Cooley

California's Broad Pay Transparency Law Takes Effect Next Year

October 5, 2022

On September 27, 2022, California Gov. Gavin Newsom signed Senate Bill 1162, a broad pay transparency bill requiring employers to include pay ranges in all job advertisements effective January 1, 2023. The bill also requires employers to submit expanded annual pay data reports that include pay data on employees hired through labor contractors to the California Civil Rights Department (CRD) beginning May 10, 2023, and every second Wednesday in May annually thereafter.

In enacting this law, California follows in the footsteps of several other jurisdictions and municipalities that have enacted similar legislation requiring pay ranges in job postings. These jurisdictions include, but are not limited to, Washington (effective January 1, 2023), Colorado (currently in effect) and New York City (effective November 1, 2022). Unlike other jurisdictions, however, California goes a step further to expand currently existing pay data reporting requirements to include reporting on mean and median pay data to "better identify gender and race-based pay disparities," among other things.

We discuss the key requirements of the law below.

Pay disclosure requirements

Like many other states, California currently prohibits employers from asking applicants about their salary history during the hiring process. The state also requires employers to provide the pay scale for a position to an applicant upon a reasonable request.

Effective January 1, 2023, SB 1162 will expand these requirements by:

- Requiring employers with 15 or more employees 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, they must provide the pay scale to that third party who must include it in the posting.
- Requiring **all employers** to provide the pay scale for the position in which a current employee is employed, upon request.
- Requiring **all employers** to maintain records of job title and wage history for each employee for the duration of employment and three years after the end of employment so that the state's labor commissioner – who is authorized to inspect these records – can "determine if there is still a pattern of wage discrepancy."

Pay data reporting requirements

California currently requires private employers with 100 or more employees, which are also required under federal law to file annual Employer Information Reports (EEO-1) with the Equal Employment Opportunity Commission (EEOC), to submit annual pay data reports to the state's CRD. Employers are required to include data on pay and hours worked by establishment, job category, sex, race and ethnicity.

SB 1162 broadly expands these reporting obligations by requiring **all** private employers with 100 or more employees to submit pay data reports to the CRD, regardless of whether they are required to submit EEO-1 reports to the EEOC, and expanding the number of data categories those employers are obligated to report. The pay data reports will be due annually on the second Wednesday in May, beginning on May 10, 2023, and must include data covering the prior calendar year (the "reporting year"). Specifically, the reports must include:

- The number of employees by race, ethnicity and sex in 10 job categories, based on a "snapshot" that counts all individuals employed in these categories during a single pay period of the employer's choice between October 1 and December 31 of

the reporting year. The job categories include:
    - Executive or senior-level officials and managers
    - First- or mid-level officials and managers
    - Professionals
    - Technicians
    - Sales workers
    - Administrative support workers
    - Craft workers
    - Operatives
    - Laborers and helpers
    - Service workers
- The number of employees by race, ethnicity and sex, whose annual earnings fall within each of the pay bands used by the US Bureau of Labor Statistics in the Occupational Employment Statistics survey.
- Within each job category, for each combination of race, ethnicity and sex, the median and mean hourly rate.
- The total number of hours worked by each employee in each pay band during the reporting year.
- The employer's North American Industry Classification System (NAICS) code.
- The employer's clarifying remarks regarding the information provided, although this is not required.

In addition, employers with 100 or more employees hired through labor contractors within the prior calendar year must also submit a separate pay data report to the CRD covering those employees and disclosing the ownership names of all labor contractors used to supply such employees. A labor contractor is defined as "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."

Finally, the pay data reports must be made "in a format that allows the [CRD] to search and sort the information using readily available software," although no further guidance is provided regarding this requirement.

Penalties for noncompliance

Employees aggrieved by an employer's noncompliance with the pay disclosure requirements may file a complaint with the California Division of Labor Standards Enforcement (DLSE) within one year of the date they learned of the violation or file a civil action for injunctive relief. If the DLSE finds that an employer violated the law, employers may be subject to civil penalties of $100 to $10,000 per violation. The labor commissioner will determine the amount of the penalty based on the totality of the circumstances, including prior violations. Importantly, **no penalty shall be assessed for a first violation** where an employer shows that "all job postings for all positions have been updated to include the pay scale."

If an employer fails to file the pay data reports, the CRD can seek a court order requiring compliance and recover costs associated with seeking such order. A court also can impose civil penalties of $100 per employee, and up to $200 per employee, for subsequent failures to file the report. If an employer cannot comply because a labor contractor has not provided the required pay data information, a court may also apportion an "appropriate amount of penalties" to such contractor.

Next steps

In preparing to comply with SB 1162's broad requirements, employers should:

- Consider conducting a privileged pay equity audit of their workforce and making related pay adjustments for any discrepancies as needed.
- Determine the salary ranges for existing positions.
- Ensure that all job postings include the required pay scale information.
- Pay special attention to similar pay transparency laws currently in effect, or that will soon take effect, in other jurisdictions, if they have multistate operations.
- Consider adopting a national policy addressing salary ranges to comport with the growing number of jurisdictions with pay

transparency laws, if they have multistate operations.

- Ensure any records maintenance policies are updated to comply with the law's record-keeping requirements.

If you have any questions about SB 1162 or other pay transparency laws, or are interested in conducting a privileged pay equity audit, please contact a member of Cooley's employment group.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Ann Bevitt **London**	**abevitt@cooley.com** **+44 (0) 20 7556 4264**
Wendy Brenner Palo Alto	brennerwj@cooley.com +1 650 843 5371
Leslie Cancel San Francisco	lcancel@cooley.com +1 415 693 2175
Helenanne Connolly Reston	hconnolly@cooley.com +1 703 456 8685
Ross Eberly Santa Monica	reberly@cooley.com +1 310 883 6415
Eileen Leman Los Angeles	eleman@cooley.com +1 213 561 3216
Joshua Mates San Francisco	jmates@cooley.com +1 415 693 2084

Anna Matsuo New York	amatsuo@cooley.com +1 212 479 6827
Gerard O'Shea New York	goshea@cooley.com +1 212 479 6704
Miriam Petrillo Chicago	mpetrillo@cooley.com +1 312 881 6612
Ryan Vann Chicago	rhvann@cooley.com +1 312 881 6640
Summer Wynn San Diego	swynn@cooley.com +1 858 550 6030

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.