

# STATE OF NEW YORK

4065

2019-2020 Regular Sessions

## IN SENATE

February 27, 2019

Introduced by Sen. BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to an annual pay data report

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new section 194-a to  
2 read as follows:

3 § 194-a. Annual pay data report. 1. On or before March thirty-first,  
4 two thousand twenty-one, and on or before March thirty-first each year  
5 thereafter, a private employer that has one hundred or more employees  
6 and who is required to file an annual Employer Information Report  
7 (EEO-1) pursuant to federal law shall submit a pay data report to the  
8 department covering the prior calendar year, which, for purposes of this  
9 section, shall be referred to as the "Reporting Year."

10 2. The pay data report shall include the following information:

11 (a) The number of employees by race, ethnicity, and sex in each of the  
12 following job categories:

13 (i) Executive or senior level officials and managers;

14 (ii) First or mid-level officials and managers;

15 (iii) Professionals;

16 (iv) Technicians;

17 (v) Sales workers;

18 (vi) Administrative support workers;

19 (vii) Craft workers;

20 (viii) Operatives;

21 (ix) Laborers and helpers; and

22 (x) Service workers.

23 (b) The number of employees by race, ethnicity, and sex, whose annual  
24 earnings fall within each of the pay bands used by the United States  
25 Bureau of Labor Statistics in the Occupational Employment Statistics  
26 survey.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (c) For purposes of establishing the numbers required to be reported  
2 under subdivision one of this section, an employer shall create a "snap-  
3 shot" that counts all of the individuals in each job category by race,  
4 ethnicity, and sex, employed during a single pay period of the employ-  
5 er's choice between October first and December thirty-first of the  
6 "Reporting Year."

7 (d) For purposes of establishing the numbers to be reported under  
8 subdivision two of this section, the employer shall calculate the total  
9 earnings, as shown on the Internal Revenue Service Form W-2, for each  
10 employee in the "snapshot," for the entire "Reporting Year," regardless  
11 of whether or not an employee worked for the full calendar year. The  
12 employer shall tabulate and report the number of employees whose W-2  
13 earnings during the "Reporting Year" fell within each pay band.

14 3. The employer shall include in the report the total number of hours  
15 worked by each employee counted in each pay band during the "Reporting  
16 Year."

17 4. For employers with multiple establishments, the employer shall  
18 submit a report for each establishment and a consolidated report that  
19 includes all employees.

20 5. The report shall include a section for employers to provide clari-  
21 fying remarks regarding any of the information provided. An employer is  
22 not required to provide clarifying remarks.

23 6. If an employer is required to file an Employer Information Report,  
24 otherwise known as the EEO-1 Report, with the United States Equal  
25 Employment Opportunity Commission or other federal agency that includes  
26 the same or substantially similar pay data information required under  
27 this section, the employer may satisfy compliance with this section by  
28 submitting the Employer Information Report to the department.

29 7. If the department does not receive the required report from an  
30 employer, the department may seek an order requiring the employer to  
31 comply with these requirements and shall be entitled to recover the  
32 costs associated with seeking the order for compliance.

33 8. It shall be unlawful for any officer or employee of the department  
34 to make public in any manner whatsoever any individually identifiable  
35 information obtained pursuant to their authority under this section  
36 prior to the institution of an investigation or enforcement proceeding  
37 by the department involving that information, and only to the extent  
38 necessary for purposes of the enforcement proceeding. For the purposes  
39 of this subdivision, "individually identifiable information" includes  
40 data that is associated with a specific person or business.

41 9. Any information disclosed to the department pursuant to this  
42 section shall be considered confidential information and not subject to  
43 disclosure pursuant to the public officers law.

44 10. Notwithstanding subdivision seven of this section, the department  
45 may develop and publicize aggregate reports based on the data obtained  
46 pursuant to their authority under this section, provided that the aggre-  
47 gate reports are reasonably calculated to prevent the association of any  
48 data with any individual business or person.

49 11. The department shall maintain pay data reports for not less than  
50 ten years.

51 12. For purposes of this section, both of the following definitions  
52 shall apply:

53 (a) "Employee" means an individual on an employer's payroll, including  
54 a part-time individual, for whom the employer is required to withhold  
55 federal social security taxes from that individual's wages.

1     (b) "Establishment" means an economic unit producing goods or  
2     services.

3     § 2. This act shall take effect on the one hundred eightieth day after  
4     it shall have become a law. Effective immediately, the addition, amend-  
5     ment and/or repeal of any rule or regulation necessary for the implemen-  
6     tation of this act on its effective date are authorized to be made and  
7     completed on or before such effective date.