

California Pay Equity Task Force

August 19, 2016

MINUTES

CALL TO ORDER: Co-Chair Commissioner Julie A. Su welcomes the members of the Task Force and members of the public and calls the meeting to order at 10:12 a.m. Commission Policy Director Bethany Renfree calls the roll. Those attending are Co-Chair Commissioner Julie A. Su, Kelly Jenkins-Pultz, Tamekia N. Robinson, Jeanna Steele, Jennifer Barrera, Krisserin Canary (for Victoria Pynchon), Leslie Simon, Kimberlee Shauman Ph.D., Daniel C.Y. Kuang Ph.D., Rhoma Young, Jennifer Reisch, and Bryn Sullivan. A quorum is established.

Commission Staff in attendance include Nancy Kirshner-Rodriguez, CCSWG Executive Director; Bethany Renfree, CCSWG Policy Director; Dr. Tonya D. Lindsey, CCSWG Senior Research Consultant; Emily Van Atta, CCSWG Fiscal and Operations Director; Stephanie Flores, CCSWG Communications and Outreach Adviser; Marian Johnston, CCSWG Staff Counsel; and, Chloe Kuske, CCSWG Policy Intern. Also present: Doris Ng and Tamara McDonald, Labor Commissioner's Office staff.

AGENDA: The Agenda is reviewed and confirmed by Task Force members. Tamekia N. Robinson motions to approve the Agenda. Leslie Simon seconds. The Agenda is approved by a unanimous vote.

MINUTES FROM JULY 22, 2016 MEETING: The minutes from the July 22, 2016 meeting are reviewed. Leslie Simon motions to approve the Minutes. Rhoma Young seconds. The Minutes are approved by a unanimous vote.

PRESENTATIONS

Dr. Daniel C.Y. Kuang – Understanding the Pay Gap—A Practitioner's Perspective

Dr. Kuang presents insight he has from his experience modeling compensation data and discusses a proactive analysis to identify pay gaps. Explaining the pay gap is a complicated issue. He finds that starting salary is a major factor in explaining the gender pay gap. Data systems rarely include complete data and often the data are incomplete and unreliable. He suggests keeping analyses simple and focused. He finds that in pay disputes the plaintiffs have a tough time proving pay disparities statistically; the defense has an easier time because it focuses on debunking statistical claims. For instance, often sample sizes are small so it is difficult to find

significant differences in pay. He recommends plaintiffs find a statistical expert and try different quantitative analyses such as econometric models rather than only cohort analyses.

During and after the presentation a discussion ensues that includes Dr. Daniel C.Y. Kuang, Jennifer Reisch, Dr. Kimberlee Shauman, Leslie Simon, Jennifer Barrera, Jeanna Steele, Kelly Jenkins-Pultz, Krisserin Canary, and Task Force staff, Doris Ng. At various points they discuss whether or not starting salary is a bonafide factor in justifying a wage gap, if pay analyses are tainted by discrimination in and of themselves, how substantially similar work factors in, how structural factors play a role in pay differences over time, such as the concentration of women in lower-paying occupations. The group also discusses the ways in which performance evaluations create and maintain the gender wage gap.

Tamekia N. Robinson, Vice President for Organizing/Representation
SEIU Local 1000— The State Classification System—the Union’s role

Ms. Robinson presents information about the state job classification system. These classifications include minimum qualifications as well as a summary range of typical job duties. All state civil service employees have a job classification in which they work. Establishing job classes and salaries include checks and balances in the system. This system includes Cal HR, State Personnel Board, and unions. Cal HR sets salaries. State Personnel Board approves job classes. The union makes certain, through collective bargaining and review, that job class allocation and salary is fitting as well as that employees have upward mobility, the state has its needs met for recruitment and retention, and vacancy rates are minimized. Real life scenarios are presented.

During and after the presentation a discussion ensues that includes Tamekia Robinson, Kelly Jenkins-Pultz, Rhoma Young, Leslie Simon, Jennifer Reisch, Commissioner Julie A. Su, Dr. Kimberlee Shauman, and Task Force staff, Nancy Kirshner-Rodriguez. At various points they discuss state workers being hired away by private contractors, outsourcing, knowledge transfer from outside contractors, having real data to analyze gender wage gap, types of data to be made available, private sector data, titles and similarity of jobs, the trend at the county level, the consolidation of job classes, special classifications, geographic differences in pay, how to help employers be in compliance, and the public and private sector working together.

CONSIDER PROCESS FOR RESPONDING TO TASK FORCE REQUESTS AND PROCESS FOR COLLECTING, SHARING AND POSTING RELEVANT INFORMATIONAL MATERIALS

A discussion ensues that includes Jeanna Steele, Jennifer Reisch, Rhoma Young, Jennifer Barrera, Commissioner Julie A. Su, Dr. Kimberlee Shauman, and, Staff Counsel, Marian

Johnston. At various points they discuss who is making a request, if the Task Force makes referrals, non-profit versus for-profit organizations, employer and employee resources, making resources available online, legal terms, personal/professional versus Task Force work, and disclaimers.

Staff Counsel, Marian Johnston, says she is uncomfortable with the Task Force, an entity of the Commission, directing the public to for-profit resources. It is permissible to provide the public with resources regarding non-profit organizations, but not for-profit. Counsel also explains that anything brought up to the Task Force during a public meeting is a matter of public record; therefore, members of the public should be made aware prior to seeking assistance that any request brought before the Task Force is a matter of public record. She adds that, under Bagley-Keene, anyone can come to the Task Force meetings and make a statement.

The Process for Responding to Task Force Requests is reviewed and confirmed by Task Force members. Leslie Simon motions to approve the Process. Rhoma Young seconds. The Process is approved by a unanimous vote.

The Process for Collecting, Sharing, and Posting Informational Materials Relevant to the Task Force is reviewed and confirmed by Task Force members. Tamekia N. Robinson motions to approve the Process. Rhoma Young seconds. The Process is approved by a unanimous vote.

The new Diversity Officer for the Task Force, Tamara McDonald, Leadership Specialist with the Labor Commissioner's Office, is introduced.

The Commission's intern, Chloe Kuske is acknowledged for all her work on the Task Force.

WORKING DEFINITIONS

Task Force members discuss the concepts from SB 358 they think should be defined. Among the concepts discussed are substantially similar work; rate versus wage; opposite sex; effort or physical exertion; and skill, effort, and responsibility.

Task Force members discuss goals for defining concepts. Generally, Task Force members seek guidance about what to consider regarding each concept rather than offering word for word definitions of concepts. These goals also include identifying processes that impact decisions, publicizing the law, guiding employers and employees about what they could do, providing employees and employers the right questions to ask, and identifying terms or phrasing from the

law. Examples of questions include: what are the physical demands of the job; do job descriptions match actual tasks expected to be performed?

The discussion of substantially similar work includes information about offering examples of substantially similar jobs, how to analyze what is substantially similar, offering broad strokes instead of strict guidance, tasks versus duties, content of jobs, and legal cases and cited sources.

The discussion of rate versus wage includes what counts as a wage.

The discussion of opposite-sex includes that the language of opposite-sex is binary and not really reflective of other California law in understanding gender.

The discussion of *bona fide* factors includes that this means a pay difference is based on or derived from something other than sex. There is no case law available as to what the universe of those factors might be.

The discussion of effort or physical exertion includes the difference between what people think a job should entail and what is actually done. They also discuss providing examples of physical requirements. For instance, someone needs to lift 20 lbs. for a certain amount of time; or, showing why such a requirement is necessary for what the job actually entails.

The discussion of skill, effort, and responsibility includes job requirements, performance issues, how the job gets done, and performance measurements. Task Force members also discuss the kinds of measures and concepts on which people might not be evaluated, such as “team building” and “collaboration,” that may not be currently used to evaluate employees.

SUBCOMMITTEE UPDATE

Questions posed to the subcommittees about Task Force products and deliverables offer structured guidance to help subcommittees move forward. Subcommittees are asked to break into their groups and discuss what they think their focus is as a subcommittee, including tools to smaller employers, how low-wage workers might be affected by the law, and how they can spread the word about SB 358. This outreach involves understanding who needs to know the subcommittee subject matter, how to reach this audience, and what each member envisions their subcommittee will produce. Finally, members are asked to also consider what each subcommittee needs to know from other subcommittees as well as to discuss their timelines.

Subcommittees meet briefly. Task Force members update the larger group about their work since the last meeting.

Dr. Shauman discusses the Evaluating Job Classifications subcommittee and the document they prepared entitled *Job Classification Data Rationale*. This subcommittee might propose processes to help employers and employees look at their jobs and assess them, provide a checklist of processes to assess jobs, and build models for job classification schemes. The subcommittee could also provide ways for employees to gather information so they can figure out if there is a pay gap for their position.

Task Force members discuss using the EEO-1 job scheme and that it might be difficult to provide small employers specific tools for evaluation. The Task Force might offer guidance about small employer compensation processes by helping these employers pose the right questions. They can also help educate employees.

Tamekia N. Robinson, Kelly Jenkins-Pultz, Commissioner Julie A. Su, Jennifer Reisch, Leslie Simon, Dr. Daniel C.Y. Kuang, Dr. Kimberlee Shauman, and Task Force staff, Doris Ng discuss future presentations they would like to see, how to create guidance, what kinds of questions will be useful to offering guidance, what kinds of scenarios to offer in the guidance, compression analyses, low-wage workers and the role of unions, outreach, best practices from unions in the 1970s or 1980s, and EEOC existing guides.

PUBLIC COMMENT: Commissioner Julie A. Su asks if there is public comment about any of the agenda items. There is no public comment.

ADJOURNMENT: Upon motion duly made, seconded, and unanimously passed, Co-Chair Commissioner Julie A. Su adjourned the meeting of the California Pay Equity Task Force at approximately 4 o'clock p.m.