

Alert | Labor & Employment



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California Bill Would Increase Strict Pay Data Reporting and Pay Transparency Requirements for Businesses Across State

Will it soon be time for California employers to collect and report more pay data? If Senate Bill 1162 (**SB 1162**) passes, the answer is “yes.” Introduced in the California Senate in February 2022, SB 1162, if passed, would lead to considerable changes to California’s pay transparency laws and affect both pay data reporting and proactive wage range disclosure.

In September 2020, California passed legislation that required employers with 100 or more employees to report annually to the Equal Employment Opportunity Commission (EEOC) the number of their employees by sex, race, and ethnicity in each of the 10 EEO-1 Job Categories.

SB 1162 proposes to amend and expand the current law in several ways. First, the bill would remove the provision of existing law that permits an employer to submit an EEO-1 in lieu of a pay data report. Private employers with 100 or more employees hired through labor contractors would be required to submit to the Department of Fair Employment and Housing (DFEH) pay data reports (distinct from EEO-1 reports), which would include average and median hourly rates for employees in specific positions, categorized by their race, ethnicity, and sex. These pay data reports would be required for workers in the following positions: (1) executive or senior-level officials and managers; (2) first or mid-level officials and managers; (3) professionals; (4) technicians; (5) sales workers; (6) administrative support workers; (7) craft workers; (8) operatives; (9) laborers and helpers; and (10) service workers.

Second, SB 1162 would require the DFEH to publish each private employer's pay data report on a website available to the public.

Employers who fail to file required pay data reports would be subject to the bill's penalty provisions. If SB 1162 is enacted, the bill "would permit a court to impose a civil penalty not to exceed one hundred dollars (\$100) per employee upon any employer who fails to file the required report and not to exceed two hundred dollars (\$200) per employee upon any employer for a subsequent failure to file the required report." Any penalty imposed under this bill would be payable to the Fair Employment and Housing Enforcement and Litigation Fund. Plaintiffs would also be able to obtain injunctive relief, as well as any other relief a court deemed appropriate. SB 1162 would specifically require the Labor Commissioner to investigate complaints alleging violations of reporting requirements and would allow the commissioner to order an employer to pay a civil penalty upon finding an employer had violated these provisions. Upon finding that an employer had violated this section, the Labor Commissioner would be able to order the employer to pay a civil penalty of no less than five hundred dollars (\$500) and no more than ten thousand dollars (\$10,000) per violation.

In addition to the expansion of pay data reporting requirements, SB 1162 would also expand an employer's obligations under the pay transparency laws under Section 432.3 of the Labor Code. Specifically, employers would be required, upon an employee's request, to provide the employee the pay scale for the position the employee currently holds. Further, California employers with more than 15 employees would have to include the pay scales for positions included in job postings, and not just upon request.

SB 1162 has already passed the California Senate. It went before the Assembly Appropriations Committee on Aug. 3, 2022. If it reaches Gov. Newsom, he has until Sept. 30, 2022, to either sign or veto the bill. If SB 1162 is enacted, it could impact businesses and industries across California through increased reporting requirements for employers and potential litigation against them, by encouraging litigation based on the availability of extensive data collected and required by the state of California.

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