

New Jersey Labor Department Revises Equal Pay Act Data Reporting Requirements

By James M. McDonnell

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The New Jersey Department of Labor (NJDOLE) has revised the state equal pay law's reporting requirements for employers that provide qualifying services or perform public works (*e.g.*, construction, demolition, repairs, and so on) to New Jersey and its agencies to clarify which employees must be included in the annual reporting.

The annual report must be submitted no later than March 31 of the year following the reporting year. This year's reporting deadline is March 31, 2019.

Pay Data Reporting Requirements

The Diane B. Allen Equal Pay Act, adopted in 2018, requires [pay data reporting](#) by employers that perform public works or that provide "qualifying services" to New Jersey and its agencies. The NJDOLE released mandatory reporting forms in June 2018 to monitor and enforce the Act's reporting requirements. These include the Payroll Certification for Public Works Projects (Certification), the Annual Equal Pay Report for Qualifying Services Other than Public Works Projects (Report), and instructions for both.

The NJDOLE revised the reporting requirements in the Instructions for Completing the Payroll Certification for Public Work Projects and the Annual Equal Pay Report for Qualifying Services Other than Public Works Projects (Instructions). Significantly, employers are no longer required to identify individual employees by name, compensation band(s), exempt status, and demographics (*e.g.*, race, sex, and ethnicity) in the Report. Moreover, employers are no longer required to identify all employees across a company's operations, regardless of an employee's actual performance of the qualified services, public work, or geography. These revisions simplify some of the requirements for employers affected by the changes.

Public Work

While the NJDOLE left unchanged the reporting requirements for entities that perform "public work," it clarified "which employees must be reported" in the Certification by a company.

The statute generally defines "public work" as construction, reconstruction, demolition, repair, or other maintenance work covered by the New Jersey Prevailing Wage Act (PWA). Since the PWA already requires employers to maintain and submit certified payroll records, the NJDOLE said the additional demographic information required under the Equal Pay Act does not substantially alter an employer's recordkeeping requirements. Therefore, the Instructions clarify that "[f]or Public Works, the employer is required to report *those individuals employed in New Jersey in connection with a contract with a public body to perform any public work for the public body.*"

Accordingly, an employer need not report on all employees across the company's operations, only on the individuals in New Jersey who are connected with a contract to perform the "public work."

Qualifying Services

The NJDOLE clarified that the reporting obligations of employers who perform "qualifying services" for a public body do not include identifying in the Report employees by name.

"Qualifying services" is defined as "the provision of any service to the State or to any other public body, except for public work." "Service" is defined as "any act performed in exchange for payment, including the provision of professional services, but shall not include the sale of goods or products." Arguably, an entity that provided such services had to file a Report identifying all employees (regardless of the employee's location or whether they provided the "qualifying services") by name, pay band, and demographics.

The revised Report requires an entity that performs qualifying services to identify the total number of employees in each job category by sex, race, ethnicity, exempt status, and compensation pay-band. Therefore, employees are not identified individually by name. The Instructions state that, "[f]or Qualifying Services, the employer is required to report *employees who are performing work in New Jersey.*" They also

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clarify that “[t]he employer is not required to identify any employee by name.” Previously, an employer was required to publicly file a document containing the names, compensation bands, and demographics of each employee across the entire company that performed qualifying services.

The clarifications issued by the NJDOL will be welcomed by employers having to compile and file information on employees across their operations. Jackson Lewis attorneys are available to assist employers in complying with these requirements.

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