

California Expected to Adopt New Pay Disclosure Requirements for Employers

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By September 30, 2022, Governor Gavin Newsom is expected to sign Senate Bill 1162, which would amend California Labor Code section 432.3, expanding employers' pay disclosure and record keeping requirements in California. Assuming this bill is signed, beginning on January 1, 2023, the following changes would be enforced in California:

Job Postings: In any job posting, employers with 15 or greater employees will be required to include the "pay scale," defined as the "salary or hourly wage range that the employer reasonably expects to pay for the position."

Disclosure to Applicants and Employees: Under this Labor Code amendment, employers will be required to disclose a job position's pay scale to *any* applicant or employee that requests it for a position in which they are applying or currently work. This requirement to share pay scale information would apply to *all* employers, including those with fewer than 15 employees.

Pay Scale Recordkeeping: All employers would be required to "maintain records of a job title and wage rate history for each employee for the duration of the employment plus three years after the end of the employment." Such records are to be accessible to the Labor Commissioner to determine whether the employer is engaging in a "pattern of wage discrepancy." If an employee brings a claim with the Labor Commissioner against an employer that fails to comply with this recordkeeping requirement, the employer's failure to maintain these records would create a rebuttable presumption in favor of an employee's claim.

Possible Penalties: The Labor Commissioner will be empowered to investigate complaints of non-compliance with this law, and if it is determined that an employer violated the statute, the Labor Commissioner would be authorized to order civil penalties ranging from \$100 to \$10,000 *per* violation. The penalty amount will depend on the "totality of the circumstances," including, whether the employer has previously violated this statute. However, no penalty will be applied to an employer's first violation where the employer can demonstrate that "all job postings for open positions have been updated to include the pay scale as required."

Notably, Senate Bill 1162 does not limit the definition of employers to those located or employing workers in California.

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