad EEO-1 categories



12 EEO-1 Pay Bands

The report requires employee pay data and hours worked by 12 pay bands.

Pay Band	Pay Band Label
1	\$19,239 and under
2	\$19,240 - \$24,439
3	\$24,440 - \$30,679
4	\$30,680 - \$38,999
5	\$39,000 - \$49,919
6	\$49,920 - \$62,919
7	\$62,920 - \$80,079
8	\$80,080 - \$101,919
9	\$101,920 - \$128,959
10	\$128,960 - \$163,799
11	\$163,800 - \$207,999
12	\$208,000 and over

Number of Employees Worked

co= ABC12345

u= 1234567

EQUAL EMPLOYMENT OPPORTUNITY
2017 EMPLOYER INFORMATION REPORT
CONSOLIDATED REPORT - TYPE 2

SECTION C - TEST FOR FILING REQUIREMENT

1. Test Company Inc.
 123 Test St Suite 42
 Annapolis, MD 21401

2.a. Test Company Inc.
 123 Test St Suite 42
 Annapolis, MD 21401
 Anne Arundel County
 c.Y

1-Y 2-Y 3-Y
 EIN:987654321

SECTION E - ESTABLISHMENT INFORMATION
 NAICS:123456

Section D - EMPLOYMENT DATA: Number of Employees

Job Categories	Salary Compensation Band	Race/Ethnicity														Total
		Hispanic or Latino		Non / Hispanic or Latino												
		Male	Female	Male					Female							
		White	Black	NHPI	Asian	AmInd	Two+	White	Black	NHPI	Asian	AmInd	Two+			
1.1 Executive/Senior Officials & Managers	\$19,239 and under	1	0	8	1	0	3	0	0	1	0	0	1	0	0	15
	\$19,240 - \$24,439	0	0	2	0	0	0	0	0	2	0	0	0	0	0	4
	\$24,440 - \$30,679	0	0	6	1	0	0	0	0	0	0	0	0	0	0	7
	\$30,680 - \$38,999	0	1	5	0	0	1	0	0	0	0	0	0	0	0	7
	\$39,000 - \$49,919	1	0	6	0	0	4	0	0	3	0	0	0	0	0	14
	\$49,920 - \$62,919	0	0	17	0	0	0	0	0	4	0	0	2	0	0	23
	\$62,920 - \$80,079	0	0	15	0	0	3	0	0	7	0	0	0	0	0	25
	\$80,080 - \$101,919	1	0	18	1	0	3	1	0	7	0	0	0	0	0	31
	\$101,920 - \$128,959	1	0	27	1	0	1	0	0	9	1	0	1	0	0	41
	\$128,960 - \$163,799	0	0	20	1	0	8	0	0	14	2	0	0	0	0	45
	\$163,800 - \$207,999	0	0	25	0	0	7	0	0	8	0	0	4	0	0	44
\$208,000 and over	1	0	9	1	0	3	0	0	5	0	0	1	0	0	20	
\$19,239 and under	0	0	3	0	0	0	0	0	0	0	0	0	0	0	3	



Total Hours Worked

Section D - EMPLOYMENT DATA: Hours Worked

Job Categories	Salary Compensation Band	Race/Ethnicity														Total
		Hispanic or Latino		Non / Hispanic or Latino												
				Male						Female						
		Male	Female	White	Black	NHPI	Asian	AmInd	Two+	White	Black	NHPI	Asian	AmInd	Two+	
1.1 Executive/Senior Officials & Managers	\$19,239 and under	2274	0	13557	1384	0	5727	0	0	1549	0	0	1807	0	0	26298
	\$19,240 - \$24,439	0	0	3327	0	0	0	0	0	1677	0	0	0	0	0	5004
	\$24,440 - \$30,679	0	0	11596	1706	0	0	0	0	0	0	0	0	0	0	13302
	\$30,680 - \$38,999	0	2707	9136	0	0	2684	0	0	0	0	0	0	0	0	14527
	\$39,000 - \$49,919	1964	0	10679	0	0	8250	0	0	2774	0	0	0	0	0	23667
	\$49,920 - \$62,919	0	0	14120	0	0	0	0	0	8003	0	0	3673	0	0	25796
	\$62,920 - \$80,079	0	0	20866	0	0	5379	0	0	11498	0	0	0	0	0	37743
	\$80,080 - \$101,919	668	0	28727	2738	0	2299	1849	0	9545	0	0	0	0	0	45826
	\$101,920 - \$128,959	394	0	36581	1942	0	2382	0	0	14482	942	0	1754	0	0	58477
	\$128,960 - \$163,799	0	0	26496	2350	0	11349	0	0	19292	3301	0	0	0	0	62788
	\$163,800 - \$207,999	0	0	34090	0	0	5491	0	0	8974	0	0	7977	0	0	56532
\$208,000 and over	1862	0	9547	822	0	6918	0	0	5267	0	0	1924	0	0	26340	
	\$19,239 and under	0	0	5862	0	0	0	0	0	0	0	0	0	0	0	5862

Future Considerations

What Will California Do With the Data?

- The data will allow the Department of Fair Employment and Housing (DFEH) to analyze the distribution of employees using 12 pay bands for each of the 10 job categories based on sex or race/ethnicity
 - DFEH may identify those employers whose differences in compensation are larger than those of other employers in the same industry.
 - Will aggregate the data and make public reports

What Will DFEH Do With the Data?

- DFEH may use the Mann-Whitney U test
 - Also called the Wilcoxon rank-sum test
 - Based on recommendation by Sage Computing during 2015 “pilot” study
- The Mann-Whitney essentially rank orders salaries within an EEO-1 group and compares the average rank of women with the average rank of men
 - Also, will be done for race/ethnicity
- Some formulas differ in terms of how they handle ties
- As with many statistical tests, a small group difference in a large sample can be statistically significant
 - It is worse to be big than it is to be bad!
- The Mann-Whitney does not include hours worked data in calculations

A Simple Example

Rank	Salary	Sex
1	\$100,000	M
2	\$95,000	M
3	\$90,000	F
4	\$87,000	M
5	\$86,000	F
6	\$50,000	F
7	\$49,000	M
8	\$48,000	M
9	\$47,000	F
10	\$24,000	F

Average rank for men = 4.4

Average rank for women = 6.6

Employee Distribution by EEO-1 Compensation Board

Test Company Inc.
Reporting Year 2018

Location (All) - Test Company Inc., 123 Test St Suite 42 Annapolis MD

EEO-1 Category	1.1 Executive/Senior Officials & Managers								
Compensation Band	Male	Female	White	Asian	Black	Hispanic	AmInd	NHPI	Two+
1: \$19,239 and under	6.4%	2.7%	4.1%	9.5%	11.1%	16.7%	0.0%	0.0%	0.0%
2: \$19,240 - \$24,439	1.0%	2.7%	1.8%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
3: \$24,440 - \$30,679	3.4%	0.0%	2.8%	0.0%	11.1%	0.0%	0.0%	0.0%	0.0%
4: \$30,680 - \$38,999	3.0%	1.4%	2.3%	2.4%	0.0%	16.7%	0.0%	0.0%	0.0%
5: \$39,000 - \$49,919	5.4%	4.1%	4.1%	9.5%	0.0%	16.7%	0.0%	0.0%	0.0%
6: \$49,920 - \$62,919	8.4%	8.2%	9.6%	4.8%	0.0%	0.0%	0.0%	0.0%	0.0%
7: \$62,920 - \$80,079	8.9%	9.6%	10.1%	7.1%	0.0%	0.0%	0.0%	0.0%	0.0%
8: \$80,080 - \$101,919	11.8%	9.6%	11.5%	7.1%	11.1%	16.7%	100.0%	0.0%	0.0%
9: \$101,920 - \$128,959	14.8%	15.1%	16.5%	4.8%	22.2%	16.7%	0.0%	0.0%	0.0%
10: \$128,960 - \$163,799	14.3%	21.9%	15.6%	19.0%	33.3%	0.0%	0.0%	0.0%	0.0%
11: \$163,800 - \$207,999	15.8%	16.4%	15.1%	26.2%	0.0%	0.0%	0.0%	0.0%	0.0%
12: \$208,000 and over	6.9%	8.2%	6.4%	9.5%	11.1%	16.7%	0.0%	0.0%	0.0%
Total Employees	203	73	218	42	9	6	1	0	0

Mann-Whitney *U* Test: Summary of Results

Test Company Inc.
Reporting Year 2018

Location	(All) - Test Company Inc., 123 Test St Suite 42 Annapolis MD			
EEO-1 Category	1.1 Executive/Senior Officials & Managers			
Comparison	Favored Group	Z-Score	<i>p</i> -Value	Significance
Male v. Female	Female	1.49	0.135	No
White v. Asian	Asian	1.12	0.263	No
White v. Black	Black	0.20	0.840	No
White v. Hispanic	White	-1.16	0.248	No
White v. American Indian	White	-0.32	0.746	No
White v. NHPI	n/a	n/a	n/a	n/a
White v. Two or More	n/a	n/a	n/a	n/a

DFEH's Thinking?

Job Group 1.2 – First/Mid-Level Officials and Managers

Organization	Sex Z-Value	Significant	EEOC Action
Company 10	5.31	Yes	Investigate
Company 8	4.64	Yes	?
Company 1	3.55	Yes	?
Company 5	2.32	Yes	?
Company 9	2.07	Yes	?
Company 2	2.03	Yes	?
Company 7	1.82	No	Ignore
Company 3	1.17	No	Ignore
Company 4	0.98	No	Ignore
Company 6	0.59	No	Ignore

Next Steps

Next Steps

- California DFEH is still working on resources and file specifications, so we anticipate we will continue to receive new information in the coming weeks
 - Several topics of FAQs are still “coming soon”

Employer Decisions

- We must submit the data, but should we analyze it as well?
- Does an analysis really add anything to our proactive efforts?
 - Could the analysis meet a federal contractor's obligation to analyze its compensation system?
 - What if this analysis yields a different picture than our regular proactive compensation analysis?
- The FAQs also requires employers to report non-binary employees (if available) in the same manner as male and female employees.
 - What about the federal EEO-1 report?

Wrap Up & Thank You

David Cohen

David B. Cohen, Co-Chair of The Institute, is President of DCI Consulting Group, Inc. and co-founder of The Institute for Workplace Equality. He provides consulting services to employers and management law firms on a wide range of human resource risk management strategies, particularly in the areas of EEO/affirmative action program development, systemic compensation statistical analyses, comprehensive human resources self-audits, and employee selection and test validation.

Recognized as a national EEO and affirmative action Equality expert, Mr. Cohen speaks frequently before corporate leaders from Fortune 500 companies, and at regional and national ILG conferences and OFCCP events. In 2006, he co-authored a book entitled “Understanding Statistics: A Guide for I/O Psychologists and Human Resource Professionals,” which was published by Thomson Wadsworth. Mr. Cohen is also the Associate Editor of the Applied HRM Research.

Erin M. Connell

Erin is an employment partner and Co-Chair of Orrick's EEO & OFCCP Compliance Group and Pay Equity Task Force. Erin's practice covers all aspects of employment law. Erin has successfully defended numerous class actions, EEOC systemic discrimination investigations, and complex individual cases involving claims of discrimination, harassment, retaliation, wrongful termination, and wage-and-hour claims. Erin has particular expertise in the area of pay equity, compensation analyses, and diversity initiatives; and regularly advises clients with respect to OFCCP and other EEO audits.

Erin also is an accomplished trial lawyer. She has tried several cases before juries and in arbitration, and has successfully obtained numerous defense summary judgment rulings and other favorable resolutions in state and federal court.

Erin is currently the management chair of the ABA Equal Employment Opportunity Committee, and frequently speaks on California and national employment law issues. She has published numerous articles on employment law in publications around the country, including the ABA Journal of Labor & Employment Law. She also provides training on managing within the law and preventing sexual harassment, and conducts internal investigations on employment-related matters.