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April 18, 2023

Deadline Looms Under California Pay Data and Disclosure Law



Though other aspects of California's pay data reporting law, [SB 1162](#) (codified in Government Code section 12999), became effective January 1, 2023, one requirement of the new law comes due May 10, 2023.

In addition to pay transparency in job postings, SB 1162 also enhanced existing pay reporting requirements for employers with 100 or more full- or part-time employees. Since 2020, such employers have been required to report to the California Civil Rights Department (CRD, formerly the Department of Fair Employment and Housing) the mean and median pay of employees within each job category by race, ethnicity, and gender. This year, the reports are due on or before May 10, 2023, for reporting year 2022. Reports each year thereafter are due on or before the second Wednesday of May.

Notably, California law also now requires private employers with 100 or more total workers hired through labor contractors in the prior calendar year (with at least one worker based in California) to file a separate "Labor Contractor Employee Report" that covers *all* workers hired through labor contractors in the prior calendar year. Labor contractors have a duty to provide relevant information to employers for any "individual on a labor contractor's payroll . . . for whom [the] labor contractor is required to withhold federal Social Security taxes from that individual's wages, and who performs labor for a client employer within the client employer's usual course of business." Importantly, reporting obligations are limited to those labor contract employees assigned to California establishments and/or working within California. An employer submitting a Labor Contractor Employee Report must submit *one report that covers labor contractor workers at all of the employer's establishments*. Employers and labor contractors are encouraged to coordinate efforts early to comply with labor contractor pay data reporting obligations.

On April 18, 2023, CRD will begin accepting "enforcement deferral requests" from employers for their Labor Contractor Employee Reports due May 10, 2023. Once granted, CRD will defer—through July 10, 2023—seeking an order of compliance for the employer to file its Labor Contractor Employee Report. Requests will only be considered by employers registered in pay data reporting portal, and CRD will only accept requests

through the portal.

Covered employers must use the CRD's [pay data portal](#) to submit their reports. More detailed information can be found on the CRD's [Pay Data Reporting webpage](#). The Pay Data Reporting webpage contains the link to the Pay Data Reporting Portal, a guide to using the portal, Excel templates that employers may use to submit their data, and examples of CSV (comma-separated values) submissions. Answers to frequently asked questions can be found [here](#).

New Penalties for Noncompliance

Pursuant to SB 1162, CRD now has the power to seek an order for a noncompliant employer to file a required report as well as to impose civil penalties of \$100 per employee, increasing to \$200 per employee for subsequent noncompliance.

Takeaway

California employers should act quickly to gather information necessary to comply with reporting year 2022 requirements by the May 10, 2023, deadline and contact experienced counsel for guidance with questions related to the pay data reporting requirements. Further information on California's pay data and disclosure law can be found in Perkins Coie's *Wage & Hour Developments* blog ([here](#) and [here](#)) and in this previous [Update](#).

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