

# PAY TRANSPARENCY IN CALIFORNIA – NEW WAGE DISCLOSURE REQUIREMENTS FOR CALIFORNIA EMPLOYERS

**Elyssa K. Kulas, Esq.**  
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California joins several other states in taking efforts to address equal pay issues and expanding equal pay protections. Effective January 1, 2023, California is amending and expanding existing law regarding the disclosure of wage information, particularly during the hiring process, as well as pay data reporting. Senate Bill 1162, which amends California Government Code section 12999 and California Labor Code section 432.3, imposes the following new or amended requirements on California employers:

## **1) Pay Scale in Job Postings**

An employer with 15 or more employees must include the pay scale for a position in any of its job postings. This includes job postings made through or with third party. “Pay scale” is defined to mean the salary or hourly range the employer reasonably expects to pay for the job position, but it does not expressly include bonuses, commission, or other benefits the employer may pay to the employee in that particular job position.

Employers should make good faith efforts to update their job postings to include pay scales, as required under California law, by January 1, 2023.

## **2) Pay Scale Information to Job Applicants**

Existing law required employers, upon reasonable request, to provide the pay scale for a position to a job applicant after they completed an initial interview with the employer. The law is now amended to eliminate the requirement that the applicant complete an initial interview to be entitled to pay scale information. Instead, any individual who is seeking employment and is not currently employed with the employer in any capacity or position may ask for pay scale information, regardless of whether the applicant has completed an initial interview.

This requirement is applicable to all employers, regardless of number of employees.

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**Elyssa K. Kulas, Esq.**  
Elyssa is a litigation attorney at Ferris & Britton, APC. Elyssa specializes in Labor and Employment and Business Dispute matters.

Email Address:  
ekulas@ferrisbritton.com

**CONTACT US**  
Ferris & Britton, APC  
501 W. Broadway  
Suite 1450  
San Diego, CA 92101

Phone: (619) 233-3131  
Fax: (619) 232-9316

ferrisbritton.com

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## **3) Pay Scale to Current Employees**

Another change to the law now requires employers, upon request, to provide current employees with a pay scale for the job position in which the employee is currently employed. However, it does not entitle existing employees to seek pay scale information for a job position they do not currently hold.

This requirement is applicable to all employers, regardless of number of employees. Employers should prepare for these requests from current employees at the start of the New Year.

## **4) Record Retention Requirements**

Employers must maintain records of job titles and wage rate history for each employee for the employee's entire employment plus 3 years after the end of their employment. The Labor Commissioner also is entitled to inspect these records to determine if there is a pattern of wage discrepancy.

This requirement is applicable to all employers, regardless of number of employees. As a result, employers should update their record retention policies to maintain compliance with this new requirement.

## **5) Pay Data Reporting**

Private employers with 100 or more employees must submit pay data report to the California Civil Rights Department ("CRD") covering the prior calendar year for each employer establishment, which now must include the median and mean hourly rate within each job category for each combination of race, ethnicity, and sex. This information was not previously required in pay data reporting.

Also, private employers with 100 or more employees hired through labor contractors within the previous calendar year must now also submit a separate pay data report covering those workers.

Finally, the new law permits a court to impose a civil penalty of up to \$100 per employee against an employer who fails to file the required report, and up to \$200 per employee against an employer for subsequent failures to file the required reports. Essentially, the new law gives the courts teeth to enforcing the new reporting requirements like never before.

Compliance with pay equity laws can be overwhelming, but Ferris and Britton can assist employers in navigating these new waters. If you have any questions about pay equity and its impact in California, please contact Elyssa Kulas at [ekulas@ferrisbritton.com](mailto:ekulas@ferrisbritton.com).