



PAUL
HASTINGS



Pay Equity and Transparency: 2023 and Beyond

January 10, 2023

Agenda

- California Senate Bill 1162: Key Amendments to California Government Code Section 12999 and California Labor Code Section 432.3
- NYC Local Law 32
- New York State Salary Disclosure Law
- Overview of Pay Transparency Laws Outside of California and New York



California Government Code

California Senate Bill 1162

- Signed by Governor Newsom on September 27, 2022
- Amends Section 12999 of the California Government Code by expanding employers' **pay reporting** obligations
- Amends Section 432.3 of the California Labor Code by expanding employers' **salary disclosure** requirements
- Effective **January 1, 2023**

California Government Code Section 12999— Pre-2023

- Private employers with 100 or more employees, and that are required to submit an annual Employer Information Report (EEO-1) under federal law, must submit a pay data report each year to the California Civil Rights Department (CRD).
- The pay data report must list the number of employees by race, ethnicity, and sex, both by job category and by specified pay band.
- The pay data report must include the total number of hours worked by each employee counted in each pay band.
- This annual reporting obligation began in 2021 and continued in 2022.

California Government Code Section 12999— Key Changes

- Pay Reporting Regarding Third-Party Labor Contractors
- Mean/Median Hourly Rate Reporting Requirement
- New Deadline
- Penalties

California Government Code Section 12999— Pay Reporting Regarding Labor Contractors

- Private employers with 100 or more employees “hired through labor contractors” within the prior calendar year now must submit a separate pay data report to the CRD covering the employees hired through labor contractors in the prior calendar year.
- Reports must include the “ownership names” of all labor contractors used to supply employees.

California Government Code Section 12999— Mean/Median Hourly Rate Reporting Requirement

- Report must include the median and mean “hourly rate” within each job category, for each combination of race, ethnicity and sex.

California Government Code Section 12999— Deadline

- Next deadline is May 2023 (from March the previous two years)
- On, or before the second Wednesday of May each year thereafter

California Government Code Section 12999— Penalties


- Potential monetary penalty for non-compliance.
- Upon request of the CRD, a court “may impose” a civil penalty not to exceed \$100 “per employee” on any employer who fails to file the required report, and a penalty not to exceed \$200 “per employee” for a subsequent failure.
- Penalties go to CRD’s Enforcement and Litigation Fund.

Pay Reporting—Next Steps

- Determine whether you will need to submit data for employees of labor contractors, and, if so, make arrangements to obtain the data.
- Perform rough calculations of median and mean hourly rates to ensure you have the appropriate data and workers are grouped in correct categories.

Illinois – Pay Reporting Obligations

- By 3/23/2024, all private employers with over 100 employees must obtain an Equal Pay Registration Certificate from the Illinois Department of Labor and renew the certificate every two years, thereafter.
 - Must certify that the “average compensation for its female and minority employees is not consistently below the average compensation, as determined by rule by the United States Department of Labor, for its male and non-minority employees within each of the major job categories in [the employer’s EEO-1 report] . . . taking into account factors such as length of service, requirements of specific jobs, experience, skill, effort, responsibility, working conditions of the job, or other mitigating factors . . .”
 - Must submit individual employee data
- By 1/1/2023, entities required to file an annual report with the secretary of state must include with their annual report the employment data from Section D of the EEO-1 report, in a form to be developed by the Illinois Secretary of State.
 - Secretary of state will publish employer-specific data on its website



California Labor Code Section 432.3

California Labor Code Section 432.3— Pre-2023

- Employers must provide the pay scale for a position to an **applicant** applying for employment, “**upon reasonable request.**”
- The law defines “pay scale” to mean “a salary or hourly wage range.”

California Labor Code Section 432.3— Key Changes

- Pay Scales Must Be Provided to Current Employees
- New Definition of Pay Scale
- Pay Scales Must Be Included in Any Job Posting
- New Data Retention Requirements
- Expanded Penalties and Potential Safe Harbor

California Labor Code Section 432.3— Pay Scales Must Be Provided To Current Employees

- **Upon request**, employers must provide employees with the pay scale for the position in which the employee is “currently employed.”
- Employers must continue to provide the pay scale to any applicant applying for employment “upon reasonable request.”

California Labor Code Section 432.3— 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.

California Labor Code Section 432.3— New Definition of “Pay Scale”

“The salary or hourly wage range *that the employer reasonably expects to pay for the position.*”

Recent Guidance and FAQs

- **Who is counted as an employee to determine whether an employer has 15 or more employees?**
 - The statute does not specify how employers should count employees.
 - However, the DLSE takes the position that the law applies if “at least one of the employees [is] currently located in California.”
- **Can employers include a link in the posting (e.g., hyperlink in electronic posting or QR code in paper posting), which would take an applicant to the salary information?**
 - “No. The pay scale shall be included within the posting.”
- **Must the posted pay scale include “bonuses, tips, or other benefits”?**
 - “No. Any compensation or tangible benefits provided in addition to a salary or hourly wage are not required to be posted.”
- **Must the posted pay scale include “piece rate or commission wages”?**
 - “Yes. If the position’s hourly or salary wage is based on piece rate or commission, then the piece rate or commission range the employer expects to pay for the position must be included in the job posting.”

[California Equal Pay Act: Frequently Asked Questions](#)

California Labor Code Section 432.3— 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.”
- 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.

California Labor Code Section 432.3— Expanded Penalties and Potential Safe Harbor

- A person who claims to be aggrieved may file a written complaint with the Labor Commissioner within one year after the date the person learned of the violation. They may also bring a civil action for injunctive relief and any other relief that the court deems appropriate.
- Labor Commissioner must promptly investigate complaints alleging violations.
- Labor Commissioner may order payment of a civil penalty of no less than \$100, and no more than \$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.



NYC Local Law 32

NYC Local Law 32—Coverage

- All employers with four or more employees or one or more domestic workers, as long as at least one of those employees works in NYC.
- Any advertisement for a job, promotion, or transfer opportunity that can or will be performed, in whole or in part, in NYC.
- Employers who would otherwise hire for a position without advertising or posting the opening need not create one to comply with the law.

NYC Local Law 32—Pay Disclosures

- An employer must disclose the base wage, or rate of pay (expressed as annual salary or hourly rate), it in good faith believes, at the time of the posting, it is willing to pay the successful applicant(s) for the position.
- Must be specific and may not be open-ended.
- An employer need not disclose other forms of compensation or benefits.

NYC Local Law 32—Enforcement

- Employees and applicants can file a complaint with the New York City Commission on Human Rights.
- Commission may also initiate its own investigation based on testing, tips.
- Employees may bring a private right of action against current employer.
- No civil penalties for first violation if cured within 30 days.
- Uncured first violations and subsequent violations may carry penalties of up to \$250,000.



New York State Salary Disclosure Law

New York State Salary Disclosure Law

- Signed by Governor Hochul on December 21, 2022.
- Goes into effect on September 17, 2023.
- Applies to all employers with four or more employees.
- Companies that recruit and hire their own workers and assign those employees to work at other organizations are exempt from coverage.
- Applies to jobs, promotions, and transfer opportunities that “can or will be performed, at least in part, in the state of New York.”
- Employers must disclose the compensation or “range of compensation” for the position.
- No private right of action; Labor Commissioner can impose monetary penalties for non-compliance.

Differences from NYC Law

- Covered employers must post a “job description” for the job, promotion, or transfer opportunity, if one exists.
- “Job description” is not defined.
- Plain language suggests employer need not create a job description for a position if one did not already exist.
- Covered employers must keep and maintain records necessary to demonstrate compliance, including, but not limited to, the history of compensation ranges for each job, promotion, or transfer opportunity, and the job description, if one exists.



Pay Transparency Laws Outside of California and New York

Washington State

- **Employer with 15 or more employees, “engag[ing] in any business, industry, profession, or activity in [Washington]”**
 - **At least one employee working physically in Washington**
 - Employer need not have physical presence in Washington
 - Employer cannot avoid disclosing wage/salary information by indicating within a posting that the employer won’t accept Washington applicants

Washington State – External Posting Requirements

- **Wage scale or salary range** (hourly wage or yearly salary amount)
- **General description of benefits and other compensation** for role – ***do not*** need to post monetary value of the benefits
 - Health care benefits
 - Retirement benefits
 - Paid time off or vacation
 - Paid holidays
 - More generous paid sick leave
 - Other compensation (bonus, commissions, profit-sharing, stock options)
- On electronic postings, may choose to utilize a link to lead the applicant to a more detailed description
- **Upon request**, employer must provide wage scale or salary range to employees offered an internal transfer to a new position or promotion
- [WA Pay Transparency Administrative Guidance](#)

Colorado's Equal Pay for Equal Work Act – External Job Postings

- No requirement to post jobs externally
 - Exception: if a job that is either in Colorado or could be performed in Colorado is posted externally AND the employer has **at least one employee in Colorado**
 - Posting requirements
 - **Rate of compensation or compensation range**
 - **General description of bonuses, commissions or other compensation**
 - **General description of all employment benefits** offered for position
 - ❖ Healthcare benefits, retirement benefits, paid time off, tax-reportable benefits
- **No private right of action**
- Fines of **\$500–\$10,000** per violation

Colorado's Equal Pay for Equal Work Act – Internal Promotion Postings

- **“Make reasonable efforts to announce, post, or otherwise make known all opportunities for promotions to all current employees [in Colorado] on the same calendar day and prior to making a promotion decision.”**
 - Regardless of the physical location of the position and Colorado employee’s qualifications
 - Posting Requirements
 - **Job title**
 - **Compensation and benefits**
 - If the job is in Colorado or could be performed as a Colorado job
 - **Means by which employees may apply for position**
- Employees outside Colorado do not need to be notified of promotional opportunities
- Exceptions to requirement to post promotions
 - **Need for confidentiality** (i.e., promotional opportunity is to replace current employee unaware that they will be separated);
 - **Automatic consideration for promotion after a trial period** within one year;
 - Position is temporary, acting, or interim, **lasting less than six months.**

Job Postings in Action

Job Posting	California	Colorado	Washington State	New York City
Which Employers Are Covered?	15+ employees, at least one of whom is physically based in CA and job may ever be filled in CA, either in-person or remotely	If one CO-based employee, posting required for any job that could be performed by CO employee	15+ employees (at least one in WA); employer engaged in any business, industry, profession in WA	4+ employees or 1+ domestic workers, as long as at least one of those employees works in NYC
Wage Scale or Salary Range	Salary range that the employer reasonably expects to pay for position	Salary compensation or a range thereof employer in “good faith” believes it might pay for particular job	Wage scale or salary range	Minimum and maximum annual base salary or hourly rate employer believes in “good faith” at time of posting that it is willing to pay
Piece-Rate or Commission Pay	Piece rate; commission range	Piece rate; general description of commissions	Agreed piece-rate or wage scale and agreed hourly rate; commission range	No guidance on piece-rate; commission pay not required to be listed
Benefits	Not required	Health care, vacation, retirement benefits	Medical, dental, vision, life insurance; 401k plan; three weeks vacation; 12 paid holidays	Not required

Other Local Posting Laws

Ithaca, NY

- Employer/employment agency can't advertise a job, promotion, or transfer without disclosing compensation or range of compensation for position
- "Range of compensation" definition same as NYC's
- No guidance as to geographic or jurisdictional scope of the law
- [Ithaca City Code Section 215-3\(F\)](#)

Westchester County, NY

- Employer/employment agency can't advertise a job, promotion, or transfer without disclosing compensation or range of compensation for position
- "Range of compensation" definition same as NYC's
- Jobs performed, in whole or in part, in Westchester County (including remotely)
- Job posting is "any written or printed communication, whether electronic or hard copy, that the employer is recruiting and accepting applications for a specific position."
- [Westchester County - File #: 2022-119 \(legistar.com\)](#)

Jersey City, NJ

- Post minimum and maximum salary and/or hourly wage
- No private right of action
- [Jersey City Ordinance 22-026](#)
- [Jersey City Ordinance 22-045](#)

Other Pay Range Disclosure Laws

The following additional states/cities require employers to disclose to applicants the salary ranges for positions **upon request**:

- Connecticut [Public Act No. 21-30](#); [Labor Dept. Guidance](#)
- Maryland [Equal Pay for Equal Work Act](#)
- Nevada [SB 293](#)
- Rhode Island [S270A](#)
- Cincinnati, OH [Ordinance No. 83-2019](#)
- Toledo, OH [Pay Equity Act](#)

Job Posting / Salary Disclosure—Next Steps

- Examine job posting practices to prepare a plan to add pay ranges to those postings, regardless of where they appear.
- Create a process for responding to employee/applicant inquiries regarding current pay ranges.
- Train managers on how to have productive discussions about employee pay.
- Conduct a privileged pay equity analysis; increased transparency may lead to increased litigation.

Contact Information

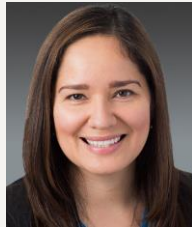


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Resources

- [California Legislature Votes to Dramatically-Expand Pay Transparency and Reporting Requirements | Paul Hastings LLP](#)
- [Illinois Employment Law Update: Greater Scrutiny of Employer Pay Practices, Mandated Disclosure of Diversity Statistics, and Expanded Opportunities for People with Convictions | Paul Hastings LLP](#)
- [New York City Commission on Human Rights Issues Guidance on New Salary Transparency Law | Paul Hastings LLP](#)
- [New York City Now Requires Salary Disclosures for Applicants and Employees | Paul Hastings LLP](#)
- [Governor Signs New York State Pay Disclosure Bill Into Law | Paul Hastings LLP](#)

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