

Update to California's New Pay Disclosure Requirements

On January 1, 2023, Senate Bill 1162 went into effect. This new law imposes significant new pay scale disclosure requirements on California employers. It also leaves a number of questions unanswered, which the Department of Industrial Relations clarified in recently released FAQs.

As previously discussed in our October 17, 2022, Alert, **SB 1162** requires California employers with 15 or more employees to include the pay scale for a position in any job posting. If the employer engages a third party to post or publish its job postings, the employer must provide pay scale information to the third party, who must include the information in the job posting.

"Pay scale" is defined as the "salary or hourly wage range that the employer reasonably expects to pay for the position." The new law is silent as to whether a pay scale should include other information such as bonuses, commissions, options, or benefits associated with the position. The updated guidance from the Department of Industrial Relations just clarified that other compensation or tangible benefits are not required to be included in the posted pay scale. A legally required job posting only requires the "salary or hourly wage range." [FAQ 32]

If, however, the position's hourly or salary wage is based on a piece rate or commission, then the piece rate or commission range the employer reasonably expects to pay for the position must be included in the job posting. [FAQ 33]

The updated FAQs also clarify that employers cannot link the salary range in an electronic posting or include a QR code in a paper posting that will take an applicant to the salary information. The pay scale must be included within the job posting itself. [FAQ 34]

The new law also is silent about whether the pay scale requirement for job postings is limited to positions whose physical location is in California or if it also applies to remote positions (where that job may be performed outside of California). In its updated FAQs, the DIR clarified that "the pay scale must be included within the job posting if the position may ever be filled in California, either in-person or remotely." [FAQ 29]

The new law does not define who must be counted as an employee to determine if the employer meets the 15-employee coverage threshold. In its updated guidance, the DIR states that it interprets this requirement consistent with how it counts employees for the purposes of 2022 COVID-19 Supplemental Paid Sick Leave and minimum wage rates, as detailed in [previously issued FAQs on the topic](#). Following this guidance, the pay scale disclosure requirements apply if an employer has more than 15 employees, with at least one located in California. [FAQ 38].

SB 1162 also adds a document retention requirement to Labor Code § 432.3, requiring employers to maintain records of job titles and wage rate histories for each employee for the duration of their employment and for an additional three years after the end of their employment and directing that such records be open and available for inspection by the Labor Commissioner. The law creates a rebuttable presumption in favor of an aggrieved employee under Labor Code § 432.3 when such records are not maintained by the employer.

Finally, SB 1162 also expands existing requirements under Government Code Section 12999 for private employers in California with more than 100 employees to submit an annual pay data report to the California Civil Rights Department (CRD, formerly the DFEH). We discussed these new requirements in our recent Alert. As there are also some questions left unanswered regarding the new pay data reporting obligations, we anticipate updated guidance in early 2023 from the CRD regarding these obligations as well.



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