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California's New Pay Transparency Requirements

On September 27, 2022, California Senate Bill ("SB") 1162 was signed into law. SB 1162, effective **January 1, 2023**, imposes new requirements on public and private employers pertaining to pay transparency. The California Labor Commissioner's office recently released its long-awaited Frequently Asked Questions ("FAQs") regarding the new requirements. The FAQs are available here: https://www.dir.ca.gov/dlse/california_equal_pay_act.htm.

Below are some key takeaways:

- Public and private employers with 15 or more employees must include a pay scale in all job postings.
 - If the public or private employer engages a *3rd party* to announce, post, publish or otherwise make known of the job posting, the employer must provide the pay scale to the *3rd party* and that *3rd party* must include the pay scale in the job posting.
 - If the job posting is for a *remote position* that may ever be filled in California, either remotely or in-person, the pay scale must be included.
 - The pay scale must actually be provided in the job posting itself. It is not sufficient to include a link to the salary range, etc.
- All public and private employers (regardless of size) must (i) provide an employee the pay scale for the position in which the employee is currently employed upon request; and (ii) provide an applicant with the pay scale for a position applying for employment upon request.
- "Pay Scale" is defined as the salary or hourly wage range that the public or private employer reasonably expects to pay for the position.
 - If a public or private employer intends to pay a *set hourly rate* or a *set piece rate*, and not a pay range, then the posting may include that set hourly rate or a set piece rate.
 - However, if the employee's hourly or salary wages is *based on a piece rate or commission*, then the piece rate or commission range that the employer reasonably

expects to pay for the position must be included when disclosing the pay scale.

- Other compensation or tangible benefits that are provided in addition to salary/hourly wage (e.g., bonuses, tips) need not be included when disclosing the pay scale.
- Retention of Pay Data Records (job titles/classification, wage rate histories, other terms and conditions of employment) must be for the duration of an employee's employment plus 3 years after the employee's employment termination.
- Civil penalties for failure to comply with these requirements may range from \$100 to \$10,000 per violation.
- Retaliation against an employee for engaging in action to invoke/assist with the enforcement of these requirements is prohibited.