

## California Employers Beware: SB 1162 Expands Pay Data Reporting and Transparency Requirements



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On September 27, 2022, Governor Newsom signed the Pay Transparency Act (“SB 1162”) amending California *Government Code* section 12999 and California *Labor Code* section 432.3. Of note, SB 1162 significantly changes two key areas that employers should be aware of: (i) it changes and adds to the pay data reporting requirements set forth in Gov. Code § 12999; and (ii) it imposes new salary disclosures and recordkeeping obligations to the pay transparency requirements under Lab. Code § 432.2. The changes, further described below, became effective January 1, 2023.

### Updates to California Government Code Section 12999

#### Changes to Pay Data Reporting Obligations

Prior to SB 1162, if a private employer with 100 or more employees was required to submit an annual Employer Information Report (“EEO-1”) to the federal Equal Employment Opportunity Commission, then it was also required to submit a pay data report to the California Civil Rights Department (“CRD”) – formerly, the California Department of Fair Employment and Housing (“DFEH”). Under the pre-existing law, an employer could satisfy the state’s pay data reporting requirement by submitting a federal EEO-1 containing the same or substantially similar pay data information to the CRD on or before March 31st of each year.

Notably, under the new law, a private employer with 100 or more employees is required to submit a pay data report to the CRD regardless of whether it files a federal EEO-1 report and EEO-1 reports can no longer be submitted to satisfy the California pay data reporting requirement.

In addition to changing the format of reporting, SB 1162 expands the data that must be reported. Under the old law, employers were required to include the number of employees by race, ethnicity and sex in specified job categories in their pay data report. Starting this year, employers must also include the median and mean hourly rate for each combination of race, ethnicity and sex within each job category in their pay data reports. This is a major change as it requires employers to provide direct comparisons of pay rates between different race, ethnic and gender groups.

Employers with multiple locations were required to prepare only one report with the pay data information for the different locations for the employer. SB 1162 eliminates the consolidation aspect and requires that employers prepare and submit reports for each individual location.

The new law changes the annual filing deadline from March 31st to the second Wednesday in May each year. In 2023, the deadline will be on May 10th.

#### New Contractor Reporting Requirements

SB 1162 also requires private employers with 100 or more employees employed through labor contractors to submit a separate pay data report covering the labor contractor’s employees. In the separate pay data report, employers must also disclose the names of all labor contractors used to supply the employees. The law defines “[l]abor contractor” as “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.”

It is up to the labor contractors to provide all of the necessary pay data to the employers so that the employers can submit their reports to the CRD. In the event an employer is unable to submit a complete and accurate report due to a labor contractor’s

failure to provide the requisite information, a court has the discretion to apportion penalties to the labor contractor that has failed to provide the pay data to the employer.

#### Penalties

Under SB 1162, the CRD may seek an order requiring an employer to comply with the above reporting requirements and shall be entitled to recover the costs associated with seeking the order. Additionally, the CRD may request that a court impose civil penalties on an employer that fails to comply for an amount “not to exceed one hundred dollars (\$100) per employee” for a first-time violation. For subsequent failures to submit the reports, civil penalties may increase to \$200 per employee. This change is significant because under the previous law, the only remedy the CRD was equipped with was seeking a court order requiring employers to file their reports.

### Updates to California Labor Code Section 432.3

#### Changes to Pay Scale Reporting Requirements

Prior to SB 1162, employers were required to provide candidates for employment with the pay scale for the position the candidate was seeking only upon request. “Pay scale” is defined under the Labor Code as the salary or hourly wage range that the employer reasonably expects to pay for the position. Under the new law, employers with 15 or more employees must now provide a pay scale range for each position they list in a job posting regardless of whether a candidate requests the information. This requirement applies to both internal and external job postings and also applies to employers working with a third-party (i.e., recruiters). Notably, no penalty will apply for a first violation of this requirement if the employer can show that all job postings for open positions have been updated to include the pay scale.

SB 1162 also expands pay scale requirements for current employees. Under the new law, upon request, employers must provide employees with the pay scale for the position in which the employee is currently employed.

#### Pay Data Record Retention Requirement

SB 1162 introduces a new record retention requirement that was not a requirement under the old law. Now, employers of **all sizes** must keep records for each employee detailing that employee’s job title(s) and wage rate history throughout their employment and for three (3) years after their termination. The California Labor Commissioner will have authority to inspect these records.

#### Penalties

Failure to comply with the above pay scale disclosure and/or record retention requirements can result in penalties ranging from \$100 to \$10,000 per violation. Given the expansive nature of the penalties, employers are well-advised to take the time to reevaluate their current policies and practices to ensure compliance with SB 1162’s new requirements.

As always, P&A will continue to keep our clients informed regarding any additional changes to California’s Pay Transparency Act and prepare updates as may become necessary.

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