

California Passes Tough Equal Pay Law: Prepare Now for the January 1, 2016 Effective Date

Labor & Employment Law Update

on October 15, 2015

California Governor Jerry Brown has signed into law an amendment to California's gender pay equality law to make it one of the toughest equal pay laws in the nation. The new law takes effect January 1, 2016, giving California employers just a couple of months to prepare.

California and federal law currently prohibit employers from basing pay on an individual's gender. The California legislature determined that a gender gap of 16 cents on the dollar still exists notwithstanding current laws. Accordingly, the new law includes strict standards with the aim of closing the gender pay gap in California.

Existing law requires equal pay for equal work performed in the same establishment. The new law changes this standard by requiring equal pay for those performing "substantially similar" work regardless of job title. In addition, pay comparisons are not limited to the same establishment, allowing comparisons with employees working at different locations (bona fide differences based on regional cost of living differences are acceptable, but this is going to be subject to challenge).

If a pay differential between substantially similar positions is shown, the employer has the burden to establish that the pay differential is based on one or more of the following permissible factors: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a bona fide factor other than sex, such as education, training or experience. While these exceptions remain the same as existing law, employers will be required to show that each factor was relied upon *reasonably* and that the factors account for the *entire* wage differential.

The new law includes an additional private right of action for employees who claim they have been discharged, discriminated, or retaliated against for exercising their rights under the statute. The law also gives employees the right to disclose, inquire, and discuss wages, which reflect current enforcement practices under the National Labor Relations Act.

California's new equal pay law is expected to increase employment-based claims and litigation. Employers should take the following steps to prepare and limit exposure to such claims:

- Review substantially similar jobs to detect any pay differences.
- Identify the factors that justify any pay differences and organize documentation that shows the factors are reasonably applied and account for the entire differential.
- Ensure recordkeeping policies/practices for wage-related information provide for at least a 3-year retention period.
- Train supervisors on the new requirements, including the employees' right to discuss wages.
- Conduct periodic audits to maintain compliance.

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