



## Client Alerts

### CALIFORNIA COMPLIANT: Required Pay Data Reporting and Disclosures for California Employers

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California employers now must disclose to employees the “pay scale” (salary or hourly wage) for their position upon request. They also must comply with expanded compensation reporting requirements. Both are required by California’s new pay transparency and pay scale disclosure law, SB 1162, also known as the Pay Transparency for Pay Equity Act (“PTA”), which was signed into law by Governor Newsom on September 27, 2022. The new law significantly expands employers’ pay transparency obligations.

Pay transparency laws are a hot topic, nationwide. These laws promote pay equity through increased transparency of pay rates and address racial and gender pay disparities in the workforce. SB 1162’s principal requirements (and potential penalties) are reviewed below.

#### New Pay Scale Disclosure Requirements

Before SB 1162, employers needed to disclose the pay scale for a position only to those applicants who completed an interview and requested that information. Now, California employers with 15+ employees must include pay scales in all job postings. (Third parties, such as recruiters or employment agencies, also must include pay scales in postings.) “Pay scale” is defined as the “salary or hourly wage range the employer reasonably expects to pay for the position.”

Notably, the pay scale must be included within the job posting. A link or a QR code that would reveal the pay scale is not compliant. Further, these pay scale disclosure obligations cover remote employees. According to the Labor Commissioner, “the pay scale must be included within the job posting if the position may ever be filled in California, **either in-person or remotely**.” Out-of-state employers who may hire remote employees in California therefore must comply (to the extent they have 15+ employees).

The PTA also requires disclosure, upon request, of pay scales to **current** employees for the position they currently hold.

#### Changes to State Pay Data Reporting Requirements

Previously, only private employers that already were required to file annual reports with the EEOC needed to submit pay data to the California Civil Rights Department (“CRD”). They could do so simply by submitting a copy of their annual EEO-1 report containing the same or substantially similar pay data. Now, all private employers with 100+ employees must submit pay data to the CRD. They must do so by the second Wednesday of May each year, beginning on May 10, 2023. In addition, employers cannot submit an EEO-1 report in lieu of the information required by the CRD.

In addition, SB 1162 expands the information that must be reported. Prior to SB 1162, pay data reports were required to include the number of employees by race, ethnicity and sex in specified job categories. SB 1162 now requires disclosures of the median and mean hourly rate by race, ethnicity and sex within each job category. Employers also must submit separate reports for each location.

SB 1162 also requires private employers with 100+ employees hired through labor contractors within the previous calendar year to make additional disclosures. Covered employers must submit a separate report about pay data for those workers. Employers must disclose the names of all labor contractors used to supply employees, in addition to pay data.



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### New Recordkeeping Obligations

Employers must maintain records of employees' job titles and wage history during for three years after termination of employment. These records must be made available to the Labor Commissioner for review of potential wage discrepancies. An employer's failure to keep these records creates a rebuttable presumption in favor of an employee's claim.

### Penalties

SB 1162 requires the Labor Commissioner to investigate alleged violations and authorizes the Commissioner to impose civil penalties. Administrative remedies may include penalties of at least \$100 and up to \$10,000 per violation for non-compliance with the wage transparency provisions. The law also creates a private right of action for any person who claims to be aggrieved.

### Next Steps

Given the high cost of noncompliance, employers should review policies that may be affected by the PTA (including their record retention policies). Employers should ensure that job postings include pay scale information and that any third-party recruiters comply with the new posting requirements. Employers should also be prepared to have conversations with current employees who may request pay scale information for the positions they hold. Covered employers should prepare to submit compliant pay data reports to the CRD by the May 10, 2023 deadline. As always, California employers may wish to consider proactive reviews of employees' compensation to detect and address any potential pay disparities.

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