

Client Alert

California Requires Disclosure of Pay Scales in Job Postings and Significant New Pay Data Reporting

September 28, 2022

On September 27, 2022, California Governor Gavin Newsom signed [SB 1162](#), which requires employers with more than 15 employees to disclose pay scales to current employees and on job postings beginning January 1, 2023. The bill also requires private employers with more than 100 employees to submit significantly more pay data to the California Civil Rights Department (CRD, formerly known as the DFEH) beginning in May 2023.

Pay Scale Disclosure Requirements

With SB 1162, California joins Colorado, Washington, and New York City in requiring employers with more than 15 employees to disclose the pay scale for a position in any job posting. “Pay scale” means the salary or hourly wage range that an employer reasonably expects to pay for the position. The bill does not specify how or if this requirement applies to postings for remote jobs that may or may not be performed in California. We expect the CRD to issue additional guidance on this and other key issues in the coming months.

The new law will also require employers to provide employees with the pay scale for their own position upon request. California already requires employers to provide job applicants with the pay scale for the position upon request. In addition, employers will now be required to maintain records of job titles and wage rate histories for employees for at least three years after separation.

An individual aggrieved by a violation of this law will be permitted to file a written complaint with the Labor Commissioner within one year of learning of a violation. Individuals will also be able to bring a civil action for injunctive relief or any other relief deemed appropriate by the court. The law allows the Labor Commissioner to order an employer to pay a civil penalty in the range of \$100 to \$10,000 per violation, based on the totality of the circumstances. The bill specifies that no penalty will be assessed for a first violation of failing to include a pay scale in a job posting as long as the employer updates the job postings.

Additional Pay Data Reporting Requirements

In 2021, California was the first state to require pay data reporting and Illinois followed with a similar law this year. While existing California law allows private employers with more than 100 employees to submit a federal EEO-1 report in lieu of a pay data report, the new law imposes more requirements, including the following:

- Employers must include “within each job category, for each combination of race, ethnicity, and sex, the median and mean hourly rate.”
- Employers must provide a separate pay data report covering workers hired through labor contractors. A “labor contractor” means an individual or entity that supplies, either with or without a contract, a client

employer with workers to perform labor within the client employer’s “usual course of business.” The term “usual course of business” is not defined.

Employers with multiple establishments must continue to submit a report covering each establishment, but the new law eliminates the requirement that employers with multiple establishments submit a consolidated report. . The law also moves the deadline for submitting reports from March of each year to the second Wednesday in May of each year, beginning in 2023.

The State is already entitled to recover costs associated with seeking an order of compliance with pay data reporting requirements. The new law increases potential exposure to employers, permitting courts to impose a civil penalty up to \$100 per employee, and up to \$200 per employee for subsequent violations.

In order to prepare for these new reporting requirements, employers should review their reporting capabilities to ensure that they are able to compile the necessary data, including coordinating pay data reporting with any labor contractors. Employers should also consider conducting privileged pay equity analyses to identify any areas of potential concern under the California Equal Pay Act.

We expect that the CRD will update its FAQs to provide further guidance regarding the required pay scale disclosures, including any requirements for job postings for remote work that could be performed in California. We will continue to update our clients on any new significant guidance from the CRD.

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