

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

MARC FREEDMAN  
VICE PRESIDENT, WORKPLACE POLICY  
EMPLOYMENT POLICY DIVISION

1615 H STREET, N.W.  
WASHINGTON, D.C. 20062  
202/463-5522

September 17, 2020

The Honorable Gavin Newsom  
Governor, State of California  
1303 10th Street, Suite 1173  
Sacramento, CA 95814

Via electronic mail: [leg.unit@gov.ca.gov](mailto:leg.unit@gov.ca.gov)

**RE: Veto of Senate Bill 973**

Dear Governor Newsom:

The U.S. Chamber of Commerce urges you to veto S.B. 973, legislation that would create a California version of the Equal Employment Opportunity Commission's ("EEOC") compensation data reporting form, EEO-1 Component 2 ("revised EEO-1, or Component 2"). The Chamber has opposed the implementation of the revised EEO-1 form, and our same objections apply to the form that would be created under S.B. 973.

Attached are comments submitted to the EEOC, supported by several representatives of employers, endorsing EEOC's decision to discontinue collection of the Component 2 data. These comments summarize arguments the Chamber made throughout the development of the Component 2 form. Of crucial importance to whether S.B. 973 should be vetoed is that the data collected by Component 2, and that would be collected through the process established by S.B. 973, is worthless with respect to identifying incidents of pay discrimination to the EEOC, or would be to the California agencies, and serves no purpose under the laws administered by the EEOC. EEOC now describes this data as having "unproven utility".<sup>1</sup>

The data collection process of the Component 2 form, and as envisioned by S.B. 973, is incapable of capturing the many nuances of legitimate distinctions that comprise compensation systems. As the attached comments describe:

The data collected under Component 2 (i.e., W-2 and "hours worked") and the methodology for organizing the data (i.e., EEO-1 job categories and pay bands), in addition to the data that was *not* collected (i.e., legitimate pay influencing factors), renders the data useless for purposes of evaluating an employer's pay practices, or identifying inappropriate compensation dissimilarities... W-2 wage data also fails to account for the fact that some types of pay, specifically commissions and tips, are a greater reflection of employee skill and effort than employer pay policies. Similarly, collecting "hours worked" and "proxy hours" for exempt workers renders any analysis

---

<sup>1</sup> 84 Fed. Reg. 48141 (Sept. 12, 2019).

meaningless because such hours have no bearing on the wages included in Box 1 of the W-2. Thus, the “data” collection conducted pursuant to Component 2 has no utility.<sup>2</sup>

Another key concern of the employer representatives in their comments to the EEOC is the likelihood that sensitive data contained in the Component 2 form will be released. While the bill has language specifying that “individually identifiable information” not be made public, that prohibition only applies prior to the initiation of an investigation or enforcement proceedings. Title VII of the Civil Rights Act has similar protections for sensitive information not being released by the EEOC, but experience has shown that once an investigation is launched, and launching one can be done for various reasons, protection for that sensitive information is lost.

For these reasons, the U.S. Chamber of Commerce recommends that you veto S.B. 973.

Sincerely,



Marc Freedman  
Vice President, Workplace Policy  
Employment Policy Division

---

<sup>2</sup> Comments of Employer Representatives to EEOC, November 12, 2019, p. 5.