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Labor & Employment Alert

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California Enacts Pay Transparency Bill

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California enacts SB 1162, expanding existing pay transparency obligations and creating a new reporting requirement.



What's the Impact

- / Effective January 1, 2023, employers with 15 or more employees will be required to include a pay scale for all job postings, and all employers.
- / Every employer must provide pay scales to employees upon request for the position they are currently holding.
- / Beginning May 2023, employers with 100 or more employees will be required to submit a new pay report to the State in addition to the federal EEO-1 Report.

California law currently prohibits employers from asking job applicants about their salary history and requires employers to provide job applicants with pay scale information upon request. California law also currently requires private employers (with 100 or more employees) to file an annual pay data report with the California Civil Rights Department (“CRD”) that contains information about their employees’ race, ethnicity, and gender in various job categories—a requirement that overlaps with the federal requirement to file the annual Employer Information Report (EEO-1).

SB 1162, which amends Cal. Gov't Code 12999 and Cal. Lab. Code 432.3, creates new employee-facing pay transparency obligations, and creates an (essentially) new CRD pay data reporting obligation. More specifically, SB 1162 has three main components:

- / Employers with 15 or more employees are now required to include a pay scale in all job postings
- / Upon request, all employers must give a pay scale to existing employees
- / New pay data reporting requirements with the CRD for employers with 100 or more employees

Job Posting Pay Scale Obligation

First, beginning January 1, 2023, an employer with 15 or more employees must include the pay scale for a position in any job posting. Of note, this is required for both internal (on a company's own website) and external (e.g., LinkedIn, Monster, Indeed) job postings. "Pay scale" means the salary or hourly wage range that the employer reasonably expects to pay for the position.

Current Employee Pay Scale Disclosure Obligation

Second, beginning January 1, 2023, all employers, upon request, must provide employees the pay scale for the position in which they are currently employed. The bill would also require employers to maintain records of a job title and wage rate history for each employee during an employee's tenure and three years thereafter, to be open to inspection by the Labor Commissioner.

Notably, employers cannot get around either the posting or current employee disclosure obligations by creating a "one-size-fits-all" pay scale (e.g., \$50,000–\$10,000,000). Rather, employers must create individualized pay scales to each position, with an amount that reflects what the business "reasonably" expects to pay.

New Pay Data Reporting Obligation

Third, employers with 100 or more employees will need to submit a new pay data report to California's CRD, beginning in May 2023 and annually every year thereafter, covering the prior calendar year. Previously, these employers could submit the federal EEO-1 report to the CRD in lieu of an individual state report. Now, covered employers will need to submit the EEO-1 report to the federal government, and an entirely separate report to the CRD. The pay data report must include the median and mean hourly rate for each combination of race, ethnicity, and sex within each job category. Employers with 100 or more employees hired through labor contractors, as defined, must also submit such a separate pay data report to the CRD for those employees. For covered employers with multiple establishments, the employer must submit a report covering each establishment.

Both the Labor Commissioner and private citizens are empowered to enforce the new law. The Labor Commissioner, on the one hand, is authorized to investigate complaints alleging violations

of the pay scale requirements and order an employer to pay a civil penalty upon finding an employer has violated those provisions. Upon finding that an employer has violated the pay scale requirements, the Labor Commissioner may order the employer to pay a civil penalty of no less than one hundred dollars (\$100) and no more than ten thousand dollars (\$10,000) per violation. Private citizens (e.g., applicants and employees) may also sue for injunctive relief and “any other relief that the court deems appropriate.”

California employers should begin their efforts to comply now. This means creating pay scales for all current (and anticipated) job positions in California, and corraling their current pay data (for 2022) so they can make a timely report to both the state and federal agencies in 2023. Given the dual mechanisms of enforcement (i.e., Labor Commissioner and civil lawsuits), and the penalties for violating these requirements, employers should seek advice and counsel from attorneys experienced with new pay transparency obligations.

For more analysis by Nixon Peabody attorneys on SB 1162, [click here](#):

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