

California Governor Gavin Newsom Signs Bill Imposing Pay Transparency and Reporting Requirements on Employers, 10-11-22

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On September 27, 2022, Governor Gavin Newsom signed into law SB 1162, which requires private employers to add pay ranges to job postings and provide them to current employees, upon request. Furthermore, it adds median and mean pay gap and contractor pay reporting to the existing SB 973, which requires private employers of 100 or more employees to submit pay data reports to the California Civil Rights Department (formerly the Department of Fair Employment and Housing) and break down aggregate pay data by sex, race, and ethnicity in specified job categories.

Starting January 1, 2023, employers with 15+ employees must include a position's salary or hourly wage range (not including bonuses or equity-based compensation) in any internal or external job postings. This requirement extends to job postings published by a third party at an employer's request.

SB 1162 does not limit the definition of "employer" to only those with operations or employees in California. As a result, this law will impact employers that do not have a physical office or current employees in California but publish nationwide job postings for remote positions.

Pay Scale Transparency:

The term "pay scale" is defined as the salary or hourly wage range that the employer reasonably expects to pay for the position. SB 1162 will require that:

- Employers with 15+ employees need to post the pay range on every job posting;
- Smaller employers will have to provide pay scale information to applicants "upon request"; and
- Employers must provide employees the pay scale for their current position upon request.

Employers with 15 or more employees who engage third parties to provide job postings will be required to provide the pay scale to the third party, who then will post the scale on the job posting.

SB 1162 also adds record-keeping requirements. Employers will be required to keep job title and wage rate history for each employee for the duration of their employment plus three years after termination of the employment relationship. Additionally, these records are open to inspection by the California Labor Commissioner.

Violations of the statute provide for penalties ranging from \$100-\$10,000, per job posting. However, there is no penalty for the first violation if the employer can show that all job postings for open positions have been updated to include the pay scale. Finally, a rebuttable presumption in favor of an employee's claim will arise if employers fail to keep records consistent with the above-mentioned requirements.

Median and Mean Pay Gap Reporting:

Private employers with 100 or more employees (if even one is a California employee) will have to add the median and mean pay gaps to the annual pay data reports provided to the California Civil Rights Department (CRD). Employers will be required to calculate and report on the median and mean pay gap in each EEO-1 job category in each location, for each combination of race, ethnicity, and sex. Moreover,

employers with multiple establishments must submit a report covering each establishment.

SB 1162 permits courts to impose a civil penalty not to exceed one hundred dollars (\$100) per employee upon any employer who fails to file the required report and not to exceed two hundred dollars (\$200) per employee upon any employer for a subsequent failure to file the required report. The bill requires those penalties to be deposited in the Civil Rights Enforcement and Litigation Fund for distribution to the Division of Labor Standards Enforcement, for expenditure to cover reasonable ongoing costs of administering and enforcing this section.

The CRD analyses and releases aggregate data to the public annually across multiple employers and will maintain data reports for no less than 10 years, provided that the aggregate reports reasonably prevent association of data with individual companies.

Contractor Pay Report:

Starting in May 2023, private employers with 100 or more workers hired through labor contractors will be required to submit a separate pay data report to the CRD covering the workers hired through labor contractors for the prior calendar year. The employer will also be required to report the ownership names of all the labor contractors used to supply employees.

The new law has defined the term “labor contractor” to mean an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer’s usual course of business.

SB 1162 will require labor contractors to supply all necessary pay data to private employer so the employer can file the report. In the event the labor contractor fails to provide the pay data to the employer as required, the penalties may be apportioned to the labor contractor in the appropriate amount.

What should employers do next?

Employers should consider the following now that SB 1162 has been signed into law:

- Consider needed revisions to existing job posting templates and job descriptions;
- Assess appropriate compensation ranges for all positions; and
- Train all hiring personnel (including recruiters).

Additionally, employers should watch out for these key dates:

- January 1, 2023 – pay scale disclosure for job postings and upon employee request
- May 10, 2023 – median/mean pay gap disclosure based on 2022 hours and wages data
- May 10, 2023 – contractor pay disclosure based on 2022 hours and wages data