

What In-House Counsel Should Know - Pay Transparency & Pay Data Reporting

Presented by

Jennifer N. Lutz, Esq., Shareholder

Pettit Kohn Ingrassia Lutz & Dolin

Amanda Chafin, Esq., Associate General Counsel

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Jennifer Lutz, Esq.

Shareholder

Pettit Kohn Ingrassia Lutz & Dolin

(858) 755-8500

jlutz@pettitkohn.com

J.D., University of Arizona College of Law

B.A., University of Arizona

PETTIT KOHN

PETTIT KOHN INGRASSIA LUTZ & DOLIN

Jennifer N. Lutz, Esq. is a founding shareholder and co-chair of Pettit Kohn Ingrassia Lutz & Dolin PC's employment and labor group, where she focuses her practice on employment litigation and counseling. Ms. Lutz successfully represents California employers involving issues of discrimination, wrongful termination, harassment, defamation, and both individual and class action wage and hour claims. In addition, Jennifer is a speaker and author on issues such as wage and hour law, employee privacy, and leaves of absence. She also provides advice and training to employers on a full range of employment law issues, including drafting employment policies and procedures, terminations, and discipline.

Ms. Lutz earned her B.A. degree, *magna cum laude*, from the University of Arizona and J.D. degree from the University of Arizona College of Law. She has been recognized by *San Diego Super Lawyers* each year since 2011 and was honored as one of the Top 25 Women Lawyers in San Diego in 2020. Recently, the *San Diego Business Journal* included Ms. Lutz in their 2021 and 2022 listings of "Women of Influence in Law" and the "SD500 Most Influential People in San Diego." *Best Lawyers in America* has also recognized Jennifer for her work in both Employment Law – Management and Labor and Employment Litigation

Pay Transparency & Data Reporting





Amanda Chafin, Esq.
Associate General Counsel
General Dynamics NASSCO

(619) 544-7601
Amanda.chafin@nassco.com

GENERAL DYNAMICS NASSCO

Amanda G. Chafin, Esq. is Associate General Counsel at General Dynamics NASSCO in San Diego. Ms. Chafin manages all labor and employment matters for the company including handling pre-litigation disputes, mediations, arbitrations, litigation, government agency investigations, and administrative charges as well as the supervision of outside counsel. She provides practical advice and legal assistance company-wide on broad range of labor and employment issues relating to discrimination, retaliation, disability accommodation, hiring, performance management and discharge, pay practices, reorganizations, reductions in force, and leaves of absences, HR investigations and outcomes, and labor union practices. In addition, she oversees Cal-OSHA matters, immigration compliance, and safety and security issues for the company. She also advises senior and executive leadership on policies, processes, and compliance strategies in close collaboration with other departments.

Previous to NASSCO, Ms. Chafin worked as employment in-house counsel for Coca-Cola Beverages Florida and was an associate in the Employment Litigation Group at Buchanan Ingersoll & Rooney P.C. Ms. Chafin earned her B.S. degree from the University of Florida and her J.D. degree from Washington University in St. Louis.

Topics

- New requirements in California for pay data reporting
- California's new pay transparency law; what legally needs to be provided
- Approaches to satisfying the new pay transparency law

California's Pay Transparency Law

- Employers with 15+ employees to include a pay scale for a position in any job posting
- Employers with 15+ employees that engage a third party to announce, post, publish, or otherwise make known a job posting to provide the pay scale to the third party and the third party must include the pay scale in the job posting
- Employers of any size, upon request, must provide an employee the pay scale of the position currently held
- This already applied to job applicants

California's Pay Transparency Law

- Employers must maintain records of job title and wage rate history for the duration of employment plus three years for Labor Commissioner inspection
- The Labor Commissioner is authorized to investigate and issue civil penalties (\$100 - \$1,000 per violation)

California's Pay Transparency Law

- 15 or more employees is interpreted as 15 or more employees nationwide with at least one employee in California
- The pay scale must be included if the position can be filled by someone physically in California or could be performed remotely in California
- An employer that intends to have a set amount may provide that amount (and not a range)
- Only required to post base pay
- An employer cannot merely link to the pay scale – the pay scale must be included within the posting itself

New Requirements in California for Pay Data Reporting

- SB 1162 (codified at Labor Code section 432.3) builds on 2020's SB 973 which put in place pay data reporting for employers with 100+ employees
- Must submit pay data report to the CRD on or before the second Wednesday of May 2023 and each year thereafter
- Requires pay data reports to include median and mean hourly rate for each combination of race, ethnicity, and sex within each of 10 job categories
- Job categories: executive, professional, sales, craft, laborers, mid-level, technical, administrative, operations, service

New Requirements in California for Pay Data Reporting

- Private employers with 100+ employees hired through labor contractors also submit a separate pay data report to the CRD
- This report must also include ownership and names of all labor contractors used
- Civil penalty of \$100 per employee for failure to file and \$200 per employee for subsequent failure to file
- Penalties are deposited into the Civil Rights Enforcement and Litigation Fund

Pay Data Reporting

- An individual employer's pay data report is neither publicly available nor subject to the Public Records Act, but may be used in a CRD enforcement action
- CRD is required to retain pay data reports for at least 10 years
- CRD publishes aggregate results:
 - <http://calcivilrights.ca.gov/paydatareporting/results/>
 - State, regional, and industry tables

Pay Data Reporting

- Payroll Employee Report
 - Determine whether required to file
 - Determine establishments the employer has and gather information
 - Determine the employer's snapshot period
 - Identify each employee's establishment, job category, race/ethnicity, sex, pay, pay band, hours worked, and hourly rate
 - Group employees
 - For each employee group, calculate the mean hourly rate, median hourly rate, and total hours worked by the group
 - Gather additional information about the employer and its establishments
 - Register in the portal and build the report

Pay Data Reporting

- Labor Contractor Report
 - The client employer has the requisite number of labor contractor employees if the employer either had 100 or more labor contractor employees in the snapshot period across all of its labor contractors, not per labor contractor – or regularly had 100 or more labor contractor employees during the reporting year

Pay Data Reporting Resources

- Pay data reporting homepage: <https://calcivilrights.ca.gov/paydatareporting/>
 - Access to portal, user guide, FAQs, Excel templates, results, and other resources
- Portal: <https://pdr.calcivilrights.ca.gov/s/>
- FAQs: <https://calcivilrights.ca.gov/paydatareporting/faqs/>
- Excel templates: <https://calcivilrights.ca.gov/paydatareporting/pdr-exceltemplates/>

Questions?



Jennifer N. Lutz, Esq.

Shareholder

Pettit Kohn Ingrassia Lutz & Dolin

jlutz@pettitkohn.com



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Associate General Counsel

General Dynamics NASSCO

amanda.chafin@nassco.com