

# SB 1162: New Pay Transparency Requirements for California Employers

Presented by:

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# Legal Disclaimer

We wish to express confidence in the information contained herein. Used with discretion, by qualified individuals, it should serve as a valuable management tool in assisting employers to understand the issues involved and to adopt measures to prevent situations which give rise to legal liability. However, this text should not be considered a substitute for experienced labor counsel, as it is designed to provide information in a highly summarized manner.

The reader should consult with legal counsel for individual responses to questions or concerns regarding any given situation.

# Overview

- Pay scale disclosure requirements
- Annual Reports
- Employment records retention requirements

**Pay Scale**  
**Disclosures:**  
**Labor Code Section**  
**432.3**

Is my business  
required to  
comply?

If so, what do I  
have to comply  
with?

- **All employers, regardless of size**, must provide current employees with the pay scale for their position upon request.
- Requires **employers with 15 or more employees** to include the pay scale (salary or hourly range) for a position in any job posting.
- Am I exempt if I have less than 15 employees?
  - No!
  - All employers must provide the pay scale for a position, following a reasonable request by an applicant applying for that position.

## What if I use a service to post my jobs?

- This job posting pay scale disclosure requirement extends to 3rd party recruiters such as Indeed, ZipRecruiter, etc.
  - What about agricultural recruiters? Yes.
  - What about positions posted through staffing agencies? Yes.

## Definitions

- “Pay scale” means the salary or hourly wage range that the employer reasonably expects to pay for the position.
- “Applicant” or “applicant for employment” means an individual who is seeking employment with the employer and is not currently employed with that employer in any capacity or position.
- “Reasonable request” to be determined.

# Record Retention

- All employers must maintain records for each employee containing the **job title and wage rate**.
- Records must be maintained for the entire duration of employment **plus three years** after the end of employment.
- The records may be used to evaluate the existence of a wage discrepancy, or pattern of wage inequality.
- Failure to maintain records will be a rebuttable presumption in favor of an employee's claims of wage discrimination or pay scale disclosure violation.



# Enforcement

- Labor Commissioner will have authority to inspect employee records and enforce compliance.
- An employee who believes there is a violation of this requirement may file a written complaint with the Labor Commission within 1 year of *discovery*.
- A person who claims to be aggrieved by a violation of this section may also bring a civil action for injunctive relief and any other relief that the court deems appropriate.

# Penalties

- Upon finding that an employer has violated this section, the Labor Commissioner may order the employer to pay a **civil penalty of no less than one hundred dollars (\$100) and no more than ten thousand dollars (\$10,000) per violation.**
- The Labor Commissioner shall determine the amount of the penalty based on the totality of the circumstances, including, but not limited to, whether the employer has previously violated this section.
- Employers can avoid penalties for their 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.

**Annual Reports:  
Government Code  
Section 12999**

# Reporting Requirement

May 10, 2023  
covering the  
Reporting year 2022.

- Employers who are engaged in **interstate commerce and have 100 or more direct hire employees with at least one employee in California**, were required to submit certain pay data to the Department of Fair Employment and Housing (DFEH) by March 31, 2021 and annually thereafter. **2023: second Wednesday of May and annually after that.**
- “Employee” means an individual on an employer’s payroll, including a part-time individual, and for whom the employer is required to withhold federal social security taxes from that individual’s wages.

# New Requirement: Labor Contractor Employees

- 100 or more employees, including employees hired through a labor contractor or staffing agency.
- “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.
- When reporting labor contractor employees, the private employer must include the ownership names of all labor contractors used to supply employees.
- A labor contractor shall supply all necessary pay data to the private employer.

# Data Categories

- The report must contain employee information including the number of employees by race, ethnicity, and sex in specified job categories.
- 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.

## Data Categories, continued

- Specifically, employers must report employees according to these seven race/ethnicity categories:
  - Hispanic/Latino
  - Non-Hispanic/Latino White
  - Non-Hispanic/Latino Black or African American
  - Non-Hispanic/Latino Native Hawaiian or Other Pacific Islander
  - Non-Hispanic/Latino Asian
  - Non-Hispanic/Latino American Indian or Alaskan Native
  - Non-Hispanic/Latino Two or More Races
- California officially recognizes three genders: female, male, and non-binary.

## Data Categories, continued

- 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.
- **2023: Adds a requirement for median and mean hourly rate for each combination of race, ethnicity, and sex within each job category.**



## Data Categories, continued

- The employer shall include in the report the total number of hours worked by each employee counted in each pay band during the “Reporting Year.”
- The report shall include the employer’s North American Industry Classification System (NAICS) code.

## Additional 2023 changes

- Requires employers with multiple establishments to submit a report for each establishment and a consolidated report that includes all employees.
  - **2023: No longer required. For employers with multiple establishments, the employer shall submit a report covering each establishment.**
- Employer is in compliance with the requirement that it submit a pay data report if it submits an EEO-1 to the CRD containing the same or substantially similar pay data information.
  - **2023: Federal EEO-1 no longer acceptable in lieu of the California reporting requirements.**

# Reporting Format

- The report shall include a section for employers to provide clarifying remarks regarding any of the information provided. **An employer is not required to provide clarifying remarks.**
- The information required by this section shall be made available in a format that allows the department to search and sort the information using readily available software.
- Employers must use the portal to submit their reports.

## Certification of the report

- An official of the employer must certify that the employer's report is accurate and was prepared in accordance with CRD's instructions.
- An employer may designate their own certifying official.
- Professional Employer Organizations (PEOs) and Human Resource Outsourcing Organizations (HROs) may prepare and file pay data reports with CRD on behalf of client employers, **an official of the client employer**, not from the PEO or HRO, **must certify the report.**

# Enforcement

- California Civil Rights Department (CRD formally DFEH) may seek an order requiring employer compliance.
- Upon request by the department, a court may impose a civil penalty.

# Penalties

- No direct penalties associated with failing to comply with the filing deadline.
- CRD may request to have the employer pay the costs associated with seeking a compliance order.
- **2023: A court may impose a civil penalties:**
  - Not to exceed one hundred dollars (\$100) *per employee* and not to exceed two hundred dollars (\$200) *per employee* upon any employer for a subsequent failure to file the required report.
- Penalties may be apportioned to the FLC or staffing agency for failure to provide the data necessary for the contracting employee to submit the required data.
- The bill would require those penalties to be deposited in the Civil Rights Enforcement and Litigation Fund.

# Confidentiality

- Cannot publicize “individually identifiable information” obtained through this mandatory reporting without an investigation or enforcement action by the DLSE and only to the extent necessary for the enforcement proceeding.
- Information is not subject to the California Public Records Act.
- The department may develop, publish on an annual basis, and publicize aggregate reports which are reasonably calculated to prevent the association of any data with any individual business or person.
- The department shall maintain pay data reports for not less than 10 years.

# THANK YOU!

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