

SENATE THIRD READING
SB 1162 (Limón)
As Amended August 15, 2022
Majority vote

SUMMARY

Expands state pay data reporting requirements to cover contracted employees and requires employers to make pay scale information for positions available to employees and included in job postings.

Major Provisions

Pay Data Reporting Requirements

- 1) Requires a private employer of 100 or more employees to submit an annual pay data report to the DFEH regardless of whether the employer is required to file an annual Employer Information Report (EEO-1) pursuant to federal law.
- 2) Requires a private employer that has 100 or more employees hired through labor contractors to submit a separate pay data report to DFEH covering the employees hired through labor contractors for the prior calendar year. The employer shall also report the ownership names of all the labor contractors used to supply employees.
- 3) Adds to the information required in the annual pay data report the median and mean hourly rate for each job category of employees broken down by race, ethnicity, and sex.
- 4) Authorizes a court, upon request by the DFEH, to impose a civil penalty, as specified, for an employer's failure to file the required report, payable to the Fair Employment and Housing Enforcement and Litigation Fund.
- 5) States that a complaint filed in a civil action alleging that an employer violated the Equal Pay Act or the anti-discrimination provisions of the Fair Employment and Housing Act that is based solely on a pay data report does not state facts sufficient to constitute a cause of action, as specified.

Salary Transparency Provisions

- 1) Requires an employer, upon request, to provide an employee the pay scale for the position in which the employee is currently employed.
- 2) Requires an employer to maintain records of a job title and wage rate history for each employee for the duration of their employment plus three years after their employment in order for the Labor Commissioner (LC) to determine if there is a pattern of wage discrepancy.
- 3) Requires an employer with 15 or more employees to:
 - a) Include the pay scale for a position in any job posting.
 - b) Provide the pay scale to a third party that announces, posts, or publishes a job posting on its behalf so that the third party can include it in the job posting.

- 4) Authorizes a person aggrieved by a violation of this section to do any of the following:
 - a) File a written complaint, as specified, with the LC within one year after the date the person learned of the violation.
 - b) Bring a civil action for injunctive relief and any other relief that the court deems appropriate.
- 5) Authorizes the LC, upon finding that an employer has violated this section, to order the employer to pay a civil penalty of no less than \$100 and no more than \$10,000 per violation, based on the totality of the circumstances, including whether this is a repeat violation.
- 6) Provides that if an employer fails to keep records in violation of this section, there shall be a rebuttable presumption in favor of the employee's claim.
- 7) States that both of the following shall apply to any action brought to enforce this section pursuant to the Labor Code Private Attorneys General Act of 2004:
 - a) The action shall commence only after the employee has complied with specified notice requirements and the employer has been given an opportunity to cure.
 - b) The following shall constitute "cure" for purposes of correcting a violation of (1)-(3) above, relating to pay transparency:
 - i) Demonstrating that the employer has revised all job postings to include a pay scale or if the alleged violation is that a person was not provided the pay scale for the position a person is currently employed in, by demonstrating that the employer has provided that person with the pay scale as required under this section.

COMMENTS

This bill seeks to address workplace pay disparities and occupational segregation based on race, ethnicity, and sex. The measure builds upon SB 973 (Jackson) of 2020, which required employers that submit an EEO-1 as required by federal law to also submit an annual pay data report to the DFEH. DFEH was then authorized to develop and publicize aggregate reports based on employers' pay data. In March of 2022, DFEH released its first pay data report, which found, among other things, that women and Hispanic/Latino and Black/African American workers are overrepresented in the lowest pay bands.

According to the Author

"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."

Arguments in Support

The California Employment Lawyers Association, Equal Rights Advocates, TechEquity Collaborative, the National Employment Law Project, and the California Commission on the Status of Women and Girls, cosponsors of the bill, state, "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.

Another driver of these pervasive gender and race wage gaps is occupational segregation. Not only are male-dominated occupations generally higher paid than female-dominated occupations, but it is also common for women and people of color to be disproportionately concentrated in lower paid jobs *within* individual companies. This bill will help reveal if women and people of color are over-represented in lower paying job categories, which is key to addressing pay equity and closing the wage gap."

Arguments in Opposition

A coalition of employer organizations, including the Chamber of Commerce, are opposed and state, "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."

The coalition goes on to state, "After only one year of this reporting requirement, SB 1162 seeks to publicize all of this data identifiable by individual companies and add average wages for each job category by race and gender under the pretense that it would reveal gender and race-based pay disparities... Publicizing the data to target employers is a cynical and disingenuous manipulation of what the EEOC itself has acknowledged is not a reliable measure of pay disparities between similarly situated employees.

Even if it did show such comparisons, as Labor Code Section 1197.5 recognizes, there are numerous, lawful, bona fide factors as to why wage disparities may exist between employees performing substantially similar work, such as: 1) different educational or training backgrounds amongst employees; 2) different career experience; 3) varying levels of seniority or longevity with the employer; 4) objective, merit-based system of the employer; 5) a compensation system that measures earning by quantity or quality of production; 6) geographical differences that impact the cost of living and job market; and, 7) shift differentials. The California Chamber of Commerce and other members of the business community supported SB 358 (Jackson) [Chapter 546, Statutes of 2015], which strengthened the Equal Pay Act and created a balanced approach that benefited both workers and employers. By publishing broad categories of data based on job

classifications and titles, SB 1162 seeks to set up employers for public criticism with incomplete, uncontextualized reports and create a false impression of wage discrimination where none may exist."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Costs of an unknown amount, likely in the low hundreds of thousands of dollars, to DFEH (recently renamed the California Civil Rights Department (CRD)) to analyze an increased number of pay data reports and prepare aggregate reports for publication CRD must also be prepared to pursue enforcement against any employer or labor contractor that fails to timely submit a report.
- 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.

VOTES

SENATE FLOOR: 27-9-4

YES: Allen, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hueso, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

ABS, ABST OR NV: Archuleta, Caballero, Hertzberg, Hurtado

ASM JUDICIARY: 7-2-2

YES: Stone, Bloom, Haney, Kalra, Reyes, Robert Rivas, Wilson

NO: Cunningham, Davies

ABS, ABST OR NV: Kiley, Maienschein

ASM LABOR AND EMPLOYMENT: 5-2-0

YES: Kalra, Haney, Jones-Sawyer, Reyes, Ward

NO: Flora, Seyarto

ASM APPROPRIATIONS: 12-4-0

YES: Holden, Bryan, Calderon, Arambula, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

NO: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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