



California's New Pay Transparency Law Requires Employers to Include Pay Scale Information in Job Postings and Disclose Significant Salary and Demographic Information, starting January 1, 2023

Insights

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On September 27, 2022, California joined several other states, cities, and local governments that require increased pay transparency in the workplace. Under the new law ([Senate Bill 1162](#)) which takes effect on **January 1, 2023**, companies with any California-based employees ("California employers") must share salary range information with current and prospective employees, include salary information in job postings, and maintain significant records and data relating to workforce demographics and salaries. Beginning on **May 10, 2023**, larger employers will also face expanded California-specific pay data reporting requirements. SB 1162 includes noteworthy penalties and civil liability. California employers should immediately begin enacting compliance plans and strategies.

Key Takeaways

- California's new pay transparency laws will apply to employers with at least one employee based in California, regardless of location of company headquarters.
- All employers will be required to share pay scale information (i.e., salary or hourly wage range) with current employees, upon request. (Effective Jan. 1, 2023)

- All employers will be required to maintain records of job descriptions and wage history for employees while they are employed and for three years after employment ends. (Effective Jan. 1, 2023)
- Companies with 15 or more employees must include pay scale information in all job postings. (Effective Jan. 1, 2023)
- Companies with 100 or more employees (or 100 or more employees hired through labor contractors, such as staffing agencies) must comply with new data reporting requirements that expand upon the Equal Employment Opportunity Commission's EEO-1 form and existing California law. (By May 10, 2023)
- Companies that violate these requirements may be subject to civil penalties and other legal action.

Pay Transparency and Information for Current Employees

Currently, California employers are required to share pay range information with job applicants upon a reasonable request. Effective January 1, 2023, California employers will also be required to share pay scale information with their current employees upon request. The new law defines "pay scale" as "the salary or hourly wage range that the employer reasonably expects to pay for the position." This requirement applies to all California employers, regardless of size or where the company headquarters are located.

The new law also requires all employers to maintain records of job description and wage history for each employee for "the duration of the employment plus three years." This data must be maintained in case the California Labor Commissioner decides to investigate whether there has been a pattern of wage discrepancy.

Pay Transparency in Job Postings

Effective January 1, 2023, California will require companies with 15 or more employees to include pay scale information in all job postings, including job postings on third-party sites. As noted above, "pay scale" means "the salary or hourly wage range that the employer reasonably expects to pay for the position." It is unclear whether pay scale includes benefits or bonuses.

The law appears to apply to companies with at least one employee in California and at least 15 employees in total. The location of the company's headquarters is not relevant. The law is silent with respect to remote workers but, in states like Colorado, similar job posting requirements have been extended to any job that can be performed in the state.

Wage Data Reporting for Employers with 100+ Employees

Under existing California law, private employers with 100 or more employees that are required to file the EEOC's annual Employer Information Report (EEO-1) must also file a wage data report with California's Civil Rights Department (CRD) on or before March 31. The California report must include data on employees' race, ethnicity, sex, as well as their wages and hours worked, including a separate report for each establishment. The new law expands these requirements and changes the filing deadline from March 31 to the second Wednesday in May (which will be May 10 in 2023).

Starting on May 10, 2023, all private employers in California with 100 or more employees are required to submit an annual pay data report to the CRD, whether they are required to file an EEO-1 or not. The report will cover the prior calendar year (the "Reporting Year").

The new California pay data reports must include:

(1) The number of employees by race, ethnicity, and sex in each of the following job categories:

- A. Executive or senior level officials and managers
- B. First or mid-level officials and managers
- C. Professionals
- D. Technicians
- E. Sales workers
- F. Administrative support workers
- G. Craft workers
- H. Operatives
- I. Laborers and helpers
- J. Service workers

To determine the numbers required to be reported here, an employer must 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.

(2) The number of employees by race, ethnicity, and sex, whose annual earnings fall within each of the pay bands used by [the United States Bureau of Labor Statistics in the Occupational Employment Statistics survey](#).

(3) Within each job category, for each combination of race, ethnicity, and sex, the median and mean hourly rate.

For purposes of establishing the numbers reported under paragraphs (2) and (3), the employer must calculate the total W-2 earnings for each employee in the “snapshot,” for the entire Reporting Year, regardless of whether an employee worked for the full calendar year. The employer must also tabulate and report the number of employees whose W-2 earnings during the Reporting Year fell within each pay band.

(4) The total number of hours worked by each employee counted in each pay band during the Reporting Year.

(5) The employer’s **North American Industry Classification System (NAICS) code**.

Additionally, (a) employers with multiple establishments (such as multiple factories, offices, stores, or teams of workers who work entirely remotely and do not have a physical office) must submit a report covering each establishment; (b) the pay data report shall include a section for employers to provide clarifying remarks regarding any of the information provided (but employers are not required to provide any remarks); and (c) employers must provide this information in a format that allows the CRD to “search and sort the information using readily available software.”

Companies with 100 or more employees hired through labor contractors face similar requirements. Starting on May 10, 2023, private employers in California with 100 or more employees hired through labor contractors in the prior year are required to submit a separate annual pay data report to the CRD for those employees. “Labor contractors” refer to individuals or entities that supply an employer with workers to perform work within the employer’s usual course of business, such as a staffing agency. The employer shall also disclose on the pay data report the ownership names of all labor contractors used to supply employees. Labor contractors shall supply all necessary pay data to the employer.

Significant Civil Liability and Penalties

The new law imposes both significant civil liability and penalties for potential violators. In terms of liability, it authorizes individuals to file complaints and lawsuits for alleged violations, including failures to provide salary information to current employees and job seekers. Employers who fail to abide by the law’s record-keeping requirements will also have to overcome a rebuttable presumption supporting the claims against them. Companies that do not file pay data reports on time or include

required pay scale information in job postings will also face civil penalties. These penalties range from \$100 to \$10,000 **per violation**; however, for a first violation, employers can avoid penalties if they show that all job postings for open positions have been updated to include the required pay scale information.

Next Steps

To ensure compliance with SB 1162, and avoid civil penalties and civil liability, California employers should immediately consider taking the following steps:

- Work with your Gunderson Dettmer employment attorney to conduct a pay equity audit to ensure current salaries are appropriate and defensible.
- Understand that current employees may become upset if they learn they are on the low end of a pay scale, and develop a plan to implement salary corrections where appropriate.
- Review all job postings and positions and determine the pay scale for each.
- Begin including pay scale information in job descriptions.
- Strategize about ways to make job postings more enticing if the salary range is not competitive.
- Develop guidelines on salary negotiations with new hires.
- Review the company's record-keeping and document retention practices and make sure the company is capturing and saving job title and salary information for all current employees.
- Work with HR and management to ensure that all key personnel understand the new law, and are prepared to share salary and wage information when required.
- Companies with 100 or more employees or contractors should analyze their internal tracking and data collection processes to ensure they are gathering the information necessary for California's pay data report.

If you have questions or concerns regarding SB 1162, or any other employment law questions, please do not hesitate to contact Gunderson Dettmer's Labor & Employment team. In the meantime, the Gunderson Dettmer team will continue to share any SB 1162 updates or guidance as they become available.

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