

Memo

To: CA Pay Equity Task Force (Co-Chairs Julie Su and Lauri Damrell)

From: Evaluating Policy and Practice Sub-Committee (Jennifer Reisch and Leslie Simon)

Re: Sub-Committee Work Plan (Draft)

Date: October 3, 2016

**This document is drafted solely for discussion during the October 24, 2016 Task Force meeting and should not be construed as legal advice or a final recommendation of the Task Force. The information contained herein does not necessarily represent the opinions or conclusions of the Task Force. The posting of this information does not create requirements or mandates.*

Rationale:

In order to ensure robust implementation of the California Fair Pay Act of 2015 (SB 358), employees must be able to effectively advocate for themselves, individually and through the organizations that represent them. Employees' capacity to exercise their rights under the Fair Pay Act, including their right to be paid equally for substantially similar work¹ and to inquire about or discuss wages, will vary depending on the nature of the industry in which they work, the level and type of job they hold, and whether or not they are represented by a union. For instance, non-unionized employees working in professional or managerial positions often are expected to negotiate for their salaries and other forms of compensation while low-wage workers are hired at a rate set by their employer with little or no ability to negotiate their wages. In the professional/managerial environment, it is more likely that a forum for employees to raise the issue of their pay with an employer actually exists, whereas no such forum exists for most employees working in lower wage occupations.

In unionized workplaces, the collective bargaining process provides an additional forum for addressing these issues on a more global (workforce-wide) level, as unions have the ability to negotiate regarding compensation for entire job classifications and to request information about employee compensation and criteria for determining salaries (for those workers covered by a CBA) in the course of negotiations. Internal grievance procedures also provide a vehicle for

¹ Under current law, employers may not pay any employee less than another employee of the "opposite sex" who does substantially similar work under similar working conditions. Recently-passed legislation, SB 1063 (Hall), expands the protections of the California Equal Pay Act to also require equal pay for employees of "another race or ethnicity" who perform substantially similar work. The law was signed by Governor Brown on September 30, 2016 and will take effect on January 1, 2017.

individual unionized workers to challenge pay decisions that they believe to be unfair. Unions therefore are well-positioned to help ensure that compensation structures are properly evaluated and that pay inequities are corrected.

Work Plan:

The Evaluating Policy & Practice Sub-committee is focusing on developing tools for unions and employees to educate them about the California equal pay law and to enable these groups to play proactive roles in ensuring compliance with the law and changing the policies and practices that perpetuate or contribute to pay inequities.

Goal # 1: Assess needs and identify existing resources and tools available for workers and unions

Activity/Strategy: Conduct and compile research

We plan to begin our work by researching what information is already available on these issues, identifying and compiling best practices and materials for unions to help them address pay equity issues in bargaining and grievance procedures and to develop model CBA language.

Specifically, with respect to the unionized sector, we are reaching out to California unions to 1) learn about any successful work done to address the issue of Pay Equity through negotiations, 2) to determine what types of materials would be helpful for unions regarding the California Fair Pay Act, and, 3) to see if local unions would be interested in having presentations for their members and/or staff regarding the Act.

With respect to individual and non-unionized employees, our research will focus on compiling and identifying any gaps in existing “Know Your Rights” materials designed to educate these workers about the requirements of the Fair Pay Act, including the FAQs published by the DLSE (http://www.dir.ca.gov/dlse/California_Equal_Pay_Act.htm) and the Fact Sheet developed by Equal Rights Advocates (<http://www.equalrights.org/legal-help/know-your-rights/california-fair-pay-act/>).² Through education and outreach with low- wage worker advocates and organizers, including webinars and presentations with worker centers, ERA and its partners in the California Fair Pay Collaborative (which include the Legal Aid Society-Employment Law Center of San Francisco and California Women’s Law Center of Los Angeles) will assess the needs of low-wage workers and non-union worker organizations with respect to understanding and taking action to protect and exercise workers’ rights to fair pay. We also plan to research ways in which nonunion employees can find salary information regarding other people doing similar work, and develop materials that can be translated into multiple languages.

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² This fact sheet is also available in Spanish, at <http://www.equalrights.org/legal-help/know-your-rights/california-fair-pay-act/?spanish=true>.

Goal # 2: Create tools and materials tailored to help California workers and unions understand and exercise rights under the Fair Pay Act

Activity/Strategy: Develop model language and practical tips that reflect California law³

In the unionized sector, any work that has been done to date to identify and/or develop best practices, such as model CBA language or exemplar information requests (from unions to employers) relating to pay equity, occurred prior to the enactment of California's Fair Pay Act. Therefore, after we have gathered and organized any samples or models that may exist, we will work to update these materials in order to develop examples of best practices that take into account California's equal pay laws and any new/recently-enacted federal policies that will impact California employers.⁴

We will then work to develop model materials for bargaining -- including model contract language, information requests, and other materials needed in the collective bargaining process -- as well as educational materials that can be used to train union officers and stewards regarding the Act and a union's role in ensuring compliance with its requirements.

With respect to the non-union sector, we plan to develop one or more "How-To" tools for workers and non-union worker organizers/advocates (e.g., worker centers) to protect, exercise and vindicate their equal pay rights. These tools will include tips on how and where to find salary information about similarly situated workers when it is not provided by the employer and will provide guidance to workers and advocates about navigating the claims process by explaining the roles and rules of the state enforcement agencies charged with implementing and enforcing the law. Equal Rights Advocates will seek input on the content and format of these tools from our partners in the California Fair Pay Collaborative --the Legal Aid Society-Employment Law Center and California Women's Law Center--as well as the participants in our trainings and workshops with low-wage workers and worker leaders.

While some of our Sub-Committee's research may overlap with (or compliment) work being done by other sub-committees, we want to avoid duplication of effort and make sure the materials we develop are not duplicative of the work being done by other subcommittees. To do this, we need to better understand what specific material or other "work product(s)" each sub-committee will be responsible for developing.

³ We will also seek to ensure that the requirements and rights established by recent legislation further amending the California Equal Pay Act (including SB 1063 and AB 1676) are incorporated into and reflected in the tools and materials we develop.

⁴ For example, the EEOC recently announced that, beginning in 2018, all employers who are required to submit annual EEO-1 reports will have to include employee pay data in those reports, broken down by occupational category, sex and race/ethnicity. See <https://www.eeoc.gov/eeoc/newsroom/release/9-29-16.cfm>. This requirement may be useful in promoting and facilitating information sharing with respect to pay equity issues between unions and employers.