

BREAKING: California Employers to Disclose Pay Ranges (US)

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As a result of Governor Newsom's signature on SB 1162, California will soon become the largest state requiring affirmative disclosure of pay scale information, thus contributing to the state's ongoing effort to increase pay transparency. Effective January 1, 2023, many California employers will be required to include pay scale information in job postings and disclose pay scale information to current employees. The bill also makes significant changes to California's existing pay data reporting requirements for private employers with 100 or more employees. Consequently, California employers must begin familiarizing themselves about the bill and its new obligations:

What is a "pay scale" and what must employers disclose?

California Labor Code section 432.3 defines "pay scale" as the "salary or hourly wage range" an employer "reasonably expects" to pay for a position. Currently, California only requires employers to provide a position's respective pay scale upon reasonable request by an applicant. But, as of January 1, 2023, employers with 15 or more employees must include the pay scale for a position in any job posting (including posts on third-party sites such as LinkedIn or Indeed). Employers will also be required to provide a position's pay scale to any current employee in that position, upon request.

What are the new pay data reporting requirements?

SB 1162 also significantly changes existing pay data reporting requirements under California Government Code section 12999, including the timing and content of such reports. California employers with 100 or more employees will be required to submit an **annual** pay data report, including median and mean **hourly rates** for race, ethnicity, and sex within each job category, to the state. Employers with multiple establishments will no longer be required to submit consolidated reports, but must still continue to submit individual reports for each establishment.

In addition, private employers with 100 or more employees hired through labor contractors will be required to submit a separate pay data report covering those employees hired through contractors in the prior calendar year. Curiously, while the new law requires labor contractors to supply all necessary pay data to the employer, it does not separately require labor contractors to actually

collect the “necessary pay data,” nor does it define the data required or address any potential issues with regard to timing of these disclosures.

What about record retention?

The new law also introduces a record retention requirement; employers will be required to maintain records of job titles and wage rate histories for the duration of an employee’s employment and three years after termination of employment.

Are there any penalties for failing to comply with the new law?

Yes – failure to comply with pay scale disclosure requirements can result in civil penalties ranging from \$100 to \$10,000 **per violation**. Importantly, there is no penalty for the first violation if an employer can show that all job postings have been updated to include the requisite pay scale. Employers who fail to retain pay scale records face additional civil penalties ranging from \$100 to \$10,000 per violation.

Employers who fail to file timely, compliant pay data reports are subject to civil penalties up to \$100 **per employee** for the first omission and \$200 for subsequent omissions.

How should employers prepare for the new law?

Covered employers should begin planning for compliance now, including by compiling and reviewing all relevant pay data and/or working with counsel to conduct a proactive pay equity audit to identify any potential areas of concern prior to the new law becoming effective. In the interim, we will continue to monitor developments related to SB 1162 and its impact on California employers.

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