

Executive Highlights - Is Your Business Prepared for California's New Pay Transparency Law?

What's in the new law?

On September 27th, 2022, California Governor Gavin Newsom signed Senate Bill 1162 into law. This bill has a significant impact on pay disclosure requirements for all businesses across the state and takes effect on January 1, 2023.

California companies with 15 or more employees will be required to include pay scale info in their job postings. All California companies must provide that information to applicants and current employees for their role upon request. The rule applies to any company with California employees, regardless of HQ location. Jobs posted on any platform or via third party are covered, including popular job sites like Indeed, LinkedIn, ZipRecruiter, Monster, or others.

The requirement covers the base pay range that an employer reasonably expects to pay (salary or hourly). Benefits, bonuses, and equity grants are not required to be disclosed. In practice, this means that your existing employees will be able to ask for the pay range for their position. Leaders should be prepared to explain why each employees pay is high/low for their position, with the support of recent performance reviews.

Annually, companies with 100 or more employees and contractors will be required to provide detailed pay info on the California Department of Fair Employment and Housing website beginning on May 10th, 2023. Noncompliance will result in fines of \$100 to \$10,000 per employee. These companies were already required to report annual pay data based on the sex and ethnicity of their employees.

More detailed reporting will now include median and average hourly rates by job category, across every combination of race, ethnicity, and sex. It will also apply to contract workers, including those hired through a third-party source. A separate pay report must be prepared for such contractual employees. The requirement covers base pay only. Benefits, bonuses, and equity grants are not required to be disclosed.

This law is unique compared to previous efforts to enforce pay equality because it gives *existing* employees access to salary range information.

The law is also unclear as to how it applies to companies that employ out of state remote workers. Often, protections in state law apply to the state where the employee lives and works. A conservative interpretation would be for California based companies to include out-of-state employees in the provisions of the law by granting them access to pay data on request.

Substantially similar work

Employers should remember that the California Equal Pay act prohibits paying any employee wages that are less than what it pays employees of another sex or ethnicity for "substantially similar" work. The critical point is the definition of "substantially similar" work. To press a claim under the law, an employee must prove that they are paid less than someone of another sex or ethnicity. So, SB 1162 makes it very easy for employees to demonstrate that pay difference. Then it falls upon the employer to justify the difference - you must prove you have a legitimate reason for paying one employee differently than another.

According to the State of California Department of Industrial Relations Labor Commissioner's Office:

"Substantially similar work" refers to work that is mostly similar in **skill, effort, responsibility**, and performed under similar **working conditions**.

- **Skill** refers to the experience, ability, education, and training required to perform the job.
- **Effort** refers to the amount of physical or mental exertion needed to perform the job.
- **Responsibility** refers to the degree of accountability or duties required in performing the job.

- **Working conditions** has been interpreted to mean the physical surroundings (temperature, fumes, ventilation) and hazards.

What is Considered "Substantially Similar Work"?

"Substantially similar work" refers to work that is mostly similar in skill, effort, responsibility, and performed under similar working conditions.

SKILL

- Technical skills
- Knowledge/experience in the industry, field, company

EFFORT

- Cognitively-Challenging
- Physical movement and energy expenditure

RESPONSIBILITY

- Amount of obligations
- Degree of importance

WORKING CONDITIONS

- Building, warehouse, construction site
- Chemicals, particles, noise

If you have employees who might look at their role and believe its comparable to another employee, it's critical that you be able to justify any differences in pay based on a difference in their skill, effort, responsibility and/or working condition as defined above. Differences that are obvious and truly objective such as years of experience, education, or certification/training are preferable. Other differences that are objective include significant difference in duties and accountabilities (example: one billing specialist handles the largest and most complex accounts with highest transaction volume, while another handles smaller and simpler accounts).

Other considerations

Since we are discussing compensation laws in California, there are other requirements to keep in mind:

- Employers may not prohibit workers from discussing their wages, asking about other employees' wages, or discussing other employees' wages.
- Employers may not retaliate for any of the above actions or against employees who make an Equal Pay complaint.
- Employers may not ask any information concerning a job applicants salary *history*. Although employers **may** ask an applicant for their salary *expectations*.
- Employers must keep records of wages, rates, classifications, and other employment items for three years.

How to prepare

1. Assess your compensation practices by identifying all the roles in your organization, who falls into each role, and what their current base pay is. Remember, if two people perform "substantially similar work" they are in the same role for this assessment, regardless of job title.
2. Benchmark your base pay for each role against base pay at comparable organizations or using average market data.
3. Using the benchmarks and your own internal pay data, decide the high and low end of the pay scale for each role.
4. Identify objective criteria that will govern whether someone is at the low end, the middle, or the high end of the pay scale for each role. Avoid subjective measures as much as possible.
5. Use your new pay scale and identify anyone who falls outside of the minimum and maximum range for their current role. Those individuals may need to have their pay adjusted or have their role changed so it aligns with their pay.
6. Use your new pay scales and criteria. Look at each role and identify anyone who is paid differently than others in the same role. Make sure you can justify the difference in pay with your criteria. If you cannot, you should adjust their pay prior to January 1, 2023.
7. Include your pay scales in each job posting and share them with employees who ask for them.

Unsure where to start? [Contact us today.](#)

About ClearPath Business Advisors:

[ClearPath Business Advisors](#) is a multi-faceted, high-end consulting & advisory firm delivering on our perspective that business owners should create a healthy, sellable business whether they plan to sell or not. Everything that builds a sellable business, creates a stronger business and a more balanced life for its leaders and teams.

We are a team of seasoned, multi-disciplinary business executives with finance, accounting, operations, sales, and legal expertise. Our Organizational Health team provides a recruiting service to our clients that is different from other solutions available. At the core of it, we act more like a member of your team, making our processes and motivations comparable to an internal recruiter. In the end, our goal is to deliver the best candidates for the Company, its culture, and the role, not just "fill a spot." Our team has used this recruiting process to hire over 351 new employees in the last 4 years. We are highly confident in our ability to deliver quality candidates.

We are also a firm with a heart, guided by our core values in creating high value for our clients while delivering on our promise of being a different type of consulting and advisory firm. We lead with our core values of Integration, Convergence, Service, and Every|One, and we donate 25% of our M&A transaction success fees to charity.

Ultimately, we just want to work with good people who could use our help.

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