STATE OF NEW YORK

453

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

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:

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

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

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

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

(i) Executive or senior level officials and managers;

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

(iii) Professionals;

(iv) Technicians;

(v) Sales workers;

(vi) Administrative support workers;

(vii) Craft workers;

(viii) Operatives;

(ix) Laborers and helpers; and

(x) Service workers.

(b) The number of employees by race, ethnicity, and sex, whose annual earnings fall within each of the pay bands used by the United States

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

LBD02860-01-1

Bureau of Labor Statistics in the Occupational Employment Statistics survey.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.