

California on Brink of Further Expansion of Fair Pay Protections

By Susan E. Groff and Benjamin A. Tulis

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California's legislature is close to passing [three bills](#) to expand the state's fair pay laws. The bills, introduced in early 2017, were designed to expand upon, or clarify, the amended [California Fair Pay Act \(CFPA\)](#).

The bills include:

- *Assembly Bill (AB) 1209*: To require employers with at least 500 employees in California to collect and submit information to the California Secretary of State regarding: (1) the difference between the median and mean salaries of male and female employees located in California who are exempt under the white collar exemptions; and (2) the difference between the median and mean wages of male and female board members who are located in California. The Secretary of State will publish this information on a publicly available website.
- *AB 168*: To prohibit employers from seeking salary history from job applicants.
- *AB 46*: To amend the CFPA to clarify that its provisions apply to both public and private employers.

While all three bills are moving toward adoption, AB 1209 is the closest.

AB 1209

As of September 11, 2017, an amended version of AB 1209 had passed both the Assembly and the Senate over the written objections of groups representing employers. AB 1209 has been amended as follows:

- To provide that wage differentials between men and women are not presumed violations of the CFPA or limit an employer's ability to demonstrate a basis for the wage differential.
- To require employers to update and republish information biennially on July 1 (as opposed to annually, as provided in the original bill).
- To provide that the collection of this information is limited to employees and board members located in California (there was no geographic limitation in the original bill).

Governor Jerry Brown has until October 15, 2017, to sign or veto the bill.

AB 168

AB 168 was passed by the Senate on September 12, 2017, and the Assembly is considering the bill.

The bill prohibits employers from seeking job applicants' salary history. On September 8, 2017, the bill was amended to provide that:

1. An employer may not rely upon the salary history information of an applicant (unless it is disclosed voluntarily and "without prompting");
2. Applicants may voluntarily "and without prompting" disclose salary history information to a prospective employer; and
3. Nothing in the bill shall be construed to allow prior salary, by itself, to justify any disparity in compensation.

AB 46

On September 12, 2017, AB 46 was ordered unanimously approved by a Senate Appropriations Committee and is pending before the legislature. The bill has not been amended since its introduction.

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California already had strong fair pay laws. With the passage of these amendments, employers must be proactive in examining and fixing their pay practices to ensure compliance.

Please contact your Jackson Lewis attorney to discuss these developments and your specific organizational needs.

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