

## **California Broadens Employee Rights to Sue for Gender Wage Differences**

Today Governor Jerry Brown signed the California Fair Pay Act, SB 358, which gives California the most expansive equal pay protections in the nation. While the federal Equal Pay Act of 1963 and California Labor Code already prohibit gender-based wage discrimination, SB 358 amends Labor Code Section 1197.5 to place additional burdens on employers to show that gender-based wage discrimination has not occurred.

First, SB 358 eliminates the "same establishment" limitation common to both federal and California law by allowing employees to compare their pay to any employee employed by the same employer, regardless of location.

Second, while current law prohibits unequal pay for "equal work," SB 358 prohibits unequal pay "for substantially similar work, when viewed as a composite of skill, effort and responsibility, and performed under similar working conditions." This will allow employees to compare their pay to employees who do not perform the same work or who are not employed in the same position.

Third, once an employee establishes unequal pay for substantially similar work, the employer has the burden of proving the wage differential is based upon (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, but only if the factor other than sex is consistent with business necessity. The one or more factors relied upon must account for the entire wage differential.

Fourth, the new law prohibits an employer from discharging, discriminating against, or retaliating against an employee who invokes or assists in the law's enforcement.

These amendments to the Labor Code, effective on January 1, 2016, will make it much easier for employees to challenge wage differentials and shift the burden to employers to prove otherwise. To be prepared for these inevitable legal challenges, employers should examine their pay structures and make sure that any wage differentials between genders for substantially similar work can be justified with documentary proof of at least one of the four factors discussed above.

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