An annual pay data report will be required for private employers with 100 or more employees that are required to file an annual Employer Information Report under federal law.

On September 30, California Governor Gavin Newsome put his signature on a bill that will require private employers with at least 100 employees to submit a pay data report to the Department of Fair Employment and Housing (DFEH) annually. He also vetoed a bill that would have required employers during a state emergency to recall laid-off employees based on a preference system.

Pay data. The pay data bill, S.B. 973, cleared both the state assembly (50-11) and senate (29-8) with comfortable majorities in August.

Under the new law, on or before March 31, 2021, and on or before March 31 of every year after that, private employers with 100 or more employees that are required to file an annual Employer Information Report (with the EEOC) under federal law must submit a pay data report to the DFEH that contains certain wage information. The information must be made available in a prescribed format.

The bill also requires, among other things, that:

- The DFEH make the reports available to the Division of Labor Standards and Enforcement (DLSE) upon request;
- The DFEH may seek an order requiring an employer to comply when the department does not receive the required report from the employer;
- The DFEH maintain the pay data reports for a at least 10 years; and
- DFEH and DLSE officers or employees refrain from making public any individually identifiable information obtained from the report prior to the institution of certain investigation or enforcement proceedings, as specified.

Pay discrimination remains a problem. Among the findings cited for the legislation is that despite recent progress in California to strengthen the state’s equal pay laws, "the gender pay gap persists, resulting in billions of dollars in lost wages for women each year in California."

Call-back after layoff. However, Governor Newsom refused to sign into law A.B 3216, which would have, among other things, required certain employers to offer laid-off employees information about job positions that become available and for which those employees are qualified. Employers would also be required to offer positions to laid-off employees based on a preference system and in accord with certain timelines and procedures.

A "laid-off employee" would be one who was employed by the employer for at least six months in the 12 months preceding the state of emergency giving rise to the application of the bill’s provisions, and whose most recent separation was due to a public health directive, government shutdown order, lack of business, a reduction in force, or other economic, non-disciplinary reason related to the state of emergency.

Reason for the veto. Newsom acknowledged the purpose behind the bill—"to ensure that workers who have been laid off due to the COVID-19 pandemic have certainty about their rehiring and job security." However, among other things, as drafted the bill’s requirements would apply during any state of emergency and to all
layoffs, even those that may be unrelated to the emergency. Gavin also said that tying the bill's provisions to a state of emergency would "create a confusing patchwork of requirements in different counties at different times."