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California Farm Bureau

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Understanding California's Pay Data Report Requirements

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UNDERSTANDING CALIFORNIA'S PAY DATA REPORT REQUIREMENTS

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Jennifer Shaw

Jennifer Shaw is the founder of Shaw Law Group. A well-respected expert in employment law for more than 25 years, employers rely on Jennifer to provide practical advice and counsel on a broad range of employment law issues, including wage-hour compliance, reasonable accommodation/leaves of absence, and hiring/separation. Named by Northern California Super Lawyers magazine as one of the top attorneys in California every year since 2009 and the recipient of numerous other awards, including the 2019 Sacramento Business Journal's "Women Who Mean Business," Jennifer is a frequent speaker on employment law topics, and a regular guest on local television and radio. After receiving a Bachelor of Arts degree in economics with honors from the University of California, Santa Cruz, Jennifer graduated magna cum laude from the University of San Francisco School of Law, where she was the editor-in-chief of the law review.



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The Disclaimer

- This program is intended to be a general overview, and should not be considered legal advice regarding your specific situation
- Consult with your regular employment law counsel before making any changes to your practices



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What's the Purpose of Pay Data Reporting

- Reduces the pay disparities facing women, certain racial/ethnic groups, and women of color
- Provides an opportunity for employers to annually review their pay practices to ensure they comply with California's equal pay and anti-discrimination laws



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The Basics

- Applies to private sector employers with 100 or more employees, and/or 100 or more workers hired through labor contractors
- Requires annual reporting of the number of employees by race, ethnicity, and sex in specified job categories
- Employers with multiple "establishments" must submit only a "consolidated" report
- Government Code §12999
- Resources available at: <https://calcivilrights.ca.gov/paydatareporting/>



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Which Employees Are Included?

- All employees assigned to California establishments and/or working within California (including part-time employees)
- Employers may no longer report employees who work outside of California and who are assigned to an establishment outside of California
- 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



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What Changes Did SB 1162 Make to Pay Data Reporting?

- Even employers not required to submit EEO-1 forms are now covered
- Pay data reports covering 2022 are due by 5/10/23
- In addition to a "Payroll Employee Report" for employees, a private sector employer with 100 or more workers hired through labor contractors in the prior year (with at least one in CA) must file a separate "Labor Contractor Employee Report" (only one report, even if they use multiple contractors)



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What Changes Did SB 1162 Make to Pay Data Reporting? (cont.)

- Covered employers must calculate the mean and median hourly rate of its payroll and/or labor contractor employees by establishment, job category, race/ethnicity and sex
- California Civil Rights Department ("CRD") may obtain a monetary penalty against any employer or labor contractor that fails to file a required report, and against any labor contractor that fails to provide necessary information to a client employer



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Deadlines and Filing Process

- The annual filing deadline is the second Wednesday of May; for 2023, the deadline is May 10
- Employers and Labor Contractors must use the CRD's Pay Data Portal to submit their reports (<https://pdr.calcivilrights.ca.gov>)

deadline



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What is the Reporting Year?

- A pay data report covers the prior calendar year, which is the "Reporting Year"
- For example, a pay data report submitted to CRD in 2023 will cover calendar year 2022, and 2022 is the Reporting Year



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What is the Snapshot Period?

- The Snapshot Period is a single pay period between October 1 and December 31 of the Reporting Year as chosen by the employer
- The Snapshot Period identifies the employees that must be included in the pay data report



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What Information Must be Included in the Pay Data Report?

- The number of employees by race, ethnicity, and sex in each of these several job categories
- The number of employees by race, ethnicity, and sex, whose annual earnings fall within the pay bands used by the federal Bureau of Labor Statistics



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Race and Ethnicity

- Employers should follow the EEOC's instructions for race and ethnicity identification available in the EEO-1 Instruction Booklet
- Race/ethnicity categories: Hispanic or Latino, White (Not Hispanic or Latino), Black or African American (Not Hispanic or Latino), Native Hawaiian or Pacific Islander, Asian, Native American or Alaska Native, Two or More Races



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Sex

- California recognizes three genders: female, male, and nonbinary
- Employers should report employees' sex according to the above categories
- This may be new for employers outside of California, and differs from the EEO-1
- Employee "self-identification" is the preferred method of identifying "sex"



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Pay

- Employers should use W-2 Box 5 – Medicare wage and tips
- Simply list the W-2 Box 5 income and do not annualize the employee's earnings
- If a corrected W-2 would result in the employee being put in a different pay band, the employer should submit a corrected report



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Hours Worked: Non-Exempt Employees

- Report actual hours worked plus time on paid leave (vacation, sick time, holiday time)
- Do not annualize hours



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Hours Worked: Exempt Employees

- Use timesheets or other records
- You may calculate by multiplying days worked by average number of hours worked per day
- May use "proxy" if no timesheets or other hour records



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Inclusion of Mean/Median Hourly Rates

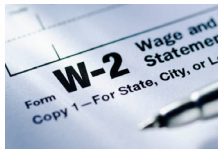
- SB 1162 requires employers to calculate and report the mean and median hourly rate of its payroll employees and/or labor contractor employees by grouping
- This requirement means you must first calculate each individual's hourly rate so you can calculate the mean and median hourly rate



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Step 1: Calculate an Individual Employee's Hourly Rate

- **Example:** if an employee's W-2 Box 5 income is \$150,000 and the employee worked 2,080 hours, the employee's hourly rate is \$150,000 divided by 2,080 or \$72.11



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Step 2: Calculate the Mean Hourly Rate for Each Grouping

- Report the mean hourly rate for each grouping of employees with the same establishment, job category, race/ethnicity, and sex combination. The mean hourly rate is calculated by adding the individual hourly rates for each employee in the group, then dividing that sum by the number of employees in the group.



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Step 2: Calculate the Mean Hourly Rate for Each Grouping (cont.)

- **Example:** Employee A and Employee B are the only two employees grouped in the same establishment, job category, race/ethnicity, and sex combination. Employee A's hourly rate is \$25.00, and Employee B's hourly rate is \$26.00. The mean hourly rate for the group would be the sum of the two hourly rates (\$51.00) divided by the number of employees (2) or \$25.50.



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Step 3: Calculate the Median Hourly Rate for Each Grouping

- The median hourly rate is calculated by listing the hourly wages of each employee in the group from smallest to largest and selecting the middle number
- **Example:** Employees A, B, and C are the only three employees grouped in the same establishment, job category, race/ethnicity, and sex combination. Employee A's hourly rate is \$25.00, Employee B's hourly rate is \$30.00, and Employee C's hourly rate is \$35.00. The median hourly rate for the group would be \$30.00, which is the middle number when all three employees' hourly rates are arranged in order from smallest to largest (\$25.00, \$30.00, \$35.00).



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New Penalties for Non-Compliance

- Previously, CRD could seek an order requiring an employer to submit a pay data report (and recover its costs in any enforcement action)
- SB 1162 added new civil penalties:
 - \$100 per employee for failure to submit a report
 - \$200 per employee for subsequent failures to submit a report



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Labor Contractor Employee Reporting

- A private employer with 100 or more employees hired through labor contractors within the prior calendar year must submit a separate pay data report covering the employees hired through labor contractors in the prior calendar year
- The private employer also must disclose on the pay data report the ownership names of all labor contractors used to supply employees



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Labor Contractor Employee Reporting (cont.)

- Labor contractors must supply all necessary pay data to the private employer
- "Labor contractor" means 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"



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Labor Contractor Employee Reporting (cont.)

- You have the requisite number of labor contractor employees if you had 100 or more labor contractor employees from all labor contractors (not 100 per labor contractor)
- Just like payroll employee reports:
 - Labor contractor employees located inside and outside of California are counted when determining whether there are 100 or more labor contractors
 - Report on labor contractor employees assigned to California establishments and/or working in California



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Labor Contractor Employee Reporting (cont.)

The "Snapshot" Period

- CRD recommends that a client employer collaborate with each of its labor contractors to choose a single pay period between October 1 and December 31 of the Reporting Year as the Snapshot Period for that labor contractor
- If a client employer has more than one labor contractor, CRD encourages the use of the same Snapshot Period across labor contractors; however, the Snapshot Period need not be the same for each labor contractor, provided the Snapshot Period otherwise complies



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Are the Pay Data Reports Public?

- Generally, no (but the CRD may use them in an enforcement action)
- Neither the CRD nor the DLSE may "make public in any manner whatever any individually identifiable information obtained"
- "Individually identifiable information" means data submitted pursuant to the pay data report requirements
- CRD will publish annual reports based on data aggregated from multiple employers
- CRD will maintain data for not less than 10 years



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Consider...

- Conducting a privileged pay equity audit, and then make appropriate compensation adjustments
- If you have multistate operations, ensuring you understand and account for pay transparency laws in other jurisdictions
- Updating your record retention procedures to comply with SB 1162



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Questions/Comments



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2023 Upcoming Webinars

Intensive Workshop: Effectively Managing Leaves of Absence and Reasonable Accommodations (The Basics)

March 14 (Day 1)
March 21 (Day 2)

Mandated Reporter Training for HR Professionals and Leaders (AB 1963 Compliance)

March 22
May 3
August 10
October 24

“Train-the-Trainer”: The Essentials of EEO Compliance Training

April 4

Best Practices for Form I-9 Compliance

April 13

Sexual Harassment Prevention and Other EEO Issues (SB 1343 Compliance Training for Staff)

May 4
August 8
October 25
December 5

Intensive Workshop: Conducting Effective Internal Investigations

May 10 (The Fundamentals)
May 17 (All-Day Mock Investigation)
May 24 (How to Draft Effective Investigation Reports)

October 12 (The Fundamentals)
October 19 (All-Day Mock Investigation)
October 26 (How to Draft Effective Investigation Reports)

2023 Upcoming Webinars (cont.)

**Sexual Harassment Prevention and Other EEO
Issues (AB 1825/SB 1343 Compliance Training
for “Supervisors”/All Employees)**

May 11
August 1
October 17
December 7

**Intensive Workshop: Effectively Managing
Leaves of Absence and Reasonable
Accommodations (Advanced Topics)**

August 15 (Day 1)
August 22 (Day 2)

California Employee Handbook Update (2024)

November 14

HR 101 for Leaders and HR Professionals

September 26

Annual Employment Law Update (2024)

November 30
December 12
January 9, 2024



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“Workplace Insights with Shaw Law and the CRD!”

Every month, Melissa Whitehead and Rashida Harmon, Senior Counsel of the CRD’s Outreach and Education Unit, cover a key employment law topic and answer your questions! Topics TBA as developments dictate.

Check out dates and topics here:

<https://shawlawgroup.com/employment-law-training-calendar/>

Thank You!



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Shaw Law Group, PC is a woman-owned employment law firm with a 10-year track record. The firm's namesake, Jennifer Brown Shaw, has almost 25 years of experience in workplace law. Shaw Law Group is small to ensure the firm's leadership is involved in every matter.

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- Leaves of absence/reasonable accommodation
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- Billing analysis
- Oversight of legal representation as "in-house" lawyer would do
- Review of motion papers, discovery, depositions
- Summary judgment assessment
- Mediation assistance
- Trial themes and preparation

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- Position statements
- Representation at informal conferences and hearings
- Agency audit defense
- Mediation and settlement

Expert Witness Testimony

- Investigation adequacy
- Wage-hour policy
- Handbook analysis
- AB 1825 compliance
- Training evaluation
- HR competence regarding discharge, discipline and policy implementation
- Interactive process and accommodation evaluation
- Skelly risk analysis
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- Attorney's fees motions

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