

California Will Now Require Employers to Disclose Pay Ranges in Job Postings and Report Certain Data in an Effort to Combat Pay Disparity

Article By:

Rachel Patta Howard

On September 27, 2022, California Governor Newsom signed the state's pay transparency bill, [SB 1162](#), into law, requiring employers with 15 or more employees to disclose pay ranges in job postings, beginning on January 1, 2023. California now joins Colorado, Washington, and New York City with this requirement. SB 1162 also requires certain employers with 100 or more employees to report certain demographic information regarding their employees to the California Civil Rights Division, beginning in May 2023.

Disclosure of Pay Ranges

SB 1162 amends California Labor Code section 432.3 and requires employers with 15 or more employees to disclose in any job postings, a "pay scale," defined as the "salary or hourly wage range that the employer reasonably expects to pay for the position." Employers are also required to provide the pay scale to applicants and current employees for their position, upon request.

Similarly, employers with 15 or more employees who engage a third party to announce, post, publish, or otherwise make known a job posting must provide the pay scale to the third party and require the third party to include the pay scale in any job posting. Of note, the law does not define the term "job posting" and the law does not require an employer to post every job opportunity. Accordingly, if a job is not posted (meaning, potentially, a candidate only discovers an opportunity via word-of-mouth), there is no requirement to provide the pay scale, but that information still needs to be provided, if requested, to any applicants.

The law further requires employers to maintain records of a job title and wage rate history for each employee for the duration of that employee's employment, plus three years after the end of such employment. The California Labor Commissioner will have authority to inspect such records.

A violation of the pay scale disclosure or record retention requirements can result in the Labor Commissioner assessing penalties ranging from \$100 to \$10,000 per violation. SB 1162 includes a limited safe harbor for first violations for failure to include pay scales in job postings, providing that no penalty may be assessed if the employer is able to show that all job postings for open positions have

been updated to include the required pay scale.

SB 1162 also provides that a person who claims to be aggrieved by a violation of this section may bring a civil action for injunctive relief and any other relief that the court deems appropriate.

Reporting Requirements

SB 1162 also amends California Government Code section 12999. The law previously required private employers with 100 or more employees who were also obligated to file federal EEO-1 reports to submit a “pay data report” to the California Civil Rights Department (formerly the Department of Fair Employment and Housing). That pay data report included the following information, based on the employees employed during a single pay period of the employer’s choice between October 1 and December 31:

1. The number of employees by race, ethnicity, and sex in each of the following job categories:
 - Executive or senior level officials and managers.
 - First or mid-level officials and managers.
 - Professionals.
 - Technicians.
 - Sales workers.
 - Administrative support workers.
 - Craft workers.
 - Operatives.
 - Laborers and helpers.
 - Service workers; and
2. 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.

Employers with multiple establishments were allowed to submit a single, consolidated report covering all of their establishments.

SB 1162 made several significant changes to these reporting requirements.

First, SB 1162 expands the employers covered by the reporting requirements to all private employers with 100 or more employees, regardless of whether the employer is obligated to file an EEO-1 report.

Second, covered employers must now also report the median and mean hourly rate within each job

category, and for each combination of race, ethnicity, and sex. The Governor explained these additional reporting requirements are meant to better identify gender and race-based pay disparities.

Third, with the passage of SB 1162, employers with multiple establishments are no longer allowed to submit a consolidated report. These employers must submit a report for each separate establishment, which may result in significant additional compliance work for employers with significant numbers of worksites.

Fourth, employers that have 100 or more employees hired through labor contractors must also produce a separate pay data report covering the employees hired through labor contractors in the prior calendar year. The labor contractor is required to supply all necessary pay data to the reporting employer.

All pay data reports must be reported to the state on or before the second Wednesday of May 2023 (i.e., May 10, 2023), and for each year thereafter on or before the second Wednesday of May.

Failure to file the required pay data could result in a civil penalty not to exceed \$100 per employee or \$200 for a subsequent failure to file the required report.

Next Steps

Employers should make sure they are aware of the key deadlines associated with this bill – January 1, 2023 for the pay scale disclosures in job postings and record retention requirements, and May 10, 2023 to provide updated pay data reports to the state.

Employers should also consult with counsel prior to revising job postings to use in 2023, to ensure such postings comply with the new law.

Copyright © 2024, Sheppard Mullin Richter & Hampton LLP.

National Law Review, Volumess XII, Number 279

Source URL: <https://natlawreview.com/article/california-will-now-require-employers-to-disclose-pay-ranges-job-postings-and-report>