

THE
NATIONAL LAW REVIEW

New Laws Enhance California's Equal Pay Act

Friday, October 21, 2016

On September 30, 2016, California Governor Jerry Brown signed into law two bills designed to address ongoing concern of pay inequity. A.B. 1676 amends the California Fair Pay Act by prohibiting employers from relying on an employee's prior salary to justify a disparity between the salaries of similarly situated employees. S.B. 1063 extends the Fair Pay Act by providing additional protections on the basis of race and ethnicity. A.B. 1676 and S.B. 1063 are effective January 1, 2017.

The Legislature was concerned that the practice of using an applicant's salary history as a basis for current salary unfairly affects women candidates who may have taken time out of the workforce, or who are already unfairly affected by the gender pay gap. Left unaddressed, the Legislature believes such practices will, even unintentionally, perpetuate pay disparity between men and women who perform substantially similar work. Accordingly, under A.B. 1676, prior salary history alone is no longer sufficient to justify pay disparity between men and women who perform substantially similar work.

Along with A.B. 1676, Governor Brown signed S.B. 1063, the Wage and Equality Act of 2016. S.B. 1063 prohibits employers from paying employees of one race or ethnicity less than employees of different races or ethnicities who perform substantially similar work. S.B. 1063 is an extension of the requirements of last year's Fair Pay Act.

Under the Fair Pay Act, employers can no longer rely on the notion of equal pay for equal work. Instead, employees alleging pay disparity must now only show "*substantially similar* work when viewed as a composite of skill, effort and responsibility." This allows employees and the courts to compare wages of employees who perform similar work, even if the job title is different. Likewise, comparisons are no longer limited to the "same establishment," but rather may be a comparison at any of the employer's locations. While the Fair Pay Act specifically addressed gender, its requirements now apply equally to race and ethnicity under S.B. 1063.

California already has stringent laws regarding equal pay. Employers should review their policies and practices to ensure compliance with the Fair Pay Act. With the passage of A.B. 1676 and S.B. 1063, California employers must be careful in assessing employee salary.

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