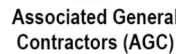
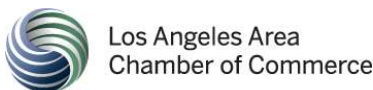
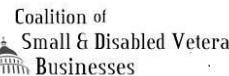


FLOOR ALERT
OPPOSE – SB 1162





August 19, 2022

TO: Members, California State Assembly

SUBJECT: **SB 1162 (LIMON) SALARIES AND WAGES
OPPOSE- AS AMENDED AUGUST 15, 2022**

The California Chamber of Commerce and the organizations listed respectfully **OPPOSE** your **SB 1162 (Limon)**. **SB 1162** undermines employers' ability to hire and subjects employers to a private right of action and penalties under the Private Attorneys General Act (PAGA). The additional burdens and costs this proposal would create will limit an employer's ability to offer higher wages and benefits to new or existing employees and discourage growth or expansion in California. The bill also requires reporting on contractors of data that employers do not have and could be penalized for a third party's failure to provide such data. Further, employers would be required to report data regarding contractors' pay regardless of whether they actually set the pay for those workers.

SB 1162 Undermines the Balanced Approach Enacted in 2017 Permitting Job Applicants to Request Pay Scales for Job Openings:

In 2016 and 2017, the Legislature passed a series of bills that prohibited employers from seeking or relying on applicants' salary history for employment. At the time, discussions surrounding salary information included the issue of disclosure of pay scales for job openings. Several concerns were raised by the employer community.

Employers in competitive industries do not advertise salaries in order to utilize their pay structure as a way in which to lure talented employees. Not having a pay range listed benefits workers in those instances. In industries where everyone makes the same lock-step wages, employees tend to lose out because there is no opportunity for growth based on performance or experience. Further, an employer may assume a pay scale accurately captures the current market for a specific position yet could be wrong. Employers need flexibility to adjust to the market.

On top of the financial devastation caused by COVID-19, a staggering 98% of small businesses have said that the labor shortage has negatively affected their financial situations.¹ This bill unfairly penalizes smaller businesses that are unable to compete in the market against larger businesses or those with higher profit margins because disclosing a pay scale is likely to artificially limit an applicant's interest in a position. Workers are likely then to skip right over their job postings without further consideration of other types of benefits the employer may offer or the type of working environment it offers.

Finally, it is unlikely that posting salary ranges will provide much benefit. Employers determine the appropriate wage and salary to pay an applicant based upon various factors, including skill, education, and prior experience, as well as the funding available for the job. Employers will feel compelled to enlarge the pay scale in order to create sufficient room to adjust that rate depending on the various factors and varied candidates for the job. Such a broad pay scale will not assist an applicant in negotiations.

In light of these concerns, a balance was struck between stakeholders that resulted in what is now existing law: applicants may request the pay scale after an initial interview. This provides applicants with pay scale information but also ensures that employers have flexibility regarding hiring and are not disclosing pay scales to competitors. **SB 1162** undermines this balance and is unlikely to provide much benefit to applicants. Indeed, public sector salaries have long been publicly available and pay disparities still exist. In a *Sacramento Bee* article from several years ago, the article detailed findings that, despite disclosing actual compensation of all employees, women staff in the California Legislature make less than male staff.² The bill is also overreaching in that it is not limited to positions to be performed in California.

SB 1162 Includes A Private Right of Action and Allows Any Employee, Including One Who Never Had Any Intention of Applying for a Position, to Sue for Penalties Under PAGA:

Section of **SB 1162** contains a private right of action. Because it amends the Labor Code, it also exposes employers to lawsuits under PAGA. This includes liability for conduct over which the employer has no control. Proposed section 432.3(c)(5) requires third parties that an employer contracts with to provide the pay scale in all job postings. It then holds the employer liable under a statutory private right of action and PAGA if the third party fails to do this regardless of the fact that it is impossible to monitor the third party at all times. While proponents argue that the private right of action is limited to "injunctive relief," in reality this will be used to extort a monetary settlement with PAGA penalties.

Most significantly, one of the biggest issues with the overreach of **SB 1162** and PAGA is that a plaintiff need not show harm to bring a PAGA claim.³ This means that any employee, even one who was not interested in the open job position at issue, could bring a claim under PAGA for a violation of these sections. PAGA lawsuits have increased over 1,000% since the law took effect in 2004. The data demonstrates that PAGA benefits the plaintiffs' bar, not workers. The current average payment that a worker receives from a PAGA case filed in court is \$1,300, compared to \$5,700 for cases adjudicated by the state's enforcement agency. Even though workers are receiving higher awards in state-adjudicated cases, employers are paying out 29% less per award. This is likely because of the high attorney's fees in PAGA cases filed in court. Attorneys usually demand a minimum of 33% of the workers' total recovery, or \$372,000 on average, no matter how much legal work was actually performed. In addition to receiving lower average recoveries in PAGA cases, workers also wait almost twice as long for their owed wages. The average wait time for a PAGA court case is 23 months compared to 12 months for the state-decided cases.

¹ Survey: Small Businesses on the Brink, Goldman Sachs, available at: <https://www.goldmansachs.com/citizenship/10000-small-businesses/US/infographics/small-businesses-on-the-brink/index.html>

² [How staff pay for men and women compares in California Legislature | The Sacramento Bee \(sacbee.com\)](#)

³ Proposed Section 432.3(d)(1) simply says the plaintiff must be "aggrieved", not that they must show any injury. Even if did use such language, under PAGA courts have held that a plaintiff need not show harm because they are standing in the shoes of the state. See, e.g., *Lopez v. Friant & Associates, LLC*, 15 Cal. App. 5th 773 (2017)

SB 1162 Requires Employers to Report Data Not in Their Control

The bill also proposes adding a report in which employers must publicly identify any labor contractors that they contract with and report race, gender, and pay data for all employees hired through those labor contractors. First, employers do not possess that data. Workers are not required to provide race or gender data and any such data would be in the labor contractor's control. Second, client employers usually do not set contract workers' pay, the labor contractor does. An employer could therefore be penalized for failing to provide data they do not have or face investigation over pay data that they do not set.

For these and other reasons, we respectfully **OPPOSE** your **SB 1162**.

Sincerely,



Ashley Hoffman
Policy Advocate
California Chamber of Commerce

Agricultural Council of California
Allied Managed Care (AMC)
American Property Casualty Insurance Association
Antelope Valley Chambers of Commerce
Associated General Contractors (AGC)
Banning Chamber of Commerce
Beaumont Chamber of Commerce
Biocom California
Big Bear Chamber of Commerce
California Association for Health Services at Home
California Bankers Association
California Beer and Beverage Distributors
California Building Industry Association
California Business and Industrial Alliance
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Craft Brewers Association
California Credit Union League
California Employment Law Council
California Forestry Association
California Grocers Association
California Hospital Association
California Hotel and Lodging Association
California Landscape Contractors Association
California League of Food Producers
California Manufactures & Technology Association
California New Car Dealers Association
California Railroads
California Restaurant Association
California Retailers Association
California State Council of the Society for Human Resource Management (CalSHRM)
California Sheet Metal and Air Conditioning Contractors, National Association (Cal SMACNA)
California Taxpayers Association (CalTax)
California Travel Association (CalTravel)
Calimesa Chamber of Commerce
Carlsbad Chamber of Commerce
Citrus Heights Chamber of Commerce

Civil Justice Association of California
Coalition of Small and Disabled Veteran Businesses
Corona Chamber of Commerce
Construction Employers' Association
Danville Area Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Flasher Barricade Association (FBA)
Fontana Chamber of Commerce
Fresno Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Ontario Business Council
Greater Riverside Chambers of Commerce
Hemet/San Jacinto Chamber of Commerce
Highland Area Chamber of Commerce
Housing Contractors of California
Imperial Valley Regional Chamber of Commerce
Inland Empire Economic Partnership
Job Creators for Workplace Fairness
La Cañada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles Latino Chamber of Commerce
Menifee Chamber of Commerce
Moreno Valley Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation of Independent Business
Oceanside Chamber of Commerce
Orange County Business Council
Orange County Hispanic Chamber of Commerce
Paso Robles Chamber of Commerce
Perris Valley Chamber of Commerce
Pomona Chamber of Commerce
Rancho Cucamonga Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
Simi Valley Chamber of Commerce
Southwest California Legislative Council
TechNet
Tri County Chamber Alliance
True Blue
Upland Chamber of Commerce
Valley Industry & Commerce Association
Visalia Chamber of Commerce
West Ventura County Business Alliance
Western Electrical Contractors Association
Western Growers Association
Wine Institute

cc: Legislative Affairs, Office of the Governor
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AH:am