

# 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:

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

3 § 194-b. Annual pay data report. 1. On or before March thirty-first,  
4 two thousand twenty-three, 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

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

LBD02860-01-1

1 Bureau of Labor Statistics in the Occupational Employment Statistics  
2 survey.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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