

California Requires Stronger Pay Transparency for Employers in California

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Governor Newsom signed SB 1162 into law on September 27 (effective January 1, 2023), imposing several new wage transparency reporting requirements on employers in California, and aligning California with Washington, Colorado, and New York City, which have passed similar laws in recent months. Governor Newsom described SB 1162 as a statute aimed at tackling pay gaps and promoting equal pay for women in California.

New Disclosure Requirements

Currently in California, when an applicant “reasonably requests” the pay scale for a position, the employer is obligated to provide that information to the applicant. SB 1162 expands that requirement as follows:

1. All employers must provide, upon request, the pay scale for the position in which a current employee is employed;
2. All employers must maintain documentation of an employee’s job title and the wage history for each employee for the duration of the employee’s employment and for three years after that.
3. Employers with 15 or more employees are required to include the “salary or hourly wage range that the employer reasonably expects to pay for the position” in any job posting, including postings made on their behalf by third party companies.

New Reporting Requirements

SB 1162 also expands disclosure requirements for employers with 100 or more employees. Those employers currently must issue an annual report “[w]ithin each job category, for each combination of race, ethnicity, and sex” the median and mean hourly rate of employees. SB 1162 expands the number of data categories those employers are obligated to report and now requires that those

employers submit pay data reports to the California Civil Rights Department (formally known as the Department of Fair Employment and Housing). The reports must now include:

1. The number of employees by race, ethnicity, and sex in each of the following job categories: (a) executive or senior level officials and managers; (b) first or mid-level officials and managers; (c) professionals; (d) technicians; (e) sales workers; (f) administrative support workers; (g) craft workers; (h) operatives; (i) laborers and helpers; and (j) service workers. Employers are required to create a “snapshot” that counts all of the individuals in each job category by race, ethnicity, and sex, employed during a single pay period of the employer’s choosing between October 1 and December 31 of the applicable year.
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.
3. Within each job category, for each combination of race, ethnicity, and sex, the median and mean hourly rate.
4. The total number of hours worked by each employee in each pay band during the reporting year.
5. The employer’s North American Industry Classification System (NAICS) code.
6. For employers with multiple establishments, the employer must now submit a report with the above referenced information for each establishment. This information is required to be submitted “in a format that allows the [California Civil Rights Department] to search and sort the information using readily available software.”

Employers with 100 or more employees hired through labor contractors must also submit a separate pay data report to the California Civil Rights Department covering those employees and disclosing the ownership names of all labor contractors used to supply such employees.

These reports are due the second week of May each year. For 2023, the deadline is May 10.

Penalties for Noncompliance

Employers who fail to file the required data reports could face a civil penalty of \$100 per employee for a first-time violation, and \$200 per employee for subsequent failures. Employees can also file a complaint with the California Division of Labor Standards Enforcement, which could subject the employer to civil penalties of \$100 to \$10,000 per violation, depending on the totality of the circumstances (i.e., repeat offender, no effort to comply, etc.). SB 1162 makes clear that there is no penalty for first violations where an employer shows that “all job postings for all positions have been updated to include the pay scale.”

Remote Workers

SB 1162 is silent on reporting obligations for businesses that operate outside of California but have remote employees who work in California, or for employers that have employees in California who render services nationwide. California may look to a similar Colorado law for guidance: any employer

with at least one employee in Colorado must include pay disclosure in any job posting for a position that will or may be performed in Colorado, including remote positions.

Next Steps for Employers

Employers should prepare for the upcoming January 1, 2023, effective date of AB 1162, by reviewing job postings, determining the reasonable pay range set for an open position, and compiling data for the report to the California Civil Rights Department. Employers may also consider contacting counsel to conduct a pay scale equity audit.

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