



September 20, 2021

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Re: Meeting with the American Payroll Association Concerning Pay Equity Reporting

Thank you and your team for meeting with the American Payroll Association (APA)¹ on September 15 regarding APA's request to collaborate with the Illinois Department of Labor (IDOL) on pay equity reporting established as part of pay equity certificate requirements. The APA was joined by members of the National Payroll Reporting Consortium (NPRC)². The following is a summary of the issues discussed during the meeting.

Due Dates and Programming

The initial due date is March 2022 for some employers. The IDOL will assign initial due dates to each employer. The APA and NPRC expressed that March 2022 may not afford sufficient time to make software changes and to collect the necessary employee data. Industry needs a minimum of six months after final specifications are published to implement programming. Six months is typical for relatively routine changes such as revisions to existing Form W-2, *Wage and Tax Statement*, or wage reporting. If there are new elements or if employers must gather additional information (i.e., any missing elements), a year or more may be needed. Programming changes cannot begin before we have at least draft specifications and details on what is to be reported.

¹ The American Payroll Association is a nonprofit professional association representing more than 20,000 payroll professionals in the United States. APA's Government Relations Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and workers.

² The National Payroll Reporting Consortium is a non-profit trade association whose member organizations provide payroll processing and related services to roughly 2 million employers nationwide, covering over 36% of the private-sector workforce, as well as software developers that provide software to enable such services.

Additional Information Deemed Necessary

During the meeting, we asked about the clause in the public act, “*any other information the Department deems necessary to determine if pay equity exists among employees....*” Our concern regarded the uncertainty of this language. The IDOL responded that the intent of the clause was to avoid the need for subsequent legislation on adding other elements. Our understanding is that IDOL has no immediate plans to add elements to reporting requirements beyond those listed in the public act.

Specific Reporting Requirements

Gender

We brought to IDOL’s attention that California³ requires reporting based on three gender options (female, male, and non-binary); however, the Equal Employment Opportunity Commission’s (EEOC) EEO-1 Report does not allow for reporting of a third category other than in a free-form comments section, which cannot be easily analyzed. We understand that IDOL plans to adopt the EEOC’s definitions. If IDOL decides to consider a third category, please let us know.

County in Which the Employee Works

The APA and NRPC asked for guidance to clarify the reporting by county. For example, clearly designating the date or dates of an employee’s work location to identify the appropriate county. IDOL could select a fixed date, optimally the last day of the year. Any other date would require analysis and programming changes. This is needed because of the significant complexities of employees moving permanently from one county to another to work, working at different job sites in different counties, or splitting time between an employer’s physical office in one county and a home office in another county, permanently or temporarily.

³ From the California Department of Fair Employment and Housing’s (DFEH) Frequently Asked Questions: How should employers report employees’ sex? (11/23/2020; updated 02/04/2021) Under the Gender Recognition Act of 2017 (Senate Bill 179), California officially recognizes three genders: female, male, and non-binary. Therefore, employers should report employees’ sex according to these three categories. Employee self-identification is the preferred method of identifying sex information. If an employee declines to state their sex, employers must still report the employee according to one of the three sex categories, using current employment records or other reliable records or information such as an employee’s own pronoun. Unlike the EEO-1 Component 2 data collection from 2017 and 2018, DFEH requires employers to report non-binary employees in the same manner as male and female employees.

Date the Employee Started Working for the Business

The IDOL should consider the definition of "start date." Employees may be hired, terminated, and then rehired. Employees may shift between related employers. Guidance on whether reporting is based on the original start date, rehire date, and/or shift date would be appreciated. Many employers retain the original hire dates for rehires to offer the original benefits to which a former employee had become accustomed or when required by other laws, such as child support.

Total Wages

The APA and NRPC are concerned about the potential for inaccurate reporting because employers use definitions not intended for compliance with Illinois' pay equity law. Total wages, as defined by Section 2 of the Illinois Wage Payment and Collection Act, is likely different than the wages currently reported by employers for income tax withholding and unemployment insurance wage reporting. This implies that employers may need to keep separate records for the wages subject to Illinois' pay equity reporting requirements. Alternatively, the IDOL could determine that it will accept total wages as defined in Illinois' income tax withholding or unemployment insurance laws. Unemployment insurance wages are generally broader than income tax wages because it includes 401(k), Section 125 contributions, and other tax-preferred compensation.

We understand from Jason Keller that the IDOL will solicit employer contact information in October. Both APA and NRPC are prepared to publicize this request to our members. As stated in APA's original letter and during the meeting, we are here to assist the IDOL in implementing Illinois' pay equity reporting requirements. Thank you again for meeting with us.

Sincerely,



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