

Instructions for Completing
the
Payroll Certification for Public Work Projects (form MW-352)
and
Annual Equal Pay Report for Qualifying Services (form MW-353)

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Background

This Equal Pay Report (“Report”) is collected under the authority of P.L. 2018, c. 9, the “Diane B. Allen Equal Pay Act,” which was signed into law by Governor Murphy on April 24, 2018.

The purpose of the law is to strengthen protections against employment discrimination and promote equal pay for all groups afforded protection against discrimination under the New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10:5-1 et seq. The law clarifies that it is an unlawful employment practice for an employer to discriminate against an employee by paying a rate of compensation to employees of a protected class which is less than the rate paid to employees not of the class for substantially similar work. Additionally, the law imposes a pay reporting requirement upon any employer who enters into a contract with a public body to provide public work or qualifying services, as defined below.

In the interest of consistency, uniformity, and economy, these forms have been developed by the Department for use by employers. Given the federal government’s long experience with collecting the relevant information on its EEO-1 form, the Department has adopted similar instructions for these forms. These instructions may be applicable to Reports for Qualifying Services, Reports for Public Works, or both.

Generally, employers filing Reports for Public Works will not see substantial changes in their current weekly reporting requirements under the Prevailing Wage Act. These employers must now add information on employees’ sex, race, and ethnicity, and must submit Reports weekly to the Department. These submissions may be new to employers filing Reports for Qualifying Services, however.

The filing of these Reports is required by law and is not voluntary.

Definitions

“Establishment” means a physical location where business is conducted or where services or industrial operations are performed (e.g. a factory, mill, store, hotel, movie theater, mine, farm, airline terminal, sales office, warehouse, or central administrative office).

“Public body” means the State or any agency or instrumentality of the State, and does not include county or local governments.

Public work” means public work as defined in N.J.S.A. 34:11-56.26(5) and is subject to the provisions of the Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. “Public work” shall not include the provisions of goods or products. “Public work” is defined at N.J.S.A. 34:11-56.26(5) as:

construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. “Public work” shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body or:

(a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and

(b) The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

“Qualifying services” means the provision of any service to the State or to any other public body, except for public work.

“Service” means any act performed in exchange for payment, including the provision of professional services, but shall not include the sale of goods or products.

Who Must File

Any employer, regardless of location, who enters into a contract with a public body to provide qualifying services or public work must file a Report.

How to File

The Department requires that Reports be filed electronically and emailed to equalpayact@dol.nj.gov.

Single-establishment employers doing business at only one establishment in one location must complete a single Report.

Multi-establishment employers doing business at more than one establishment must complete additional Reports. Such employers must complete:

1. A Report covering the principal or headquarters office;
2. A separate Report for each establishment employing 50 or more employees; and,
3. A consolidated Report for all establishments employing 50 or fewer employees.

For establishments involving physically dispersed activities it is not necessary to list separately each individual site, project, field, line, etc., unless the employer treats it as a separate legal entity. For these types of activities, list as establishments only those relatively permanent main or branch offices, terminals, stations, etc., which are either:

- (a) directly responsible for supervising such dispersed activities; or
- (b) the base from which personnel and equipment operate to carry out these activities.

When to File

For employers filing Reports for Qualifying Services, Reports must be submitted annually by **March 31** for the preceding year, using employment figures from any pay period in October through December.

For employers filing Reports for Public Works Projects, Reports must be submitted weekly.

Description of Job Categories (Qualifying Services Only)

The Equal Pay Act requires the Department to collect pay data sorted by job categories, which are broad-based employment categories. Employers filing a Report for Public Works should continue the same reporting of job titles, work classifications, and occupational categories as is currently required by the Prevailing Wage Act.

For employers filing a Report for Qualifying Services, the Department has adopted the job categories used in the federal government's EEO-1 report. The major job categories are listed below, including a brief description of the skills and training required for occupations in that category and examples of the job titles that fit each category. The examples shown below are illustrative and not intended to be exhaustive of all job titles in a job category. These job categories are primarily based on the average skill level, knowledge, and responsibility involved in each occupation within the job category. **All reported jobs must be placed into one of the below job categories.**

The Officials and Managers category as a whole is to be divided into the following two subcategories: Executive/Senior Level Officials and Managers, and First/Mid Level Officials and Managers. These subcategories are intended to mirror the employers own well established hierarchy of management positions. Small employers who may not have two well-defined hierarchical steps of management should report their management employees in the appropriate categories.

Executive/Senior Level Officials and Managers

Individuals who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products or services, within the parameters approved by boards of directors or other governing bodies. Residing in the highest levels of organizations, these executives plan, direct or coordinate activities with the support of subordinate executives and staff managers. They include, in larger organizations, those individuals within two reporting levels of the CEO, whose responsibilities require frequent interaction with the CEO.

Examples of these kinds of managers are: chief executive officers, chief operating officers, chief financial officers, line of business heads, presidents or executive vice presidents of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners.

First/Mid Level Officials and Managers

Individuals who serve as managers, other than those who serve as Executive/Senior Level Officials and Managers, including those who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations. These managers receive directions from the Executive/Senior Level management and typically lead major business units. They implement policies, programs and directives of executive/senior management through subordinate managers and within the parameters set by Executive/Senior Level management.

Examples of these kinds of managers are: vice presidents and directors, group, regional or divisional controllers; treasurers; human resources, information systems, marketing, and operations managers.

The First/Mid Level Officials and Managers subcategory also includes those who report directly to middle managers. These individuals serve at functional, line of business segment or branch levels and are responsible for directing and executing the day-to-day operational objectives of enterprises/organizations, conveying the directions of higher level officials and managers to subordinate personnel and, in some instances, directly supervising the activities of exempt and non-exempt personnel.

Examples of these kinds of managers are: first-line managers; team managers; unit managers; operations and production managers; branch managers; administrative services managers; purchasing and transportation managers; storage and distribution managers; call center or customer service managers; technical support managers; and brand or product managers.

Professionals

Most jobs in this category require bachelor and graduate degrees, and/or professional certification. In some instances, comparable experience may establish a person's qualifications.

Examples of these kinds of positions include: accountants and auditors; airplane pilots and flight engineers; architects; artists; chemists; computer programmers; designers; dieticians; editors; engineers; lawyers; librarians; mathematical scientists; natural scientists; registered nurses; physical scientists; physicians and surgeons; social scientists; teachers; and surveyors.

Technicians

Jobs in this category include activities that require applied scientific skills, usually obtained by post-secondary education of varying lengths, depending on the particular occupation, recognizing that in some instances additional training, certification, or comparable experience is required.

Examples of these types of positions include: drafters; emergency medical technicians; chemical technicians; and broadcast and sound engineering technicians.

Sales Workers

These jobs include non-managerial activities that wholly and primarily involve direct sales.

Examples of these types of positions include: advertising sales agents; insurance sales agents; real estate brokers and sales agents; wholesale sales representatives; securities, commodities, and financial services sales agents; telemarketers; demonstrators; retail salespersons; counter and rental clerks; and cashiers.

Administrative Support Workers

These jobs involve non-managerial tasks providing administrative and support assistance, primarily in office settings.

Examples of these types of positions include: office and administrative support workers; bookkeeping; accounting and auditing clerks; cargo and freight agents; dispatchers; couriers; data entry keyers; computer operators; shipping, receiving and traffic clerks; word processors and typists; proofreaders; desktop publishers; and general office clerks.

Craft Workers

Most jobs in this category include higher skilled occupations in construction (building trades craft workers and their formal apprentices) and natural resource extraction workers.

Examples of these types of positions include: boilermakers; brick and stone masons; carpenters; electricians; painters (both construction and maintenance); glaziers; pipelayers, plumbers, pipefitters and steamfitters; plasterers; roofers; elevator installers; earth drillers; derrick operators; oil and gas rotary drill operators; and blasters and explosive workers.

This category also includes occupations related to the installation, maintenance and part replacement of equipment, machines and tools, such as: automotive mechanics; aircraft mechanics; and electric and electronic equipment repairers.

This category also includes some production occupations that are distinguished by the high degree of skill and precision required to perform them, based on clearly defined task specifications, such as: millwrights; etchers and engravers; tool and die makers; and pattern makers.

Operatives

Most jobs in this category include intermediate skilled occupations and include workers who operate machines or factory-related processing equipment. Most of these occupations do not usually require more than several months of training.

Examples include: textile machine workers; laundry and dry cleaning workers; photographic process workers; weaving machine operators; electrical and electronic equipment assemblers; semiconductor

processors; testers, graders and sorters; bakers; and butchers and other meat, poultry and fish processing workers.

This category also includes occupations of generally intermediate skill levels that are concerned with operating and controlling equipment to facilitate the movement of people or materials, such as: bridge and lock tenders; truck, bus or taxi drivers; industrial truck and tractor (forklift) operators; parking lot attendants; sailors; conveyor operators; and hand packers and packagers.

Laborers and Helpers

Jobs in this category include workers with more limited skills who require only brief training to perform tasks that require little or no independent judgment.

Examples include: production and construction worker helpers; vehicle and equipment cleaners; laborers; freight, stock and material movers; service station attendants; construction laborers; refuse and recyclable materials collectors; septic tank servicers; and sewer pipe cleaners.

Service Workers

Jobs in this category include food service, cleaning service, personal service, and protective service activities. Skill may be acquired through formal training, job-related training or direct experience.

Examples of food service positions include: cooks; bartenders; and other food service workers.

Examples of personal service positions include: medical assistants and other healthcare support positions; hairdressers; ushers; and transportation attendants.

Examples of cleaning service positions include: cleaners; janitors; and porters.

Examples of protective service positions include: transit and railroad police and fire fighters; guards; private detectives and investigators.

Identification of an Employee's Sex, Race, and Ethnicity (Qualifying Services and Public Works)

The Department recognizes that identifying an employee's sex, race, and ethnicity can be a sensitive subject. However, accurate reporting of this information is necessary to achieve the Equal Pay Act's goal of ending pay discrimination. To that end, **this information must be reported for every employee and cannot be left blank.**

Voluntary self-identification is the preferred method of identifying an employee's sex, race, and ethnicity. Before completing a Report an employer must give all employees a voluntary opportunity to self-identify. The Department recommends that employers offer a statement about the voluntary nature of this inquiry for employees. For example, the following language may be used:

"The employer is subject to New Jersey reporting requirements for the administration of civil rights laws and regulations. In order to comply with these requirements, the employer invites employees to voluntarily self-identify their sex, race, and ethnicity. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information obtained may only be used in accordance with the provisions of applicable laws, executive orders, and regulations."

If an employee declines to self-identify his sex, race, or ethnicity, employment records or observer identification may be used. Again, this information must be reported for every employee and cannot be left blank.

Definitions of the sex, race, and ethnicity categories are as follows, and are drawn from the federal government's EEO-1 report.

Sexual Categories

The Department permits a designation of *non-binary* to encompass those employees who do not identify as either male or female.

Racial Categories

Asian (Not Hispanic or Latino) — A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American (Not Hispanic or Latino) — A person having origins in any of the black racial groups of Africa.

Native Hawaiian or Pacific Islander (Not Hispanic or Latino) — A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Native American or Alaska Native (Not Hispanic or Latino) — A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.

White (Not Hispanic or Latino) — A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Two or More Races (Not Hispanic or Latino) — All persons who identify with more than one of the above five races.

Ethnicity Categories

Hispanic/Latino — A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.

Non-Hispanic/Latino — A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.

Employee Hours Worked (Qualifying Services and Public Works)

The Equal Pay Act requires the Department to collect the number of hours worked by employees. Employers filing a Report for Public Works should continue the same reporting of hours as currently required by the Prevailing Wage Act.

For employers filing a Report for Qualifying Services, the Department will adopt the reporting requirements in the 2016 rule proposed by the Equal Employment Opportunity Commission at 81 F.R. 45479 (the rule was rescinded in 2017). For employees that are not exempt from the Fair Labor Standards Act (“FLSA”), employers must report the **actual number of hours worked by the employee in that year**.

For employees that are FLSA-exempt, an employer may report the actual number of hours worked by the employee. However, in lieu of reporting the actual hours worked, an employer is permitted to report a proxy of **40 hours per week for full-time exempt employees and 20 hours per week for part-time exempt employees**, multiplied by the number of weeks the individuals were employed during the reporting year.

Pay Bands (Qualifying Services Only)

The Equal Pay Act requires the Department to collect data on the compensation earned by employees, which must be reported in pay bands. Employers filing a Report for Public Works should continue the same pay data reporting as currently required by the Prevailing Wage Act.

For employers filing a Report for Qualifying Services, the Department will adopt the reporting requirements in the 2016 rule proposed by the Equal Employment Opportunity Commission at 81 F.R. 45479 (the rule was rescinded in 2017). The Department has adopted the 12 pay bands proposed in the 2016 rule. **An employer should determine an employee’s pay using Box 1 of the employee’s W-2 form, and then sort the employee into one of the 12 pay bands accordingly.**