

Date of Hearing: August 3, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 1162 (Limón) – As Amended June 14, 2022

Policy Committee:	Judiciary	Vote:	7 - 2
	Labor and Employment		5 - 2

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill expands pay data reporting requirements for a private employer with over 100 employees, requires the Department of Fair Employment and Housing (DFEH) to post pay data reports online and requires an employer to publicize pay scales for all positions.

Specifically, this bill:

- 1) Expands reporting requirements to private employers with over 100 employees hired through labor contractors, submitted to DFEH through a separate pay data report, and requires a pay data report to include the median and mean hourly pay rate for each combination of race, ethnicity and sex within each job category. The new annual reports are due the second Wednesday of May 2023 and an employer can no longer comply by submitting a substantially similar federal Employer Information Report (EEO-1). A court, upon request by DFEH, may impose a civil penalty of up to \$100 per employee upon any employer that fails to report and up to \$200 per employee for subsequent failures to report, payable to the Fair Employment and Housing Enforcement and Litigation Fund.
- 2) Requires DFEH to annually publish pay data reports on a public internet website, beginning in 2025 with reports from employers with over 1,000 employees, 2026 for employers with over 500 employees and 2027 for employers with over 250 employees. DFEH must also provide a mechanism allowing the employer to share any additional information about the report the employer wishes to provide.
- 3) Requires an employer to provide an employee, upon request, with the pay scale for the position the employee currently holds and maintain classification and wage history for each employee, open to inspection by the Labor Commissioner (LC). Additionally, an employer with over 15 employees must include the pay scale for a position in any job posting, including those facilitated by a third party. The LC must investigate complaints of any alleged violations and may impose civil penalties on an employer of \$100 to \$10,000 per violation, deposited in the Labor Enforcement and Compliance Fund. An aggrieved employee may also bring a civil action for injunctive and other appropriate relief.

FISCAL EFFECT:

- 1) Costs of approximately \$477,000 in fiscal year (FY) 2023-24, \$548,000 in FY 2024-25 and \$473,000 in FY 2025-26 and ongoing to DFEH (recently renamed the California Civil Rights Department (CRD)) to analyze an increased number of pay data reports and prepare reports

for publication on an interactive public website, which includes carefully reviewing and redacting any information that could be used to identify an individual employee. CRD also anticipates an increased volume of inquiries from employers and labor contractors about meeting this bill's new reporting obligations, as well as general questions from the media and public. Lastly, CRD must be prepared to pursue enforcement against any employer or labor contractor that fails to timely submit a report.

Accordingly, CRD's breakdown of costs is as follows: approximately \$200,000 annually for two additional positions, \$200,000 annually for data analysis and publication, \$75,000 in FY 2023-24 and FY 2024-25 for one-time information technology costs to build the pay data reporting portal and interactive public website and \$75,000 annually beginning FY 2024-25 for ongoing information technology maintenance and software licenses. (General Fund (GF))

- 2) Minor and absorbable costs to the LC. Based on experience with existing law prohibiting an employer from seeking salary history information, the LC does not anticipate an appreciable number of claims as a result of this bill's pay scale provisions.
- 3) GF or Trial Court Trust Fund (TCTF) cost pressures of an unknown, but potentially significant, amount to the courts in additional workload by authorizing civil penalties on employers that fail to report and creating a new cause of action for employees or applicants who do not receive pay histories or scales, as well as through Private Attorneys General Act claims. The estimated workload cost of one hour of court time is \$1,000. If additional 10 cases are filed statewide resulting in 20 hours of court time for each case, costs would be approximately \$200,000. Although courts are not funded on the basis of workload, increased pressure on the TCTF and staff workload may create a need for increased funding for courts from the GF to perform existing duties.

COMMENTS:

- 1) **Purpose.** According to the author:

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.

- 2) **Support and Opposition.** This bill is co-sponsored by the California Commission on the Status of Women and Girls, California Employment Lawyers Association, Equal Rights Advocates, National Employment Law Project and TechEquity Collaborative. The sponsors argue "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." This bill is also supported by a large coalition of labor and civil rights organizations.

This bill is opposed by a large coalition of business organizations, led by the California Chamber of Commerce, which argues "SB 1162 would encourage new, burdensome

litigation against employers based on the publication of broad, unreliable data collected by the state” and the costs of such burdens “limit an employer’s ability to offer higher wages and benefits to new or existing employees and discourage growth or expansion in California.” This bill is also opposed, unless amended to exempt non-profit private colleges, by the Association of Independent California Colleges and Universities, which argues reporting “will take valuable staff time from the [colleges’] primary mission, which is to provide a high-quality education and support services,” especially in light of similar federal reporting requirements to the Integrated Postsecondary Education Data System.

- 4) **Expanding Recent Pay Disparity Law.** SB 973 (Jackson), Chapter 363, Statutes of 2020, required an employer with over 1,000 employees already filing a federal EEO-1 Report to submit an annual pay data report to DFEH, which DFEH may publicize in the aggregate to shed light on any workplace pay disparities based on race, ethnicity and sex. DFEH’s first publication, released March 2022, found overrepresentation of women and Hispanic/Latino and Black/African American workers in the lowest pay bands.

In light of a recent Bureau of Labor Statistics study finding temporary employment has grown 75% since the Great Recession, compared to just 19% private employment generally, this bill expands SB 973’s reporting requirements to include private employers with over 100 employees hired through labor contractors. This bill also requires employers to further publicize pay scales during the hiring process and course of employment.

- 5) **Categories of Information.** SB 973 required an employer to classify an employee into one of 10 job categories and calculate and report the employee’s total earnings based on the employee’s Internal Revenue Service Form W-2, which includes regular wages, but also overtime, bonuses, prizes, tips and other items. Accordingly, two employees classified into the same job category could hold vastly different jobs with appropriately disparate levels of pay and two employees earning the same regular wages could have vastly different W-2 income for various reasons.

Since SB 973 only authorized DFEH to publish aggregate reports, utilizing these broad categories of information still provided helpful insight to trends in pay. This bill utilizes the same broad categories to classify employees and calculate total earnings, but requires DFEH to publish each employer’s pay data report online and expands reporting to include the median and mean hourly pay rate for employees within each job category, for each combination of race, ethnicity and sex. Since such a granular breakdown of data may not reveal the full context of employee compensation, this bill requires DFEH to provide an employer with the option to further explain the pay data report on the public website. Additionally, the detailed demographic breakdown per job category may inadvertently suggest the individual identity and earnings of specific employees. This bill prohibits DFEH from publishing any individually identifiable information, thus necessitating consultation with technical data experts to set rules around suppressing or obscuring data elements to prevent individual identification.