



EQUAL PAY ACT

This newsletter summarizes the equal pay act seeking to eliminate the gender wage gap that is codified in Labor Code section 1197.5 (“Equal Pay Act”). This new law is considered one of the most aggressive equal pay laws. As an employer in California, you should be prepared to comply with the new requirements and impacts brought forward with this new law.

What does the Law Require? The new law amends California’s Equal Pay Act and prohibits an employer from paying employees of one sex lower than employees of the opposite sex for “substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.”

The law also bars employers from prohibiting employees from disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise his or her rights under this new law. However, it doesn’t require that the employer disclose another employee’s wages or that an employee disclose his or her own wages in response to a co-worker’s inquiry. But the law allows an employee working in one office location for the employer to challenge the wages paid to an employee holding the same position at a different office location.

The law prohibits employers from retaliating against employees for exercising their rights under the California Equal Pay Act.

The new law also increases recordkeeping requirements from 2 years to 3 years.

So what does this mean? This means that the employer must allow employees to freely discuss their wages. The employer must also keep records of payments to employees. Most importantly, this means that the employer must audit and determine whether a wage differential exists between employees of different sexes.

So what does “skill, effort, and responsibility, and performed under similar working conditions” really mean. This is not clearly explained in the law and is likely the area of most litigation. In general terms, if one person is doing the same job as the other person, the employer cannot pay employees of one sex differently than employees of another sex.

Are there any exceptions?

The only exceptions are related to the determination of whether there is a wage differential. The employer may base a wage differential on one or more of the following factors:

- a seniority system;
- a merit system;
- a system that measures earnings by quality or quantity of production; or

- some other bona fide factor other than sex such as education, training, or experience. However under this factor the employer must also demonstrate that the determination is not based on or derived from a sex-based differential in compensation, is job-related with respect to the position in question, **and** is consistent with a business necessity. The new law defines “business necessity” as an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve. The employer cannot use of this exception as a defense if the employee demonstrates that an alternative practice exists that would serve the same business purpose without producing the wage differential.

What is the potential liability to Employers?

The new law grants employees various rights to pursue claims of unequal pay. The employee may seek claims through the Labor Commissioner or the courts. An employee who successfully claims unequal pay can recover:

- balance of the wages (the difference between the wages);
- interest;
- an equal amount of liquidated damages;
- costs of suit; and
- attorney’s fees, notwithstanding any agreement to work for a lesser wage.

How Can Employers Prepare for the New Equal Pay Act?

The employers should review their handbooks and remove all provisions in their handbooks that do not comply with this new law. Employers should also conduct an internal audit of their pay rates for the same or similar jobs. This audit should determine whether there are differences between wages of different sexes for the same job. If there are differences, the employer should seek counsel to determine whether the difference in wages can be justified under this new law. Lastly, the employer should update all document retention policies to comply with this new law.

For more information on this subject, please contact Chang & Coté, LLP, a full service law firm, at (626) 854-2112. We stand ready to assist you with all of your legal needs.

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