

State of California

LABOR CODE

Section 1197.5

1197.5. (a) An employer shall not pay any of its employees at wage rates less than the rates 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, except where the employer demonstrates:

(1) The wage differential is based upon one or more of the following factors:

(A) A seniority system.

(B) A merit system.

(C) A system that measures earnings by quantity or quality of production.

(D) A bona fide factor other than sex, such as education, training, or experience.

This factor shall apply only if the employer demonstrates that the factor is not based on or derived from a sex-based differential in compensation, is job related with respect to the position in question, and is consistent with a business necessity. For purposes of this subparagraph, "business necessity" means an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve. This defense shall not apply if the employee demonstrates that an alternative business practice exists that would serve the same business purpose without producing the wage differential.

(2) Each factor relied upon is applied reasonably.

(3) The one or more factors relied upon account for the entire wage differential.

(b) Any employer who violates subdivision (a) is liable to the employee affected in the amount of the wages, and interest thereon, of which the employee is deprived by reason of the violation, and an additional equal amount as liquidated damages.

(c) The Division of Labor Standards Enforcement shall administer and enforce this section. If the division finds that an employer has violated this section, it may supervise the payment of wages and interest found to be due and unpaid to employees under subdivision (a). Acceptance of payment in full made by an employer and approved by the division shall constitute a waiver on the part of the employee of the employee's cause of action under subdivision (g).

(d) Every employer shall maintain records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by the employer. All of the records shall be kept on file for a period of three years.

(e) Any employee may file a complaint with the division that the wages paid are less than the wages to which the employee is entitled under subdivision (a) or that the employer is in violation of subdivision (j). The complaint shall be investigated as provided in subdivision (b) of Section 98.7. The division shall keep confidential the name of any employee who submits to the division a complaint regarding an alleged

violation of subdivision (a) or (j) until the division establishes the validity of the complaint, unless the division must abridge confidentiality to investigate the complaint. The name of the complaining employee shall remain confidential if the complaint is withdrawn before the confidentiality is abridged by the division. The division shall take all proceedings necessary to enforce the payment of any sums found to be due and unpaid to these employees.

(f) The department or division may commence and prosecute, unless otherwise requested by the employee or affected group of employees, a civil action on behalf of the employee and on behalf of a similarly affected group of employees to recover unpaid wages and liquidated damages under subdivision (a), and in addition shall be entitled to recover costs of suit. The consent of any employee to the bringing of any action shall constitute a waiver on the part of the employee of the employee's cause of action under subdivision (g) unless the action is dismissed without prejudice by the department or the division, except that the employee may intervene in the suit or may initiate independent action if the suit has not been determined within 180 days from the date of the filing of the complaint.

(g) Any employee receiving less than the wage to which the employee is entitled under this section may recover in a civil action the balance of the wages, including interest thereon, and an equal amount as liquidated damages, together with the costs of the suit and reasonable attorney's fees, notwithstanding any agreement to work for a lesser wage.

(h) A civil action to recover wages under subdivision (a) may be commenced no later than two years after the cause of action occurs, except that a cause of action arising out of a willful violation may be commenced no later than three years after the cause of action occurs.

(i) If an employee recovers amounts due the employee under subdivision (b), and also files a complaint or brings an action under subdivision (d) of Section 206 of Title 29 of the United States Code which results in an additional recovery under federal law for the same violation, the employee shall return to the employer the amounts recovered under subdivision (b), or the amounts recovered under federal law, whichever is less.

(j) (1) An employer shall not discharge, or in any manner discriminate or retaliate against, any employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of this section. An employer shall not prohibit an employee from disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise his or her rights under this section. Nothing in this section creates an obligation to disclose wages.

(2) Any employee who has been discharged, discriminated or retaliated against, in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this section may recover in a civil action reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, including interest thereon, as well as appropriate equitable relief.

(3) A civil action brought under this subdivision may be commenced no later than one year after the cause of action occurs.

(Amended by Stats. 2015, Ch. 546, Sec. 2. (SB 358) Effective January 1, 2016.)