

Date of Hearing: August 11, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 973 (Jackson) – As Amended June 18, 2020

Policy Committee: Labor and Employment

Vote: 5 - 2

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill requires certain employers to submit a report each year to the Department of Fair Employment and Housing (DFEH) with pay data for specified job categories broken down by race, ethnicity and sex. Specifically, this bill:

- 1) Requires, on or before March 31, 2021, and on or before March 31 each year thereafter, a private employer with at least 100 employees that is required to submit a federal Equal Employment Opportunity Commission (EEOC) Employer Information Report (EEO-1) to submit a similar pay data report to DFEH. This report must include the number of employees, by demographic characteristic, in specified job categories and the number of employees by demographic characteristic in each of the pay bands used by the Occupational Employment Statistics (OES) survey as well as the number of employees by demographic characteristics in specified occupational types.
- 2) Prohibits any DFEH employee or officer from making public any identifiable information obtained prior to the institution of an investigation or enforcement proceeding under California's Equal Pay Act or the anti-discrimination provision of the Fair Employment and Housing Act.
- 3) Permits DFEH to develop and publicize aggregate reports based on the data obtained from employers, provided DFEH generates these reports to prevent association of any data with an individual or business.
- 4) Authorizes the DFEH to investigate, conciliate, mediate and prosecute complaints alleging unlawful pay discrimination under the Equal Pay Act (EPA).

FISCAL EFFECT:

Annual General Fund (GF) costs in the range of \$1 million to \$5 million for DFEH to implement the bill. Costs will depend on how the proposed pay reporting system is developed and implemented.

COMMENTS:

- 1) **Federal efforts thus far.** The EEOC, for decades, has required employer submission of workforce demographic information to help it administer and enforce anti-discrimination

laws in employment. In 2016, the Obama Administration announced its intent to revise the reporting rule to require the submission of employee pay data by race and gender beginning in 2018. Since that announcement, the rollout of this new reporting requirement has met repeated roadblocks. In August 2017, the federal Office of Management and Budget (OMB) halted implementation of the proposed rule and initiated an extensive review process of all proposed revisions. In March 2019, a federal court lifted the stay on implementation of the revised reporting rule, noting that OMB lacked a reasonable explanation for blocking the rule. The court ordered OMB to initiate data collection covering two years of pay data. In November 2019, the EEOC announced that it would fund a study by the National Academies of Sciences, Engineering, and Medicine's Committee on National Statistics (CNSTAT) to assess the quality of data collected for 2017 and 2018 "as the result of a court order." This evaluation is expected to be completed by December 31, 2021, and is intended to inform whether EEOC will collect additional data in the future.

- 2) **Purpose.** According to supporters, this bill allows appropriate state agencies to more efficiently identify patterns of wage disparities. Moreover, supporters note this bill will help employers analyze their own pay practices and help promote internal change in pay practices.
- 3) **The OES database.** SB 973's data reporting requirement relies heavily on the Bureau of Labor Statistics' OES database. The OES program produces employment and wage estimates annually for over 800 occupations at the state and national level. The survey is the only comprehensive source of regularly collected wage rate information across occupations, and each year's dataset uses data collected at different points in time. For example, the May 2020 OES release reflects data collected in November 2017, May 2018, November 2018, May 2019, November 2019 and May 2020.
- 4) **This data could be valuable.** Opponents correctly note this bill requires employers to submit pay data that does not align with current state laws on pay equity and pay discrimination. Existing law prohibits employers from paying an employee less than an employee of the opposite sex for "substantially similar" work, except when the wage differential is based on factors such as seniority, a merit system or other bona fide factors. This bill's data will not reflect these nuances and will not consider factors such as seniority or merit. Moreover, this bill's job categories do not show "substantially similar" work: OES' job categories are broad and encompass a variety of employees with differing tasks and responsibilities.

Despite the above considerations, this bill's pay data could still be valuable for both state agencies and employers. This data will not show evidence of explicit wage discrimination and should not be used for this purpose. However, the collected data can provide insight into hiring or promotion practices that perpetuate ongoing pay disparities in the workplace. For example, this data could show a clustering of women employees just below the median wage of a mid-level management position and men just above the median, or it could show a clustering of male employees in certain high-paying occupations.

- 5) **Recent legislation.** SB 171 (Jackson), of the 2019-20 Legislative Session, was substantially similar to this bill. SB 171 was held on this committee's Suspense File. SB 1284 (Jackson), of the 2017-18 Legislative Session, was also substantially similar to this bill and was also held on this committee's Suspense File.