

AMENDED IN ASSEMBLY AUGUST 15, 2022

AMENDED IN ASSEMBLY JUNE 14, 2022

AMENDED IN SENATE MAY 19, 2022

AMENDED IN SENATE MAY 2, 2022

SENATE BILL

No. 1162

Introduced by Senator Limón

(Principal coauthors: Senators Leyva and Skinner)

(Principal coauthors: Assembly Members Cristina Garcia and Kalra)

(Coauthors: Senators Cortese, Durazo, and Wiener)

(Coauthors: Assembly Members Berman, Low, Luz Rivas, Robert Rivas, Ting, and Wicks)

February 17, 2022

An act to amend Section 12999 of the Government Code, and to amend Section 432.3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1162, as amended, Limón. Employment: Salaries and Wages.

Existing law establishes the Department of Fair Employment and Housing (DFEH) within the Business, Consumer Services, and Housing Agency to enforce civil rights laws with respect to housing and employment and to protect and safeguard the right of all persons to obtain and hold employment without discrimination based on specified characteristics or status.

Existing law requires a private employer that has 100 or more employees and is required to file an annual Employer Information Report (EEO-1) pursuant to federal law to submit a pay data report to the DFEH that contains specified employee information on or before March 31, 2021, and on or before March 31 each year thereafter.

Existing law prescribes the information that must be included in the pay data report, including the number of employees by race, ethnicity, and sex in specified job categories. Existing law requires employers with multiple establishments to submit a report for each establishment and a consolidated report that includes all employees. Existing law permits the DFEH to develop, publish on an annual basis, and publicize aggregate reports, provided that the aggregate reports are reasonably calculated to prevent the association of any data with any individual business or person.

Existing law provides that an employer is in compliance with the requirement that it submit a pay data report if it submits an EEO-1 to DFEH containing the same or substantially similar pay data information. Existing law permits DFEH to seek an order requiring an employer to comply with these provisions and permits it to recover the costs associated with seeking the order for compliance.

This bill would, instead, require a private employer that has 100 or more employees to submit a pay data report to DFEH. This bill would revise the timeframe in which a private employer is required to submit this information to require that it be provided on or before the second Wednesday of May 2023, and for each year thereafter on or before the second Wednesday of May. This bill would also require a private employer that has 100 or more employees hired through labor contractors, as defined, to also submit a separate pay data report to DFEH for those employees in accordance with the above timeframe, as specified.

This bill would require the pay data ~~report~~ *reports* to include the median and mean hourly rate for each combination of race, ethnicity, and sex within each job category. This bill would ~~require~~ *delete a provision requiring* employers with multiple establishments to submit a *consolidated* report ~~covering each establishment~~. This bill would ~~remove~~ *delete* the provision of law that permits *authorizing* an employer to submit an EEO-1 in lieu of a pay data report. This bill would permit a court to impose a civil penalty not to exceed one hundred dollars (\$100) per employee upon any employer who fails to file the required report and not to exceed two hundred dollars (\$200) per employee upon any employer for a subsequent failure to file the required report. ~~The bill would require DFEH to publish the pay data report, on an internet website available to the public, of each private employer with 1,000 or more employees in the 2025 calendar year, of each private employer with 500 or more employees in the 2026 calendar year, and of each~~

~~private employer with 250 or more employees in the 2027 calendar year, and each subsequent calendar year thereafter. The bill would prohibit the department from publishing any individually identifiable information that is associated with a specific person.~~

Existing law creates the Division of Labor Standards Enforcement, under the direction of the Labor Commissioner, within the Department of Industrial Relations to enforce labor laws. Existing law requires an employer, upon reasonable request, to provide the pay scale for a position to an applicant applying for employment. Existing law defines pay scale for these purposes to mean salary or hourly wage range.

This bill would also require an employer, upon request, to provide to an employee the pay scale for the position in which the employee is currently employed. The bill would require an employer with 15 or more employees to include the pay scale for a position in any job posting. The bill would require an employer to maintain records of a job title and wage rate history for each employee for a specified timeframe, to be open to inspection by the Labor Commissioner. The bill would create a rebuttable presumption in favor of an employee's claim if an employer fails to keep records in violation of these provisions. The bill would require an employer with 15 or more employees that engages a third party to announce, post, publish, or otherwise make known a job posting to provide the pay scale to the third party and would require the third party to include the pay scale in the job posting. The bill would require the Labor Commissioner to investigate complaints alleging violations of these requirements and would authorize the commissioner to order an employer to pay a civil penalty upon finding an employer has violated these provisions. The bill would also authorize a person aggrieved by a violation of these provisions to bring a civil action for injunctive and any other appropriate relief.

This bill would require deposit of the civil penalties collected pursuant to these provisions into the Labor Enforcement and Compliance Fund, and would authorize these funds to be used, upon appropriation by the Legislature, for administration and enforcement of these provisions.

The bill would require the Labor Commissioner to adopt regulations as necessary to carry out these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12999 of the Government Code, as
2 amended by Section 178 of Chapter 615 of the Statutes of 2021,
3 is amended to read:

4 12999. (a) (1) On or before the second Wednesday of May
5 2023, and on or before the second Wednesday of May of each year
6 thereafter, a private employer that has 100 or more employees
7 shall submit a pay data report to the department covering the prior
8 calendar year, which, for purposes of this section, shall be referred
9 to as the “Reporting Year.”

10 (2) On or before the second Wednesday of May 2023, and on
11 or before the second Wednesday of May of each year thereafter,
12 a private employer that has 100 or more employees hired through
13 labor contractors within the prior calendar year shall submit a
14 separate pay data report to the department covering the employees
15 hired through labor contractors in the prior calendar year. The
16 private employer shall also disclose on the pay data report the
17 ownership names of all labor contractors used to supply employees.

18 (b) The pay data report shall include the following information:

19 (1) The number of employees by race, ethnicity, and sex in each
20 of the following job categories:

21 (A) Executive or senior level officials and managers.

22 (B) First or mid-level officials and managers.

23 (C) Professionals.

24 (D) Technicians.

25 (E) Sales workers.

26 (F) Administrative support workers.

27 (G) Craft workers.

28 (H) Operatives.

29 (I) Laborers and helpers.

30 (J) Service workers.

31 (2) The number of employees by race, ethnicity, and sex, whose
32 annual earnings fall within each of the pay bands used by the
33 United States Bureau of Labor Statistics in the Occupational
34 Employment Statistics survey.

35 (3) Within each job category, for each combination of race,
36 ethnicity, and sex, the median and mean hourly rate.

37 (4) For purposes of establishing the numbers required to be
38 reported under paragraph (1), an employer shall create a “snapshot”

1 that counts all of the individuals in each job category by race,
2 ethnicity, and sex, employed during a single pay period of the
3 employer's choice between October 1 and December 31 of the
4 "Reporting Year."

5 (5) For purposes of establishing the numbers to be reported
6 under paragraphs (2) and (3), the employer shall calculate the total
7 earnings, as shown on the Internal Revenue Service Form W-2,
8 for each employee in the "snapshot," for the entire "Reporting
9 Year," regardless of whether or not an employee worked for the
10 full calendar year. The employer shall tabulate and report the
11 number of employees whose W-2 earnings during the "Reporting
12 Year" fell within each pay band.

13 (c) The employer shall include in the report the total number of
14 hours worked by each employee counted in each pay band during
15 the "Reporting Year."

16 (d) For employers with multiple establishments, the employer
17 shall submit a report covering each establishment.

18 (e) The report shall include the employer's North American
19 Industry Classification System (NAICS) code.

20 (f) The report shall include a section for employers to provide
21 clarifying remarks regarding any of the information provided. An
22 employer is not required to provide clarifying remarks.

23 (g) The information required by this section shall be made
24 available in a format that allows the department to search and sort
25 the information using readily available software.

26 (h) If the department does not receive the required report from
27 an employer, the department may seek an order requiring the
28 employer to comply with these requirements and shall be entitled
29 to recover the costs associated with seeking the order for
30 compliance. Upon request by the department, a court may impose
31 a civil penalty not to exceed one hundred dollars (\$100) per
32 employee upon any employer who fails to file the required report
33 and not to exceed two hundred dollars (\$200) per employee upon
34 any employer for a subsequent failure to file the required report.
35 Any penalty under this section shall be payable to the Fair
36 Employment and Housing Enforcement and Litigation Fund
37 established under Section 12907.

38 (i) ~~Except as required by subdivision (k), it~~ It shall be unlawful
39 for any officer or employee of the department or the Division of
40 Labor Standards Enforcement to make public in any manner

1 whatever any individually identifiable information obtained
2 pursuant to their authority under this section prior to the institution
3 of an investigation or enforcement proceeding by the Division of
4 Labor Standards Enforcement or the department under Section
5 1197.5 of the Labor Code or Section 12940 involving that
6 information, and only to the extent necessary for purposes of the
7 enforcement proceeding. For the purposes of this section,
8 “individually identifiable information” means data submitted
9 pursuant to this section that is associated with a specific person or
10 business.

11 ~~(j) Except as required by subdivision (k), any~~ Any individually
12 identifiable information submitted to the department pursuant to
13 this section shall be considered confidential information and not
14 subject to disclosure pursuant to the California Public Records Act
15 (Division 10 (commencing with Section 7920.000) of Title 1).

16 ~~(k) (4)~~ Notwithstanding subdivision (i), the department may
17 develop, publish on an annual basis, and publicize aggregate reports
18 based on the data obtained pursuant to their authority under this
19 section, provided that the aggregate reports are reasonably
20 calculated to prevent the association of any data with any individual
21 business or person.

22 ~~(2) (A) Notwithstanding subdivision (i) and (j), and in addition~~
23 ~~to the aggregate report described in paragraph (1), the department~~
24 ~~shall publish each private employer’s pay data report as provided~~
25 ~~in paragraphs (1) and (2) of subdivision (a) on an internet website~~
26 ~~available to the public, as follows:~~

27 ~~(i) The department shall not publish any private employer’s pay~~
28 ~~data report for calendar years 2023 and 2024.~~

29 ~~(ii) The department shall publish each private employer’s data~~
30 ~~report for the 2025 calendar year for private employers with 1,000~~
31 ~~or more employees.~~

32 ~~(iii) The department shall publish each private employer’s pay~~
33 ~~data report for the 2026 calendar year for private employers with~~
34 ~~500 or more employees.~~

35 ~~(iv) The department shall publish each private employer’s pay~~
36 ~~data report for the 2027 calendar year, and each subsequent year,~~
37 ~~for private employers with 250 or more employees.~~

38 ~~(B) The department shall provide a mechanism, accessible from~~
39 ~~the internet website on which each private employer’s pay data~~
40 ~~report may be accessed, for visitors to that internet website to view~~

1 any additional information that the employer chooses to provide
2 regarding its pay data. The mechanism shall be either a space for
3 text under the heading, “What this employer says about their pay
4 equity data,” a hyperlink from that heading, or both. An employer
5 is not required to submit additional information pursuant to this
6 subparagraph.

7 ~~(C) The department shall not publish any individually
8 identifiable information that is associated with a specific person.~~

9 (l) The department shall maintain pay data reports for not less
10 than 10 years.

11 (m) For purposes of this section, the following definitions shall
12 apply:

13 (1) “Employee” means an individual on an employer’s payroll,
14 including a part-time individual, and for whom the employer is
15 required to withhold federal social security taxes from that
16 individual’s wages.

17 (2) “Labor contractor” means an individual or entity that
18 supplies, either with or without a contract, a client employer with
19 workers to perform labor within the client employer’s usual course
20 of business.

21 (3) “Establishment” means an economic unit producing goods
22 or services.

23 (n) Upon request by the department, no later than 60 days from
24 the date of the request, the Employment Development Department
25 shall provide the department with the names and addresses of all
26 businesses with 100 or more employees in order to ensure
27 compliance with this section.

28 (o) A complaint filed in a civil action alleging that an employer
29 violated Section 1197.5 of the Labor Code or Section 12940 of
30 the Government Code that is based solely on information in a pay
31 data report does not state facts sufficient to constitute a cause of
32 action for purposes of Section 425.10 of the Code of Civil
33 Procedure, and the defendant may demur based on the fact that
34 the complaint does not state facts sufficient to constitute a cause
35 of action against the defendant pursuant to Section 430.10 of the
36 Code of Civil Procedure.

37 SEC. 2. Section 432.3 of the Labor Code, as amended by
38 Section 320 of Chapter 615 of the Statutes of 2021, is amended to
39 read:

1 432.3. (a) An employer shall not rely on the salary history
2 information of an applicant for employment as a factor in
3 determining whether to offer employment to an applicant or what
4 salary to offer an applicant.

5 (b) An employer shall not, orally or in writing, personally or
6 through an agent, seek salary history information, including
7 compensation and benefits, about an applicant for employment.

8 (c) (1) An employer, upon reasonable request, shall provide
9 the pay scale for a position to an applicant applying for
10 employment.

11 (2) An employer, upon request, shall provide an employee the
12 pay scale for the position in which the employee is currently
13 employed.

14 (3) An employer with 15 or more employees shall include the
15 pay scale for a position in any job posting.

16 (4) An employer shall maintain records of a job title and wage
17 rate history for each employee for the duration of the employment
18 plus three years after the end of the employment in order for the
19 Labor Commissioner to determine if there is still a pattern of wage
20 discrepancy. These records shall be open to inspection by the Labor
21 Commissioner.

22 (5) An employer with 15 or more employees that engages a
23 third party to announce, post, publish, or otherwise make known
24 a job posting shall provide the pay scale to the third party. The
25 third party shall include the pay scale in the job posting.

26 (d) (1) A person who claims to be aggrieved by a violation of
27 this section may file a written complaint with the Labor
28 Commissioner within one year after the date the person learned
29 of the violation. The complaint shall state the name and address
30 of the employer and shall provide a detailed account of the alleged
31 violation, as may be required by the Labor Commissioner.

32 (2) A person who claims to be aggrieved by a violation of this
33 section may also bring a civil action for injunctive relief and any
34 other relief that the court deems appropriate.

35 (3) The Labor Commissioner shall promptly investigate
36 complaints alleging violation of this section.

37 (4) Upon finding that an employer has violated this section, the
38 Labor Commissioner may order the employer to pay a civil penalty
39 of no less than one hundred dollars (\$100) and no more than ten
40 thousand dollars (\$10,000) per violation. The Labor Commissioner

1 shall determine the amount of the penalty based on the totality of
2 the circumstances, including, but not limited to, whether the
3 employer has previously violated this section.

4 (5) If an employer fails to keep records in violation of this
5 section, there shall be a rebuttable presumption in favor of the
6 employee's claim.

7 (6) Both of the following shall apply to any action brought to
8 enforce this section pursuant to the Labor Code Private Attorneys
9 General Act of 2004 (Part 13 (commencing with Section 2698) of
10 Division 2):

11 (A) The action shall commence only after the requirements
12 specified in subdivision (c) of Section 2699.3 have been met.

13 (B) The following shall constitute cure for purposes of
14 subdivision (c) of Section 2699.3:

15 (i) For an alleged violation of subdivision (a), demonstrating
16 that the employer revised an applicant's salary by excluding salary
17 history as a factor in determining what salary to offer the applicant
18 or demonstrating that the employer reevaluated an applicant for
19 employment by excluding salary history as a factor in determining
20 whether to offer employment to the applicant.

21 (ii) For an alleged violation of subdivision (b), demonstrating
22 that the employer has revised any hiring or recruitment practices
23 that seek salary history information.

24 (iii) For an alleged violation of subdivision (c), demonstrating
25 that the employer has revised all job postings to include a pay scale
26 or if the alleged violation is that a person was not provided the pay
27 scale for the position a person is currently employed in, by
28 demonstrating that the employer has provided that person with the
29 pay scale as required under this section.

30 (e) Section 433 does not apply to this section.

31 (f) This section does not apply to salary history information
32 disclosable to the public pursuant to federal or state law, including
33 the California Public Records Act (Division 10 (commencing with
34 Section 7920.000) of Title 1 of the Government Code) or the
35 federal Freedom of Information Act (Section 552 of Title 5 of the
36 United States Code).

37 (g) This section applies to all employers, including state and
38 local government employers and the Legislature.

- 1 (h) Nothing in this section shall prohibit an applicant from
2 voluntarily and without prompting disclosing salary history
3 information to a prospective employer.
- 4 (i) If an applicant voluntarily and without prompting discloses
5 salary history information to a prospective employer, nothing in
6 this section shall prohibit that employer from considering or relying
7 on that voluntarily disclosed salary history information in
8 determining the salary for that applicant.
- 9 (j) Nothing in this section shall prohibit an employer from asking
10 an applicant about the applicant's salary expectation for the
11 position being applied for.
- 12 (k) Consistent with Section 1197.5, nothing in this section shall
13 be construed to allow prior salary to justify any disparity in
14 compensation.
- 15 (l) All civil penalties collected pursuant to this section shall be
16 deposited into the Labor Enforcement and Compliance Fund for
17 distribution to the Division of Labor Standards Enforcement. Upon
18 appropriation by the Legislature, these funds may be expended by
19 the division to cover reasonable ongoing costs of administering
20 and enforcing this section.
- 21 (m) For purposes of this section, all of the following shall apply:
 - 22 (1) "Pay scale" means the salary or hourly wage range that the
23 employer reasonably expects to pay for the position.
 - 24 (2) "Applicant" or "applicant for employment" means an
25 individual who is seeking employment with the employer and is
26 not currently employed with that employer in any capacity or
27 position.