Insights: Alert

California Expands Its Pay Transparency Law

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On September 27, 2022, Governor Gavin Newsom signed Senate Bill (SB) 1162 expanding the scope of California's existing pay transparency laws. SB 1162 imposes new requirements for pay information in job postings, extends current pay data reporting requirements to all employers in California with 100 or more employees, requires additional information from employers, and provides penalties for failure to comply with the law, as amended.

Job Posting and Record-Keeping Requirements for California Employers with 15 or More Employees

California Labor Code section 432.3 currently requires employers to provide pay scale information to an applicant for employment after an initial interview but only if the applicant requests the information. It also prohibits employers from asking about a job applicant's salary history or relying on a candidate's salary history information when deciding on employment offers. SB 1162 amends section 432.3 by expanding these disclosure requirements to require California employers to include a position's pay scale in any job posting. “Pay Scale” is defined as the “salary or hourly wage range that the employer regularly expects to pay for the position.” Employers that use third-party job posters must also provide the pay scale information to the third-party poster to include in job postings. The revised law also requires employers to keep records of job titles and pay histories for each employee during their employment and for three years after employment ends.

SB 1162 gives the California Labor Commissioner authority to investigate and impose civil penalties for violations of the law, ranging from $100 to $10,000 per violation. The new law also enables “aggrieved” individuals to bring a civil action for injunctive relief and any “other relief” deemed appropriate by a court.

It is unclear whether the new pay transparency law will apply to remote work positions that can be performed in California. In interpreting Colorado's Equal Pay for Equal Work Act, one of the first laws requiring pay scale information in job postings, Colorado's Department of Labor and Employment has indicated that compensation and benefits information must be included in any postings for jobs that can be performed remotely in Colorado. In other words, according to Colorado's interpretation of its statute, nationally advertised remote job positions must comply with Colorado's pay disclosure laws. Employers advertising nationwide for remote workers should not be surprised if California's Labor Commissioner adopts the same interpretation.

Pay Data Reporting Obligations

Aside from the new disclosure requirements, SB 1162 also expands employers' pay data reporting obligations. Before SB 1162, only employers with 100 or more employees were required to prepare federal EEO-1 reports and submit a pay data report to California's Department of Fair Employment and Housing. Covered employers were required to provide (A) the number of employees within each establishment (B) by race, ethnicity, and sex within each (C) job category (for example, Professionals, Technicians, Laborers, and Service Workers), and (D) the number of employees

within each of 12 specific pay bands during the prior year. Next year, all private employers with 100 or more employees must submit the report. Employers will also have to (1) submit a separate pay data report for employees hired through labor contractors (i.e., covering temporary staffing agencies) that also discloses the "ownership names of all labor contractors used to supply employees." Significantly, employers will also have to report the median and mean hourly rate for each combination of race, ethnicity, and sex for each job category for both traditional employees and those hired through labor contractors.

The first reporting deadline for these new categories of pay data will be May 10, 2023. Employers with multiple establishments must submit a report covering each establishment. SB 1162 also adds potential penalties for the failure to comply with reporting requirements. The California Civil Rights Department (CRD) may ask a court to impose civil penalties of up to one hundred dollars ($100) per employee on any employer who fails to file the required reports. For any subsequent failures, the CRD may request civil penalties of up to two hundred dollars ($200) per employee.

In enacting Senate Bill (SB) 1162, California joins Colorado, Washington, New York, and local municipalities in requiring employers to disclose compensation information in job postings. Of note, other states, including Connecticut, Nevada, Rhode Island, and Maryland, have enacted pay transparency laws but do not require disclosure of pay scales in job postings. In light of California's SB 1162 and the recent trend of jurisdictions enacting similar pay transparency laws, employers should review their job postings and practices regarding compensation information provided to current employees and seek the advice of counsel if they have questions regarding compliance. Employers who advertise for candidates nationally should ensure that they stay up-to-date with regard to the requirements of the above states and watch for additional states to follow suit. In addition, employers should carefully review the data it collects on employees and workers hired through staffing agencies to ensure that it can comply with California's new data disclosure laws.

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