

**AMERICAN  
PAYROLL  
ASSOCIATION**

June 17, 2022

Assembly Committee on Labor and  
Employment  
1020 N Street, Room 155  
Sacramento, California 95814

Assembly Judiciary Committee  
1020 N Street, Room 104  
Sacramento, CA 95814

Senator Monique Limón  
1021 O Street, Suite 7330  
Sacramento, CA 95814

Re: Concerns and Comments on Proposed Pay Data Reporting Legislation, SB-1162

Dear Senators and Assemblypeople,

The American Payroll Association (APA)<sup>1</sup> submits the following comments on SB-1162, legislation which enacts expansive data requirements that would be burdensome to payroll professionals and their employers, as well as not having the intended outcome in terms of applicability of the data collected. The APA is concerned about the transition to any new or expanded reporting system and its potential effect on existing state systems as well as the implementing burden of collection, storage, and development on reporting of the additional data on payroll management especially when there is a current reporting requirement in place using the same data required by the Equal Employment Opportunity Commission's EEO-1 Component Report.

The APA understands and supports the important goal of equal pay with the collection of accurate wage data. APA agrees with the bill's intent of ending employment discrimination and considers ending employment discrimination an important public policy worthy of the State of California's attention.

**Reporting Already Required for Covered Employers**

SB-1162 will require all private employers with 100 or more employees to submit a pay data report to the Department of Fair Employment and Housing (DFEH). Existing law already requires

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<sup>1</sup> The APA is a nonprofit professional association representing more than 20,000 payroll professionals in the United States. APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, APA's Government Relations Task Force (GRTF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

private employers with 100 or more employees and that are required to file an annual Employer Information Report (EEO-1) to submit a pay data report to the DFEH annually on or before March 31 each year. At present, existing law deems employers to be in compliance with pay data reporting requirements if they submit an EEO-1 to DFEH that contains the same or substantially the same pay data information.

This significant expansion of required pay data reporting will be burdensome on employers as well as the DFEH by removing the ability for employers to submit EEO-1 reports to both the DFEH and EEOC and instead requiring much more detailed pay data information to be tracked, organized, compiled, and submitted for the DFEH to publish in a report.

### **Detailed Pay Data Reporting Categories**

SB-1162 contains requirements for employee data that employers will be required to track, maintain, and report. Section 12999 (b) will require that in addition to tracking the number of employees by race, ethnicity, and sex across 10 different job categories, employers must also report the total number of employees by race, ethnicity, and sex whose annual earnings fall within each pay band used by the US Bureau of Labor Statistics Occupational Employment statistics survey, as well as the “median and mean hourly pay rate” within each job category for each combination of race, ethnicity, and sex.

### **Unclear Definitions**

Neither median nor mean is defined in this legislation, leaving questions as to how employees not paid in an hourly rate will have their rates calculated. For example, employees may be paid on a commission basis, by piece work, or employees may receive bonuses that are included in the regular rate of pay calculation for overtime. For employees who are paid on an hourly basis, it is unclear if their median and mean rates would need to be calculated for multiple pay rates including overtime, or if the base rate would suffice. For employees who are paid on a salary basis, could the median and mean rate be calculated based on the proxy methodology currently allowed for the hours worked calculation for CA Pay Data reporting or would actual hours worked be required to determine a salaried “hourly rate”? If the proxy method of calculation is not deemed acceptable, this would mark a significant change for employers who do not currently track hours for exempt employees.

The DFEH will need time to determine the requirements for calculating these rates, and employers will need time to implement data collection and calculation procedures to comply with these new methods.

To establish the wages with which employers could begin to calculate median and mean rates, in Section 12999(b)(5), SB-1162 directs employers to calculate total earnings for an employee as shown on IRS Form W-2, regardless of whether or not an employee worked the full calendar year. This does not establish which box on Form W-2 will be used to calculate these earnings. For example, Box 1 (federal wages) has deductions for retirement plans, cafeteria plans and

transportation plans reducing the gross wages to calculate taxable wages. Box 5 (Medicare wages) has deductions for cafeteria plans and transportation plans reducing the gross wages to calculate taxable wages. Using either box will not truly provide pay data information that can be used to end employment discrimination.

Section 1299(d) indicates that for employers with multiple establishments, the employer shall submit a report covering each establishment, and Section 1299(m)(3) defines establishment as “an economic unit producing goods and services.”

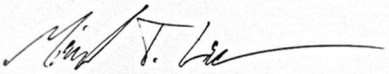
Presently, Section 320.5 of the California Unemployment Insurance Code and Section 320-1 Title 22 of the California Code of Regulations, authorized by 29 U.S.C. 2 mandates the U.S. Department of Labor BLS Multiple Worksite Report Form BLS 3020, which defines multiple location employers as having a total of 10 or more employees combined in their secondary locations<sup>2</sup>. SB-1162 should contain definitions and language that match with existing definitions for multiple worksite reporting.

### **Short Notice Before Implementation**

As written, SB-1162 will require employers with 100 or more employees to submit the new pay data report on or before the second Wednesday of May every year, starting in May of 2023, giving both the DFEH and employers subject to reporting requirements a very short amount of time to establish systems to ensure compliance. With the first reporting for calendar year 2022, the data gathering to meet the reporting requirements should have begun on January 1, 2022. The gathering, organization, and reporting of the large amount of data included in this legislation will require significant configuration and coordination between employers, third party service providers, and the state, and is a goal that will be difficult to meet in the time frame allotted.

Again, the APA thanks you for your time and consideration of this very important topic. To discuss further the impacts on payroll professionals or their employers and potential solutions, please contact Mike Linehan at [mlinehan@americanpayroll.org](mailto:mlinehan@americanpayroll.org), or by phone at 443-254-2645.

Thank You,



Mike Linehan  
Assistant Manager of Government Relations

For Cochairs, GRTF State and Local Topics Subcommittee:  
Pete Isberg

<sup>2</sup> [https://www.labormarketinfo.edd.ca.gov/bls-statistical-programs/MWR\\_FAQs.html#Q4](https://www.labormarketinfo.edd.ca.gov/bls-statistical-programs/MWR_FAQs.html#Q4)

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