

## The Gender Pay Gap: Employees

### Job Searches and Interviewing (Stage I)

The first step in a job search is deciding what job/career you wish to consider. Labor Market Information on California's Employment Development Department (EDD) website discusses a wide array of possible career directions. It offers information about which jobs are in growing fields, which jobs offer fewer opportunities, and what might be the basic pay rate for new and more experienced staff. The information will also help a job seeker answer what the likelihood is that a particular job or occupation may grow and what kinds of educational requirements may be required or desirable for a position?

To begin a preliminary job search, it is helpful to go to a basic career website (or portals) that advertise and announce current job openings. Go to Monster, Glassdoor, Indeed, or Craigslist to begin your exploration. Ask family and friends about what they do. How do they like their jobs? If they dislike their jobs, why? Their responses should not make your job decision for you, but they can often be starting points of possible interests. Finding out from other people what they like and do not like about their jobs can help you build a list of possible job titles and occupations to explore. However, others may be less open about discussing how much they get paid.

Labor Market Information on EDD's website offers basic information about potential salaries and pay rates for specific jobs. It is a handy way to learn about the possible income/pay rate for a job in which you are interested. Before you even begin applying for jobs or interviewing, you need to be aware of what possible pay ranges or options exist. Doing so will help guide your research into other aspects and requirements for possible jobs. And, you have to be aware of pay ranges and options at the points of interviewing and being hired.

Are there differences between how men and women are paid? Are certain jobs that tend to be primarily performed by women paid at different rates than seemingly "similar" jobs that may be performed by men? A classic example is a cleaning person and a janitor. What is the long term impact of such differences?

Gender pay gaps at companies are often produced and made larger during the hiring process. Once a company offers a woman candidate a job for a rate of pay that is below what men are getting paid for doing substantially similar work, this can often set in motion gendered personnel dynamics that solidify the wage gap. Negotiating for a fair wage is a difficult task that requires more than just confidence. Effective wage negotiation also requires good information.

Below are some questions women should consider asking at the beginning of their job search that could impact their choice of occupation and starting salary.

## **General questions**

- Where can I go to find out information about jobs/career in which I may be interested? What are the qualifications, skills and experience needed?
- What about education requirement?
- What is a reasonable salary/pay range to start? In two years?
- Is there a demand /anticipated need for this occupation? In my area? In the state?
- What is the best thing I can do to find out more about this occupation? (Informational Interviews? Research?)
- How and where do I get any needed training? Community Colleges? How long will it take?
- How much will it cost?
- Is there available public transportation to these jobs?

## **Job search**

- On-line research... Search resources: Monster, Craigslist, glass door, SFBT book of lists; sources by issue area or job type: idealist, public sector jobs resources, unionjobs.com)
- Make a plan. Figure out what you want to research and where you are going to look.
- What is the method that you plan to use to describe yourself to a prospective employer?
- Do you have an up to date resume?
- How do you get that? Again, EDD and internet research can be incredibly helpful in giving ideas and suggestions.
- How do I connect with a prospective employer?
- Once I have stated sending out resumes, how should I keep track? Documentation: keep copies of job postings, sources, follow-up
- Keywords (between your skills and job announcement) must line up with the job description in your resume
- Write a compelling cover letter, show you excel at the job posting
- Conduct a resource assessment, identify your transferable skills and training needs then incorporate into your plan

## **How do I connect with a prospective employer?**

- Networking. This is described as the key process by which people find jobs. It is asking questions, getting into conversations with everyone you can think of and anyone your personal connections can think of.
- Industry and trade organizations form a very important role in networking, attending meetings and conferences.
- A key point of exploration is an encounter called an informational interview

## **Informational interviewing**

Informational interviewing with other women in a company or occupation that you're interested in is a great strategy towards getting to know a potential employer or an industry, how compensation is structured and how different jobs are evaluated.

Acknowledging what they've accomplished is a great conversation starter- "You have a great reputation for being knowledgeable and experienced in your field" etc. If you have a personal referral, that's even better. Ask if they have time to talk informally. "Do you have time talk for about 15 minutes?" As they are talking about themselves, the conversation usually goes longer. Possible or sample question include:

- How did you get to where you are today?
- How did you start off?
- Did you have a firm idea of what you wanted to do and how to get there?
- If not, what is the progression to get to where you are?
- I don't know what I want, but the important things to me are the ability to contribute, to grow, to learn (I am curious about everything). I enjoy working hard and taking pride in what I have accomplished.
- What do you suggest as the most practical and effective way to find out about different careers in.....(general field)
- Is it your perspective that there is a growing demand for...
- Is the field already crowded?
- Do you feel you are in the right job? The right field? How? When did you know that you are in the right job?
- Do feel you are fairly paid? Is there a difference in how men and women are paid in (co name or industry?)
- If you were starting over today, would you make different choices? What?
- If you knew what you know now about being a .....would you do it again? What do you wish you had done differently (if anything)?
- Does a person in your field need to be flexible? How? A lot? Is that an issue?
- Is there anyone else you would suggest that I speak with? What particular reason do you have in making that suggestion? (or, what should I say when I contact that person?)

## **Possible focus group questions**

- What type of information do you think might be helpful to know before you negotiate your starting salary with a potential employer?
- Studies have shown that women often ask for less than men during the hiring process. What do you think accounts for that fact?
- Have you ever had the opportunity to negotiate your pay before you accepted a job offer? If so, what questions did you have about the process?

- Have you experienced any barriers (felony record, lack of quality child care, transportation, lack of access to cell phone or computer technology) that have may it much harder to conduct a meaningful job search or interview?

### **Am I being paid fairly under the Fair Pay Act of 2015? (Stage II)**

So you've been at a job long enough to suspect that you might be doing similar work to men at your company or agency but their getting paid more. You'd like to do some research but where do you start? Below are some resources you might find useful.

#### **Pay Calculators by Occupation**

- Pathways to Equity: Women and Good Jobs <http://womenandgoodjobs.org/>
- Closing the Gap: 50 years Seeking Equal Pay <http://www.womenwagegap.org/tools>
- Economic Policy Institute: What Could You Be Making? <http://www.epi.org/multimedia/gender-pay-gap-calculator/>

#### **Job Descriptions, Toolboxes and Resources (Also add articles from Task Force website)**

- Rutgers, Women and Work ( Provides quality professional development opportunities and technical assistance for educators and administrators, as well as experiential programs for students regarding current equity issues and research, with a focus on gender, race/ethnicity, and socio-economic status
- Annette Bernhardt (Coffee Pot Wars) (<http://www.cows.org/the-coffee-pot-wars-unions-and-firm-restructuring-in-the-hotel-industry>)- Great article on unionization, gender equity and the hotel industry.
- EDD ([www.edd.ca.gov](http://www.edd.ca.gov))– Job Resources and toolbox for Job Seekers in California seeking assistants in their job search, career exploration, and training needs.
  - America's Job Center of California<sup>SM</sup> provides no-cost services, tools and resources for job seekers. ([www.americasjobcenter.ca.gov](http://www.americasjobcenter.ca.gov)) (Includes formerly One Stop Career Centers). Most job centers offer: Career specialists to assist job seekers with assessments to identify and match skills to occupations and make career decisions, access to internet, phones, printers, and copy machines at no cost.
  - CalJOBS<sup>SM</sup> is a virtual job center that gives you online access to thousands of job listings and tools to help you manage your career. Benefits include: Create and upload multiple versions of your résumé tailored to specific jobs or career paths. Also includes automatic job alerts through the feature titled Virtual Recruiter. Notifications of new job openings via text messages and/or e-mail. Viewing of current events such as workshops and job fairs by location. A Message Center with templates to communicate with employers.
- California Occupational Guides ([www.labormarketinfo.ca.gov/occguides](http://www.labormarketinfo.ca.gov/occguides))- are long-recognized resources designed to assist individuals in making career decisions. Each

guide includes local and/or statewide information about training, current wages and job prospects, skills requirements, and day-to-day tasks.

- The California Department of Industrial Relations ([www.dir.ca.gov/das](http://www.dir.ca.gov/das)) - provides job seekers access to search for apprenticeship programs by individual counties and occupations.
- Labor Market Info (LMI allows you to explore a new career, compare occupational profiles, or find out what jobs are the most in demand in your local area.
- Career Outlook (formerly Occupational Outlook Quarterly) (Career Action Resources specializes in best-practice assessments and action planners used by workforce, employment, and career services to guide job seekers and the unemployed in getting hired. With nearly 20 years of experience in workforce development publishing, career resources staff creates Layoff-to-Employment Action Planner (LEAP) and Your Employment Search (YES).

### **Possible Focus Group Questions**

- What type of information do you think would be *most* helpful for women who think they may be making less than men where they work but are doing substantially similar work? Studies and Reports? First hand testimony from women who have gone through similar wage problems at work? Job counseling? Information on legal or union representation? Information on agency regulations around the gender wage gap?
- What information do you think might be missing from the above list of resources?
- How could Task Force resources be used more effectively?

**If you feel that your previous efforts to get clarity or equity have not worked:**

**How to file a gender equity claim under the Fair Pay Act of 2015 (Stage III, taken from DIR website)**

### **California Equal Pay Act: Frequently Asked Questions**

For decades now, the California Equal Pay Act has prohibited an employer from paying its employees less than employees of the opposite sex for equal work. On October 6, 2015, Governor Brown signed the California Fair Pay Act (SB 358), which strengthens the Equal Pay Act in a number of ways, including by:

- Requiring equal pay for employees who perform “substantially similar work, when viewed as a composite of skill, effort, and responsibility.
- Eliminating the requirement that the employees being compared work at the “same establishment.”
- Making it more difficult for employers to satisfy the “bona fide factor other than sex” defense.
- Ensuring that any legitimate factors relied upon by the employer are applied reasonably and account for the entire pay difference.

- Explicitly stating that retaliation against employees who seek to enforce the law is illegal, and making it illegal for employers to prohibit employees from discussing or inquiring about their co-workers' wages.
- Extending the number of years that employers must maintain wage and other employment-related records from two years to three years.

This document contains answers to frequently asked questions about California's Equal Pay Act (CA Labor Code section 1197.5), which was amended by SB 358 (Statutes of 2015).

**Q: When do the amendments to California's Equal Pay Act take effect?**

**A:** Governor Brown signed SB 358 into law on October 6, 2015. SB 358 makes several changes to California's Equal Pay Act. These amendments took effect on January 1, 2016.

**Q: What does the new law provide?**

**A:** The amended Equal Pay Act prohibits an employer from paying any of its employees wage rates that are less than what it pays 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.

**Q: What does "substantially similar work" mean?**

**A:** "Substantially similar work" refers to work that is mostly similar in skill, effort, responsibility, and performed under similar working conditions. Skill refers to the experience, ability, education, and training required to perform the job. Effort refers to the amount of physical or mental exertion needed to perform the job. Responsibility refers to the degree of accountability or duties required in performing the job. Working conditions has been interpreted to mean the physical surroundings (temperature, fumes, ventilation) and hazards.

**Q: What are the key differences between the old Equal Pay Act and the amended Equal Pay Act?**

**A:** The main differences are that the new law:

- eliminates the requirement that the jobs that are compared must be located at the same establishment;
- replaces a comparison of "equal" work with a comparison of "substantially similar" work;
- makes it more difficult for employers to justify unequal pay between men and women;
- adds new express anti-retaliation protections for workers that assist employees with bringing claims under the Act;
- provides that an employer cannot prohibit workers from disclosing their wages, discussing the wages of others, or inquiring about others' wages.

**Q: Under the new law, what do I have to prove to prevail on my Equal Pay Act claim?**

**A:** Under the new law, an employee must show that he or she is being paid less than an employee or employees of the opposite sex who is performing substantially similar work. The employer must then show that it has a legitimate reason for the pay difference.

**Q: Can I file a claim if the person who earns more than I do has a different job title?**

**A:** Yes, you may file a claim. Because the Equal Pay Act compares jobs that are “substantially similar,” the job titles that are being compared do not have to be the same.

**Q: How is “wage rates” defined?**

**A:** Although the law does not specifically define “wage rates,” it refers to the wages or salary paid, and also other forms of compensation and benefits.

**Q: Under the new law, how may an employer defeat an Equal Pay Act claim?**

**A:** Under the new law, an employer can defeat an Equal Pay Act claim by proving that the difference in pay for substantially similar work is due to:

- seniority;
- merit;
- a system that measures production; and/or
- a “bona fide factor other than sex.”

In addition, an employer must show that it applies the above factor(s) reasonably and that the factor(s) accounts for the entire difference in wages.

**Q: Under the new law, how is the “bona fide factor other than sex” applied?**

**A:** Under the new law, an employer may defeat an Equal Pay Act claim by proving that the wage differential is due to a “bona fide factor other than sex,” but to succeed on this defense, the employer must also prove that the factor is

- not based on or derived from a sex-based factor;
- job related; and
- consistent with a business necessity.

Examples of a “bona fide factor other than sex” include education, training or experience.

**Q: When do I need to file my Equal Pay Act claim?**

**A:** Under the Equal Pay Act, an employee must file a claim within 2 years from the date of the violation. If the violation is willful, then an employee must file within 3 years. Each paycheck that reflects unequal pay is considered a violation for the purpose of calculating the deadline for filing.

For example, if an employer decides in January 2016 to pay a female worker less than a male worker for substantially similar work, and the employer cannot justify the unequal pay with any available defenses, for a non-willful violation, the female worker has until January 2018 to file a claim to seek recovery going back to January 2016. If she waits until January 2019 to file a claim, she can seek recovery going back only two years, or January 2017.

**Q: Where can I bring a claim to enforce the Equal Pay Act? Must I file an administrative claim before filing a case in court?**

**A:** An employee who has experienced an Equal Pay Act violation can file an administrative claim before the Labor Commissioner’s office or file an action in court. For information about filing a claim with the Labor Commissioner’s Office, go to (<http://www.dir.ca.gov/dlse/dlseRetaliation.html>). Depending on the nature of the claim, the employee may also file a claim with the California Department of Fair Employment and Housing. An employee does not have to file an administrative claim before filing an action in court.

**Q: What happens after I file my claim with the Labor Commissioner’s Office?**

**A:** Under California Labor Code section 98.7, the Labor Commissioner’s Office investigates your claim and makes a determination as to whether or not the employer violated the Equal Pay Act. If the Labor Commissioner’s Office determines that no violation occurred, it will dismiss the claim. If the Labor Commissioner determines that a violation occurred, it will make a demand for remedies. If the employer fails to comply with the Labor Commissioner’s demand for remedies, then the Labor Commissioner files a civil action in court.

**Q: Do I need to file a claim with the California Department of Fair Employment and Housing (DFEH)?**

**A:** The DFEH enforces the California Fair Employment and Housing Act, which prohibits discrimination based on sex, in addition to other protected categories. You may, but are not required to, file a claim with the DFEH if you are only claiming unequal pay based on sex. Because the Labor Commissioner’s Office only investigates the Equal Pay Act, if you have additional claims (for example, if you also claim discrimination in promotion based on sex or if you also claim discrimination based on another protected status), you can also file with the DFEH. For information about deadlines for filing complaints with the DFEH, go to ([http://www.dfeh.ca.gov/Complaints\\_ComplaintProcess.htm](http://www.dfeh.ca.gov/Complaints_ComplaintProcess.htm)) or call 800-884-1684.

**Q: May I file a claim under the Equal Pay Act anonymously or in a group with others?**

**A:** The law states that the Labor Commissioner’s Office shall keep the name of the employee who files an Equal Pay Act claim confidential until it establishes the validity of the claim. However, the Labor Commissioner may reveal the name of the claimant if needed to investigate the claim. Employees who are similarly affected may all file claims against the same employer. These claims may be assigned to the same investigator.

**Q: What do I get if I prevail in my Equal Pay Act claim?**

**A:** Under the Equal Pay Act, an employee can recover the difference in wages, interest, and an equal amount as liquidated damages. If an employee files a case in court, he or she can also recover attorney’s fees and costs.

**Q: How long must an employer keep records of employee wages and wage rates?**

**A:** Under the amended Equal Pay Act, an employer must keep records of wages, wage rates, job classifications, and other terms and conditions of employment for a period of three years.

**Q: Can I ask my employer how much other employees are paid?**



**A:** Yes, an employee can ask his or her employer about how much other employees are paid, however, the law does not require an employer to provide that information.

**Q: Can my employer retaliate against me for asking about other employees' wages?**

**A:** An employer may not prohibit an employee from disclosing his or her own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise rights under the Equal Pay Act. Accordingly, an employer may not retaliate against an employee for engaging in such conduct.

**Q: Am I protected from retaliation if I complain about an Equal Pay Act violation?**

**A:** Yes, the amended Equal Pay Act specifically prohibits an employer from retaliating against an employee for "any action taken by the employee to invoke or assist in any manner" with the enforcement of the Equal Pay Act.

**Q: What is my deadline to file a retaliation claim with the Labor Commissioner?**

**A:** An employee must file a retaliation claim within six months of the retaliation.

**Q: What do I get if I prevail in my retaliation claim?**

**A:** Under the California Labor Code, an employee who prevails in a retaliation claim may be awarded reinstatement, back pay, interest on back pay, and possibly other remedies.

#### **Possible Focus Group Questions**

- Do you think the above information makes it clear about what to do and who to go to if you believe your employer is in violation of the Fair Pay Act?
- Do you think a short video, chart or other type of visual around how to file a claim would be helpful?
- Is there other information about remedies under the Fair Pay Act that you think would be helpful to know?
- What other material could help clarify the definitions of "similar", "same", "comparable" and "related" in looking at jobs and what they are paid?

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