



Action of the Commission Creating Task Force

Overview

In January 2016, SB 358, the California Fair Pay Act, took effect. Among other things, this law mandates that employers pay women and men equally for *substantially similar* work. The momentum is strong in California to redress gender pay inequity, and nationwide that momentum continues to grow. Many women and their allies recognize that we are in a moment of real change. We have the opportunity to take focused action towards ending pay inequalities that have persisted for centuries.

As California leads the nation in implementing stronger equal pay protections, we are in many ways entering uncharted territory. Instead of expecting California employers to rely on complaint-based enforcement setting precedent, the Task Force can design proactive implementation mechanisms to support compliance. Effective policy change can be less robust when based solely on waiting for complaints to be filed. More meaningful implementation of California's new Fair Pay Act requires engaging with employers and the private sector before employees file complaints. A forum is needed for diverse interests to engage in a dialogue that will operationalize the law, encourage compliance, and facilitate an informed understanding of the importance of gender equity in the workplace.

In response to the *Fair Pay Act*, and to provide a forum for this dialogue, The CCSWG created a California Pay Equity Task Force. The Task Force includes 19 members, each identified and nominated by the CCSWG Gender Equity in the Workplace and Employment Subcommittee and approved by the CCSWG chair. Task Force members represent organizations, agencies, and groups with subject-matter expertise and/or experience in workplace policy and compensation. Members represent employers and employees. The first convening of the Task Force is in July 2016 followed by two additional meetings in August and October 2016. Additional meetings will take place no less than six times per year until July 2018.

As an independent state agency with convening authority, the CCSWG is in a neutral position to bring together stakeholders who will identify solutions to the challenges companies have in understanding and/or complying with the new law. Additionally, the CCSWG is also uniquely positioned to facilitate meaningful implementation of SB 358 because the legislation's author

Senator Hannah-Beth Jackson; the law's enforcer, Labor Commissioner Julie Su; and a practicing employment law attorney, Commissioner Lauri Damrell, all currently serve on the CCSWG as Commissioners. Commissioners Damrell and Su are also members of the CCSWG's Gender Equity in the Workplace Subcommittee and will co-chair the Task Force. Senator Jackson will serve as a legislative member of the Task Force. The Task Force will also seek out and designate a Diversity Officer to work closely with the Task Force in its focus on women and women of color.

The California Division of Labor Standards Enforcement, which implements and enforces the California Equal Pay Act, including the provisions of SB 358, will provide in-kind professional support to the Task Force. Policy, research, and communications staff from CCSWG will also provide professional support for the Task Force.

Mission

Ensure effective implementation of the strongest equal pay law in the nation by supporting meaningful compliance and active awareness through the facilitation of ongoing dialogue among diverse parties and interests.

Goals

- 1) Bring together diverse parties and interests from the workplace and employment sector to help ensure meaningful implementation of SB 358.
- 2) Convene state agency representatives, industry liaison groups, employers, advocates, legal experts, policymakers, social scientists, and employees to speak candidly as they receive and disseminate information through dialogue about pay in/equity and compliance with the new law.
- 3) Engage the private sector to develop solutions to compliance challenges. Currently, many companies are working with social scientists and diversity experts to identify solutions that ensure gender equity in pay and workplace policy. The Task Force can borrow from this practice by including social science and corporate diversity experts in discussions.
- 4) Understand employers' perceived barriers to compliance and identify what can be done to remove those barriers.
- 5) Identify and engage employers who are taking proactive steps to ensure they are not discriminating by gender in compensation; help them comply with the new law and support women's equality in the workplace.
- 6) Outreach to and inform employees about equal pay protections and their rights under the new law.

- 7) Produce a substantive guide that will facilitate employer and employee understanding of the law and the importance of gender equity in the workplace and compensation.
- 8) Provide ongoing written guidance about the purpose of the law, complete with steps to help with compliance.

Task Force Seats

Commissioner Julie Su and Commissioner Lauri Damrell, CCSWG

California Labor Commissioner, or representative, and Members of the CCSWG Gender Equity in the Workplace and Employment Subcommittee

Senator Hannah-Beth Jackson; Assemblymember Cristina Garcia; Assemblymember Marie Waldron; VACANT: Republican Senator

California State Legislators, preferably one from each party and from each house of the Legislature, or representatives

Kevin Kish/Phoebe P. Liu, CA Department of Fair Employment and Housing

Representative from the CA Department of Fair Employment and Housing

Kelly Jenkins-Pultz, U.S. Department of Labor Women's Bureau

Federal government representative

Jennifer Reisch, Equal Rights Advocates

An individual who meets several of the following criteria: works in or represents workers in an industry where wage discrimination is common; a discrimination or employment lawyer with an emphasis on gender equity and with expertise about discrimination against women of color; representative from women's advocacy groups

Tamekia N. Robinson, SEIU Local 1000

Labor union representative

Jeanna Steele, Sunrun, Inc.

An individual who meets several of the following criteria: in-house corporate representative from small, mid-size, or large companies in different sectors (e.g., technology, finance, retail, restaurants/hotels, health care); representative from in-house employment attorneys or human resource

Jennifer Barrera, CA Chamber of Commerce

Representative from employer association such as the Chamber of Commerce

Victoria Pynchon, She Negotiates

Professional women's consultant

Leslie Simon, International Alliance of Theatrical Stage Employees Local 871
Employment law industry expert

VACANT

Industry liaison such as a member of the Bay Area Council

VACANT

Chief Diversity Officer, or equivalent, such as a person who works in human resources and is responsible for diversity

Kimberlee Shauman, Ph.D., University of California Davis

A person with a background in statistical research, particularly in the area of gender analysis

Daniel C.Y. Kuang, Ph.D., Biddle Consulting Group, Inc.

A person with a background in industrial-organizational psychology

Brynan Sullivan, Legislative Women's Caucus Principal Consultant

Legislative Women's Caucus

Enforcement

Administrative Enforcement

The California Division of Labor Standards Enforcement administers and enforces provisions of the Equal Pay statute, including the following:

- Investigates complaints filed by an employee under the Equal Pay Act when there is an allegation of wages paid that are less than the wages the employee is entitled to pursuant to the provisions of the Act.
- Supervises the payment of wages and interest found to be due by an employer who violates the law. The employer is liable for the amount of wages and interest the employee is deprived. The employer is also liable for liquidated damages.
- Addresses retaliation claims. Employers are prohibited from retaliating against employees for exercising their rights under the Act. This includes the newly adopted retaliation provisions under SB 358, which extend the existing enforcement mechanisms for wage discrimination under the Equal Pay Act to claims of retaliation and provide a one-year statute of limitations for retaliation claims filed in civil court. Employees have six-months after the occurrence of the alleged retaliatory action to file an administrative claim.

Civil Enforcement

Any employee aggrieved by a violation of California's Equal Pay Act, including the new standards implemented by the passage of SB 358, may either file an administrative complaint

with the Division of Labor Enforcement or may bring a civil action in court against an employer for violating the law.

The California Division of Labor Standards Enforcement or the Department of Industrial Relations may also commence and prosecute a civil action to recover unpaid wages and liquated damages on behalf of an employee or affected group unless the employee or affected group requests otherwise.

Proposed Products (Deliverables) for Task Force Discussion

- 1) Create SB 358 *Considerations and Guidelines*.
- 2) Use different methods to collect information about best practices:
 - a. Perform a content analysis of best practices published by law firms, unions, and/or human resource organizations.
 - b. Gather information from the perspectives of smaller and larger companies about the logistical steps they took to evaluate how gender relates to compensation, promotion, and hiring in their companies.
 - c. Utilize an expert in gender compensation, promotion, and hiring equity, specifically about how to conduct audits.
- 3) Create best practice document(s) that is (are) useful to both human resources officers and potential complainants. Base information on the content analysis, company information, expert information, and other methods as identified. The document should guide employers in how to achieve pay equity and inform employees of their rights and the remedies available to them in the case they have a complaint.
- 4) Develop templates or forms from the best practices and make them available to companies. For example, self-audit templates. There is likely no one-size-fits-all model so these forms may need to differ by company size or by other factors such as industry. The templates and forms might assist companies with documenting factors related to starting pay, current pay, hiring, and promotions. The information in the templates and forms can also guide company policies and procedures.
- 5) Develop a model performance review system for companies to utilize.
- 6) Suggest proactive measures that could prevent perpetuating pay disparities to enforcement agencies. These measures might include ordering, as a remedy or a point of settlement, specific training on best practices or a self-audit in a retaliation case or *Equal Pay Act* claim.
- 7) Interim Report.
- 8) Toolkit

Logistics

Task Force Operations

- 1) Task Force co-chairs to nominate members of the Task Force.
- 2) CCSWG Chair to appoint each nominee.
- 3) Task Force will adopt rules of order during first meeting.
- 4) Task Force co-chairs will convene the first meeting of the Task Force. At the first convening they will identify a subcommittee to organize meetings with various different constituents.
- 5) Produce an Interim Report by April 2017.
- 6) Task Force to hold a constituent meeting no later than one month after the first convening to identify discussion items and topics based on input at the constituent meeting.
- 7) Following the constituent meeting convene the Task Force pursuant to the requirements of the Bagley-Keene Open Meeting Act.
- 8) Identify issue-areas based on the constituent meeting and input. Create two-person subcommittees based on those issue-areas.

Meeting Locations

The Task Force will convene meetings in the following cities. The primary meeting location is Sacramento:

- Sacramento
- San Francisco
- Silicon Valley
- Los Angeles
- Orange County

Considering the costs associated with securing travel, a meeting space, the availability of staff, and the availability of state agency representatives, it is proposed that Sacramento, California be selected as the permanent location for Task Force public meetings. The Task Force will make an effort to meet at least one time per year in each of the following areas: San Francisco, Silicon Valley, Los Angeles, and Orange County.

Options for securing a meeting space in Sacramento include:

- California State Library Conference Room, 900 N Street, Sacramento, Room 340.
\$0
- Department of General Services Conference Room, 707 Third Street, West Sacramento.
\$0
- Stanley Mosk Library and Courts Building, Meeting Room, 914 Capitol Mall, Sacramento.
\$0

- Orrick law firm, 400 Capitol Mall, Suite 3000, Sacramento
\$0

Options for securing meeting spaces in other major metropolitan areas: (accessible to the public; must have ground-level meeting space or elevators)

- San Francisco, The Orrick Building, 405 Howard Street, San Francisco, CA
- Silicon Valley, 1000 Marsh Road, Menlo Park, CA
- Los Angeles, 777 South Figueroa Street, Suite 3200, Los Angeles, CA
- Orange County, 2050 Main Street, Suite 1100, Irvine, CA

Budget Projection, Annual Costs

- 1) Meeting Space: \$0 annual costs
- 2) Administrative Costs: \$60,000 – \$125,000

CCSWG staff time broken out between four staff members:

- 25% Policy Director (AGPA) for coordination among Task Force members including agencies and legislative offices, research, reports, and basic administrative duties
- 25% Public Outreach (SSA) for communications, outreach, website coordination, and basic administrative duties
- 75% Research Consultant (RPS II). Quantitative and qualitative research and design, data collection, data analysis, writing, editing, presentations as needed, subcommittee participation and management, basic project management.
- 15% Executive Director (CEA) for oversight of staff work, networking, coordination of resources, and budget management.

- 3) Research Costs: \$ 0
 - Coordinated with a Legislative Office and the California Research Bureau
- 4) Supplies: \$ 1,000
 - Deducted from the Commission’s estimated expenditure authority for “Goods”
- 5) Printing: \$1,000
 - Deducted from the Commission’s estimated expenditure authority for “Printing”
- 6) Deliverables: \$6,000 – \$200,000

Substantive written materials and guides, including a toolkit and comprehensive reports, will be identified and developed through the Task Force process. Once the Task Force convenes, then the composition and extent of guidance documents as well as next steps will

be based on information gaps and employer and employee needs identified by the Task Force.

- Online *Considerations and Guidelines*, in addition to publication of best practices guide and model forms and templates, created and posted on a designated page of the CCSWG website \$6,000
- Online *Considerations and Guidelines*, in addition to publication of best practices guide and model forms and templates, created and posted on a website designed specifically for the California Pay Equity Task Force and its guidance documents \$15,000
- Comprehensive Public Education Outreach Plan, including all materials and staff work \$200,000