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# California Legislature Votes to Dramatically Expand Pay Transparency and Reporting Requirements

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On August 30, 2022, the California Legislature passed SB 1162, which expands pay transparency and reporting requirements for employers doing business in California. If signed by Governor Gavin Newsom, the bill will amend Section 12999 of the California Government Code and Section 432.3 of the California Labor Code by, among other requirements, expanding employers' pay reporting obligations and salary disclosure requirements.

## California Government Code Section 12999—Expanded Pay Reporting Obligations

Existing California law requires private companies with 100 or more employees to submit a pay data report each year to the California Civil Rights Department (CRD).<sup>1</sup> The pay data report requires employers to list the number of employees working in California facilities by race, ethnicity, and sex, both by job category and by specified pay band. This annual reporting obligation began in 2021 and continued in 2022.

SB 1162 makes a number of changes to employers' pay reporting requirements. Among the most significant:

- **Pay Reporting Regarding Third-Party Contractors**: Private companies with 100 or more workers "hired through labor contractors"<sup>2</sup> within the prior calendar year now must submit a separate pay data report for those labor contractor workers.
  - Such reports must also include the "ownership names" of all labor contractors used to supply workers.
- **Hourly Rate Reporting Requirement**: In addition to reporting the number of employees and labor contractor workers by race, ethnicity, and sex in each job category and pay band, employers also must report the median and mean "hourly rate" within each job category by race, ethnicity, and sex.
- **Deadline**: The deadline for submitting the annual reports has moved to May 2023 (from March the previous two years), and on or before the second Wednesday of May each year thereafter.

- **Expanded Penalties:** The amendment adds a potential monetary penalty for non-compliance. Upon request of the CRD, a court “may impose” a civil penalty of \$100 or less “per employee” on any employer who fails to file the required report, and a penalty of \$200 or less per employee for a subsequent failure. As such, an employer with 100 employees could face a penalty up to \$10,000 for their first failure to submit the required report. Penalties are payable to the CRD’s Civil Rights Enforcement and Litigation Fund.<sup>3</sup>

### California Labor Code Section 432.3—Expanded Pay Scale Disclosure Obligations

Existing California law requires employers to provide the pay scale for a position to an applicant applying for employment, upon reasonable request. The law currently defines “pay scale” to mean “a salary or hourly wage range” and requires disclosure of pay scales only to “applicants” (individuals who are not currently employed with that employer).

SB 1162 expands these requirements in the following notable ways:

- **Pay Scales Must Be Provided to Current Employees:** Upon request, employers must provide current employees with the pay scale for the position in which the employee is “currently employed.” Employers also must continue to provide the pay scale to any applicant applying for employment.<sup>4</sup>
- **New Definition of Pay Scale:** The term “pay scale” is now defined to mean “the salary or hourly wage range that the employer reasonably expects to pay for the position.”
- **Pay Scales Must Be Included in Any Job Posting:** Employers with 15 or more employees must include the pay scale for a position in “any job posting.” This includes any postings made by a third party engaged by the employer to announce, post, publish, or otherwise make known a job posting.
- **New Data Retention Requirements:** Employers are 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 in order for the Labor Commissioner to determine if there is still a pattern of wage discrepancy.” These records will be open to inspection by the Labor Commissioner. Failure to maintain required records will establish a rebuttable presumption in favor of an employee’s claim.
- **Expanded Penalties and Potential Safe Harbor:** The Labor Commissioner is empowered to investigate complaints of non-compliance, and upon finding that an employer has violated the statute, may order payment of a civil penalty that can range from \$100 to \$10,000 per violation. For a first violation, there will be no penalty if the employer can demonstrate that all job postings for open positions have been updated to include the required pay scale. Penalties collected will go to the Labor Enforcement and Compliance Fund for distribution to the Division of Labor Standards Enforcement.

### Next Steps

SB 1162 leaves open a number of unanswered questions and presents significant work for California employers to prepare for their 2023 reports. As a preliminary matter, employers should determine whether they will need to submit data for employees of labor contractors, and if so, make arrangements to obtain the needed information well in advance of the filing deadline. Employers should also examine

their job posting practices to prepare a plan to add pay ranges to those postings, regardless of where they appear, and create a process for responding to employee inquiries regarding current pay ranges.

Communicate with your Paul Hastings contact for advice or questions.



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<sup>1</sup> Formerly the California Department of Fair Employment and Housing (DFEH).

<sup>2</sup> "Labor contractor" is defined as "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."

<sup>3</sup> The court "may" apportion an appropriate amount of penalties to any labor contractor that fails to provide pay data to the employer if that failure results in a penalty to the employer.

<sup>4</sup> "Applicant" means an individual who is seeking employment with the employer and "is not currently employed with that employer in any capacity or position."

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