

New California Pay Transparency Requirements

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California employers will need to increase pay transparency beginning January 1, 2023. Governor Newsom signed Senate Bill 1162 ("S.B. 1162") on September 27, 2022, amending California Labor Code § 432.3.

Prior to S.B. 1162, California employers were already prohibited from inquiring about an applicant's salary history. Employers were also required to provide the pay scale for a position upon a reasonable request by an applicant.

The new bill takes the requirements a step further. It continues to require all employers, regardless of number of employees, to provide the pay scale for a position to any applicant upon receipt of such request from the applicant. In addition, any employer who receives a request from a current employee also must provide the pay scale for the employee's current position. All employers must also maintain job records reflecting the job title and wage rate history for each employee during their employment, and for three years afterward.

Employers with 15 or more employees are subject to additional requirements. They are now required to include the pay scale for a position in any job posting. If a covered employer engages a third party to post, publish, or advertise a job posting, the employer must provide the pay scale to the third party to be included in the posting. The Labor Commissioner may investigate complaints alleging violations of these requirements and, upon finding a violation, could order a covered employer to pay a civil penalty of between \$100 to \$10,000 per violation. The law also provides a private right of action for an individual to seek injunctive and other relief.

Employers with 100 or more employees will also be subject to even more reporting requirements as S.B. 1162 amends California Government Code § 12999 to require increased reporting to the California Civil Rights Department. By the second Wednesday of May each year, beginning on May 10, 2023, for 2022 data, any private employer with 100 or more employees - not limited to only those employers who are required to submit EEO-1 reports - must submit an annual pay data report that discloses the median and mean hourly wage rates for ten listed job categories, broken down by race, ethnicity, and sex. Any private employer with 100 or more workers hired through labor contractors must produce data on pay, hours worked, race or ethnicity, and gender information in a separate report. Employers may be subject to a civil penalty of \$100 per employee for an initial violation of failure to file required reports and up to \$200 per employee for any subsequent violation.

California employers should review their data reporting procedures and job postings going forward to ensure compliance. **For more information, please contact a member of Benesch's [Labor & Employment Practice Group](#).**

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