

# California Expands Fair Pay Act Protections

By Jonathan A. Siegel

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Requiring employers to prove an employee's higher pay is determined on factors other than gender and allowing workers to sue if they are paid less than co-workers of a different gender with different job titles doing "substantially similar" work highlight California's expanded Fair Pay Act ([SB 358](#)), signed by Governor Jerry Brown on October 6, 2015.

The Act provides:

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 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.

Further, every employer must maintain records of the wages and wage rates, job classifications, and other terms and conditions of employment of employees for a period of three years.

The Act also provides workers with protection from discrimination and retaliation for any action taken by an employee to invoke or assist in the enforcement of the Act.

An employer may not prohibit an employee from disclosing the employee's own wages, discussing others' wages, asking questions about another employee's wages, or aiding or encouraging any other employee to exercise rights under the Act. However, the Act states expressly it does not create an obligation to disclose wages.

The new standards likely would make it easier for an aggrieved plaintiff to prevail in a lawsuit. Workers can file expanded claims in court or through the state labor commissioner's office, beginning January 1, 2016.

Jackson Lewis attorneys are available to answer inquiries regarding this new law and assist employers in achieving compliance with its requirements.

## Meet the Author



[Jonathan A. Siegel](#)

Principal  
Orange County 949-885-1360  
Email

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