
California Equal Pay Act: New Rules on Pay Transparency, Record-Keeping, and Pay Data Reporting

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On September 27, 2022, Governor Newsom signed Senate Bill (SB) 1162 into law. SB 1162, effective January 1, 2023, imposes new record-keeping, disclosure, and data reporting requirements for job pay scales and pay data.

Pay Transparency

Previously, California law required employers with 15 or more employees to provide the pay scale for a position to an applicant upon request. Employers were also prohibited from asking applicants about their salary history during the hiring process.

SB 1162 expands existing law by making changes to Labor Code section 432.3.

First, employers with 15 or more employees are required to include the pay scale, defined as the “salary or hourly wage range that the employer reasonably expects to pay for the position,” in any job posting. If the employer uses a third party to publish or post a job, the pay scale must be provided to the third party who must include it in the posting. 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. Subsequent violations may incur civil penalties of \$100 to \$10,000 per violation. The law also provides for a private right of action.

Second, all employers are required to provide the pay scale for the position in which a current employee is employed, upon request.

The law does not specify how wide the pay scale range can be, which some employers may interpret as discretion and flexibility in determining what to publish. It is important to keep in mind, however, that employers could be found in violation if the range does not reflect what the employer “reasonably” expects the salary to be.

Record-Keeping

SB 1162 also creates new record-keeping requirements under Labor Code section 432.3 for public and private employers with 15 or more employees. Specifically, these employers must keep records of the job title(s) and wage rate history for each employee for the duration of their employment, plus three years after termination of employment. These records are open to inspection by the Labor Commissioner. The new law creates a presumption in favor of an

employee's claim (e.g., a discrimination claim for which pay data may be critical evidence) if an employer fails to keep such records.

Failure to comply with the record retention requirements can result in penalties ranging from \$100 to \$10,000 per violation.

Takeaways

SB 1162 imposes a variety of new obligations on employers that may carry significant fines for failure to comply. In complying with SB 1162, employers should:

- Review all job postings existing on or after January 1, 2023, to ensure that they include pay scale information.
- Consider conducting privileged pay equity audits to confirm that the pay scales set for positions are accurate and appropriate.
- Confirm appropriate record-keeping mechanisms are in place for employee job titles and salary/wage histories during employment, and for the three-year period thereafter.

If you have questions about this new law, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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