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California Requires Additional Pay Disclosures

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On September 27, 2022, California Governor Gavin Newsom signed SB 1162 into law, which significantly expands California's current pay and data transparency reporting requirements for employers.

Job Postings and Pay Scale Disclosures

California law already requires that an employer, upon a job applicant's request after an initial interview, provide the pay scale for a position to the applicant. Beginning January 1, 2023, SB 1162 requires additional pay disclosures and record keeping requirements for California employers.

First, the law requires that an employer provide to employees, upon request, the pay scale for the position in which the employee is currently employed. SB 1162 expands the definition of "pay scale" to mean the salary or hourly range that the employer reasonably expects to pay for the position.

Second, in any job posting, including those made by third parties, employers with 15 or more employees must include the pay scale.

Finally, a person who claims to be aggrieved under SB 1162 may file a written complaint with the Labor Commissioner within one year after the date the person learned of the violation. The Labor Commissioner may order the employer to pay a civil penalty \$100 to \$10,000 per violation. For a first violation relating to disclosing or posting pay scales, no penalty may be assessed if the employer shows that all job postings for open positions have been updated to include the pay scale. The aggrieved person also may bring a civil action for injunctive relief and any other relief that the court deems appropriate.

Record Retention

Employers must maintain records of a job title and wage rate history for each employee for the duration of the employment, plus three years after the end of the employment. SB 1162 states this requirement is to allow "the Labor Commissioner to determine if there is still a pattern of

wage discrepancy.” If an employer fails to keep these records, there is a rebuttable presumption in favor of an employee claiming to be aggrieved by the failure to post or disclose pay scales.

Pay Data Disclosure

SB 1162 also changes employers’ pay data reporting requirements and modifies the timeframe for those disclosures. Pay data reports must be submitted to the state on or before May 10, 2023, and each year thereafter. Within each job category, employers now must report the median and mean hourly rate by race, ethnicity, and sex. Employers that have multiple locations still must submit a report for each location, but no longer have to submit a consolidated report.

Further, employers with 100 or more employees hired through labor contractors face new and separate obligations as far reporting on pay, hours worked, race and ethnicity, and gender information for those employees.

Employers that fail to file their pay data reports are subject to civil penalties of \$100 per employee for initial violations and \$200 per employee for subsequent violations.

Employers should contact their Vorys lawyer to discuss strategies to comply with these new posting and disclosure requirements.