

THE ZAPPIA LAW FIRM

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SPECIAL UPDATE

PRIVATE AND PUBLIC EMPLOYERS

October 8, 2015

Governor Brown Signs California Fair Pay Act

Governor Brown signed Senate Bill 358, the bipartisan California Fair Pay Act, into law on Tuesday with the intention of further improving gender wage equality and boosting worker protections.

"Sixty-six years after passage of the California Equal Pay Act, many women still earn less money than men doing the same or similar work," said Governor Brown. "This bill is another step toward closing the persistent wage gap between men and women."

Senator Hannah-Beth Jackson (D-Santa Barbara), author of the bill said, "Families rely on women's income more than ever before. Because of the wage gap, our state and families are missing out on \$33.6 billion dollars a year. That money could be flowing into families' pocketbooks, into our businesses and our economy."

The current law prohibits employers from paying a woman less than a man when they are both doing equal work at the same establishment. The new law will now require equal pay, regardless of gender, for "substantially similar work."

The new law states:

"An employer shall not pay any of its employees at wage rates less than the rates paid to 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, except where the employer demonstrates:

- (1) The wage differential is based upon one or more of the following factors:
 - (A) A seniority system.
 - (B) A merit system.
 - (C) A system that measures earnings by quantity or quality of production.
 - (D) A bona fide factor other than sex, such as education, training, or experience. This factor shall apply only if the employer demonstrates that the factor 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. For purposes of this subparagraph, "business necessity" means an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve. This defense shall

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not apply if the employee demonstrates that an alternative business practice exists that would serve the same business purpose without producing the wage differential.

- (2) Each factor relied upon is applied reasonably.
- (3) The one or more factors relied upon account for the entire wage differential.”

Additional details re application and enforcement of the new law:

- The Division of Labor Standards Enforcement will administer and enforce this law, and may supervise the payment of wages and interest found to be due and unpaid to employees.
- Employers must maintain records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by the employer for a period of three years.
- Any employee may file a complaint with the division that the wages paid are less than the wages to which the employee is entitled under the new law.
- The division shall keep the name of the employee confidential until the division establishes the validity of the alleged complaint; and the name of the complaining employee shall remain confidential if the complaint is withdrawn before the confidentiality is abridged by the division.
- The new law also prohibits retaliation against employees who invoke the law, protects those who discuss wages and allows claims based on salaries at different workplaces.

Click the following link to be directed to the bill.

http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0351-0400/sb_358_bill_20150831_enrolled.pdf