

## California's New Pay Transparency Law: What Recruiters Need to Know

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Last month, California's new pay transparency law—Senate Bill 1162—went into effect (the “Law”). This new Law further expands what pay scale information California employers must provide to applicants and employees. The most relevant changes for recruiters and candidates are that the Law requires certain employers to (1) include salary or hourly wage scale on their job postings (internally and externally), and (2) upon request, provide to current employees the pay scale for the position in which they are currently employed.

This Law will have far reaching effects for all parties involved, including recruiters, employers, employees, and applicants. It is important to keep in mind that California is not alone in making these changes, and it is likely that other states will follow its lead. Indeed, Colorado, Washington, and New York City have already enacted similar laws, followed by the State of New York. Recruiters operating in any of these jurisdictions should familiarize themselves with the pay scale disclosure requirements because each state's law is different.

Anticipating these changes, in California and elsewhere, and considering how they will impact the recruitment process is critical. This article discusses key considerations to assist recruiters with getting up to speed on these new developments and navigating this new landscape.

### What does the new Law require?

Previously, California law required employers to provide pay scale information to an applicant after receiving a reasonable request. Under the new Law, employers with 15 employees or more are required to include pay scale information in their job postings. This job postings requirement also extends to any third parties, such as recruiters, used by employers to fill their job openings. While the pay scale information must be listed in the job posting, the Law does not prohibit the employer and applicant from negotiating or prohibit employers from offering a higher salary than the range provided in the job listing, so long as there is an objective reasoning for the exception.

The new Law defines several key terms of which employers and recruiters should be aware:

- ◇ “Applicant” or “applicant for employment” means an individual who is seeking employment with the employer and is not currently employed with that employer in any capacity or position.
- ◇ “Pay scale” is defined by the law to include “salary or hourly wage range that the employer reasonably expects to pay for the position.” The Labor Commissioner has clarified that “pay scale” does not include bonuses, commissions, tips, or other benefits.
- ◇ The Law also requires employers to share pay scale information with current employees—for the position in which the employee is currently employed—upon request.

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- ◇ The Law defines an “employee” as an “individual on an employer’s payroll, including a part-time individual, and for whom the employer is required to withhold federal social security taxes from that individual’s wages.” Associate and counsel positions generally would fall within this definition. With regard to non-equity partners, the analysis is more complicated. It depends on how the law firm is structured from a tax perspective. For example, some law firms issue K-1s to their non-equity partners, while others issue W-2s. Recruiters will need to discuss the specifics with a firm when hired to fill a non-equity partner position to determine if pay scale information is needed. Filling “contract” positions also presents a unique situation that should be discussed with law firms.
- ◇ Failure to provide the required pay scale information, in job postings or in response to an employee’s request, exposes companies to civil actions and monetary penalties of up to \$10,000 per violation.

- ◇ The Law also reaffirms that employers may not (1) ask applicants for salary history information, or (2) rely on an applicant's historical salary in determining whether to offer employment to an applicant or in offering a salary.

### What remains unclear under the new law?

The new Law leaves open several important questions as to its interpretation. First, the law does not purport to limit its applicability to those employers based in California. Thus, it remains unclear as to whether employers operating outside of California, but who may have employees working remotely in California, are subject to its provisions. Second, it is ambiguous as to whether the pay scale disclosure requirements relate to job postings for California employers with remote workers outside of California. Third, it does not appear that the Law intends to impose liability on recruiters for a firm's failure to comply with the wage posting requirement because the Law only mentions civil penalties against employers.

Nonetheless, recruiters need to be aware of the Law's requirements and tread carefully. The Law specifically states that third parties (i.e. recruiters) "*shall* include pay scale [information] in the job posting." Given the lack of clarity and agency guidance with regard to these issues and others, it is critical for recruiters to (1) be familiar with this Law (and similar laws elsewhere) and (2) discuss the pay scale disclosure requirements with firms if he or she is concerned that a posting may be subject to disclosure requirements and such information has not been provided.

### How will the Law impact candidates?

Salary information is invariably one of the most important pieces of information a candidate will receive when deciding whether to change jobs. The new Law should streamline matters considering it provides candidates with this critical decision-making information at the very beginning of the process—in the job posting. Including salary information early on in the process allows candidates to be more purposeful in the firms they choose to apply to and better adjust their expectations and salary preferences.

### How will the Law impact recruiters?

This publicly available salary information also provides an opportunity for recruiters to collect salary data in advance of working with a candidate. While this may mean more work on the front end, preparing and analyzing this information in the beginning of the recruitment process will allow recruiters and candidates to better target prospective firms and move through the process more efficiently.

The other aspect of the Law, which allows current employees the right to view salary information for their current position, may also result in recruitment opportunities. Employees on the low range of the pay scale may choose to seek employment elsewhere. So may employees on the high end of the scale, who may realize there is little room for growth at their current firm. Inquiring with California attorneys about whether they have requested and/or are aware of the salary details at their firm should be considered.

But the new Law also means that recruiters need to be aware of when a job posting must include pay scale information. If a recruiter receives a posting from a firm with whom it has contracted that does not include the requisite pay scale information, the recruiter should immediately bring this to the firm's attention.

### Takeaways

The Law will undoubtedly impact recruiting in the California legal market. How much lateral activity the Law sparks and how the Law will impact the negotiation process remains to be seen, especially with regard to firms that previously have had closed compensation systems. But what is clear is that more information will be available to recruiters (and candidates) earlier on in the process.

As part of their best practices, recruiters should familiarize themselves with the pay disclosure laws and their requirements in California and elsewhere to make certain that any job postings the recruiter is trying to fill on behalf of a firm is in compliance with any applicable laws. With regard to firms with offices in multiple states where these laws exist, the firms should draft a job posting template that complies with the most stringent requirements of these various statutes and use that job posting template as the firm's "standard" across the country when posting for a new position to ensure compliance.

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