



California to impose more salary disclosure, pay data reporting

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A new California law ([2022 Ch. 559](#), SB 1162) expands salary disclosure and pay data reporting requirements. Effective Jan. 1, 2023, employers will have to disclose pay scale for positions to applicants and employees and include that information in job postings. Building on a 2020 mandate to help identify wage disparities ([GRIST](#), Oct. 7, 2020), the new law also changes and expands state pay data reporting for private employers beginning May 10, 2023. “California has the strongest equal pay laws in the nation, but we’re not letting up on our work to ensure all women in our state are paid their due and treated equally in all spheres of life,” said Gov. Gavin Newsom.

Pay scale disclosure

Application. California already requires employers (including state and local government employers and the legislature) to provide the pay scale for a position on reasonable request from an employment applicant. Under the new law, employers will have to provide on request the pay scale for an employee’s current position. This is a unique requirement relative to other states’ pay transparency legislation. Pay scale is defined as “the salary or hourly wage range that the employer reasonably expects to pay for the position.”

Employers with 15 or more employees also will have to include the pay scale for a position in any job posting. If using a third party to announce, post, publish or otherwise make known a job posting, employers will need to provide the pay scale to the third party to include in the job posting.

Recordkeeping. To help the Labor Commissioner’s Office detect any a pattern of wage discrepancies, employers will have to maintain records of a job title and wage rate history for each employee for the employment duration, plus three years. These records will be open to inspection by the Labor

Commissioner's Office. Failure to keep these records creates a rebuttable presumption in favor of an employee's claim for a violation of the pay scale disclosure law.

Recourse. A person allegedly aggrieved by a violation of these requirements can file a written complaint with the Labor Commissioner's Office within one year after the date the person learned of the violation. The person may also bring a civil action for injunctive relief and any other relief that the court deems appropriate.

Penalties. After finding an employer has violated these requirements, the Labor Commissioner's Office may order the employer to pay a civil penalty of \$100 to \$10,000 per violation. The penalty amount will reflect the totality of the circumstances, including but not limited to any past violations of these requirements by the employer. For a first failure to provide the pay scale, employers will not face any penalty if they demonstrate that all job postings for open positions have been updated to include the pay scale.

Pay data reporting

The new law changes the 2020 pay data reporting mandate and imposes additional reporting obligations and penalties.

Reporting date change. The new law changes the current March 31 reporting date. On or before May 10, 2023, and on or before the second Wednesday of May in later years, a private employer that has 100 or more employees must submit an annual pay data report to the Civil Rights Department.

Submission of federal EEO-1 report no longer sufficient. The current law provides that employers are in compliance if they submit to the department the federal Employer Information Report (EEO-1) containing the same or substantially similar pay data information as the state law require. The new law removes this provision and now requires separate reporting.

Contracted employee reporting. The new law specifically covers contract workers in addition to employees. On or before May 10, 2023, and on or before the second Wednesday of May thereafter, a private employer with 100 or more workers hired through labor contractors in the past calendar year must submit to the department a separate pay data report covering those contract workers. 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." The private employer also will have to disclose on the pay data report the ownership names of all labor contractors used to supply employees. A labor contractor shall supply all necessary pay data to the private employer.

Additional information. In addition to the existing information currently required, the pay data report will need to include the median and mean hourly rate within each job category for each combination of race, ethnicity and sex.

Multiple establishments. If an employer has multiple establishments, it will still have to submit a separate report for each establishment but will no longer need to submit a consolidated report.

Penalties. On request by the California Civil Rights Department, a court may impose a civil penalty not exceeding \$100 per employee for a first failure to file the required report and not exceeding \$200 per employee for each subsequent failure. If the employer is unable to submit a complete and accurate report because a labor contractor has not provided the required pay data, the court may hold the labor contractor liable for a portion of the penalty.

Next steps

Employers with California employees should prepare to make pay more transparent both internally and externally. These employers also should consider their national and international pay transparency plans to align employee and candidate experiences to the degree desired. Here are some steps to consider to support pay transparency planning.

1. Assess current programs across four key dimensions, and strengthen where necessary.

- Job organization
 - Are jobs well-defined? Well-defined roles can help ensure understanding of the pay for the nature of work.
 - Are jobs organized into a meaningful and logically consistent framework? Ambiguity in the relative contribution of a role might complicate understanding the pay associated with the role.
 - Do employees and managers know how to navigate their careers? Once job postings include pay ranges, current employees may want to understand how their career and pay opportunities compare.
- Pay strategy
 - Does the organization have a compensation philosophy? A well-articulated rationale to explain why the pay system is designed as it is, what skills or performances are rewarded, and how pay is delivered helps put pay ranges into context.
 - Are benchmark jobs and salary ranges up to date? Competitive pay ranges will ensure that posted ranges attract the right talent.
- Pay equity
 - Does the employer use robust statistical analysis to identify and remediate disparities? Sharing pay ranges can carry risks if employees' actual pay relative to those ranges is not defensible from a human capital management perspective.
 - Can management soundly defend pay decisions? Confidence that pay policies and practices mitigate inequities can help assure candidates and employees about pay equity.

- Employee perception
 - How do candidates and employees view the organization? Understanding how stakeholders view the organization's value proposition is critical to ensuring pay ranges meet the expectations of candidates and employees.

2. Define your pay transparency strategy by answering key questions.

- What is the desired pay and career transparency story, and why is it important?
- What will be shared internally versus externally?
- With whom — e.g., employees, managers and/or candidates — and how will the story be shared?
- How will the information be shared, and what is the desired reaction?
- How will the organization respond to employee questions about pay ranges or pay data reporting?
- What is the timing to roll out this pay transparency strategy?

3. Implement changes.

- Create a digital platform where employees and external candidates can access salary information and explore career paths.
- Develop training toolkits and resources for managers and human resource partners to ensure the compensation strategy is effectively and consistently communicated.
- Enhance performance management and coaching resources to include modeling tools that illustrate earnings potential for various career opportunities.
- Share efforts beyond the posting of pay ranges.
- Highlight key experiences and branded employee communications/messaging.
- Define broad external candidate messaging that is consistent with internal messaging.
- Create a communication playbook (including target audiences, communication objectives for each audience, delivery vehicles, frequency/timing, challenges, metrics, etc.) to ensure clarity and transparency for all employees at various points of the journey.

4. Measure effectiveness.

- Survey candidates and employees to identify unmet needs and the most important aspects of the value proposition, including compensation.
- Conduct statistical modeling to see how employees' perception of pay affects outcomes (like turnover).

States trend toward pay transparency

In recent years, many states have enacted legislation requiring the disclosure of salary ranges and pay data. Consider these examples:

- In Colorado, each job vacancy posting has to disclose the hourly wage or salary, or the hourly wage or salary range, and give a general description of all benefits and other compensation offered. The implementation rules specify that this requirement does not apply to jobs performed outside of Colorado and job postings entirely outside of Colorado.
- Beginning Nov. 1, 2022, New York City will require job postings to include the minimum and maximum salary for the position.
- California, Connecticut, Maryland, Nevada, Rhode Island and Washington also require employers to disclose — voluntarily or on request — information about salary ranges for open positions or promotions.

Other states, such as Massachusetts and New York, are considering similar legislation. For more information, see [Roundup: US employer resources on states' recent equal pay laws](#).

Related resources

Non-Mercer resources

- [Press release](#) (Office of Governor, Sept. 27, 2022)
- [2022 Ch. 559, SB 1162](#) (Legislature, Sept. 27, 2022)

Mercer Law & Policy resources

- [Roundup: US employer resources on states' recent equal pay laws](#) (regularly updated)
- [Salary information will be required in New York City job postings](#) (May 4, 2022)
- [Colorado issues pay equity rules to implement law in 2021](#) (Nov. 17, 2020)
- [California requires employers to file equal pay reports](#) (Oct. 7, 2020)

Other Mercer resources

- [How to make the move to pay transparency](#)
- [The case for pay transparency](#)

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