
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair

2021 - 2022 Regular Session

SB 1162 (Limón) - Employment: Salaries and Wages

Version: May 2, 2022

Urgency: No

Hearing Date: May 16, 2022

Policy Vote: L., P.E. & R. 4 - 1, JUD. 9 - 2

Mandate: No

Consultant: Robert Ingenito

Bill Summary: SB 1162 would (1) require employers of 100 or more workers hired through labor contractors to provide the Department of Fair Employment and Housing certain specified information, including pay data, about their workers, (2) require employers to provide the pay scale for a position to an applicant for employment and include it in job postings, and (3) require all employers to inform current employees on the same day of an opportunity for promotion, as defined

Fiscal Impact:

- The Department of Fair Employment and Housing (DFEH) would incur first-year costs of \$572,000, and \$494,000 annually thereafter, to implement its provisions of the bill (General Fund).
- The Department of Industrial Relations (DIR) has yet to determine its administrative costs that would result from the bill (special fund). However, these costs would minimally be in the hundreds of thousands of dollars annually.
- The bill's costs would be offset to some extent by increased penalty revenue, the magnitude of which is unknown.

Background: Studies consistently show that women continue to earn less than their male counterparts. In 1963, women who worked full-time year-round made 59 cents on average for every dollar earned by a man according to the American Association of University Women (AAUW). Today, women working full time in the United States typically are paid just 83 percent of what men are paid, a gap of 17 cents on every dollar. African-American (87 percent), Latino (91 percent), Native American (91 percent), and Pacific Islander (95 percent) men make less than what their white counterparts, according to a study by the compensation data and software firm PayScale. The greatest disparities appear where the categories intersect. For example, the National Women's Law Center estimates that the average black woman earns just 63 percent of what her white male counterpart makes. Of course, these gaps compound over time, such that even relatively small pay gaps add up to earnings disparities ranging into the hundreds of thousands of dollars or more over the course of a lifetime of work.

The EEOC is a federal commission, created by the Civil Rights Act of 1964. Since its creation, the EEOC has fought discrimination throughout America's workplaces, including discrimination based on race, color, religion, national origin, age, disability,

and sex. The EEOC was an early pioneer in the fight for gender equality – as early as 1968, the EEOC argued in court that state laws that prevented women from certain occupations were illegal and preempted under federal law.

Starting in 1966, the EEOC required employers with 100 or more employees to submit EEO-1 forms, which showed the representation of men and women of different ethnic groups in nine different occupational classifications. According to the EEOC, the EEO-1 data was invaluable in enforcing anti-discrimination laws and conducting public hearings throughout the country to bring attention to the issue of discrimination in the workplace. The EEO-1 continues to be required by the EEOC, and continues to be used to enforce antidiscrimination laws throughout the country.

In 2016, in an attempt to end gender-based pay discrimination, the Obama Administration required employers to report pay data in specified bands on the EEO-1 form. This requirement went through the necessary rule making, and the first reporting deadline was March 31, 2018. However, in August of 2017, the current federal Administration, through the Office of Management and Budget (OMB), suspended the rule requiring the reporting of pay data due to compliance burdens.

Proposed Law: This bill would, among other things, do the following:

- Require a private employer that has 100 or more employees to submit a pay data report to DFEH, and revise the timeframe in which a private employer is required to submit this information to require that it be provided on or before the second Wednesday of May 2023, and for each year thereafter on or before the second Wednesday of May.
- Require a private employer that has 100 or more employees hired through labor contractors, as defined, to also submit a separate pay data report to DFEH for those employees in accordance with the above timeframe, as specified.
- Require the pay data report to include the median and mean hourly rate for each combination of race, ethnicity, and sex within each job category. Employers with multiple establishments would be required to submit a report covering each establishment.
- Remove the provision of law that permits an employer to submit an EEO-1 in lieu of a pay data report.
- Permit a court to impose a civil penalty not to exceed one hundred dollars (\$100) per employee upon any employer who fails to file the required report and not to exceed two hundred dollars (\$200) per employee upon any employer for a subsequent failure to file the required report.
- Require DFEH to publish the pay data-report, on an internet website available to the public, of each private employer with 1,000 or more employees in the 2024 calendar year, of each private employer with 500 or more employees in the 2025 calendar year, and of each private employer with 250 or more employees in the 2026 calendar year, and each subsequent calendar year thereafter. The bill

would prohibit the department from publishing any individually identifiable information that is associated with a specific person.

- Require an employer to include the pay scale for a position in any job posting. The bill would require the employer to maintain records of a job-title and wage rate history for each employee for a specified-timeframe, and would require those records to be open to inspection by the Labor Commissioner.
- Create a rebuttable presumption in favor of an employee's claim if an employer fails to keep records in violation of these provisions.
- Require an employer that engages a third party to announce, post, publish, or otherwise make known a job posting to provide the pay scale to the third party and would require the third party to include the pay scale-in the job posting.
- Require an employer to notify all current employees of any internal job opening and the pay scale at least five business days before filling the position, except as specified.
- Require the Labor Commissioner to investigate complaints alleging violations of these requirements and would authorize the commissioner to order an employer to pay a civil penalty upon finding an employer has violated these provisions.
- Authorize a person aggrieved by a violation of these provisions to bring a civil action for injunctive and any other appropriate relief.
- Require deposit of the civil penalties collected pursuant to these provisions into the Labor Enforcement and Compliance Fund, and would authorize these funds to be used, upon appropriation by the Legislature, for specified administration and enforcement.

Related Legislation:

- SB 1458 (Limon) would adjust the formula for calculating workers compensation benefits by increasing the average weekly wage by the percentage of disparity in earnings between genders as reported to the DFEH in the employer's annual pay equity data if the applicant's average weekly wage is less than the average weekly wage of the opposite gender in that data. The bill is currently pending in this Committee.
- AB 1192 (Kalra, 2020) would have required the report and publication of a series of metrics for large California employers about the nature of their workforce, pay, benefits, and conditions including, among others, disparities in pay based on race and gender. The bill died on the Assembly inactive file.
- SB 973 (Jackson, Chapter 363, Statutes 2020) required California employers with 100 or more employees to compile and submit pay equity data to the DFEH

annually and directed DFEH to publish a yearly report on statewide pay equity based on this data in the aggregate.

- SB 171 (Jackson, 2019) was substantially similar to SB 973, and was held under submission on the Suspense File of the Assembly Appropriations Committee.
- SB 1284 (Jackson, 2018) was substantially similar to SB 973 and also was held under submission on the Suspense File of the Assembly Appropriations Committee.
- AB 2282 (Eggman, Chapter 127, Statutes of 2018) clarified that, while prior salary information cannot justify disparities in compensation, an employer may make a compensation decision based on an applicant's current salary as long as any wage differential resulting from that compensation decision is justified by: (a) a seniority system; (b) a merit system; (c) a system that measures earnings by quantity or quality of production; or (d) a bona fide factor other than sex, such as education, training, or experience.
- AB 46 (Cooper, Chapter 776, Statutes of 2017) clarified that the California Equal Pay Act applies to public as well as private sector employers.

Staff Comments: As noted above, this bill would increase the number of pay data reports that DFEH would receive on an annual basis, increase the number of fields in the pay data report itself, and, consequently, increase DFEH's costs for analysis and publication of aggregate data. Additionally, it would require DFEH to create and maintain an interactive public website to host redacted reports and, before posting to that site, would require the department to review and redact any information that could be used to identify an individual employee. DFEH anticipates that this bill would result in increased calls and emails to the department from employers, labor contractors, the media, and the public. DFEH would also need to ensure employers and labor contractors know of their new obligations and would need to pursue any employer or labor contractor that fails to timely submit its report.

Based on its recent implementation of the pay data reporting program mandated by SB 973 (Jackson) DFEH anticipates requiring two positions to implement the bill. Additionally, the Department would incur increased IT costs to make changes to the existing pay data reporting portal (and the user guide to the portal and other program materials) and to build the interactive website to host the public-facing reports.

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