

Report from the Evaluating Job Classifications Subcommittee

Re: Subcommittee Deliverables

**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.*

Subcommittee Goal/Deliverables: The Evaluating Job Classifications subcommittee will provide model job classification schemes with information on the types of data that should be collected to support effective pay equity evaluations, audits and reporting.

Rationale: Employers may limit the likelihood of California Fair Pay Act claims by reviewing their job classification systems to ensure that "substantially similar" jobs are paid equally and that between-job pay differentials are justified by "bona fide factors other than sex" that are job-related and consistent with business requirements. Such reviews require the collection and analysis of reliable data on job characteristics.

Data Requirements: Collection of data on job characteristics and job classification schemes, in addition to wage data, is essential to the implementation of the California Fair Pay Act and the achievement of wage equity. To ensure that employers are providing equitable compensation to all of their employees, they must assess (1) the way jobs are classified in their organization, i.e., based on what characteristics, (2) the compensation levels assigned to each job, as well as (3) how workers are assigned to specific jobs and wages. Similarly, individual workers need access to data that enables them to compare job characteristics and compensation if they are to assess the equity of their compensation relative to other workers.

The specific data required to reliably assess job classification equity will vary across employers, but the following principles for data collection apply to all employers:

- job description data should be collected, maintained, and periodically reviewed for accuracy
- job description data should include information on job tasks, requires skill, effort, and responsibility, the working conditions of the job, the minimum objective qualifications for workers,¹ and the assigned wage²
- job description and wage data should be readily available for review by employees

These data should be analyzed regularly to ensure wage rates are aligned to job requirements equally across job categories.

Explanation: The fundamental necessity of job classification data for the analysis of wage equality is clear in wage determination theories, is underscored by studies of gender inequality in pay, and is intrinsic to the concepts of "substantially similar work" and "bona fide factor other than sex" specified by SB 358, the California Fair Pay Act.

¹ These characteristics identified as the criterion on which to identify job similarity by the EEOC (EEOC Compliance Manual 10.III.A.3.b-c).

² The California Labor Code (Section 200(a)) defines wage as "money or other value that is received by an employee as compensation for labor or services performed", where "other value" can include "room, board, clothes, and other benefits to which the employee is entitled as a part of his or her compensation."

Wage determination theories: Job compensation is determined by both supply- and demand-side forces. Demand-side influences include the characteristics of jobs, i.e., the job content (e.g., the required tasks, skills, effort, and responsibility), the minimum objective qualifications (e.g., specialized license or certification), and the working condition of the job. Supply-side factors, such as the availability of qualified workers, also influence the wage setting process, but when supply-side factors are equivalent, *pay rates should be equal across jobs that have similar content, requirements, and conditions.*

Determinants of the gender pay gap: Studies show consistently that the segregation of men and women in different jobs is the most significant determinant of the gender gap in pay: women and men tend to be employed in different jobs, and male-dominated jobs tend to pay more than female-dominated jobs. A 2016 study estimated that gender segregation across occupations and industries currently accounts for 51% of the gender gap in pay.³

Key concepts in the California Fair Pay Act: By requiring equal pay for "substantially similar work" rather than for "equal work," SB 358 broadens the range of job-to-job comparisons that may be legitimately used to assess pay equality and implicitly encourages assessments of equity based on job characteristics rather than job titles. The concept of "substantially similar work" acknowledges that established job classification systems may reflect the vestiges of historical gender segregation and institutionalize unconscious gender biased assumptions about what jobs require and how much they should be paid. Existing job classification systems and wage assignments therefore may unintentionally perpetuate gender inequalities in pay, unless they are evaluated to identify substantially similar jobs and to equalize wage scales accordingly.

The California Fair Pay Act specifies 4 categories of *job characteristics* – skill, effort, responsibility, and working conditions – on which jobs may be assessed in order to establish similarity. It implicitly encourages the collection of data to measure these characteristics to so that jobs might be assessed for similarity and the compensation adjusted to reflect equality across those jobs that may be legitimately distinct in a company's job structure but "substantially similar" in their job characteristics. Furthermore, these job characteristics are also the "bona fide factors," i.e., the characteristics that are related to business necessities but unrelated to any sex-based factors, that are legitimate bases for between-job pay differences.

³ Blau, Francine D. & Lawrence M. Kahn (2016) "The Gender Wage Gap: Extent, Trends, and Explanations." IZA discussion paper No. 9656.