

# The New Frontier: Explaining Pay Data Information Requirements for Promotions in Colorado and California's New Pay Reporting Requirements

JANUARY 27, 2021



DirectEmployers  
Association

## **Candee Chambers**

DirectEmployers Association  
7602 Woodland Drive, Suite 200  
Indianapolis, IN 46278  
Phone: (317) 874-9052



FOX, WANG & MORGAN P.C.

## **Jay J. Wang, Esq.**

Fox, Wang & Morgan P.C.  
315 University Avenue  
Los Gatos, CA 95030  
Phone: (408) 844-2370



## **Tony Perkins**

Taapestry by DirectEmployers  
7602 Woodland Drive, Suite 200  
Indianapolis, IN 46278  
Phone: (317) 874-9013

# AGENDA

1. The Caveats P. 3
2. Colorado Equal Pay for Equal Work Law – What We Haven’t Covered Yet P. 6
  - ❑ Wage Discrimination Prohibition P. 6
  - ❑ The “Promotions” Requirement P. 14
3. California Pay Data Reporting P. 23
  - ❑ What is Required P. 29
  - ❑ Practical Pointers P. 43
4. Question & Answer Period P. 45

# THE CAVEATS

- ❑ Today's webinar is about new laws in the West meant to address pay disparity in the workplace
  - ❑ Colorado Equal Pay for Equal Work Act
    - ❑ Will not repeat information from December 15<sup>th</sup> webinar
    - ❑ Today is about the requirements not previously addressed:



- Prohibition on wage discrimination
- Pay data information for promotion listings/postings

# THE CAVEATS

- ❑ California SB 973 – Pay Reporting Requirement
  - ❑ Who does the law apply to, and how to satisfy its requirements
  - ❑ Information today based on what is currently known
    - FAQs re effect of acquisitions, mergers, and company spinoffs not yet published
    - User guide and template to be available February 1st



# THE CAVEATS

- ❑ Information today is not intended to be, nor does it constitute, legal advice.
- ❑ Consult with your legal counsel.



# **COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET**

## **❑ Wage Discrimination Prohibitions**

**❑ Colorado employers (have one or more employees in Colorado) are prohibited from:**

**❑ Paying a wage rate less than the rate paid to another employee for substantially similar work on the basis of sex, or sex in combination with another protected status**

- “Sex” means gender identity
- “Substantially similar work” based on composite of skill, effort (including shift differential), and responsibility
  - Job title not determinative

# **COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET**

- ❑ Wage rate differential permissible if completely accounted for and reasonably based on:
  - Seniority or merit system
  - System that measures earnings by quantity or quality of production
  - Geographic location where work is performed
  - Education, training, or experience reasonably related to work
  - Travel requirements if regular and necessary condition of work

# **COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET**

- ❑ Wage Discrimination Prohibitions
  - ❑ Colorado employers (have one or more employees in Colorado) are prohibited from (cont'd.):
    - ❑ Asking or relying upon wage rate history of prospective employee to determine compensation
    - ❑ Restricting employees from discussing compensation
    - ❑ Requiring employees to sign a document that prohibits disclosure of compensation rate



# **COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET**

- ❑ Wage Discrimination Prohibitions
  - ❑ Colorado employers (have one or more employees in Colorado) are prohibited from (cont'd.):
    - ❑ Discriminating or retaliating against applicant who refuses to disclose wage rate history
    - ❑ Discriminating or retaliating against employee for discussing wage rate or assisting in enforcement of law

# **COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET**

## ☐ Wage Discrimination Prohibitions

☐ To determine compliance with prohibition against wage discrimination, Colorado employers **MUST**:

- ☐ Maintain records of job descriptions and wage-rate history of current employees; and
- ☐ Maintain such information for former employees for a period of two years after end of employment



# COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET

## ☐ Wage Discrimination Prohibitions

### ☐ What happens when there is a violation?

- ☐ Aggrieved party can either file a Complaint with the Colorado Division of Labor Standards & Statistics, OR bring a civil complaint
  - Two year statute of limitations from when violation occurs. **NOTE:** Violation occurs on each occasion person is affected by wage discrimination (i.e., each time employee is paid the discriminatory wage)

# **COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET**

## ☐ Wage Discrimination Prohibitions

### ☐ What happens when there is a violation?

#### ☐ Damages an aggrieved party may recover:

- Back pay, not to exceed three years
- Equitable relief (reinstatement, promotion, pay increase, etc.)
- Reasonable costs of suit, including attorneys' fees



# **COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET**

## ☐ Wage Discrimination Prohibitions

### ☐ What happens when there is a violation?

#### ☐ Damages an aggrieved party may recover (cont'd.):

- Liquidated damages equal to economic damages, unless employer's act or omission was in good faith
  - “Good faith” includes the employer undertaking a comprehensive pay audit of workforce within two years prior to commencement of action for the purpose of identifying and remedying pay disparities



# COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET

## ❑ The “Promotions” Requirement

### ❑ Colorado Revised Statutes § 8-5-201(1):

- ❑ “An employer shall make **reasonable** efforts to announce, post, or otherwise make known **all** opportunities for promotion to **all** current employees on the same calendar day and prior to making a promotion decision.” (Emphasis added)

### ❑ EPT Rules 7 CCR 1103-13, Rule 4.2



# **COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET**

## **❑ The “Promotions” Requirement**

### **❑ WHAT DOES THE STATUTE AND RULE MEAN?**

- ❑ If you are a Colorado employer, with Colorado employees, you must provide notice of each and every promotion opportunity to your Colorado employees
  - Does not matter if employee is not qualified (Rule 4.2.4)
  - Law does not extend obligation to non-Colorado employees

# **COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET**

## **❑ The “Promotions” Requirement**

### **❑ WHAT IS AN “OPPORTUNITY FOR PROMOTION”?**

- ❑ Rule 4.2.1: “Exists when an employer has or anticipates a vacancy in an existing or new position that could be considered a promotion for one or more employee(s) in terms of compensation, benefits, status, duties, or access to further advancement.”
- ❑ INFO SHEET #9: “A vacancy is a promotional opportunity so long as the job is superior to another job...in terms of compensation, benefits, status, duties, opportunities, or access to further career advancement.”



# **COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET**

## **❑ The “Promotions” Requirement**

### **❑ EXCEPTIONS TO PAY DATA REQUIREMENT**

- ❑ Promotions requiring confidentiality because employee unaware of pending separation
- ❑ Automatic promotions after trial period less than one year
  - I.e. advancement promised in written contract
- ❑ Temporary or interim positions lasting less than six months

# **COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET**

## ☐ The “Promotions” Requirement

### ☐ WHEN MUST AN EMPLOYER PROVIDE NOTICE OF PROMOTION OPPORTUNITY?

☐ Must make known to all current employees “same calendar day”

- Inform everyone at same time (no rolling distribution)
- Provide notice before making promotion decision



# COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET

## ❑ The “Promotions” Requirement

### ❑ HOW MUST COLORADO EMPLOYEES BE NOTIFIED?

#### ❑ “Reasonable efforts” constitutes:

- A writing (best practice due to recordkeeping obligation)
- Accessible to all covered employees
  - Intranet vs. Email
  - Physical post on board outside HR
  - Alternative methods



# COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET

## ❑ The “Promotions” Requirement

### ❑ Contents Employers Must Include in Promotion Opportunity:

- ❑ Job title
- ❑ “Pay Data” Information
  - Rule vs. Statute language
- ❑ Means by which to apply
- ❑ RECOMMENDED: Minimum qualifications



# COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET

## ❑ The “Promotions” Requirement

### ❑ WHAT DOES THIS MEAN PRACTICALLY?

#### ❑ If an employer has a Colorado employee:

- Employers must list/post, with pay data information, to its Colorado employees **EVERY** position accepting internal candidates
  - Geographic location of job does not matter
  - Only limitation is if open position is not a promotion



# **COLORADO EQUAL PAY FOR EQUAL WORK – WHAT WE HAVEN'T COVERED YET**

## ☐ The “Promotions” Requirement

### ☐ BUT HOW DO I AVOID PUBLICIZING THE PAY DATA TO EVERYONE TO COMPLY WITH PROMOTION NOTICE TO MY COLORADO EMPLOYEES?

- ☐ Separate portal accessible to Colorado employees only?
- ☐ Do not use your publicly accessible jobs website to satisfy your separate “promotions” obligation
- ☐ Publication of openings to Colorado?

# **CALIFORNIA PAY DATA REPORTING**

## **❑ SB 973 – California Pay Data Reporting**

### **❑ Enacted Government Code § 12999**

- ❑ Authorizes DFEH to collect an Annual Pay Data Report
- ❑ Allows DFEH to share reports data with DLSE so two agencies can undertake targeted enforcement of equal pay or discrimination laws
- ❑ Authorizes DFEH to enforce the California Fair Pay Act (Labor Code sections 1197.5 and 432.3)
  - Previously enforced through DLSE

# CALIFORNIA PAY DATA REPORTING

## ❑ SB 973 – California Pay Data Reporting

### ❑ Intended to:

- ❑ Address continuing pay disparity
- ❑ Ensure California continues to compile and aggregate pay data
  - Resuscitates President Obama's proposed revision to EEO-1 halted by Trump Administration in August 2017





# CALIFORNIA PAY DATA REPORTING

- ❑ **WHO** must submit annual pay data report?
  - ❑ Private employers with 100 or more employees required to file an EEO-1 with the EEOC
    - ❑ Who counts towards 100 employee requirement?
      - ALL employees on payroll
        - Part-time? Temps? Located outside California?  
**YES**
        - Affiliated company employees if single enterprise?  
**YES**



# CALIFORNIA PAY DATA REPORTING

❑ Who counts towards 100 employee requirement (cont'd.)?

- Count employees using EITHER:
  - A “Snapshot Period” (a single pay period) chosen by employer between 10/1 and 12/31 of the prior year (the “Reporting Year”); OR
  - Whom the employer employed on a regular basis during the Reporting Year.
    - Accounts for seasonal employers



# CALIFORNIA PAY DATA REPORTING

- ❑ **WHEN** are annual pay data reports due to DFEH?
  - ❑ Employers must submit reports on or before March 31<sup>st</sup> every year through DFEH portal, showing pay data from prior year
    - ❑ DFEH Online Portal expected to be available by February 15, 2021 for 2020 pay data
    - ❑ User Guide and Template for employer edification expected to be available by February 1, 2021
  - ❑ Upload an Excel or .CSV file using DFEH's template, or by using the portal's fillable form



# CALIFORNIA PAY DATA REPORTING

- ❑ **WHERE** is the information publicly (or **HOW** state agencies will use the annual pay reports)?
  - ❑ DFEH will annually publicize aggregate reports
    - ❑ No individually identifiable information made public; unlawful by statute
  - ❑ Individual data used only for purposes of institution of enforcement proceeding or investigation
  - ❑ DFEH to maintain data for period of 10 years
    - ❑ No information yet about how DFEH will maintain security of data

# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

### ❑ Reporting to be done by establishment

- ❑ If an employer has a single establishment, the employer will submit one pay data report (an “establishment” is an economic unit producing goods or services)
- ❑ If an employer has multiple establishments, the employer will submit one pay data report for each establishment that is either in California or has California employees, and one consolidated report (which combines all locations with California employees).

# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

- ❑ DFEH preparing form of report currently, but EEO-1 Component 2 form is a starting point for how data will be submitted.
- ❑ NOTE: DFEH FAQ explicitly states that an employer's EEO-1 Report for Reporting Year 2020 OR a script/program developed for EEO-1 Component 2 collection from 2017 and 2018 is **INSUFFICIENT**
  - <https://www.dfeh.ca.gov/paydatareporting/faqs/>

# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

| Job Categories   | Salary Compensation Band  | Number of Employees (Report employees in only one category) |        |                        |                           |                                     |       |                                  |                   |        |                           |                                     |       |                                  |                   | Total Col. A-N |  |
|--|---------------------------|---|--------|------------------------|---------------------------|-------------------------------------|-------|----------------------------------|-------------------|--------|---------------------------|-------------------------------------|-------|----------------------------------|-------------------|----------------|--|
|  |                           | Race/Ethnicity  |        |                        |                           |                                     |       |                                  |                   |        |                           |                                     |       |                                  |                   |                |  |
|  |                           | Hispanic or Latino  |        | Non/Hispanic or Latino |                           |                                     |       |                                  |                   |        |                           |                                     |       |                                  |                   |                |  |
|  |                           |   |        | Male                   |                           |                                     |       |                                  |                   | Female |                           |                                     |       |                                  |                   |                |  |
|  |                           | Male  | Female | White                  | Black or African American | Native Hawaiian or Pacific Islander | Asian | Native American or Alaska Native | Two or more races | White  | Black or African American | Native Hawaiian or Pacific Islander | Asian | Native American or Alaska Native | Two or more races |                |  |
|  |                           | A   | B      | C                      | D                         | E                                   | F     | G                                | H                 | I      | J                         | K                                   | L     | M                                | N                 | O              |  |
| 1<br>Executive/<br>Senior Level<br>Officials and<br>Managers | 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    |   |        |                        |                           |                                     |       |                                  |                   |        |                           |                                     |       |                                  |                   |                |  |

Sample Form

# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

| Job Categories   | Salary Compensation Band  | For each cell provide the <u>TOTAL Number of Hours</u> worked in last year |        |                        |                           |                                     |       |                                  |                   |        |                           |                                     |       |                                  |                   | Total Col. A-N |
|--|---------------------------|--|--------|------------------------|---------------------------|-------------------------------------|-------|----------------------------------|-------------------|--------|---------------------------|-------------------------------------|-------|----------------------------------|-------------------|----------------|
|  |                           | Race/Ethnicity   |        |                        |                           |                                     |       |                                  |                   |        |                           |                                     |       |                                  |                   |                |
|  |                           | Hispanic or Latino   |        | Non-Hispanic or Latino |                           |                                     |       |                                  |                   | Female |                           |                                     |       |                                  |                   |                |
|  |                           | Male   | Female | White                  | Black or African American | Native Hawaiian or Pacific Islander | Asian | Native American or Alaska Native | Two or more races | White  | Black or African American | Native Hawaiian or Pacific Islander | Asian | Native American or Alaska Native | Two or more races |                |
|  |                           | A  | B      | C                      | D                         | E                                   | F     | G                                | H                 | I      | J                         | K                                   | L     | M                                | N                 | O              |
| 1<br>Executive/<br>Senior Level<br>Officials and<br>Managers | 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    |  |        |                        |                           |                                     |       |                                  |                   |        |                           |                                     |       |                                  |                   |                |
| 2<br>First/Mid-Level<br>Officials and<br>Managers            | 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    |  |        |                        |                           |                                     |       |                                  |                   |        |                           |                                     |       |                                  |                   |                |

Sample Form



# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

❑ **WHAT** information must an employer submit in its annual pay data report?

❑ Number of employees by race, ethnicity, and sex in each of 10 job categories

▪ Employees an employer **MUST** include are:

- Inside CA and reports to establishment
- Outside CA and reports to CA establishment
- Inside CA and reports to non-CA establishment

# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

❑ **WHAT** information must an employer submit in its annual pay data report?

❑ Number of employees by race, ethnicity, and sex in each of 10 job categories

- Employees on payroll during “Snapshot Period” employer selects between 10/1 and 12/31 of Reporting Year
- Identify sex based on male, female, or non-binary
- Job categories match categories from EEO-1 Report

# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

❑ **WHAT** information must an employer submit in its annual pay data report?

- ❑ Number of employees by race, ethnicity, and sex whose annual earnings fall within each pay band
  - Pay bands are the bands the U.S. Bureau of Department of Labor Statistic uses to collect data in its Occupational Employment Statistics Survey
  - Annual wages based on wages reported in Box 5 on employee's W-2 form for Reporting Year

# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

❑ **WHAT** information must an employer submit in its annual pay data report?

❑ Total number of hours worked by each employee

- For non-exempt employees, use hours worked plus paid time off during the Reporting Year
- For exempt employees, use timesheets plus paid time off during Reporting Year OR total number of days worked or on paid leave multiplied by average number of hours worked per day

# CALIFORNIA PAY DATA REPORTING

## ☐ WHAT IS REQUIRED

☐ **WHAT** information must an employer submit in its annual pay data report (cont'd.)?

☐ Reporting Year and dates of Snapshot Period selected by employer

☐ Reporting Year is calendar year prior to the March 31<sup>st</sup> submission deadline

☐ Snapshot Period is a payroll period between 10/1 and 12/31 the employer chooses to use.

# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

❑ **WHAT** information must an employer submit in its annual pay data report (cont'd.)?

### ❑ Employer's identifying information

- Name, address, headquarters' address (if different)
- CA and federal Employer Identification Number
- North American Industry Classification System code
- # of employees in and out of California
- California state contractor status

# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

❑ **WHAT** information must an employer submit in its annual pay data report (cont'd.)?

❑ Identifying information for each establishment (the “work from home” issue)

- Establishment name
- Establishment address
- # of employees at establishment
- Major activity at establishment

# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

❑ **WHAT** information must an employer submit in its annual pay data report (cont'd.)?

❑ Certification that information is accurate and in accordance with code and instructions

❑ Information and signature of certifying official

- Name, title, signature, and date of execution for certifying official
- Does not have to be same person as contact for state agency inquiry



# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

❑ **WHAT** information must an employer submit in its annual pay data report (cont'd.)?

- ❑ Contact information for person whom state can contact
  - Practical considerations about whom state agencies should speak to about the annual pay data report

# CALIFORNIA PAY DATA REPORTING

## ❑ WHAT IS REQUIRED

❑ **WHAT** information must an employer submit in its annual pay data report (cont'd.)?

❑ Clarifying remarks

- VERY IMPORTANT (as we will see)
- Opportunity to explain numbers

❑ Penalty for Non-Compliance:

❑ Litigation costs state incurs to seek an order of compliance

# CALIFORNIA PAY DATA REPORTING

## ❑ PRACTICAL POINTERS

❑ **WHY** will annual pay data reports be unhelpful in resolving pay disparities?

- ❑ Data too highly aggregated and/or nondescript to create a comparison of similarly situated employees

  - Think of the *OFCCP v. Oracle* issue

- ❑ Data sets may be too small for meaningful statistical analysis

- ❑ Data does not report “pay decisions” that are the basis of the California Fair Pay Act and federal Equal Pay Act

# CALIFORNIA PAY DATA REPORTING

## ❑ PRACTICAL POINTERS

❑ **WHY** will annual pay data reports be unhelpful in resolving pay disparities?

❑ Report fails to take into account important, legally valid factors that can account for differences in pay

- Seniority system, merit system, system measuring earnings by quantity or quality
- Education, training, or experience

❑ Differences in each reported employee's job history

- Different hire dates, different hours schedule

# CALIFORNIA PAY DATA REPORTING

## ❑ PRACTICAL POINTERS

❑ **HOW** and **WHY** a vendor like Taapestry should be involved

- ❑ Help determine what pay period to use to get best employee mix
- ❑ Pre-analysis of data to prepare employer to address concerns
- ❑ Review pay information for providing explanations in clarifying remarks
- ❑ Institutional report knowledge to address any resulting investigation or complaint



# CALIFORNIA PAY DATA REPORTING

## ❑ PRACTICAL POINTERS

- ❑ **HOW** and **WHY** a vendor like Taapestry should be involved

- ❑ Analyze data consistent with employer's actual decision-making process to prepare defenses

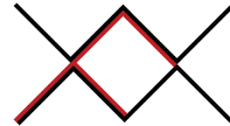




DirectEmployers  
Association

**Candee Chambers**

DirectEmployers Association  
7602 Woodland Drive, Suite 200  
Indianapolis, IN 46278  
Phone: (317) 874-9052



FOX, WANG & MORGAN P.C.

**Jay J. Wang, Esq.**

Fox, Wang & Morgan P.C.  
315 University Avenue  
Los Gatos, CA 95030  
Phone: (408) 844-2370



**Tony Perkins**

Taapestry by DirectEmployers  
7602 Woodland Drive, Suite 200  
Indianapolis, IN 46278  
Phone: (317) 874-9013