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# CLIENT ALERT: EMPLOYERS REQUIRED TO PUBLISH PAY IN CALIFORNIA

## Resource

10.4.22

Are you prepared for the disclosure requirements attendant to California's new Pay Transparency for Pay Equity Act (SB1162)? Starting on January 1, 2023 employers with 15 or more employees will be required to include salary ranges in all job postings.

## New Pay Transparency Requirements under SB 1162

SB 1162 requires an employer with 15 or more employees to include in all job postings the salary or hourly wage range that the employer reasonably expects to pay for the position. Previously, employers were only required to provide an applicant with a pay range upon reasonable request. Thus, an employer will need to do the heavy lifting prior to posting the job to ensure that the job description adequately justifies the reasonable range that is being offered for the experience level expected. Gone are the days of overbroad job descriptions with wide pay ranges.

SB 1162 also requires covered employers to provide employees with the pay scale for their current positions upon request. Again, this component requires employers to take the initiative to ensure that the objective and subjective components of the job are sufficiently specific to justify the pay range. The consequences of skimping on due diligence in this regard is bound to yield an Equal Pay Act claim.

Documentation is the name of the game with SB1162 as the bill further requires employers to maintain job title and compensation records for each employee for the duration of their employment and for three years following their termination of employment. It also mandates disclosure of the pay scale if it will be used by a third party to post, publish, or advertise a job posting.

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The bill also vests the Labor Commissioner with the authority to investigate complaints alleging violations of these provisions. Upon finding a violation, the Commissioner may order a covered employer to pay a civil penalty 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. While the civil penalty may prove a great enough deterrent to force compliance, the bill essentially creates an opportunity to gather direct evidence of equal pay act violations in circumstances where true discrepancies exist, thereby increasing liability potential in the corporate and professional sectors.

Finally, under the new California law, each year, on or before the second Wednesday of May, any private employer with 100 or more employees must submit an annual pay data report to the California Civil Rights Department that discloses the median and mean hourly rates, within each listed job category, by race, ethnicity, and sex. Furthermore, any private employer with 100 or more workers hired through labor contractors (such as temporary staffing agencies) must submit a separate pay data report for these workers. Failure to file the required reports could result in penalties of \$100 per employee for an initial violation and up to \$200 per employee for any subsequent violation.

A few questions about the provisions of the law remain. The law is silent as to whether the pay disclosure requirements relate to job postings for California employers with remote workers outside of California or employers based outside of California who are hiring remote workers based in California. If we look to other laws that touch on remote work for guidance, including for example Federal Tax law, it would logically follow that any work done for the benefit of a California employer would be subject to the conditions set forth in SB1162. The truth, however, is that we just don't know yet how this might be interpreted in the coming years. Follow-up guidance is sure to surface in the future, but in the short term, an employer should consider following the letter and spirit of the law in order to ensure compliance and mitigate risk.

### **California Joins Growing List of Jurisdictions with Similar Laws**

California has taken cues from several other jurisdictions that recently passed similar pay transparency laws including Colorado, Washington, and New York City. The New York legislature passed a statewide pay transparency law in June which is awaiting the governor's signature. If signed, the New York pay transparency law could also take effect next year (i.e., 270 days after signing). Connecticut, Nevada, and Rhode Island also have laws requiring pay disclosure during the hiring process, and Connecticut and Rhode Island, along with Maryland, also require pay disclosure upon an applicant's request.

### **Next Steps for Employers**

In the next 90 days, employers should focus on internal and external pay data to eliminate the risk of noncompliance, or worse a lurking Equal Pay Act claim within the ranks of current employees. This should include a review of compensation data, job postings, job descriptions, reporting requirements, and related policies and practices. Employers should also consider training management and human resources personnel on how to comply with the new requirements as well as conducting a pay equity audit to identify and remedy any existing pay disparities.