

CALIFORNIA'S PAY TRANSPARENCY LAWS

March 9, 2023

Since 2018, the California Equal Pay Act (“CEPA”) has prohibited employers from asking applicants about their salary history, including compensation and benefits, during the hiring process. California also requires employers to provide the pay scale for a position upon reasonable request by an applicant. However, in 2022, California passed SB 1162, which expanded the disclosure requirements imposed on employers, effective January 1, 2023.

COVERED EMPLOYERS

California’s disclosure laws apply to employers with 15 or more employees nationwide, and only one employee needs to be physically located in California for the law to apply. Moreover, the Department of Labor Standards Enforcement (DLSE) has interpreted the job posting requirement to apply if the posted position “may ever be filled in California, either in-person or remotely.”

If the employer utilizes third parties to “announce, post, publish, or otherwise make known a job posting,” the employer must provide the pay scale to the third party that, in turn, must include the pay scale on any job posting.

DISCLOSURE REQUIREMENTS

In addition to requiring disclosure of pay scale information to applicants, upon request, California employers are now required to include pay scale information in any job posting and provide existing employees with pay scale information for the employee’s current position upon request. The DLSE interprets the law to require the pay scale for the position to be included directly within the job posting. In other words, employers cannot require the applicant to go elsewhere to find the pay range.

“Pay scale” means the base salary or hourly wage range or set rate that the employer “reasonably expects” to pay for the position. The DLSE recently clarified that the “pay scale” need not include bonuses, tips, or other benefits. However, piece rate and commission wages must be included in the pay scale information if the job position compensates employees either in whole or in part based on a task, piece, or commission. In such circumstances, the job posting or disclosure to a current

employee must include the piece rate or commission range that the employer “reasonably expects to pay for the position.”

RECORDKEEPING AND PENALTIES

California employers must keep records of wages, wage rates, job classifications, and other terms and conditions of employment for a period of three years. Additionally, starting January 1, 2023, an employer must keep records of a job title and wage rate history for each employee for the duration of the employment plus three years after the end of the employment.

The DLSE can inspect these records to determine if there is a pattern of wage discrepancy.

If an employer violates the disclosure requirements, an employee or applicant who claims to be aggrieved may file a written complaint with the DLSE within one year after the date they learned of the violation. An employee or applicant may also file a civil action for injunctive relief or any other relief that a court deems appropriate.

The DLSE may order employers to pay a civil penalty between \$100 and \$10,000 per violation. However, employers can avoid the penalty for a first time violation if the employer demonstrates that all job postings for open positions have been updated to include the required pay scale information.

MEET THE TEAM



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