

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 1162 (Limón) – As Amended May 19, 2022

SENATE VOTE: 27-9

SUBJECT: EMPLOYMENT: SALARIES AND WAGES

KEY ISSUES:

- 1) SHOULD THE DATA SPECIFIED PRIVATE EMPLOYERS ARE REQUIRED TO REPORT ANNUALLY TO THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING BE EXPANDED TO INCLUDE THE MEDIAN AND MEAN HOURLY RATE OF PAY FOR BOTH DIRECT HIRES AND EMPLOYEES HIRED THROUGH LABOR CONTRACTORS FOR EACH COMBINATION OF RACE, ETHNICITY AND SEX?
- 2) SHOULD THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING BE REQUIRED TO MAKE THE DATA FROM THE SPECIFIED PRIVATE EMPLOYERS PUBLICLY ACCESSIBLE?
- 3) SHOULD EMPLOYERS BE REQUIRED TO PROVIDE THE PAY RANGE FOR POSITIONS WHEN REQUESTED FROM EMPLOYEES OCCUPYING THE POSITION, WHEN THE EMPLOYER HAS 15 OR MORE EMPLOYEES AND IS PUBLISHING A JOB OPENING, AND UPON REASONABLE REQUEST FROM APPLICANTS FOR ALL OTHER EMPLOYERS?

SYNOPSIS

Despite a robust history of legislation intended to curb pay inequity throughout the state, California workers still face significant pay disparities across industries. We are collectively aware of these disparities, shining light on workers' stories and stark realities through events such as Equal Pay Day (observed on March 15, or the day when women on average will have earned as much as their male counterparts earned the previous year), and often approving legislation designed to curb their continued growth. Despite these efforts, inequities have persisted. This bill proposes mechanisms that would allow state agencies, employers, and workers to gather data to help close the pay gap.

This bill would make three main changes to existing law. First, it would modify the data private companies are required to report to the Department of Fair Employment and Housing (DFEH). Companies would be required to report the median and mean rate of pay for each job classification for each combination of race, ethnicity, and sex. Additionally, it would require any private employer who hires or uses the service of at least 100 temporary or contract workers to submit the same report for that population of employees. Second, it would require DFEH to make each private employer's report publicly available on its website. Finally, the bill would require private companies with 15 or more employees to provide the pay scale information in each job posting and make pay scale information available upon request to any employee who requests the information regarding their current position.

The bill is co-sponsored by the California Employment Lawyers' Association, California Commission on the Status of Women and Girls, National Employment Law Project, Equal Rights Advocates, and TechEquity Collaborative. It is supported by a large coalition of labor, workers' rights, and various other progressive organizations. It is opposed by the California Chamber of Commerce and numerous other local chambers of commerce, along with numerous employer and business organizations. The Association of Independent California Colleges and Universities opposes the bill unless amended. Upon passage out of this committee, this bill would be heard by the Assembly Committee on Labor and Employment.

SUMMARY: Expands the data that private employers are required to report to the Department of Fair Employment and Housing (DFEH) and requires the DFEH to make those reports publicly accessible and also requires disclosure of pay scales with job postings in specified circumstances. Specifically, **this bill:**

- 1) Changes the date by which large, private California employers must submit pay equity data to the DFEH each year from March 31 to the second Wednesday of May.
- 2) Modifies the data that large, private California employers must submit as part of their annual pay equity data reports to include:
 - a) Data regarding the pay of employees hired through labor contractors, as defined, if the employer had 100 or more employees hired through labor contractors, as defined, within the prior calendar year; and
 - b) The median and mean hourly rate of pay, within each specified job category, for each combination of race, ethnicity, and sex.
- 3) Clarifies that an employer with multiple establishments must file a single pay equity data report which covers each of those establishments.
- 4) Requires the report to include a section for employers to provide clarifying remarks regarding any of the information provided and grants the employer discretion whether to include those remarks.
- 5) Authorizes the DFEH to seek a court order for monetary penalties, as specified, in the event that an employer who is obligated to submit a pay equity data report fails to do so.
- 6) Requires the DFEH to publish each private employer's pay equity data report on a publicly available website and, accordingly, eliminates the requirement that the DFEH provide these reports to the Division of Labor Standards Enforcement upon request.
- 7) Specifies that, when publishing pay equity data reports, the DFEH must not publish any individually identifiable information that is associated with a specific person.
- 8) Defines "labor contractor" 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.

- 9) Clarifies that a complaint filed in a civil action alleging that an employer engaged in unlawful employment discrimination, including wage discrimination that is based solely on information in a pay data report does not state facts sufficient to constitute a cause of action.
- 10) Requires employers with 15 or more employees to include pay scale information for the position in any job announcement. Requires employers with 15 or more employees to provide pay scale information to third parties posting job announcements on behalf of the employer and requires the third party to include the pay scale information to anyone who views the announcement.
- 11) Requires employers to provide pay scale information for the position to any employee currently occupying that position, upon request.
- 12) Requires employers to maintain job description and wage rate history for each employee for the duration of the employment plus three years after the end of the employment, and makes these records open to inspection by the California Labor Commissioner. Provides that the failure to maintain these records as required shall be a rebuttable presumption in favor of the employee's claim of a violation.
- 13) Provides that an aggrieved applicant or employee may seek redress for violations of 10) through 12), above, through either a complaint to the Labor Commissioner or a civil action for injunctive relief and any other relief that the court deems appropriate.
- 14) Directs the Labor Commissioner to investigate any complaint made to the Labor Commissioner and authorizes the Labor Commissioner to impose civil penalties between \$500 and \$10,000 per violation, depending on the totality of the circumstances, upon finding that a violation occurred.
- 15) Directs all civil penalties collected pursuant to the provisions of this bill to be deposited into the Labor Enforcement and Compliance Fund for distribution to the Division of Labor Standards Enforcement.

EXISTING LAW:

- 1) Establishes the DFEH to combat discrimination in housing and employment. Specifies that DFEH has the power to receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful by the Fair Employment and Housing Act (FEHA). (Government Code Sections 12900-12930.)
- 2) Prohibits, under the California Equal Pay Act, an employer from paying an employee wage rates less than the rates paid to employees of the opposite sex for substantially similar work requiring the same skills, effort, and responsibility when performed under similar working conditions. (Labor Code Section 1197.5 (a).)
- 3) Prohibits employers from paying employees a wage rate less than the rate paid to employees of a different race or ethnicity for substantially similar work requiring the same skills, effort, and responsibility when performed under similar working conditions. (Labor Code Section 1197.5 (b).)

- 4) Sets forth exceptions to these prohibitions when a wage differential is based on one or more of the following: (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. (Labor Code Sections 1197.5 (a)(1)(A-D) and 1197.5 (b)(1)(A-D).)
- 5) Specifies that prior salary by itself may not justify any disparity in compensation. (Labor Code Sections 1197.5 (a)(3) and 1197.5 (b)(3).)
- 6) States that any employer who violates the California Equal Pay Act is liable for the amount of the compensation and interest that the employee is deprived of, in addition to liquidated damages. (Labor Code Section 1197.5 (c).)
- 7) Authorizes the Department of Industrial Relations (DIR) or the Division of Labor Standards Enforcement to commence and prosecute, unless otherwise requested by the employee or affected group of employees, a civil action on behalf of the employee and on behalf of a similarly affected group of employees to recover unpaid wages and liquidated damages for violations of the California Equal Pay Act, and to recover costs of suit. (Labor Code Section 1197.5 (g).)
- 8) Requires every private sector employer to maintain records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed, to be kept on file for three years. (Labor Code Section 1197.5 (e).)
- 9) Prohibits an employer from relying on the salary history of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant. (Labor Code Section 432.3 (a).)
- 10) Requires an employer, in response to a request made after an applicant has completed an initial interview with the employer, to provide the pay scale for a position. (Labor Code Section 432.3 (c).)
- 11) Makes it an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California, for an employer, because of the employee's race or gender, to discriminate against an employee in compensation or in terms, conditions, or privileges of employment. (Government Code Section 12940 (a).)
- 12) Requires employers with more than 100 employees to submit data to the DFEH showing the number of employees in each of the following job categories and the pay range that they fall within, as specified, broken down by race, ethnicity, and sex:
 - a) Executive or senior level officials and managers;
 - b) First or mid-level officials and managers;
 - c) Professionals;
 - d) Technicians;
 - e) Sales workers;
 - f) Administrative support workers;
 - g) Craft workers;
 - h) Operatives;

- i) Laborers and helpers; and
 - j) Service workers. (Government Code Section 12999 (b).)
- 11) Requires the DFEH and DIR to keep all individually identifiable information pay equity data reported to the DFEH confidential prior to the institution of an investigation or enforcement proceeding. (Government Code Section 12999 (i).)
- 12) Authorizes the DFEH to develop, publish, and publicize aggregate annual reports based on the pay equity data reported to it, provided that the aggregate reports are reasonably calculated to prevent the association of any data with any individual business or person. (Government Code Section 12999 (k).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Despite a robust history of legislation intended to curb pay inequity throughout the state, California’s workers still face significant pay disparities across industries. We are collectively aware of these disparities, shining light on workers’ stories and stark realities through events such as Equal Pay Day (observed on March 15, or the day when women on average will have earned as much as their male counterparts earned the previous year), and often approving legislation designed to curb their continued growth. Despite these efforts, inequities have persisted. This bill proposes a mechanism that would allow state agencies, employers, and workers to gather data to help close the pay gap. In support of the bill, the author writes:

According to a recent analysis of pay data, California women in 2020 lost \$46 billion due to the gender pay gap, and people of color in the state lost \$61 billion due to the race pay gap. The wage gap persists across industries, occupations, and education levels, and exacts a heavy toll not only on women and people of color, but also on the families they support and the economy as a whole.

Pay transparency is key to achieving pay equity. SB 1162, the Pay Transparency for Pay Equity Act, will help identify gender and race-based pay disparities by requiring pay transparency at every stage of the employment process, from hiring to ongoing employment.

We must increase pay transparency in order to narrow the gender and race wage gap, which prevents many women, particularly women of color, from achieving economic security.

Pay disparities in California today. In workplaces in California, earnings disparities disadvantage women and people of color. The median earnings of full-time employed women are about 88 percent of the median earnings of men. (Schumacher, *Women’s Well-Being Index* (Oct. 2020) California Budget & Policy Center, available at <https://calbudgetcenter.org/resources/womens-well-being-index/>.) On average, Hispanic and Black workers earn less than white workers. Though the median earnings of white men are about \$76,000 in California, the median earnings of Hispanic women and men are less than half, at \$31,800 and \$36,900, respectively. (*Ibid.*) Median earnings of Black women are \$46,600, and \$50,700 and among Black men. (*Ibid.*)

Pursuant to SB 973 (Jackson, Chap. 363. Stats. 2020), the Department of Fair Employment and Housing (DFEH) collects data on pay rates for employees at companies in California with 100 employers or more. The most recent report covered the year of 2020, and revealed widespread disparities within the state by gender and race, including that women, black, and Hispanic

workers make up a disproportionate number of low-wage workers. (DFEH, *Pay and Demographics of California Workers*, available at <https://www.dfeh.ca.gov/paydatareporting/results/>.)

Among workers making \$19,239 or less annually, 55% are women, though they make up only 48% of California's total workforce. (*Ibid.*) Forty-nine percent of workers in the lowest pay band are Hispanic/Latino and 9% are Black, despite making up 37% and 6% of all workers, respectively. (*Ibid.*) Black and Hispanic/Latina women of color are especially overrepresented in the lowest pay band, comprising, respectively, 4.5% of the lowest paid workers (versus 3.2% of the total workforce) and 27% of the lowest paid workers (versus 18% of the total workforce). (*Ibid.*)

Though DFEH publishes aggregate data on pay disparities among workers directly employed at many companies in California, it does not have the statutory authority to collect earnings data on the sizable population of temporary workers hired by those same companies. One investigation from 2019 estimated that Google employed around 121,000 temps and contractors, rising significantly above their global workforce of 102,000 full-time employees. (Wakabayashi, *Google's shadow workforce: Temps who outnumber full-time employees* (May 2019) *The New York Times*, available at <https://www.nytimes.com/2019/05/28/technology/google-temp-workers.html>.) Oftentimes, the contractors are performing substantially similar work to full-time employees but receive lower wages, few benefits, and less job stability. Data from the U.S. Census suggests that, among temporary workers, Hispanic workers are overrepresented in these low-wage jobs. Nationally, Hispanic workers are about 16 percent of full-time workers, but make up 22 percent of temporary workers. (U.S. Department of Labor, *Contingent and Alternative Employment Arrangements – May 2017* (June 2018), available at <https://www.bls.gov/news.release/pdf/conemp.pdf>.) However, the lack of reliable data and varying classifications across full-time and temporary workers precludes a clear understanding of pay disparities between temporary workers and full-time employees.

Moreover, it is clear that increased data helps reduce pay disparities. The difference in the pay gap between private employers and public employers – who are required to publicly disclose how much each employee is paid and have a pay gap between men and women of 7 cents on the dollar– exemplify this reality. (*Gender Pay Differences: The Pay Gap for Federal Workers Has Continued to Narrow, but Better Quality Data on Promotions are Needed*, Government Analysts Office (December 2020) at <https://www.gao.gov/assets/gao-21-67.pdf>.) Applicants to our own Legislature have access to years of information regarding salary patterns for distinct positions, and can use that information to make informed decisions regarding their careers.

The author posits that one tool vital to closing the wage gap is transparency. By shining a light on how different employees at different companies are paid, this bill may arguably provide the data necessary for state agencies, employers, and employees to develop policy that will ensure pay equity state-wide.

This bill would make three main changes to existing law. First, it would modify the data private companies are required to report to the DFEH. Companies would be required to report the median and mean rate of pay for each job classification for each combination of race, ethnicity, and sex. Additionally, it would require any private employer who hires or uses the service of at least 100 temporary or contract workers to submit the same report for that population of employees. Second, it would require the DFEH to make each private employer's report publicly

available on its website. Finally, the bill would require private companies with 15 or more employees to provide the pay scale for information in each job posting and make pay scale information available upon request to any employee who requests the information regarding their current position.

Currently, Labor Code Section 432.3 defines “reasonable request” as “a request made after an applicant has completed an initial interview with the employer.” It appears that the amendments taken to narrow this provision of the bill removed this definition. Further, the paragraph dealing with both an employee already in a position with their employer would make a pay scale available “upon request,” while the paragraph dealing with employers with 15 or more employees require the pay scale to be made available absent any request. That is to say, the only paragraph conditioning the provision of a pay scale on a *reasonable* request is the paragraph mandating that any employer make a pay scale available to applicants. This is arguably inconsistent and potentially confusing.

In order to avoid any uncertainty when applying these provisions, the author may wish to amend the bill to recapture the definition of “reasonable request” that is in existing law.

This bill is unlikely to trigger a significant increase in litigation against private businesses.

Opponents of the bill contend that requiring the DFEH to post reports detailing the pay provided to each employee will necessarily expose California businesses to an avalanche of burdensome and unwarranted litigation. This threat may not be as serious as predicted, for several reasons. First, in an attempt to address this very concern, the bill was amended in the previous house to include language making explicit that any complaint alleging a violation of either Labor Code Section 1197.5, or Government Code Section 12940, made solely on the basis of the information in a pay data report would fail to state sufficient grounds to constitute a claim. In other words, if an employer is sued for perceived pay discrimination as reflected in a pay data report required by this bill but the plaintiff provides no other evidence to substantiate their claim, the claim would necessarily fail. The opposition contends this amendment “will have no practical effect,” and that in order to circumvent this language, “[a] plaintiff simply needs to include a line in the complaint stating, ‘upon information and belief I was being discriminated against in my pay’ or provide an example of a time their supervisor allegedly treated them differently.” First, an initial pleading including a statement such as the one offered by the opponents, would likely need to be supported by additional evidence or risk dismissal. Second, a plaintiff’s claim alleging they felt or believed they were being discriminated against in their pay is properly the subject of litigation. The burden of proof on the plaintiff is in no way diminished simply due to the fact that their claim alleges discrimination.

Moreover, the cost of litigation is not isolated to defendants. Plaintiffs can incur hefty court and attorney’s fees. Because plaintiffs in these matters are inherently employees rather than the employer or business owner, both of whom likely have access to greater resources, it is arguably more of a financial burden on the plaintiff than the defendant. Therefore, it is more likely that a worker will be dissuaded from bringing a valid claim due to the high cost, rather than opt to bring a frivolous litigation despite its price tag.

The threat of an onslaught of litigation is further undermined by the reality that the majority of private employees are bound by arbitration agreements. Arbitration agreements effectively prevent employees from bringing claims in court either independently, or as a class. According to a 2018 study by the Economic Policy Institute, approximately 56% of private-sector nonunion

employees were subject to mandatory arbitration, and 30% of employers included class action waivers. Also in 2018, the United States Supreme Court upheld the validity of forced arbitration agreements and class waivers in *Epic Systems Corp. v. Lewis* (128 S. Ct. 1611-1612 (2018).) In light of the existing dominance of arbitration agreements and the *Epic Systems* decision, the Center for Popular Democracy and the Economic Policy Institute estimate that by 2024, more than 80% of nonunion private-sector workers will be covered by arbitration agreements. (*Hamaji et. al., Unchecked corporate power: Forced arbitration, the enforcement crisis, and how workers are fighting back*, Economic Policy Institute (May 20, 2019) at <https://www.epi.org/publication/unchecked-corporate-power/>.)

Existing law prohibits employers from *conditioning* employment on employees' acceptance of an arbitration clause. (Labor Code Section 432.6.) However, nothing in statute prevents employers from relying on most workers' lack of knowledge regarding arbitration to encourage acceptance of such agreements at the time of hire. Despite attempts to curb their dominance, most workers ultimately may be bound by arbitration agreements, making it unlikely that this bill will trigger the sudden rise in litigation claimed by the opposition.

In fact, it is arguably *because* of the pervasiveness of arbitration agreements that this bill is so important. The reality is that arbitration typically results in poorer recovery for workers, even if they prevail in their claims. In a 2015 study, the Economic Policy Institute reported that employees prevailed in approximately 57% of cases brought before state courts in non-civil rights matters, such as wage violations, but only 21% of the time in mandatory arbitration. (*Stone and Colvin, The arbitration epidemic Mandatory arbitration deprives workers and consumers of their rights*, Economic Policy Institute (December 7, 2015) at <https://www.epi.org/publication/the-arbitration-epidemic/>.) The report also detailed an average recovery for employees in state court of \$85,000 as compared to \$36,000 in arbitration. (*Ibid.*) While arguably more efficient and less costly for employers, arbitration frustrates the ability of workers to enforce existing statutory protections through claims in civil court and fully recover the wages and civil penalties to which they are entitled.

The bill's pay scale requirements are also unlikely to trigger significant litigation. As mentioned above, this bill would also require private employers with 15 or more employees to include the relevant pay scale in any job posting. It would also require an employer to provide the pay scale upon request to either an existing employee for the position they currently occupy, or an applicant to a position, if the request is reasonable. Due to the placement of this provision in the Labor Code, it is subject to the Private Attorneys General Act (PAGA). Put briefly, PAGA allows individual workers to enforce labor laws that would otherwise be solely enforceable by the state.

Similar to the bill's provisions regarding mandatory pay data reporting, the opposition claims that this provision would also unduly expose employers to litigation via PAGA. This contention is also unlikely to occur. First, there are several requirements plaintiffs must satisfy prior to filing a PAGA claim, including, for certain claims, granting the defendant the right to cure any perceived violation. The bill makes clear that the same opportunity would be given in potential litigation under its provisions, and even clarifies potential avenues to cure the violation. Using the example provided by the opposition, if a third party failed to post the pay scale for a given job posting as required under the bill, a plaintiff would first need to do both of the following: 1) give notice to the Labor and Workforce Development Agency of their intent to file a claim in court and pay the corresponding filing fee; and 2) allow the defendant-employer 33 days from

the date of filing the notice to cure the perceived violation. (Labor Code Section 2699.3 (c).) The bill further states that, upon a showing that the employer has revised the job posting that failed to include the pay scale, the violation is considered cured, thereby dissolving any potential litigation.

The opposition also suggests that workers are ill-served by PAGA suits, and would in fact fare better if all such litigation was managed by the state. As previously stated, PAGA suits are claims that may also be brought by the state but which the plaintiffs have opted to pursue themselves. The reality is that state enforcement of labor law does not fall into the shortened timeframe suggested by the bill's opponents. As of May 11, 2022, the Labor Commissioner's office reported a backlog of more than 36,000 wage-claim cases alone. (Romero, *Despite Record Budget Surplus, California Unlikely to Fix Massive Wage-Theft Claim Backlog Anytime Soon*, KQED (May 11, 2022) at <https://www.kqed.org/news/11913910/despite-record-budget-surplus-california-unlikely-to-fix-massive-wage-theft-claim-delays-anytime-soon#:~:text=Even%20as%20California%20enjoys%20a%20staggering%20budget%20surplus,t he%20state%20agency%20charged%20with%20investigating%20wage%20theft.>) Of those claims, nearly 30% have been pending with the Labor Commissioner for over two years, significantly over the 12 months suggested by the opposition. (*Ibid.*) Many workers simply aren't able to delay the potentially staggering four to five years necessary to recover the wages owed to them.

Put briefly, none of the proposed disclosure requirements is likely to result in a wave of litigation that buries California's businesses. It is even possible that companies embrace an opportunity to reflect on the disparities their pay data reports reflect and initiate changes to ensure their employees are paid equitably. That act alone, potentially more than any other, would be an incredibly effective shield against the boogeyman of litigation.

The state's wage gap is a reality in need of a solution. The disclosure requirements proposed by this bill would arguably empower workers, employers, and the State to take the necessary steps to help reach pay equity. Considering the procedural protections applicable to any claims brought in state court, the financial hurdles of litigation, and the reality of arbitration's dominance throughout the private sector in particular, it is unlikely that this bill would trigger the wave of litigation predicted, despite the opposition's catastrophizing. What's more, one would hope organizations that supported measures such as the Equal Pay Act, as the opposition claims to have done, would support a bill that would further the Act's intent.

ARGUMENTS IN SUPPORT: This bill is sponsored by the California Commission on the Status of Women and Girls, the California Employment Lawyers Association, Equal Rights Advocates, the National Employment Law Project, and TechEquity Collaborative. It is supported by a large coalition of labor organizations, women's and workers' rights advocates, affinity organizations, and various other progressive advocacy organizations. The sponsors of the bill emphasize the role of transparency in addressing the state's wage gap. They write:

Despite significant improvements to California's equal pay laws in recent years, the gender and racial pay gap persists. According to the most recent analysis of pay data, California women in 2020 lost \$46 billion due to the gender pay gap and people of color in the state lost \$61 billion due to the race pay gap. These pay gaps are not only detrimental to women and workers of color, but also harm the families they support and the state's overall economy. In California, if all working women and working single mothers earned

the same as comparable men, the state's poverty rate would be reduced by about 40% and the estimated average earnings increase if all working women earned the same as comparable men would be 15.8% (an additional \$68.45 billion or 2.2% to the state's economy). Gender and race-based wealth disparities create long-term and intergenerational economic inequality. We therefore need continued strong policy responses to break the cyclical wage and wealth disparities that continue to hold back women and people of color.

One contributor to the wage gap is that pay disparities are often "hidden from sight" and worsen when no one is actively monitoring hiring and pay practices. Thus, employees and in many cases employers themselves - especially in larger companies - may not be aware of gender or race-based pay disparities that exist in their workforce.

[...]

Increasing pay transparency is a critical component to closing the wage gap, particularly at the hiring stage. Research shows that when job applicants are clearly informed about the context for negotiations, including the salary range, women are more willing to negotiate, more successful in negotiating, and the gender wage gap narrows. The much narrower wage gap in the public sector, where agencies typically have transparent and public pay structures, is further evidence that greater salary range transparency helps reduce wage disparities. Nationally, the gender-based wage gap for all full-time workers is 18 percent, but in the federal government, where pay rates are publicly available, the gender-based wage gap in 2017 was 7 percent. [Citations omitted]

Further, the California Labor Federation writes in support:

The Legislature has previously recognized the importance of pay data reporting requirements. As was well documented, the pandemic dramatically impacted women—in particular, Black and Latinx women—with over a million leaving the workforce entirely. As workers leave the workforce and change jobs at levels not seen in modern history, we know that transparency in hiring, promotion, and employment, helps women and people of color ensure that they are not being undervalued or discriminated against in their wage rates.

SB 1162 focuses on transparency throughout the employment cycle—from hiring to promotions to ongoing employment. Notably, this bill will require the salary range in all job postings and enable existing employees to compare their pay with the stated ranges in similar open roles, allowing employees to determine if they are being paid fairly and competitively. Research by the National Bureau of Economic Research shows that when women applicants have clear information about job offers, they are more likely to negotiate and are more successful when they do, chipping away at the wage gap. [Citations omitted]

ARGUMENTS IN OPPOSITION: This bill is strongly opposed by the Chamber of Commerce and a coalition of local chambers of commerce and business advocates. They write:

The California Chamber of Commerce and the organizations listed respectfully **OPPOSE** your SB 1162 (Limon) as a **JOB KILLER**. SB 1162 would encourage new, burdensome litigation against employers based on the publication of broad, unreliable data collected by the state. Further, this bill undermines employers' ability to hire and subjects employers to a private right of action and penalties under the Private Attorneys General Act (PAGA). The

additional burdens and costs this proposal would create will limit an employer's ability to offer higher wages and benefits to new or existing employees and discourage growth or expansion in California.

[...]

Just one year after SB 973 (Jackson) took effect, SB 1162 seeks to publish all annual DFEH pay data reports by company name. SB 973 intentionally stated those reports were to be kept and used by the DFEH and DIR alone. Annual DFEH reports do not show *per se* evidence of unlawful conduct. Yet, that is exactly how they will be used if published.

Similar to what is proposed in SB 1162, AB 1209 (Gonzalez) from 2017 would have required the publication of data from employers on mean wage differentials between male and female employees. In an article that year by Scott Rodd titled "Employer attorney concerned about lawsuits as wage data bill passes Legislature," published in the *Sacramento Business Journal* on September 13, 2017, a member of the plaintiff's bar stated:

"By posting this on the Secretary of State's website, the government is basically giving us (plaintiff lawyers) the data we need to go in there and hammer companies," said Galen T. Shimoda, attorney owner at Shimoda Law Corp.

By making public the reports required under SB 973 (Jackson), SB 1162 will similarly open businesses up to litigation. Once the data is made public, a plaintiff's attorney would simply have to review the companies with perceived pay disparities, use the report to advertise to find one plaintiff, and send a settlement demand or threaten litigation. [Citations omitted]

The Association of Independent California Colleges and Universities (AICCU) opposes the bill unless amended to exempt non-profit IHEs. AICCU argues:

We understand the author and the California Women's Legislative Caucus are deeply invested in closing the gender pay equity gap. As an association, we support equal pay for equal work and celebrate diversity in the workforce.

However, we firmly believe requiring IHE personal to gather the data this bill calls for and report it in another way will take valuable staff time from the IHE's primary mission, which is to provide a high-quality education and support services to our more than 328,000 students. Given that our institutions already provide information to IPEDS, including full-time instructional staff and non-instructional staff composition and salaries by the Bureau of Labor Statistic Standard Occupational Classification (SOC) codes, we respectfully ask that this bill be amended to exempt non-profit IHEs from this mandate.

REGISTERED SUPPORT / OPPOSITION:

Support

California Commission on the Status of Women and Girls (co-sponsor)

California Employment Lawyers Association (co-sponsor)

Equal Rights Advocates (co-sponsor)

National Employment Law Project (co-sponsor)

TechEquity Collaborative (co-sponsor)

9 to 5
ACLU
Alameda Labor Council
Alliance of Californians for Community Empowerment (ACCE) Action
Alphabet Workers Union
American Association of University Women - California
Asian Law Alliance
Bluegreen Alliance
California Work & Family Coalition
California Asset Building Coalition
California Child Care Resource and Referral Network
California Conference Board of The Amalgamated Transit Union
California Conference of Machinists
California Domestic Workers Coalition
California Healthy Nail Salon Collaborative
California Labor Federation, AFL-CIO
California Latinas for Reproductive Justice
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
California Women Lawyers
California Women's Law Center
Career Ladders Project
Child Care Law Center
Chinese Progressive Association
Clergy and Laity United for Economic Justice
Communication Workers of America, District 9
Consumer Attorneys of California
Contra Costa Labor Council
Courage California
Disability Rights California
Earthseed
Economic Policy Institute Policy Center
Employee Rights Center
End Hunger Now!
Engineers and Scientists of California, IFTPE Local 20, AFL-CIO
Equality California
Friends Committee on Legislation of California
Greenlining Institute
Human Impact Partners
Kim Center for Social Balance
LAANE (Los Angeles Alliance For A New Economy)
Legal Aid At Work
Mujeres Unidas Y Activas
NARAL Pro-Choice California
National Association of Social Workers, California Chapter
National Council of Jewish Women - California
National Union of Healthcare Workers (NUHW)
National Women's Law Center

National Women's Political Caucus of California
Opportunity Institute
Orange County Labor Federation, AFL-CIO
Parent Voices
Raising CA Together
San Francisco Women's Political Committee
San Mateo Labor Council
Santa Barbara Women's Political Committee
Santa Clara Wage Theft Coalition
Service Employees International Union California
Stronger California
Temp Worker Justice
The Greenlining Institute
The Women's Foundation California
The Workers Lab
Trusaic
Unite Here International Union, AFL-CIO
United Food and Commercial Workers Union, Western States Council
Utility Workers of America
Voices for Progress
Western Center on Law & Poverty
Western States Council Sheet Metal, Air, Rail and Transportation
Worksafe

Opposition

Allied Managed Care
American Property Casualty Insurance Association
Antelope Valley Chambers of Commerce
Associated General Contractors
California Association for Health Services At Home
California Bankers Association
California Beer and Beverage Distributors
California Building Industry Association
California Business and Industrial Alliance
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Credit Union League
California Employment Law Council
California Farm Bureau
California Forestry Association
California Grocers Association
California Hospital Association
California Hotel & Lodging Association
California Landscape Contractors Association
California League of Food Producers
California Manufactures & Technology Association
California New Car Dealers Association

California Railroads
California Restaurant Association
California Retailers Association
California State Council of The Society for Human Resource Management (CALSHRM)
California Taxpayers Association (CALTAX)
California Travel Association (CALTRAVEL)
Carlsbad Chamber of Commerce
Citrus Heights Chamber of Commerce
Civil Justice Association of California
Coalition for Small and Disabled Veteran Businesses
Construction Employers' Association
Corona Chamber of Commerce
Danville Area Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Flasher Barricade Association
Fresno Chamber of Commerce
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Housing Contractors of California
Imperial Valley Regional Chamber of Commerce
Job Creators for Workplace Fairness
LA Canada Flintridge Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles Latino Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Federation of Independent Business
Oceanside Chamber of Commerce
Orange County Business Council
Orange County Hispanic Chamber of Commerce
Paso Robles Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
Simi Valley Chamber of Commerce
Southwest California Legislative Council
TechNet
Tri County Chamber Alliance
True Blue
Valley Industry & Commerce Association
Visalia Chamber of Commerce
West Ventura County Business Alliance
Western Electrical Contractors Association
Western Growers Association
Wine Institute

Oppose unless Amended

Association of Independent California Colleges and Universities

Analysis Prepared by: Alec Watts and Manuela Boucher-de la Cadena / JUD. / (916) 319-2334