

## Patchwork of Pay Transparency Laws Continues to Evolve

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State legislatures continue to pass laws designed to enhance pay equity and transparency, with the laws of California and Colorado effective in 2021. The California law requires employee pay data reporting by race and gender, and the Colorado law requires robust pay and promotional transparency.

### California

Under California's pay data reporting law (SB 973), most employers with employees in California must file a report of employee pay data by March 31, 2021.

#### 1. Who must file?

All employers (a) with at least one employee working in California and (b) with at least 100 employees nationwide that must file annual federal EEO-1 Reports must file this new report with California's Department of Fair Employment and Housing (DFEH) each year.

#### 2. Who is included in the report?

All employees during one pay period in the fourth quarter of 2020 who worked in California and who worked remotely in other states, but report to California, must be included in the new pay data report.

#### 3. What must be reported?

The data in the report resembles the now-defunct federal EEO-1 Report Component 2, which was due in the fall of 2019. Like the EEO-1 Report Component 2, the submission must identify the number of employees within each establishment, within each EEO-1 Category, within each specific race and gender combination whose annual earnings fall into each of the Bureau of Labor Statistics standard pay bands — as well as the total number of hours worked.

Unlike the EEO-1 Report Component 2, the value of annual earnings for the California submission must be the value in each employee's W-2, Box 5 (Medicare wages) and the hours worked should include all hours the employer pays the employee (including for sick, vacation, and holiday time).

The submission must include common information on the employer and work establishments.

#### 4. What is the format?

DFEH has provided a standard Excel template and sample csv to submit the required data.

#### 5. When is it due?

March 31, 2021, but, "in light of the COVID-19 pandemic and the fact that pay data reporting is newly required," DFEH is accepting requests for an extension until April 30, 2021.

### Colorado

Under the Colorado Equal Pay Transparency Rules (EPT Rules), effective January 1, 2021, Colorado employers must provide certain additional transparency regarding pay and promotional opportunities to their employees.

#### 1. To which employers do the EPT Rules apply?

All employers with at least one employee in Colorado.

#### 2. What "promotional opportunities" must employers notify Colorado employees about?

Colorado employers must provide notice to all Colorado employees of all "promotional opportunities," regardless of the role's work location.

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### Practices

Affirmative Action, OFCCP and  
Government Contract Compliance  
Wage and Hour

### Services

Pay Equity

A “promotional opportunity” exists when an employer (a) backfills an existing position, (b) adds a new position, or (c) gives an existing employee a new position, including by changing their title or materially changing their authority, duties, or opportunities (including “in-line” progressions), and that new position is superior to at least one job held by at least one employee of the same employer in terms of compensation, benefits, status, duties, opportunities, or access to further career advancement — regardless of the physical location of the new role.

Notices of promotional opportunities must be in writing and be provided a reasonable time before the employer an employee for the role.

### *3. What information must be included in notices of promotional opportunities and job postings?*

For jobs to be performed in Colorado (including anything more than a “modest” amount of work in Colorado) and remote jobs not tied to any location:

- The job title;
- The wage rate or range (lowest to highest pay) that the employer believes it might pay the hire of the particular job, depending on the circumstances and based on good-faith beliefs;
- A general description of other types of pay that are being offered for the job;
- A general description of benefits the employer is offering for the job, including healthcare benefits, retirement benefits, any benefits permitting paid days off (including sick leave, parental leave, and paid time off or vacation benefits), and any other benefits that must be reported for federal tax purposes; and
- The means for employees to apply.

Colorado does not require that employers post jobs externally, but does require written notice of “promotional opportunities” to Colorado employees.

For jobs to be performed entirely outside of Colorado (or only a “modest” amount of work in Colorado):

- The job title; and
- The means for employees to apply.

### *4. Which jobs require pay and benefit information in job postings?*

Job postings for the following types of roles must disclosure of pay and benefit information in the job posting:

- Job postings for roles , including any role with more than “modest” work in Colorado,
- Remote jobs that are not tied to any specific location.

Postings and notices for jobs to be performed entirely outside of Colorado, including roles with only “modest” work in Colorado, do not require disclosure of pay and benefit information. But if the role is a promotional opportunity, it must be disclosed to Colorado employees in writing and before making a selection decision.

### *5. What is the penalty for non-compliance?*

Employers face potential fines between \$500 and \$10,000 per job with non-compliant job postings or notices of promotional opportunities.

For additional guidance on this issue, please contact the Jackson Lewis attorney with whom you regularly work.

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