
UNFINISHED BUSINESS

Bill No: SB 1063
Author: Hall (D), et al.
Amended: 8/19/16
Vote: 21

SENATE LABOR & IND. REL. COMMITTEE: 4-1, 4/13/16
AYES: Mendoza, Jackson, Leno, Mitchell
NOES: Stone

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/27/16
AYES: Lara, Beall, Hill, McGuire, Mendoza
NOES: Bates, Nielsen

SENATE FLOOR: 26-13, 5/31/16
AYES: Allen, Beall, Block, De León, Galgiani, Glazer, Hall, Hancock,
Hernandez, Hertzberg, Hill, Hueso, Jackson, Lara, Leno, Leyva, Liu, McGuire,
Mendoza, Mitchell, Monning, Pan, Pavley, Roth, Wieckowski, Wolk
NOES: Anderson, Bates, Berryhill, Cannella, Fuller, Gaines, Huff, Moorlach,
Morrell, Nguyen, Nielsen, Stone, Vidak
NO VOTE RECORDED: Runner

ASSEMBLY FLOOR: 60-14, 8/23/16 - See last page for vote

SUBJECT: Conditions of employment: wage differential: race or ethnicity

SOURCE: California National Organization for Women

DIGEST: This bill amends the Equal Pay Act to prohibit employers from paying employees a wage rate less than the rate paid to employees of a different race or ethnicity for substantially similar work.

Assembly Amendments address chaptering-out issues with AB 1676 (Campos).

ANALYSIS:

Existing law:

- 1) Prohibits an employer from requiring an employee to refrain from disclosing the amount of his or her wages, or discharging, formally disciplining, or otherwise discriminating against an employee who discloses the amount of his or her wages (Labor Code §232).
- 2) States that 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.
- 3) Provides that the only exceptions to this standard are when the wage differential is based upon one or more of the following factors (Labor Code §1197.5):
 - 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 which only applies if the employer demonstrates that it is not based on a sex-based differential in compensation, is job related, and is consistent with a business necessity. “Business necessity” means an overriding legitimate business purpose which the factor relied upon effectively fulfills. This does not apply if the employee demonstrates that an alternative business practice would serve the same business purpose without producing the wage differential.
- 4) States that each factor relied upon to explain the wage differential must be applied reasonably and account for the entire wage differential (Labor Code §1197.5).
- 5) States that any employer who violates the above section is liable for the amount of the employee’s wages and interest that the employee is deprived in addition to liquidated damages, administered and enforced by the Division of Labor Standards Enforcement (DLSE) (Labor Code §1197.5).
- 6) Requires that employers maintain records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by the employer (Labor Code §1197.5).

- 7) States that DLSE may also commence and prosecute a civil action on behalf of the employee and on behalf of a similarly affected group of employees to recover unpaid wages and liquidated damages (Labor Code §1197.5).
- 8) Specifies that an employer that pays or causes to be paid any employee a wage less than the rate paid to an employee of the opposite sex and required by Labor Code Section 1197.5 is guilty of a misdemeanor and is punishable by a fine of not more than \$10,000 or by imprisonment for not more than six months (Labor Code §1199.5).

This bill expands the prohibitions laid down in the Equal Pay Act to include discrimination based on race or ethnicity. By adding these provisions, this bill, among other things:

- 1) Duplicates the provisions laid down in the Equal Pay Act regarding gender, but restates them to prevent wage rate discrimination based on *race or ethnicity*.
- 2) Mirrors the enforcement mechanism and penalties for wage rate discrimination based on gender and includes discrimination based on *race or ethnicity*.

Comments

Need for this bill? The author believes that the Equal Pay Act, in its current form, fails to address the multifaceted consequences of biases that permeate every aspect of our society. While it is an improvement on the original Equal Pay Act, it still does not recognize that wage discrimination is not confined to women. Women of color, who are paid less than white women, should be able to make a claim under California's Equal Pay Act. Men of color, who are paid less than white men, should be able to make a claim under California's Equal Pay Act as well. Ideally, other protected classes, such as members of the LGBTQ or disabled community should be included in this remedy, but the addition of race and ethnicity begins the process of making pay equity in California more inclusive.

This bill's relationship to SB 358. This bill adopts an identical approach to SB 358 (Jackson, Chapter 546, Statutes of 2015) in addressing wage discrimination. It places the responsibility on the employer to prove or demonstrate that a wage differential between employees is not occurring as a result of a worker's race or ethnicity. Additionally, this bill uses the definitions specified in SB 358 regarding the nature of "business necessity" and "substantially similar work" to close perceived loopholes in the law which were used to justify discriminatory wage rate differentials. "Business necessity" is taken to mean an overriding legitimate business purpose which validates a wage variance, such as paying someone more

because they possess a higher degree which is essential to their duties. Only under this definition does “business necessity” justify wage rate differences. Also, in SB 358 “substantially similar work” replaced “equal work” as a comparative term for wage rates. This removed the ability of employers to use different titles in order to justify paying unequal wage rates for people who were doing similar work.

Overall, this bill broadens the specifications set down in SB 358 and applies them to racial and ethnic protections.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee, there would be unknown, likely significant costs to the Department of Industrial Relations (DIR) to process claims associated with wage discrimination based on race or ethnicity.

DLSE does not currently receive any pay discrimination claims on the basis of race or ethnicity, making it difficult to predict costs associated with this bill. DIR notes, however, that the Department of Fair Employment and Housing (DFEH) received roughly 6,500 claims in 2014 alleging employment discrimination based on race. As a point of comparison, if DLSE received 1% of the claims DFEH received, this would generate workload for DLSE of approximately \$600,000 (special fund) in the first year and \$570,000 (special fund) in subsequent years.

SUPPORT: (Verified 8/23/16)

California National Organization for Women (source)
American Association of University Women California
American Civil Liberties Union of California
California Catholic Conference, Inc.
California Domestic Workers Coalition
California Employment Lawyers Association
California Federation of Teachers
California Labor Federation, AFL-CIO
California Reinvestment Coalition
California State Conference of the National Association for the Advancement of Colored People
California Teachers Association
Centro Laboral de Graton
City of Compton
Coalition for Humane Immigrant Rights of Los Angeles
Courage Campaign
Equal Rights Advocates
Greater Sacramento Urban League

Los Angeles County Federation of Labor
Los Angeles County Professional Peace Officers Association
National Coalition of 100 Black Women, Inc. - Sacramento Chapter
Rainbow Services
Sacramento National Organization for Women
San Diego County Court Employees Association
San Luis Obispo County Employees Association
Service Employees International
The Greenlining Institute
The Organization of SMUD Employees
The Women's Foundation of California
United Domestic Workers of America/AFSCME Local 3930
134 individuals

OPPOSITION: (Verified 8/24/16)

Agricultural Council of California
California Bankers Association
California Chamber of Commerce
California League of Food Processors
California Manufacturers & Technology Association
California Pool and Spa Association
California Restaurant Association
California Retailers Association
California State Association of Counties
California Travel Association
Civil Justice Association of California
League of California Cities
National Federation of Independent Business
Western Electrical Contractors Association, Inc.
Western Growers Association

ARGUMENTS IN SUPPORT: Proponents argue that despite being the most diverse and prosperous state in the nation, many California workers continue to suffer from a chronic racial and ethnic wage gap. A 2013 study revealed that Asian American women make 90 cents, African American women make 64 cents, and Latina women make just 54 cents for every dollar that a white man earns. The wage gap is not only between men and women, as African American men earn just 75% of the average salary of a white male.

Proponents state that last year, SB 358 began to address wage inequality by prohibiting employers from paying employees a wage rate less than the rates paid to employees of the opposite sex for substantially similar work. However, gaps in the law still persist. The 65-year old California Equal Pay Act fails to include one of the largest factors for wage inequity – race and ethnicity. As California continues to grow and diversify, large segments of our state’s minority population are facing devastating economic inequality. No employee should be denied an equal wage for an equal day of work. SB 1063 builds upon the important steps California has taken to address wage inequality and will set a national standard to ensure that every worker is paid a fair and equitable wage.

ARGUMENTS IN OPPOSITION: Opponents state that SB 358, which expanded and strengthened Labor Code Section 1197.5 regarding equal pay for women, just went into effect at the beginning of this year. SB 358 is the strongest equal pay law for women in the country. The new standards introduced by SB 358 will likely be tested over the next several years in litigation. In fact, there is already a class-action lawsuit pending alleging an equal pay violation with regard to female attorneys in the insurance industry. While they believe that no employee should be paid differently based upon any protected classification, they believe that the Legislature should allow time for employees, employers, and the courts to interpret and implement the new boundaries of the equal pay law before seeking to amend and expand it even further.

Opponents believe that the Legislature needs to give SB 358 sufficient time to determine whether its changes work and how they impact the litigation environment before its provisions are expanded. Employees who believe they have been discriminated against with regard to pay may still seek relief under the Fair Employment and Housing Act (FEHA). FEHA covers all protected classifications, including race and ethnicity.

ASSEMBLY FLOOR: 60-14, 8/23/16

AYES: Alejo, Arambula, Atkins, Baker, Bloom, Bonilla, Bonta, Brown, Burke, Calderon, Campos, Chau, Chávez, Chiu, Chu, Cooley, Cooper, Dababneh, Dodd, Eggman, Frazier, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Gray, Hadley, Roger Hernández, Holden, Irwin, Jones-Sawyer, Lackey, Levine, Lopez, Low, Maienschein, McCarty, Medina, Mullin, Nazarian, O'Donnell, Olsen, Quirk, Ridley-Thomas, Rodriguez, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Waldron, Weber, Wilk, Williams, Wood, Rendon

NOES: Achadjian, Bigelow, Brough, Dahle, Beth Gaines, Gallagher, Grove, Harper, Jones, Mathis, Melendez, Obernolte, Patterson, Wagner

NO VOTE RECORDED: Travis Allen, Chang, Daly, Kim, Linder, Mayes

Prepared by: Brandon Seto / L. & I.R. / (916) 651-1556
8/24/16 11:38:31

**** **END** ****