

LEGAL UPDATES

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## Services

Labor & Employment  
Pay Equity

## Professional

CHENGZHUO HE  
KANSAS CITY:  
816.983.8364  
CHENGZHUO.HE@  
HUSCHBLACKWELL.COM

# California Expands Pay Data Reporting and Pay Transparency Obligations

On September 27, 2022, California Governor Gavin Newsom signed the Pay Transparency for Pay Equity Act (SB 1162) into law. Effective January 1, 2023, private employers will be required to disclose more pay data to California's Civil Rights Department (CRD) and both private and public employers will be required to provide pay ranges on job postings and to requesting employees, to increase pay transparency for applicants and employees.

### Key takeaways

Private employers with more than 100 employees must submit annual "pay data reports" to the CRD by the second Wednesday of May every year. This obligation now exists independently of similar federal reporting obligations to the Equal Employment Opportunity Commission.

All employers must provide pay scale information to employees and job applicants for their position upon request.

All employers with more than 15 employees must publish pay scale information on every job posting for the position that is being filled.

All employers must maintain pay history information for each employee for the duration of their employment and for an additional three (3) years beyond the last date of their employment.

### New pay data reporting requirements

Private employers with 100 or more employees must submit annual pay data reports to the CRD, formerly known as the Department of Fair Employment

and Housing (DFEH). The pay data reports must include the median and mean hourly rate for each combination of race, ethnicity, and sex within each job category. In addition, private employers will need to comply with the following requirements:

Employers subject to EEO-1 reporting will no longer be able to satisfy pay equity reporting by submitting an EEO-1 report. Instead, California employers must submit pay data reports broken down by demographics to the CRD.

Employers who use labor contractors (i.e., 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) would also have to submit pay data for employees hired through those contractors under a separate report.

Employers with multiple locations would be required to submit a separate report for each establishment, eliminating the option of a single consolidated report.

The deadline for reporting would move from March each year to the second Wednesday in May. The updated pay data reports, including mean and median hourly rates, are due starting May 10, 2023.

Employers who fail to file pay data reports may be subject to a civil penalty of up to \$100 per employee for initial failures to file and \$200 per employee for subsequent failures to file.

### **New pay disclosure requirements**

**Job Postings:** Employers with 15 or more employees must include the pay scale (i.e., salary or hourly wage ranges) for a position in all job postings, including postings made by third parties on behalf of employers on social media and job search websites.

**Disclosure to Applicants and Employees:** All employers, regardless of size, must disclose a job position's pay scale to any applicant or employee that requests it for a position in which they are applying or currently work.

**Record Retention Requirement:** All employers, regardless of size, must maintain records of job title and wage rate history for each employee for the duration of an employee's employment plus three years after the termination of employment. The California Labor Commissioner will have authority to inspect these records. If an employee brings a claim with the Labor Commissioner against an employer that fails to comply with this recordkeeping requirement, the employer's failure to maintain these records would create a rebuttable presumption in favor of an employee's claim.

**Enforcement, Civil Actions and Penalties:** Employees could file complaints with the California Labor Commissioner within one year the employees first learned of the violation and can bring a civil action for injunctive relief and any other relief that a court deems appropriate. The Labor Commissioner is empowered to investigate complaints of noncompliance with these disclosure requirements. If it is determined that an employer violated the law, the Labor Commissioner is authorized to order the employer to pay civil penalties ranging from \$100 to \$10,000 per violation. However, no penalty will apply for an initial violation if the employer can show that all job postings for each open position has been updated to reflect the pay scale.

## **What this means to you**

SB 1162 introduces a potentially burdensome reporting regime for covered California employers with the added risk of costly civil penalties for instances of noncompliance. Processes regarding pay disclosure and reporting will need to account for these new complexities and risks, and the clock is ticking, as the law is effective at the beginning of 2023.

## **Contact us**

Contact Tyler Paetkau, Michael Matta, Chengzhuo He or your Husch Blackwell attorney if you have questions regarding SB 1162 and how it might impact your organization.