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*The information provided in this report is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. The materials do not represent the opinions nor conclusions of the Task Force. The posting of this report does not create requirements nor mandates. The materials provided in Appendix A and B have been provided by individual Task Force members or staff to provide information or access to resources that are available on the issues considered by the Task Force.*

[Letters placeholder]

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The **California Commission on the Status of Women and Girls** staff authored this report with added expertise from the **Labor Commissioner's Office** staff and each **California Pay Equity Task Force** member and liaison. For specific questions about the analysis and information in the report contact Tonya D. Lindsey, Ph.D. at [tonya.lindsey@library.ca.gov](mailto:tonya.lindsey@library.ca.gov). For questions and information about the Commission contact Stephanie Flores at [stephanie.flores@women.ca.gov](mailto:stephanie.flores@women.ca.gov).

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## Introduction

The gender pay gap is a long-standing and complex economic issue that Californians have been working to eliminate for decades through law, policy, and practice. Recently, the *Fair Pay Act* amended California Labor Code Section 1197.5 to, among other things, "...prohibit an employer from paying any of its employees at wage rates less than those 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..."<sup>1</sup> Our introduction briefly explains the gender pay gap and summarizes U.S. and California laws that address pay equity. Further, existing California law continues to require enforcement agencies to address different, yet sometimes overlapping, aspects of unequal pay for women and men, and we describe how the Labor Commissioner's Office and the Department of Fair Employment and Housing are working together to implement the *Fair Pay Act*. Finally, we provide an interim report about the recent activities, goals, and what to expect in the coming year for California's Pay Equity Task Force, a state body established by the California Commission on the Status of Women and Girls to aid government, employer, and employee interests impacted by the *Fair Pay Act*.

## Gender Pay Gap Research and Analysis

The gender pay gap measures the average difference between men's and women's aggregate wages or salaries. In 2015, women earned an estimated 52.4 percent of what men earned worldwide.<sup>2</sup> In the United States and California, the gap is smaller, and researchers estimate women earned 80 percent and 84 percent of what men earned in 2015, respectively.<sup>3</sup> While the U.S. and California gaps have narrowed since the 1960s when the federal *Equal Pay Act* became law, the problem persists into the 21<sup>st</sup> century.<sup>4</sup>

Most research about the gender pay gap begins from a human capital perspective that measures the significance of factors such as education level, training, time in a job, and skill. "The model rests on the idea that worker contributions and merit can be quantified and that

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<sup>1</sup> Jackson, Hannah-Beth. The Fair Pay Act, Cal. S. B. 358 (2015-2016), Chapter 546 (Cal. Stat. 2015). Retrieved from [http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB358](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB358) December 21, 2016. In 2016, Governor Brown signed amendments to the Equal Pay Act expanding its coverage to pay differences based on race and ethnicity. Hall, Isodore. Cal. Assemb. B. 1063 (2015-2016), Chapter 866 (Cal. Stat. 2016). Retrieved from [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB1063](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1063). January 29, 2017.

<sup>2</sup> World Economic Forum research estimates the global average, annual earnings of women and men in 2015 was \$11,000 and \$21,000, respectively. Retrieved from <http://reports.weforum.org/global-gender-gap-report-2015/report-highlights/> December 1, 2016.

<sup>3</sup> All estimates presented here are not directly comparable because different sources analyze different data sets and may have different operational definitions of what "pay" is. These percentages provide only a ballpark comparison of worldwide, national, and state gender pay gaps. National and California estimates are cited from the Institute for Women's Policy Research and the National Partnership for Women and Families, respectively. Retrieved from <http://www.iwpr.org/initiatives/pay-equity-and-discrimination> and <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/4-2016-ca-wage-gap.pdf> December 1, 2016.

<sup>4</sup> In 1963 when the federal Equal Pay Act became law, the gender pay gap was just under 60 percent for the nation.

rewards are then distributed in a rational, bias-free way that reflects this quantification.”<sup>5</sup> Missing from these analyses are measures of culturally-held beliefs about gender that inform the choices people make and the contexts in which they make decisions. For example, that women are largely responsible for child-rearing is a gendered expectation seen more easily when it is not met. Women who do not stay at home with their children may be viewed as “unwomanly.” Similarly, men who stay home with their children may be viewed as “unmanly.”<sup>6</sup> Women and men make choices within a context informed by beliefs, values, and expectations that impact their choices and pay outcomes. Women may “trade off advancement or higher earnings for a job that offers flexibility to manage work and family responsibilities.”<sup>7</sup> It is possible that “an earnings difference may result from discrimination in the workplace or subtler discrimination about what types of career or job choices women can make.”<sup>8</sup> However, “it is difficult, and in some cases may be impossible, to precisely measure and quantify individual decisions and possible discrimination.”<sup>9</sup> And, “[b]ecause these factors are not readily measurable, interpreting any remaining earnings difference is problematic.”<sup>10</sup>

Research also reveals that occupational segregation continues to be one of the most significant factors impacting the gender pay gap. Occupational segregation refers to “the systematic concentration of groups of workers (e.g., women, people of color) in particular jobs...that are less prestigious, well paying, and stable.”<sup>11</sup> In one study of the public and private sectors from 1970–2010, social scientists found that while the gender pay gap has decreased, occupational segregation consistently explained between 11 percent and 13 percent of the remaining gap over time.<sup>12</sup>

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<sup>5</sup> Lips, Hilary, M. (2013). “The Gender Pay Gap: Challenging the Rationalizations. Perceived Equity, Discrimination, and the Limits of Human Capital Models.” *Sex Roles* 68.

<sup>6</sup> For more information about how expectations operate to inform behavior see West, Candace and Sarah Fenstermaker. 1995. “Doing Difference.” *Gender & Society* 9:1.

<sup>7</sup> Women’s Earnings: Work Patterns Partially Explain Difference between Men’s and Women’s Earnings. Government Accountability Office. 2003. Retrieved from <http://www.gao.gov/assets/250/240547.pdf> on February 8, 2017.

<sup>8</sup> Women’s Earnings: Work Patterns Partially Explain Difference between Men’s and Women’s Earnings. Government Accountability Office. 2003. Retrieved from <http://www.gao.gov/assets/250/240547.pdf> on February 8, 2017.

<sup>9</sup> Women’s Earnings: Work Patterns Partially Explain Difference between Men’s and Women’s Earnings. Government Accountability Office. 2003. Retrieved from <http://www.gao.gov/assets/250/240547.pdf> on February 8, 2017.

<sup>10</sup> Women’s Earnings: Work Patterns Partially Explain Difference between Men’s and Women’s Earnings. Government Accountability Office. 2003. Retrieved from <http://www.gao.gov/assets/250/240547.pdf> on February 8, 2017.

<sup>11</sup> Gauchet, Gordon, Maura Kelly, and Michael Wallace. 2012. “Occupational Gender Segregation, Globalization, and Gender earnings Inequality in U.S. Metropolitan Areas.” *Gender & Society* 26:5.

<sup>12</sup> Mandel, Hadas and Moshe Semyonov. 2014. “Gender Pay Gap and Employment Sector: Sources of Earnings Disparities in the United States. 1970–2010.” *Demography* 51. See also Blau, Francine D. and Lawrence M. Kahn. 2016. “The Gender Wage Gap: Extent, Trends, and Explanations.” The National Bureau of Economic Research Working Paper No. 21913. <http://www.nber.org/papers/w21913>. See also Gender Pay Differences: Progress Made, but Women Remain Overrepresented among Low-wage Workers. Government Accountability Office. 2011, Retrieved from

## Legal Solutions to the Gender Pay Gap: California Leading Since 1949

In 1963, President John F. Kennedy signed the U.S. *Equal Pay Act*, which amended the *Fair Labor Standards Act* of 1938. The United States is currently one of at least 60 countries with laws that protect women from pay discrimination.<sup>13</sup>

At the state level, California passed its first *Equal Pay Act* in 1949, 15 years earlier than the federal government. California is one of 44 states with equal pay statutes.<sup>14</sup>

To redress pay inequity in the past, California's original law required equal pay for the *same work* with some exceptions. Labor Code [S]ection 1197.5 prohibited an employer from paying an employee less than employees of the opposite sex who perform the same job, requiring the same skills, effort, and responsibility, in the same establishment, under similar working conditions. Exempt from this prohibition are payments made pursuant to systems based on seniority, merit, or that measure earnings by quantity or quality of production; or differentials based on any bona fide factor other than sex.<sup>15</sup>

Despite earlier state and federal laws, the gender pay gap persists in the 21<sup>st</sup> century. In response, California broadened its *Equal Pay Act* in 2015 when Governor Edmund "Jerry" G. Brown signed Senate Bill 358, also called the *Fair Pay Act*. In a letter to California's Pay Equity Task Force, the bill's author, Senator Hannah-Beth Jackson, writes that she sought to further improve the economic situation of women by closing loopholes in the existing law:

While California has prohibited gender-based pay discrimination since 1949, we still have had an unacceptable gender wage gap – especially for women of color. This persistent disparity in earnings between men and women has had a significant impact on the economic security and welfare of millions of working women and their families.

Specifically, SB 358 provides that employees will no longer face retaliation by their employer for asking about the wages being paid to other employees. Women will now be able to challenge pay discrimination based on wages paid to other workers at different worksites for the same employer or for doing substantially similar work. Employers will now be required to show that a difference in wages is based on a specific factor that is

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<sup>13</sup> The World Bank makes available country-level data about women, business, and the law <http://wbl.worldbank.org/data/timeseries>. The World Economic Forum used these data in its 2016 Global Gender Gap Report. [http://www3.weforum.org/docs/GGGR16/WEF\\_Global\\_Gender\\_Gap\\_Report\\_2016.pdf](http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf). The countries counted and presented here have mandates exceeding the United States' in that each requires equal pay for jobs of equal value even if the jobs are different.

<sup>14</sup> State Equal Pay Laws. 2016. National Conference of State Legislators. Retrieved from <http://www.ncsl.org/research/labor-and-employment/equal-pay-laws.aspx> January 28, 2017.

<sup>15</sup> Marian M. Johnston. 2016. Statutory History of Equal Pay Laws in California and the United States. Retrieved from <http://tinyurl.com/joyz9k> January 10, 2017. See also Appendix C.

legitimate, serves a business purpose, and is not based on or derived from a gender bias.<sup>16</sup>

Since the *Fair Pay Act* became effective on January 1, 2016, subsequent amendments to the Labor Code have been signed into law. Governor Brown signed Assembly Bills 1063 and 1676 into law in 2016.<sup>17</sup> The former amends two sections of the Labor Code, 1197.5 and 1199.5, to prevent and penalize wage discrimination based on race or ethnicity in addition to “sex.” The latter amends Labor Code Section 1197.5 to specify that an employee’s prior salary cannot, by itself, justify any disparity in compensation.<sup>18</sup>

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<sup>16</sup> Jackson, Hannah-Beth. 2016. “Senate Bill 358, the California Fair Pay Act, Author’s Message.” Retrieved from <http://tinyurl.com/hdvu3cd> January 28, 2017.

<sup>17</sup> Hall, Isodore. Cal. Assemb. B. 1063 (2015-2016), Chapter 866 (Cal. Stat. 2016). Retrieved from [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB1063](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1063) January 29, 2017. Campos, Nora. Cal. Assemb. B. 1676 (2015-2016), Chapter 856 (Cal. Stat. 2016). Retrieved from [http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB1676](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB1676) January 29, 2017.

<sup>18</sup> Assembly Bill 46, introduced for legislative action in the 2017–2018 session, seeks to amend Labor Code Section 1197.5 to specifically define an employer to include public and private employers. It also exempts public employers from the misdemeanor provision for violations. The California Department of Human Resources found that in 2014, women were underrepresented in state civil service relative to their presence in the population, and the state civil service gender pay gap is 20.5 percent. Retrieved from <http://www.calhr.ca.gov/Documents/ocr-women's-earnings-2014.pdf> January 29, 2017.

## Executive Agency Enforcement: Cooperation and Collaboration

Administrative duties and legal enforcement of the *Fair Pay Act* are supported by two state agencies, the California Labor Commissioner's Office and the California Department of Fair Employment and Housing. Both agencies protect employees' rights and the ability of law-abiding employers to compete on a level playing field; however, the California Labor Commissioner enforces the state's labor laws and the Department of Fair Employment and Housing enforces the state's civil rights laws, including anti-discrimination in the workplace.<sup>19</sup> While the *Fair Pay Act* specifically tasks the Labor Commissioner with implementation of the *Act*, employees seeking to redress pay inequities might also make a claim of employment discrimination with the Department of Fair Employment and Housing.

Both agencies have worked together to define their jurisdictions and responsibilities under the *Fair Pay Act* with the goal of establishing procedures that "...promote cooperation between the agencies, avoid a duplication of effort, and provide guidance to staff in handling prospective [Labor Commissioner's Office] claimants and/or [Department of Fair Employment and Housing] complainants."<sup>20</sup> Claims of sex-based wage discrimination can be filed with the California Labor Commissioner and/or the Department of Fair Employment and Housing. The agencies' policies and frequently asked questions instruct potential claimants about where to file their claims and where agency jurisdiction might overlap.<sup>21</sup>

- **Only sex-based wage discrimination.** If the claimant has only a sex-based wage discrimination case, then the person can file an administrative claim with the California Labor Commissioner and/or the Department of Fair Employment and Housing. The claimant can also file in court without first filing an administrative claim.
- **Sex-based wage discrimination and/or other forms of discrimination.** If the claimant has multiple forms of discrimination to report, including sex-based wage discrimination, the person can file a claim for the sex-based wage discrimination with the California Labor Commissioner and the other forms of discrimination (e.g., sex-based discrimination in promotion) with the Department of Fair Employment and Housing or file all claims with the Department of Fair Employment and Housing.

Both agencies are represented on California's Pay Equity Task Force, and they continue to collaborate where there is overlap in their jurisdictions. California's Labor Commissioner Julie A. Su, and Kevin Kish, the Director of the Department of Fair Employment and Housing, represent their agencies on the Task Force and co-chair the subcommittee on Enforcement and Process.

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<sup>19</sup> For relevant statutes see Labor Code Section 1197.5 for Division of Labor Standards Enforcement and Government Code Section 12940 for California Department of Fair Housing and Employment.

<sup>20</sup> Retrieved from <http://www.dfeh.ca.gov/files/2016/12/DFEH-DIR216.pdf> January 11, 2017.

<sup>21</sup> Information about frequently asked questions retrieved from [http://www.dir.ca.gov/dlse/California\\_Equal\\_Pay\\_Act.htm](http://www.dir.ca.gov/dlse/California_Equal_Pay_Act.htm) January 11, 2017.

Information about policies and procedures retrieved from <http://www.dfeh.ca.gov/files/2016/12/DFEH-DIR216.pdf> January 11, 2017.

## California's Pay Equity Task Force: Proactive Compliance

In October 2015, Governor Brown signed Senate Bill 358, *The California Fair Pay Act*.<sup>22</sup> Among other things, this bipartisan law mandates that employers pay women and men equally for *substantially similar* work, broadening the previous law requiring equal pay for equal work. The Commission on the Status of Women and Girls (Commission) convened the California Pay Equity Task Force to develop methods, systems, and processes to (1) help employers work proactively to achieve pay equity and comply with the new law and (2) inform employees about their rights and how to exercise them. The Task Force members represent stakeholders impacted by and responsible for the new law by including employees, large and small employers, California enforcement agencies, and the Legislature.

Many California companies are working proactively to comply with the *Fair Pay Act* by, for example, conducting pay analyses to identify and redress gender wage gaps.<sup>23</sup> Companies also report monitoring promotion rates, training women for leadership roles, regularly publishing salary information, and implementing/improving parental leave programs.

Three staff liaisons, a diversity officer, and Commission staff support the 17-member Task Force that began meeting in July 2016. The Commission carefully selected expert employee and business advocates, labor union representatives, lawyers, researchers, and practitioners from over 100 applicants. Task Force members attended three day-long meetings in July, August, and October 2016 in Sacramento, California. They have also worked together in two-person advisory subcommittees. Multiple subcommittees met in publicly-noticed forums in December 2016, January 2017, and February 2017 (see Table 1 for list of past meetings and discussion points).

Based on a review of the growing literature about compliance with international, national, and state laws supporting gender pay equity,<sup>24</sup> Commission staff established various subcommittees to address the multiple components of the law that need to be implemented.<sup>25</sup>

- **Definitions Subcommittee:** Identifies legal concepts, researches legal background of concepts, and develops materials to help employees, employers, and other stakeholders interpret the new law.
- **Enforcement and Process Subcommittee:** Comprised of the *Fair Pay Act's* agency enforcers, provides information and expertise to the Task Force concerning the legal enforcement and implementation of the *Fair Pay Act*.

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<sup>22</sup> Jackson, Hannah-Beth. 2016. "Senate Bill 358, the California Fair Pay Act, Author's Message." Retrieved from <http://tinyurl.com/hdvu3cd> January 28, 2017.

<sup>23</sup> For example, Apple, Google, Intel, Salesforce, and SpaceX. See <http://www.usatoday.com/story/tech/news/2016/03/23/amazon-pay-male-female-gender-gap-earnings-equity-apple-intel/82180982/>.

<sup>24</sup> See best practices literature review [http://www.women.ca.gov/Portals/70/ReportLitReview\\_TLindsey.xlsx](http://www.women.ca.gov/Portals/70/ReportLitReview_TLindsey.xlsx).

<sup>25</sup> For a full list of subcommittees, members assigned to each, and the work they have completed, see <http://www.women.ca.gov/CaliforniaPayEquityTaskForce.aspx> "Subcommittees" tab.

- **Measuring the Pay Gap Subcommittee:** Responsible for providing information describing appropriate metrics and analytical methods that can be used to assess the pay gap.
- **Implementation and the Law Subcommittee:** Evaluates implementation and compliance in terms of the larger legal context, which includes federal laws.
- **Human Resources Subcommittee:** Develops guidance for human resources professionals on how to communicate with employees about pay equity.
- **Evaluating Systems and Functional Infrastructure Subcommittee:** Identifies data elements and systems that employers can maintain to document, evaluate, and defend their pay practices.
- **Evaluating Job Classifications Subcommittee:** Provides model job classification schemes to support effective pay equity evaluations, audits, and reporting.
- **Evaluating Policy and Practice Subcommittee:** Focuses on policies and practices that impact employee pay.
- **Challenges and Barriers Subcommittee:** Identifies compliance barriers as a means to provide topics for discussion, panel presentations, solutions, and deliverables.
- **Deliverables Subcommittee:** Identifies tools for conveying Task Force information to employees and employers through a variety of media.

Subcommittees have convened joint meetings to discuss overlapping topics. Table 1 below presents a synopsis of publicly noticed meetings and discussions that took place during 2016 and early 2017 (See Appendix A for links to presentation given at Task Force meetings).<sup>26</sup>

Table 1. Past Meetings in 2016–17

Past Public Meeting Date	Discussion Topics and Presentations
July 22, 2016 Full Task Force Meeting	<i>Fair Pay Act</i> from enforcement agency perspective, <i>Fair Pay Act</i> from an employer and business perspective, <i>Fair Pay Act</i> from an employee and advocate perspective, goals for the Task Force, subcommittee goals, timeline, public comment.
August 19, 2016 Full Task Force Meeting	The gender pay gap from a practitioner’s perspective; the union’s role and the state classification system; process for responding to requests, process for collecting, sharing, and posting information; working definitions; subcommittee updates.
October 24, 2016 Full Task Force Meeting	Legislative Task Force member and author comments, defining key terms, California’s low-wage workers and the gender pay gap, subcommittee action plans, deliverables, public comment.
December 14, 2016 Joint Subcommittee	Definitions and where to find information; law

<sup>26</sup> More information about discussions and presentations can be found in the meeting minutes available on the Commission’s Pay Equity Task Force Home Page: <http://www.women.ca.gov/CaliforniaPayEquityTaskForce.aspx> under the “Meeting Times, Materials, and Agenda” tab.

Meeting: Definitions and Co-chairs	applicability; substantially similar work; totality of circumstances, skill, effort, and responsibility; similar working conditions; entire wage differential and statistical significance; documentation; wage rate; discussing employee wages; policy and guidance; who is an “employer”; next steps.
December 19, 2016 Joint Subcommittee Meeting: Measuring the Pay Gap, Evaluating Job Classifications, Systems and Functional Infrastructure, and Human Resources	Review of definitions and co-chairs joint subcommittee meeting; action items for each subcommittee; employer record keeping and documentation; different types of products to create; potential guidance document; needs of smaller vs. larger companies; definition of smaller and larger employers; how to present information, flowchart and other deliverables; next steps.
January 19, 2017 Joint Subcommittee Meeting: Measuring the Pay Gap, Evaluating Job Classifications, Systems and Functional Infrastructure, and Human Resources	Prepared document from Systems and Functional Infrastructure Subcommittee; small versus large employer differences; career-leveling matrices, salary surveys, what could be considered <i>bonafide</i> factors for measuring/explaining the gender pay gap?
January 20, 2017 Joint Subcommittee Meeting: Deliverables, Enforcement, and Policy and Practice	Strategy for creating and disseminating Task Force work products, partner organizations and funding for Task Force outreach, types of deliverables, ways subcommittees can better share information.
February 1, 2017 Joint Subcommittee Meeting: Definitions and Co-chairs	Review of terms in <i>Fair Pay Act</i> ; identification of case law and other existing guidance that can illustrate the meaning of terms; next steps.

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## Deliverables: Guidance for Employees and Employers

The Task Force is developing guidance informed by the work of each subcommittee with the goal of assisting employers with compliance and informing employees about their rights under the new law. Guidance will be constructed with employer size employee representation status in mind. The intention is to educate workers from different demographics and industries. The Task Force is currently developing the following road maps, tools, and a glossary of terms:

1. **Road maps** will guide small and large employers, employees, unions, and employee organizations through the different tools the Task Force develops and makes publicly available.
2. **Tools** will provide, for example, strategies for conducting pay audits, preserving pay-related data and information, instructions to employees on how to file a claim with enforcement agencies, and sample collective bargaining agreement language addressing pay equity.
3. **A Glossary** will provide working definitions of terms used by human resources professionals and concepts found in the *Fair Pay Act* (e.g., substantially similar work).

## Looking Forward: Meetings, Times, and Places in 2017

The 2017 schedule is presented below in Table 2. Most full California Pay Equity Task Force meetings will be held in Sacramento, California. Task Force members will be completing subcommittee work to deliver guidance to employees and small and large employers. The Commission will continue to publicly notice all meetings of more than two Task Force members as mandated by the *Bagley-Keene Open Meeting Act*.<sup>27</sup> The Task Force will also produce a final report, but the release date is to be determined.

Table 2. Full and Subcommittee California Pay Equity Task Force Meetings in 2017

Meeting Date	Meeting Type	Time and Location	Teleconference Locations
February 16, 2017	Full Task Force	10 AM–4 PM Sacramento, Ca.	As needed
March 16, 2017	Joint Subcommittees	TBD	As needed
April 4, 2017	Full Task Force; Equal Pay Day; Interim Report Release	10 AM–4 PM Sacramento, Ca.	As needed
May 25, 2017	Joint Subcommittee	TBD	As needed
June 1, 2017	Full Task Force	10 AM-4 PM TBD	As needed
August 17, 2017	Joint Subcommittee	TBD	As needed
September 14, 2017	Full Task Force	10 AM-4PM TBD	As needed
October 6, 2017	Joint Subcommittee	TBD	As needed
November 13, 2017	Full Task Force; Deliverables Roll Out and Final Report	10 AM-4PM TBD	As needed

<sup>27</sup> A Handy Guide to the Bagley-Keene Open Meeting Act 2004. Retrieved from [http://ag.ca.gov/publications/bagleykeene2004\\_ada.pdf](http://ag.ca.gov/publications/bagleykeene2004_ada.pdf) December 9, 2016.

To receive email updates and meeting notices please email [info@women.ca.gov](mailto:info@women.ca.gov) and ask to be added to the Commission's listserv. Meeting notices are posted at least 10 days in advance on the Commission's Website <http://www.women.ca.gov/Home.aspx>.

## Appendix A: Presentations to the Task Force

- Kuang, Daniel. 2016. *Understanding the Pay Gap: Insight from Industry/Practice* [pdf.]. Retrieved from [http://www.women.ca.gov/Portals/70/160819\\_CAFPA\\_TF.pdf](http://www.women.ca.gov/Portals/70/160819_CAFPA_TF.pdf)
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## Appendix B: Publications Provided to Task Force by Members and Staff

### Materials provided by California Pay Equity Task Force Co-chair Commissioner Lauri Damrell

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## Appendix C: Pay Equity Statutory History

### Statutory History of Equal Pay Laws in California and the United States

Marian M. Johnston, Esq.

California first passed an Equal Pay Act in 1949. Before SB 358 was enacted in 2015, Labor Code Section 1197.5 prohibited an employer from paying an employee less than employees of the opposite sex who perform the same job, requiring the same skill, effort, and responsibility, in the same establishment, under similar working conditions. Exempt from this prohibition are payments made pursuant to systems based on seniority, merit, or that measure earnings by quantity or quality of production; or differentials based on any bona fide factor other than sex. Enforcement was by the Labor Commissioner (also known as the Division of Labor Standards Enforcement):

(a) No employer shall pay any individual in the employer's employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions ....

The federal Equal Pay Act was passed in 1963. Pub.L. 88-38; 77 Stat. 56 This act amended the Fair Labor Standards Act of 1938, as amended (29 U.S.C. et seq.), by adding a new subsection (d).

(d) (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

The U.S. Department of Labor had responsibility for enforcement of the federal Equal Pay Act until the federal Reorganization Plan No. 1 of 1978, which, as of July 1, 1979, shifted responsibility for enforcing both the Equal Pay Act and the Age Discrimination in Employment Act from the Labor Department to the Equal Employment Opportunity Commission.

<https://www.eeoc.gov/eeoc/history/35th/thelaw/epa.html>

Senate Bill 358 substantially broadened California's gender pay differential law. SB 358, also called the "Fair Pay Act," became effective January 1, 2016. The "Fair Pay Act" expanded pay equity claims by removing the requirement that the pay differential be within the same "establishment," and replaced the "equal" and "same" job, skill, effort, and responsibility

standard. The new standard would require only a showing of “substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.” These changes make it easier for an employee to bring an equal pay suit, permitting a plaintiff to compare him or herself with employees of the opposite gender working at any location for the same employer, and in any similar job.

The “Fair Pay Act” also requires employers to affirmatively demonstrate that the wage differential is based entirely and reasonably upon one or more factors. The “Fair Pay Act” adds to the three existing factors (seniority, merit, or production-based) a “bona fide factor”: that is, a factor not based on or derived from a sex-based differential in compensation, that is related to the position in question, and that is consistent with a “business necessity” (defined as “an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve”). The “bona fide factor” defense is inapplicable if the plaintiff demonstrates that an alternative business practice exists that would serve the same business purpose without producing the wage differential. With the enactment of SB 358, the California Labor Code 1197.5 now provides:

- (a) No employer shall pay any individual in the employer's employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex.

### **Statutory History of Employment Discrimination Laws in California and the United States**

The state and federal equal pay laws have always been distinct from laws generally prohibiting employment discrimination. California's Fair Employment Practice Act enacted in 1949 prohibited employment discrimination because of race, religious creed, color, national origin, or ancestry, and did not prohibit sex discrimination. Sex was added as a prohibited basis of discrimination in 1970 (Cal.Stats. 1070, ch. 1508). Enforcement was through the Fair Employment Practice Commission, later named the Fair Employment and Housing Commission. Title VII of the federal Civil Rights Act of 1964, as originally enacted, prohibited race, color, religion, sex, or national origin discrimination in employment. The administrative agency responsible for enforcement of Title VII is the Equal Employment Opportunity Commission.