
UNFINISHED BUSINESS

Bill No: SB 1162
Author: Limón (D), et al.
Amended: 8/24/22
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 4/4/22
AYES: Cortese, Durazo, Laird, Newman
NOES: Ochoa Bogh

SENATE JUDICIARY COMMITTEE: 9-2, 4/26/22
AYES: Umberg, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Stern,
Wieckowski, Wiener
NOES: Borgeas, Jones

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/19/22
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 27-9, 5/24/22
AYES: 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
NOES: Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh,
Wilk
NO VOTE RECORDED: Archuleta, Caballero, Hertzberg, Hurtado

ASSEMBLY FLOOR: 54-14, 8/29/22 - See last page for vote

SUBJECT: Employment: Salaries and Wages

SOURCE: California Employment Lawyers Association
California Commission on the Status of Women and Girls
Equal Rights Advocates
National Employment Law Project
TechEquity Collaborative

DIGEST: This bill requires employers of 100 or more workers hired through labor contractors to provide the Department of Fair Employment and Housing (DFEH) certain specified information, including pay data, about their workers. This bill also requires employers to provide the pay scale for a position to an applicant for employment and include it in job postings.

Assembly Amendments:

- 1) Remove a provision that would have required DFEH to publish each private employer's pay data report, with certain specifications.
- 2) Allow an employer to have no penalty assessed against them for a first violation of new pay scale posting requirements, if the employer demonstrates that all job postings for open positions have been updated to include the pay scale as required.
- 3) Delete a provision requiring additional steps before litigation under the Private Attorney Generals Act could begin.
- 4) Make wording changes to align with DFEH name changes to the Civil Rights Department
- 5) Clarify that the provisions of SB 1162 will not affect the requirement of employers to file reports in 2021 and 2022 as it read on December 31, 2022, or the department's authority to pursue those employers on and after January 1, 2023.

ANALYSIS:

Existing federal law:

- 1) Requires that, on or before March 31 of each year, every employer that is subject to Title VII of the Civil Rights Act of 1964, as amended, and that has 100 or more employees, shall file with the Commission or its delegate executed copies of Standard Form 100, as revised (otherwise known as "Employer Information Report EEO-1"), in conformity with the directions set forth in the form and accompanying instructions. (29 CFR §1602.7)
- 2) Requires every employer, employment agency, and labor organization subject to the above subchapter must (a) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed; (b) preserve such records for such periods; and (c) make such reports therefrom as the Commission shall prescribe by regulation or order,

after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title. (Federal Civil Rights Act of 1964, §709(c), Title VII)

Existing state law:

- 1) Prohibits an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire, discriminate against, or harass the person. (Government Code §12940)
- 2) Prohibits, explicitly, an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring. (Government Code §12940(k))
- 3) Establishes the Fair Employment and Housing Enforcement and Litigation Fund, funded by attorney's fees and costs awarded to the Department of Fair Employment and Housing (DFEH) for a civil action brought under the California Fair Employment and Housing Act. (Government Code §12907)
- 4) 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. Requires an employer, upon reasonable request, to provide the pay scale for a position to an applicant applying for employment. "Reasonable request" means a request made after an applicant has completed an initial interview with the employer. (Labor Code §432.3)

This bill:

- 1) Requires, on or before the second Wednesday of May of each year, a private employer that has 100 or more employees hired through labor contractors within the prior calendar year submit a separate pay data report to the Department of Fair Employment and Housing (DFEH). Further requires these employers to disclose the ownership names of all labor contractors used to supply employees.
 - a) Defines "Labor Contractor" to mean an individual or entity that supplies, either with or without contract, a client employer with workers to perform labor within the client employer's usual course of business.

- b) Requires the pay data submitted to contain the number of employees by race, ethnicity, and sex in each of the following job categories: (1) executive or senior level officials and managers; (2) first or mid-level officials and managers; (3) professionals; (4) technicians; (5) sales workers; (6) administrative support workers; (7) craft workers; (8) operatives; (9) laborers and helpers; and (10) service workers.
 - c) Further requires the median and mean hourly rate within each job category for each combination of race, ethnicity, and sex. Prohibits DFEH from publishing any individually identifiable information associated with a specific person.
 - d) Imposes a civil penalty of \$100 per employee on an employer who fails to file the required report for a first offence and \$200 per employee for subsequent violations. Any penalty imposed will be payable to the Fair Employment and Housing Enforcement and Litigation Fund.
 - e) Requires the report to include the employer's North American Industry Classification System code.
- 2) Requires all employers *with 15 or more employees* provide the pay scale for a position to an applicant for employment by including it in the job posting and provide, upon request, the pay scale for the position a person is currently employed in.
- a) Requires an employer maintain records of a job description and wage rate history for each employee for the duration of their employment, plus three years. These records will be open to the Labor Commissioner for inspection.
 - b) Requires an employer *of 15 or more* that engages a third party to announce a job posting to provide the pay scale to the third party. The third party must make the pay scale available to applicants that view the posting.
 - c) Allows an aggrieved worker to file a written complaint with the Labor Commissioner within one year after the date the worker learned of the violation.
 - i) Requires the complaint must state the name and address of the employer and provide a detailed account of the alleged violation.
 - ii) Allows a person who claims to be aggrieved by a violation of this section to also bring a civil action for injunctive relief and any other relief the court deems appropriate.
 - iii) Allows the Labor Commissioner to order an employer found to be in violation to pay a civil penalty of between \$100 and \$10,000 per violation. These funds must be deposited into the Labor Enforcement and Compliance Fund. *For a first violation of new pay scale posting requirements*, if the employer demonstrates that all job postings for open positions have been updated to include the pay scale as required.

- d) If an employer fails to keep records in violation of this section, there is a rebuttable presumption in favor of the employee's claim.
- e) Defines "pay scale" to mean a salary or hourly wage range that the employer reasonably expects to pay for the position.

Comments

Need for this bill?

The Equal Employment Opportunity Commission (EEOC) and Form EEO-1. 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.

SB 1162 requirements and Labor Contractors. Notably excluded from the above EEO-1 process are the employers of labor contractors, who frequently work with large companies to contract for a variety of services. More and more, however, these contracted employees provide similar services to directly hired employees with lower pay and less stringent safety requirements. This has created an incentive to utilize contractors over time, eroding the de facto status of the employee-employer relationship and making contractor-employer relationship more and more common. For the purposes of the EEO-1 and the overall goal of the EEOC, this means that data for thousands of workers is not collected. SB 1162 seeks to expand the information collection to include the thousands of workers at the statewide level, in more specified pools. This additional data could be important for antidiscrimination enforcement and targeted state programs to help specific type of workers.

It is worth noting that the above section and the requirement to post pay scales within job postings are subject to the Private Attorneys' General Act, *which*

contains a 33 day right to cure period, but also carries the potential risk of costly lawsuits.

Related/Prior Legislation

SB 973 (Jackson, Chapter 363, Statutes of 2020) required employers with 100 or more employees provide the DFEH with specified EEO-1 pay data.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, “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))

“Minor and absorbable costs to the Labor Commissioner (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.

“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.”

SUPPORT: (Verified 8/29/22)

California Employment Lawyers Association (co-source)
California Commission on the Status of Women and Girls (co-source)
Equal Rights Advocates (co-source)
National Employment Law Project (co-source)
TechEquity Collaborative (co-source)
9 to 5
ACCE Action (Alliance of Californians for Community Empowerment)
ACLU
Alameda Labor Council
Alphabet Workers Union
American Association of University Women - California
American Federation of Labor and Congress of Industrial Unions, AFL-CIO
Asian Law Alliance
Bluegreen Alliance
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 Legislative Women's Caucus
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
California Women Lawyers
California Women's Law Center
California Work & Family Coalition
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, IFPTE Local 20, AFL-CIO
Equality California
Friends Committee on Legislation of California
Fund Her
Greenlining Institute
Hispanas Organized for Political Equality
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
National Women's Law Center
National Women's Political Caucus of California
Nextgen 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 Lawyers
Santa Barbara Women's Political Committee
Santa Clara County Wage Theft Coalition
Service Employees International Union California
Stronger California
Stronger California Advocates Network
Temp Worker Justice
The Greenlining Institute
The Workers Lab
Trusaic

Unite Here International Union, AFL-CIO
United Food and Commercial Workers Union, Western States Council
Utility Workers of America
Utility Workers Union of America
Voices for Progress
Western Center on Law & Poverty
Western States Council Sheet Metal, Air, Rail and Transportation
Women's Foundation of California
Worksafe

OPPOSITION: (Verified 8/29/22)

Acclamation Insurance Management Services
Agricultural Council of California
Allied Managed Care
American Property Casualty Insurance Association
American Staffing Association
Antelope Valley Chambers of Commerce
Associated General Contractors
Association of Independent California Colleges & Universities
Banning Chamber of Commerce
Beaumont Chamber of Commerce
Big Bear Chamber of Commerce
Biocom California
California Association for Health Services At Home
California Association of Christian Colleges and Universities
California Association of Sheet Metal & Air Conditioning Contractors National
Association
California Bankers Association
California Beer and Beverage Distributors
California Building Industry Association
California Business Industrial Alliance
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Craft Brewers Association
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 Legislative Conference of Plumbing, Heating & Piping Industry
California Manufactures & Technology Association
California New Car Dealers Association
California Railroads
California Restaurant Association
California Retailers Association
California Staffing Professionals
California State Council of the Society for Human Resource Management
California Taxpayers Association
California Travel Association
Calimesa Chamber of Commerce
Carlsbad Chamber of Commerce
Citrus Heights Chamber of Commerce
Citrus Heights Regional Chamber of Commerce
Civil Justice Association of California
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Corona Chamber of Commerce
Danville Area Chamber of Commerce
Edelstein Gilbert Robson & Smith, LLC
Family Business Association of California
Family Winemakers of California
Flasher Barricade Association
Fontana Chamber of Commerce
Fresno Chamber of Commerce
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Ontario Business Council
Greater Riverside Chambers of Commerce
Hemet San Jacinto Valley Chamber of Commerce
Highland Area Chamber of Commerce
Housing Contractors of California
Imperial Valley Regional Chamber of Commerce
Inland Empire Economic Partnership

Job Creators for Workplace Fairness
LA Canada Flintridge Chamber of Commerce
Laguna Niguel 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
Menifee Valley Chamber of Commerce
Moreno Valley Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Electrical Contractors Association
National Federation of Independent Business
Northern California Allied Trades
Oceanside Chamber of Commerce
Orange County Business Council
Orange County Hispanic Chamber of Commerce
Paso Robles Chamber of Commerce
Perris Valley Chamber of Commerce
Pomona Chamber of Commerce
Rancho Cucamonga Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
Scripps Health
Simi Valley Chamber of Commerce
South California Rental Housing Association
Southern California Glass Management Association
Southwest California Legislative Council
Technet
Tri County Chamber Alliance
True Blue
United Contractors
Upland Chamber of Commerce
Valley Industry and Commerce Association
Visalia Chamber of Commerce
Wall and Ceiling Alliance
West Ventura County Business Alliance
Western Electrical Contractors Association
Western Growers Association

Western Line Constructors Chapter, Inc., NECA
Western Wall and Ceiling Contractors Association
Wine Institute

ARGUMENTS IN SUPPORT: The California Employment Lawyers Association writes in support:

“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. Unequal wages also contribute to the overall gender *wealth* gap, which is even larger than the wage gap, especially for women of color. 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.

“In 2019, the Legislature passed SB 973, requiring employers with more than 100 employees to submit pay data reports to the Department of Fair Employment and Housing. That bill was an important step forward in augmenting oversight by our state enforcement agencies. However, it did not require that this information be publicly available, and did not include a large and growing part of the modern workforce: temporary, contract, and contingent workers hired through third-party staffing agencies.

“One contributor to the wage gap is that pay disparities are often ‘hidden from sight’ and worsen when no one is actively monitoring hiring 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.”

ARGUMENTS IN OPPOSITION:

The California Chamber of Commerce writes in opposition, “Less than two years ago, the California Legislature enacted SB 973 (Jackson). SB 973 requires all California employers with 100 or more employees to report pay data by sex, race, ethnicity, and job category to the Department of Fair Employment and Housing (DFEH). 2021 was the first year this information was reported. DFEH is permitted to use those reports to publish aggregate data regarding the workforce as a whole. SB 973 specified that those reports are confidential and not subject to Public Records Act requests... After only one year of this reporting requirement, SB 1162

seeks to publicize all of this data identifiable by individual companies under the pretense that it would reveal gender and race-based pay disparities. As explained above, this data was never designed to show such 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.”

ASSEMBLY FLOOR: 54-14, 8/29/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooley, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Stone, Ting, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bigelow, Choi, Cunningham, Megan Dahle, Flora, Fong, Gallagher, Kiley, Lackey, Mayes, Patterson, Seyarto, Smith, Voepel

NO VOTE RECORDED: Chen, Cooper, Daly, Davies, Gray, Irwin, Mathis, Nguyen, O'Donnell, Blanca Rubio, Valladares, Villapudua

Prepared by: Jake Ferrera / L., P.E. & R. / (916) 651-1556
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