

# Promoting Workplace Diversity, Equity, & Inclusion

SESSION 5 | CALIFORNIA LABOR & EMPLOYMENT LAW UPDATE 2021 WEBINAR SERIES

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## Session 5 Road Map

1. California's Progress Promoting Workplace Diversity, Equity, and Inclusion
2. Recent California Legislation Passed Addressing Gaps
  1. Appointing BOD From Underrepresented Communities (*Cal. Corp. Code* §§ 301.3, 301.4, & 2115.6)
  2. California Pay Data Reporting (*Cal. Gov't Code* § 12999)
3. Improving Diversity, Equity, and Inclusion in the Workplace
4. Conclusion

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# California's Progress Promoting Workplace Diversity, Equity, and Inclusion

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## California's Progress

- Significant progress made in recent years to strengthen California's equal pay laws

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## Opportunities for Improvement

- Gender and racial pay and opportunity gap persists
- 35%+ of publicly-traded corporations headquartered in CA have all White BOD (Latino Corporate Directors Association)
- 90% of CEOs are White (US Bureau of Labor Statistics, 2019)

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## Opportunities for Improvement

- In management, professional, and related occupations, only:
  - 31% of African Americans
  - 22% of Latinos
  - Compared with 54% of Asian Americans and 41% of Whites work in the same occupation (US Bureau of Labor Statistics)

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## Opportunities for Improvement

- Asian Americans the least likely to be promoted to manager or executive positions in CA (Ascend Foundation)

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## Opportunities for Improvement

- POC's earnings still trail others with similar positions
- Black women with Master's degree make 64 cents to every dollar paid to White, non-Hispanic men (National Women's Law Center)



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## Opportunities for Improvement

- Companies in the top quarter for racial and ethnic diversity are 35% more likely to financially outperform the national industry median (McKinsey & Company)
- For every 10% increase in racial and ethnic diversity on the senior-executive team, earnings before interest and taxes rise 0.8% (McKinsey & Company)

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## Opportunities for Improvement

- \$12tn in additional GDP if gender gap is narrowed by 2025 (McKinsey & Company)

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# Recent California Legislation Passed Addressing Gaps

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Boards of Directors From  
Underrepresented Communities  
*California Corporations Code* §§ 301.3, 301.4, &  
2115.6

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# BOD From Underrepresented Communities

- ❖ Requires public corporations to have a minimum number of directors from underrepresented communities

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## “Underrepresented Communities”

- An individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native,
- or
- Who self-identifies as gay, lesbian, bisexual, or transgender

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## Who Must Comply? - Covered Corporations

- Every public company with securities listed on major U.S. stock exchange
- and
- Principal executive office in California

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# Compliance Deadlines: 2021

- ❑ By the end of 2021, must have at least 1 director from an underrepresented community



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## Compliance Deadlines: 2022 & Beyond

By the end of 2022, BOD with:

- ❑ 9 or + directors must have at least 3 directors from underrepresented communities
- ❑ 5-8 directors, at least 2 directors from underrepresented communities
- ❑ 4 or > directors, 1 director must be from underrepresented community

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## Publication

- Beginning March 1, 2022, California Secretary of State will publish annual reports documenting covered corporations' compliance

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## Noncompliance Consequences

- \$100,000/violation fine for an initial violation
- \$300,000/violation fine for each subsequent violation

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California Pay Data Reporting  
*California Government Code § 12999*

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# California Pay Data Reporting

- ❖ Private employers with 100 or more employees (inside & outside of CA) must annually submit data on the pay, hours, job category, sex, race, and ethnicity to the DFEH

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# California Pay Data Reporting

- The number of employees by race, ethnicity, and sex in each of the following job categories:
  1. executive or senior level officials and managers,
  2. first or mid-level officials and managers,
  3. professionals,
  4. technicians,
  5. sales workers,
  6. administrative support workers,
  7. craft workers,
  8. operatives,
  9. laborers and helpers, and
  10. service workers

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# California Pay Data Reporting

- The number of employees by race, ethnicity, and sex, whose annual earnings fall within each of the pay bands used by the United States Bureau of Labor Statistics in the Occupational Employment Statistics survey.

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# Pay Bands

## Current Pay Bands:

1. \$19,239 and under
2. \$19,240 – \$24,439
3. \$24,440 – \$30,679
4. \$30,680 – \$38,999
5. \$39,000 – \$49,919
6. \$49,920 – \$62,919
7. \$62,920 – \$80,079
8. \$80,080 – \$101,919
9. \$101,920 – \$128,959
10. \$128,960 – \$163,799
11. \$163,800 – \$207,999
12. \$208,000 and over



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## Compliance Deadlines

- ❑ First report is due on or before March 31, 2021 for 2020 annual pay data
- ❑ Continues each year thereafter on or before March 31

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## Enforcement Deferral Period

- Must submit deferral request before March 31, 2021 at [dfeh.ca.gov/paydatareporting](https://dfeh.ca.gov/paydatareporting)
- If granted deferral, employer will have through April 30, 2021 to submit report to DFEH

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## Noncompliance Penalties

- DFEH may seek an order requiring the employer to comply

and

- may recover the costs associated with seeking the order for compliance

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# Improving Diversity, Equity, and Inclusion in the Workplace

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# Unconscious Bias

- ❖ Preferring Certain Names
- ❖ Gender Bias
- ❖ Similarity Bias
- ❖ Ageism Bias

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## Promoting Workplace Diversity, Inclusion, and Equity

- ✓ Audit the diversity of the workforce and BOD
- ✓ Assess adequacy of company policies for hiring, retention, and advancement of diverse employees
- ✓ Audit payroll practices to ensure employees are paid fairly based on nondiscriminatory factors

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# Promoting Workplace Diversity, Inclusion, and Equity

- ✓ Comply California's salary history ban (California Labor Code 432.3)
- ✓ Broaden areas of traditional recruitment
  - ✓ Historically diverse colleges/universities
  - ✓ Diverse career fairs
  - ✓ Websites/publications that cater to diverse communities
  - ✓ Diverse recruitment panels



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# Promoting Workplace Diversity, Inclusion, and Equity

- ✓ Match diverse employees with effective leaders and mentors
- ✓ Verify equity in your reward and recognition systems
- ✓ Open access to professional development and stretch assignments to all
- ✓ Check in with employees
- ✓ Open workplace flexibility options to all

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## Promoting Workplace Diversity, Inclusion, and Equity

- ✓ Review policies and practices to ensure that they are non-discriminatory and legally compliant
- ✓ Conduct periodic pay audits that target potential disparities based on protected categories
- ✓ Conduct periodic elimination of bias training

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# Promoting Workplace Diversity, Inclusion, and Equity

- ✓ Train performance evaluators to minimize bias
- ✓ Conduct periodic audits of performance evaluations to analyze potential disparities based on protected categories
- ✓ Train managers regarding best practices for conducting employee interviews

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## Conclusion

- ❖ Gender and racial pay and opportunity gap persists
- ❖ BOD from Underrepresented Communities → end of 2021, must have at least 1 director from an underrepresented community
- ❖ California Pay Data Reporting → reporting deadline March 31, 2021
- ❖ Audit policies and practices in the workplace

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