



ALERTS

New Pay Transparency And Disclosure Requirements Effective Jan. 1, 2023, In California

December 21, 2022

Highlights

California employers with 15 or more employees will be required to include a pay scale in every job posting

Employers of all sizes must maintain records of job title and salary history for all employees

All private employers with 100 or more employees must submit pay data reports to the California Civil Rights Department

Beginning on Jan. 1, 2023, many California employers will be required to adhere to new pay scale and pay data reporting requirements. California Gov. Gavin Newsom [signed Senate Bill 1162](#), which amends Section 1299 of the Government Code and Section 432.3 of the Labor Code, in September to expand California's pay transparency requirements.

Senate Bill 1162 is seen by supporters as a step forward in the effort to increase pay transparency in California and it is [comparable to similar legislation](#) recently passed in Nevada, Colorado, Washington and New York.

Pay Transparency in Job Postings

RELATED PEOPLE



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Labor and Employment

Under Senate Bill 1162, California employers with 15 or more employees must now include the pay scale applicable to the open position in every job posting. The law defines pay scale as the “salary or hourly range that the employer reasonably expects to pay for the open position.” Employers with 15 or more employees must include pay scale information on both internal and external job postings, including job postings on company websites as well as third party job posting websites.

Employers of any size – including those with fewer than 15 employees – must also provide pay scale information upon a reasonable request from a job applicant. A job applicant is defined as “an individual who is seeking employment with the employer and is not currently employed with that employer in any capacity or position.” Employers of all sizes must also provide an employee pay scale information for the position in which that employee is currently employed upon request.

The amended Labor Code Section 432.3 also imposes new record-keeping requirements on employers. Employers are now required to maintain records of a job title and wage rate history for every employee for the duration of each employee’s tenure with the company. These records must be kept for three years after the employee’s separation from the company and made available to the California Labor Commissioner for inspection.

Upon finding that an employer has violated section 432.3, the Labor Commissioner may impose a civil penalty of no less than \$100 and no more than \$10,000 per violation. The Labor Commissioner is authorized to determine the amount of penalty based on the totality of the circumstances, including whether an employer has previously violated the statute.

New Pay Data Report Requirements

On the second Wednesday of May each year, private employers with 100 or more employees must submit a pay data report to the California Civil Rights Department (formerly the Department of Fair Employment and Housing) with data applicable to the previous year. The pay data reports must provide the following information:

1. The number of employees by race, ethnicity and sex in each of the following job categories: executive or senior level officials and managers; first- or mid-level officials and managers; professionals; technicians; sales workers; administrative or support workers; craft workers; operatives; laborers and helpers; and service workers.
2. The number of employees by race, ethnicity and sex, whose annual earnings fall within each of the pay bands used by the U.S. Bureau of Labor Statistics in the Occupational Employment Statistics survey.
3. The median and mean hourly rate for each combination of race, ethnicity and sex, within each job category.

To establish the numbers applicable to the first requirement, employers are directed to create a snapshot that counts all of the individuals in each job category by race, ethnicity and sex, employed during a single pay period of the employer’s choice between October 1 and December 31 of

the reporting year (which begins and ends on the second Wednesday of May each year). To establish the numbers applicable to the second and third requirements, the employer shall calculate the total earnings, as shown on the Internal Revenue Service Form W-2, for each employee in the snapshot, for the entire reporting year, regardless of whether or not an employee worked for the full calendar year.

Labor Contractor Reporting Requirements

An employer that has 100 or more employees hired through labor contractors within the prior calendar year shall submit a separate pay data report to the department covering the employees hired through labor contractors in the prior calendar year. Employers must include the ownership names for all labor contractors used to supply employees in the report.

If an employer does not submit the required reporting, the department may seek an order requiring the employer to comply with these requirements and is entitled to recover the costs associated with seeking the order. Upon request by the department, courts are also authorized to impose a civil penalty not to exceed \$100 per employee upon any employer who fails to file the required report and not to exceed \$200 per employee upon any employer for a subsequent failure to file the required report.

If an employer is unable to submit a complete and accurate report because a labor contractor has not provided the necessary pay data, the court may apportion an appropriate amount of penalties to any labor contractor that has failed to provide the pay data to the employer.

Senate Bill 1162 imposes new and potentially burdensome requirements on many California employers. Employers should be careful to understand how these requirements will impact their businesses and work with their legal team to understand how to best protect themselves in this evolving pay transparency landscape.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or John Kuenstler at 312-338-5924 or john.kuenstler@btlaw.com or Michael Witczak at 310-284-3764 or michael.witczak@btlaw.com.

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