



SENATE OFFICE OF RESEARCH

Jody Martin, Director

October 3, 2016

MEMORANDUM

TO: Senator Hannah-Beth Jackson, Member, Pay Equity Task Force
Attn: Bryn Sullivan, Senate Consultant, Legislative Women's Caucus

FROM: Megan Lane 

SUBJECT: Defining the Key Terms of the Equal Pay Act as Amended by SB 358

At your request, I conducted informal legal research regarding ways to define and interpret key terms of California's Equal Pay Act (EPA). The information in this memorandum does not constitute a legal opinion of this office or any other legislative office.

Background on California's Equal Pay Act

California first addressed the concept of equal pay for equal work in the passage of the Equal Pay Act in 1949. The statute prohibited employers from paying different wage rates among the sexes for equal work on jobs requiring equal skill, effort, and responsibility. California's EPA, as amended by SB 358, Chapter 546, Statutes of 2015, also known as the Fair Pay Act, enhances the concept of equal work for equal pay, by replacing the term equal with substantially similar work. In addition, SB 358 requires that a justification for wage disparity not based on sex be consistent with business necessity and that any factor causing such disparity be applied reasonably. This memorandum will look at key words or phrases in the amended California EPA and

provide guidance from a number of legal sources on how to define them. My legal research included a review of the 43 state equal pay statutes (for more information, please see the attached National Conference of State Legislatures' document summarizing state equal pay laws¹), the Federal Equal Pay Act of 1963 (federal EPA) and corresponding Equal Employment Opportunity Commission (EEOC) regulations, state and federal case law interpreting these statutes, model jury instructions for equal pay cases, and a variety of secondary legal sources.

The key terms and phrases that this memorandum attempts to define and interpret are "wage rates," opposite "sex," "substantially similar" work, "skill," "effort," "responsibility," and "similar working conditions." This analysis also will address potential employer defenses, including seniority, merit and quantity/quality of production systems, and differentials based on a bona fide factor other than sex.

Wage Rates

California's EPA prohibits an employer from paying different wage rates to employees doing substantially similar work based on their sex. SB 358 amendments to the act did not change or update this terminology. The majority of state equal pay laws and the federal EPA use the term "wages" rather than "wage rate." EEOC guidelines interpreting the federal EPA define both terms. As a concept, wages is defined broadly. It includes all payments made to or on behalf of an employee as remuneration for employment and includes fringe benefits such as vacation and holiday pay.² Federal courts, following EEOC guidelines, also have given an expansive meaning to the term in federal EPA cases.³ In contrast, the term "wage rate" represents a limited form of compensation. EEOC guidelines provide that a wage rate refers to the rates of wages "whether calculated on a time, commission, piece, job incentive, profit sharing, bonus, or other basis."⁴ Absent state case law on the issue, California courts considering state

¹ The National Conference of State Legislatures' (NCSL) summary of state equal pay laws was accessed on September 15, 2016, and is available at: www.ncsl.org/research/labor-and-employment/equal-pay-laws.aspx. NCSL cites as its information source searches of the Westlaw 50-state statutory database conducted in July 2015.

² See 29 C.F.R. §1620.10.

³ See *Barrett v. Forest Labs., Inc.*, 39 F. Supp. 3d 407, 452 (S.D.N.Y. 2014), and *Ewald v. Royal Norwegian Embassy*, 82 F. Supp. 3d 871, 952 (D. Minn. 2014).

⁴ See 29 C.F.R. §1620.12.

equal pay claims are likely to use the federal EEOC guidelines' interpretation of the term wage rate.

Opposite Sex

The federal EPA, as well as the majority of state equal pay laws, utilize this term. One exception is Wyoming, which provides that employers cannot pay wages at a lower rate to employees of the opposite gender. Additionally, both Maryland and Massachusetts passed new equal pay laws this year. The Maryland statute requires equal pay for employees regardless of sex or gender identity, and Massachusetts reformed its law by replacing the term "sex" with "gender."

Courts interpreting Title VII (the federal anti-discrimination statute) claims have applied a plain meaning to the term "sex." They interpret the term as a binary concept focusing on biological differences (male vs. female)⁵. If California's courts follow guidance from federal sex discrimination cases, they are likely to attach a similar and restrictive meaning to the term "sex." On the other hand, state employment discrimination law assigns a broader meaning to the term "sex." Under the Fair Employment and Housing Act, the prohibition of discrimination based on sex includes gender defined as gender identity and gender expression.⁶ Courts have used the terms "gender" and "sex" interchangeably in this context. Therefore, future judicial interpretation in pay discrimination cases could follow this more fluid interpretation of sex.

Substantially Similar Work

Only two other states—Illinois and Louisiana—use the term "substantially similar" to compare jobs. The balance of state equal pay laws use a variety of terms such as comparable work, jobs of comparable worth or character, and equal work. While the federal EPA employs an equal work standard, courts interpret it to mean *substantially* equal work.

⁵ See *Bibby v. Phila. Coca Cola Bottling Co.*, 85 F. Supp. 2d 509, 516 (E.D. Pa 2000), and *Ulane v. E. Airlines*, 742 F.2d 1081, 1085 (7th Cir. 1984).

⁶ See California Government Code §12926 (r)(2); and *Crisanto v. County of Tulare*, 2015 U.S. Dist. LEXIS, 154734 (holding that plaintiff psychologist's claim of hostile work environment against her county employer based on sex also was an allegation of gender-based discrimination).

Most of the guidance for a definition of substantially similar work comes from legal sources evaluating the federal EPA's equal work standard. Although this is a higher standard for a plaintiff to meet, the concept of equal work is interpreted generously. When comparing jobs, courts do not require that they be identical, but rather that they share a common core of tasks.⁷ Similarly, the job evaluation should look at the day-to-day content of the jobs.⁸ Jobs will not be found dissimilar just because one job involves an extra but peripheral task.⁹ In addition, as a practical comparison, the equal work standard is not dependent on job classifications or titles.¹⁰ Finally, skills possessed by the job incumbents themselves are not determinative.¹¹

Under California's EPA, the substantially similar test also requires an evaluation of the skill, effort, and responsibility required by the jobs and the working conditions present. These factors are mirrored in the federal EPA and a number of state equal pay laws. As summarized below, EEOC regulations, model jury instructions, and federal case law provide helpful definitions for each criterion. I was unable to find California case precedence for these terms.

Skill

Skill is broken down as a composite of experience, training, education and ability.¹² Some aspects of the skills performed can be excluded. For example, if an employee possesses a skill not required for the job, it is not considered.¹³ In addition, the efficiency of an employee's performance is not relevant to the skill test, nor is the frequency in

⁷ See *Ewald v. Royal Norwegian Embassy*, *supra* at 937 (finding that two advanced positions at a foreign embassy were substantially similar as they shared a significant portion of tasks designed to strengthen exchanges, networks, and overall relations between the United States and Norway).

⁸ See *id.*

⁹ See *Brennan v. Prince William Hospital Corp.*, 503 F.2d 282, 290 (4th Cir. 1974) (holding that male hospital orderlies' additional but occasional performance of catheterization did not render their job unequal to that of the female nurses' aides).

¹⁰ See *Dumas v. SBC Global Servs.*, 2008 U.S. Dist. LEXIS, 47283 (N.D. Ohio 2008), and Model Civil Jury Instructions for the Third Circuit, 3 Modern Federal Jury Instructions- Civil 11.1.1.

¹¹ See *Hein v. Oregon College of Education*, 718 F.2d 910, 914 (9th Cir. 1983) (holding that the academic credentials of a physical education assistant professor were not relevant when comparing her position to another assistant professor who also was the men's basketball coach), and Civil Pattern Jury Instructions for the Eleventh Circuit, 11 Modern Federal Jury Instructions-Civil 4.13.

¹² See 29 C.F.R. §1620.15.

¹³ *Id.*; see American Bar Association Model Jury Instructions Employment Litigation, Model Jury Instr. Emp. Lit. P 99 §2.04 [1][d].

which the employee exercises that skill.¹⁴ The focus is on whether the majority of skills performed are substantially similar.

Effort

Effort measures the physical and mental exertion needed for the performance of a job.¹⁵ Job factors that cause, or conversely, alleviate, mental fatigue are considered.¹⁶ The sporadic performance of an activity requiring extra physical or mental exertion does not preclude a finding of similar or equal effort.¹⁷ Furthermore, federal courts recognize that even though effort may be exerted in different ways in the performance of two jobs, the overall effort required is still the same.¹⁸

Responsibility

Responsibility focuses on the accountability required in the performance of a job.¹⁹ The extent by which the job requires supervision of other employees is a factor.²⁰ Level of responsibility also accounts for the consequences to the employer if there is effective or ineffective performance.²¹ The greater the responsibility, the greater the impact job performance may have on the operations of the business.

¹⁴ See 29 C.F.R. §1620.15, and Model Civil Jury Instructions for the Third Circuit, 3 Modern Federal Jury Instructions–Civil 11.1.1.

¹⁵ See 29 C.F.R. §1620.16 and *Mehus v. Emporia State Univ.*, 2004 U.S. Dist. LEXIS 12263 (D. Kan. 2004) (holding that plaintiff head volleyball coach exerted the same effort in recruiting and engaging in public relations as did the head basketball coaches).

¹⁶ See 29 C.F.R. §1620.16.

¹⁷ *Id.*

¹⁸ See American Bar Association Model Jury Instructions Employment Litigation, Model Jury Instr. Emp. Lit. P 99 §2.04 [1][f].

¹⁹ See 29 C.F.R. §1620.17.

²⁰ See *Howard v. Lear Corp. Eeds & Interiors*, 234 F.3d 1002, 1005 (7th Cir. 2000) (holding that plaintiff, an HR Coordinator, did not have equal responsibility to other HR managers who supervised and trained a greater number of employees), and Model Civil Jury Instructions for the Third Circuit, 3 Modern Federal Jury Instructions–Civil 11.1.1.

²¹ *Id.* and Civil Pattern Jury Instructions for the Eleventh Circuit, 11 Modern Federal Jury Instructions–Civil 4.13.

Similar Working Conditions

Similar working conditions are broadly construed and encompass the surroundings and hazards of a job.²² The term “surroundings” is narrowly defined. Surroundings measure the elements, such as toxic chemicals, regularly encountered by an employee, and account for both their frequency and intensity.²³ The time of day worked is not a relevant factor in determining similar surroundings.²⁴

Hazards refer to physical hazards confronting an employee, their frequency, and the severity of injury they may cause.²⁵ More weight is given to hazards directly encountered by the employee.²⁶ The similar working conditions analysis also considers the frequency of travel required by a job as it can increase the associated hazards.²⁷

Employer Defenses

Under California’s EPA, an employer can assert a number of defenses to a wage disparity between jobs requiring substantially similar work. The first three—a seniority system, a merit system, and a system that measures earnings by the quantity or quality of production—are mirrored in the federal EPA, as well as the majority of state equal pay laws. The SB 358 amendments revised the fourth defense—that the pay differential be based on a bona fide factor other than sex—by requiring that its application be consistent with business necessity. All of the factors must be applied reasonably.

²² See 29 C.F.R. §1620.18.

²³ *Id.*

²⁴ See *Corning Glassworks v. Brennan*, 417 U.S. 188, 201 (1974) (holding that the surroundings of female inspectors who worked the day shift were in fact similar to those of their male counterparts who worked the night shift).

²⁵ *Id.*

²⁶ See *Pfeiffer v. Lewis County*, 308 F.Supp. 2d 88, 101 (N.D.N.Y. 2004) (finding that plaintiff prison dispatcher was not exposed to the same workplace hazards as a full time corrections officer who worked directly with inmates).

²⁷ See Civil Pattern Jury Instructions for the Eleventh Circuit, 11 Modern Federal Jury Instructions—Civil 4.13.

Seniority System

The main feature of a seniority system is that preferential treatment in employee rights and benefits is given based on the length of time in employment.²⁸ In addition, the system must be well-established and consistently utilized. Courts are more likely to consider a seniority system valid if it includes the following: a rule on when the seniority clock begins ticking, under what circumstances seniority may be forfeited, the lengths of service that will count toward accrual of seniority, and the types of employment decisions that will govern seniority.²⁹

Merit System

A merit system defense requires a showing that there is an organized and structured procedure to evaluate employees according to predetermined criteria.³⁰ The idea is that employees receive recognition in an objective manner and on the basis of job performance. As with a seniority system, this procedure must be well-established. If employees are unaware of the merit system, it may be invalid.³¹

System That Measures Earnings by Quantity/Quality of Production

An employer may provide compensation incentives for greater output or better quality of production. Compensation tied to quantity refers to equal dollar per unit compensation rates so that the rate of pay is actually the same among employees, but the total compensation may differ.³² A compensation system based on the quality of production rewards employees who make superior products.³³

²⁸ See American Bar Association Model Jury Instructions Employment Litigation, Model Jury Instr. Emp. Lit. P 106, §2.04[2][b].

²⁹ See Title VII racial discrimination case *California Brewers Association v. Bryant*, 444 U.S. 598, 607 (1980).

³⁰ See American Bar Association Model Jury Instructions Employment Litigation, Model Jury Instr. Emp. Lit. P 106, §2.04[2][c].

³¹ See federal EPA gender discrimination case, *Ryduchowski v. The Port Authority of New York*, 203 F.3d 135, 143 (2d Cir. 2000).

³² See federal EPA case regarding disproportionate commissions, *Bence v. Detroit Health Corp.*, 712 F.2d 1024, 1029 (6th Cir. 1983).

³³ See American Bar Association Model Jury Instructions Employment Litigation, Model Jury Instr. Emp. Lit. P 106, §2.04[2][d].

Bona Fide Factor Other Than Sex

This is another affirmative defense to a claim of sex-based wage discrimination. As a legal term, bona fide means “in or with good faith; honestly, openly and sincerely . . .”³⁴ In evaluating whether something is bona fide, courts ask whether “the thing is, in fact, just what it purports to be.”³⁵ While the federal EPA includes the employer defense “factor other than sex,” it does not qualify it with the term bona fide. A half-dozen state equal pay statutes use the term “bona fide factor other than sex.” A handful of other states substitute bona fide with the qualifier “exercised in good faith.” California’s EPA specifically provides that bona fide factors other than sex include education, training, or experience.

Consistent With Business Necessity

California’s EPA, as amended, provides that a bona fide factor other than sex also must be consistent with business necessity. The federal EPA does not contain this provision. Only Connecticut, Louisiana, Maryland, New York, and Vermont have equal pay statutes with comparable language. California’s EPA defines business necessity as an “overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve.”³⁶ Absent judicial interpretation of the business necessity test in equal pay cases, it is difficult to predict how California’s courts will interpret the term. Courts could look to disability discrimination law for guidance on how to interpret business necessity, but in that context the standard of proof is much higher. The business necessity defense under the Americans with Disabilities Act requires a showing that the employer’s practice *substantially* promotes the needs of the business.³⁷

Each Factor is Applied Reasonably

Under California’s EPA, any employer affirmative defense to a wage differential must be reasonably applied. The federal EPA has no similar provision. While a number of state equal pay laws provide that a reasonable factor other than sex is an employer

³⁴ See Black’s Law Dictionary, 1991 edition.

³⁵ See *Hammond v. McDonald* (1942), 49 Cal.App.2d 671, 685.

³⁶ See Cal. Lab. Code §1197.5(a)(1)(D).

³⁷ See *Bates v. UPS*, 511 F.3d 974, 996 (9th Cir. 2007).

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affirmative defense, they do not require that the factor be *applied* in a reasonable manner.

If I can provide further assistance, please do not hesitate to contact me at (916) 651-1500.

ML:tr

Enclosure



NATIONAL CONFERENCE of STATE LEGISLATURES

State Equal Pay Laws -- August 2016

State	Law Name and Citation	Size of Employers Covered	Provisions
Alabama	None		None
Alaska	Employment Discrimination Act Alaska Stat. Ann. § 18.80.220(a)(5)	All	It is unlawful for an employer to discriminate in the payment of wages as between the sexes, or to employ a female in an occupation in this state at a salary or wage rate less than that paid to a male employee for work of comparable character or work in the same operation, business, or type of work in the same locality.
Arizona	Equal Wages Ariz. Rev. Stat. Ann. § 23-340, 341	All	No employer shall pay any person in his employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for the same quantity and quality of the same classification of work. Provides employer liability for damages.
Arkansas	Wage Discrimination Ark. Code Ann. § 11-4-601, <i>et. seq.</i>	All	No employer shall discriminate in the payment of wages as between the sexes or shall pay any female in his or her employ salary or wage rates less than the rates paid to male employees for comparable work. Provides employer liability for damages.
California	Equal Pay Act Cal. Labor Code § 1197.5	All	No employer shall 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. Provides a cause of action to sue for damages.
Colorado	Wage Equally Regardless of Sex Colo. Rev. Stat. Ann. § 8-5-101, <i>et. seq.</i>	All	No employer shall make any discrimination in the amount or rate of wages or salary paid or to be paid his employees in any employment in this state solely on account of the sex thereof. Provides employer liability for damages.
Connecticut	Discrimination in compensation on the basis of sex Conn. Gen. Stat. Ann. §31-75, <i>et. seq.</i>	All	No employer shall discriminate in the amount of compensation paid to any employee on the basis of sex. Any difference in pay based on sex shall be deemed a discrimination. Provides employer liability for damages.
Delaware	Differential rate of pay based on gender prohibited 19 Del. Code Ann. § 1107(a), 1113	All	No employees shall be paid a wage at a rate less than the rate at which an employee of the opposite sex in the same establishment is paid for equal work on a job the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions. Provides a cause of action to sue for damages.
D.C.	No equal pay law Employment discrimination law D.C. Code Ann. § 2-1402, <i>et. seq.</i>		Washington D.C. has a general employment discrimination law prohibiting wage discrimination based on protected class status.
Florida	Wage discrimination based on sex prohibited		No employer shall discriminate between employees on the basis of sex by paying wages

	Fla. Stat. Ann. § 448.07	Employers with 2 or more employees	to employees at a rate less than the rate at which he or she pays wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. Provides a cause of action to sue for damages.
Georgia	Sex Discrimination in Employment Ga. Code Ann. § 34-5-3, et. seq.	Employers with 10 or more employees	No employer having employees subject to any provisions of this chapter 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 in jobs which require equal skill, effort, and responsibility and which are performed under similar working conditions. Provides a cause of action to sue for damages.
Hawaii	Equal pay; sex discrimination Haw. Rev. Stat. § 378-2.3, -5 Wage discrimination prohibited Haw. Rev. Stat. § 387-4	All	No employer shall discriminate between employees because of sex, by paying wages to employees in an establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex in the establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions. Provides a cause of action to sue for damages. No employer shall discriminate in any way in the payment of wages as between persons of different races or religions or as between the sexes.
Idaho	Discriminatory Wage Rates Based on Sex Idaho Code § 44-1701, et. seq.	All	No employer shall discriminate between or among employees in the same establishment on the basis of sex, by paying wages to any employee in any occupation in this state at a rate less than the rate at which he pays any employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort and responsibility. Provides cause of action to sue for damages.
Illinois	Equal Wage Act 820 Ill. Comp. Stat. 110/1, et. seq. Equal Pay Act of 2003 820 Ill. Comp. Stat. 112/1, et. seq. Wages of Women and Minors Act 820 Ill. Comp. Stat. 125/0.01, et. seq.	Employers with 6 or more employees Employers with 4 or more employees	Creates penalty for wage discrimination. No employer may discriminate between employees on the basis of sex by paying wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. Provides cause of action to sue for damages. Prohibits the employment of women and minors at an oppressive or unreasonable wage rate. Provides a cause of action to sue for damages.

Indiana	Minimum Wags: Rates; Discrimination Ind. Code Ann. §22-2-2-4(d), <i>et. seq.</i>	Employers with 2 or more employees	No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which employees are employed, between employees on the basis of sex by paying to employees in such establishment a rate less than the rate at which the employer 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. Provides a cause of action to sue for damages.
Iowa	Compensation based on comparable worth Iowa Code Ann. § 70A.18 Wage discrimination in employment Iowa Code Ann. § 216.6A	All	Adopts a state policy of wage non-discrimination between the sexes. It shall be an unfair or discriminatory practice for any employer or agent of any employer to discriminate against any employee because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such employee by paying wages to such employee at a rate less than the rate paid to other employees who are employed within the same establishment for equal work on jobs. Provides cause of action to sue for damages.
Kansas	Discrimination in payment of wages Kan. Stat. Ann. 44-1205, <i>et. seq.</i>	All	No employer having employees of both sexes 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 of wages paid to employees of the opposite sex in such establishment for equal work on jobs. Provides employer liability for damages.
Kentucky	Wage Discrimination Because of Sex Ky. Rev. Stat. § 337.420, <i>et. seq.</i>	Employers with 2 or more employees	No employer shall discriminate between employees in the same establishment on the basis of sex, by paying wages to any employee in any occupation in this state at a rate less than the rate at which he or she pays any employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort and responsibility. Provides employer liability for damages.
Louisiana	Louisiana Equal Pay for Women Act La. Rev. Stat. Ann. § 23:661, <i>et. seq.</i> Employment discrimination law La. Rev. Stat. Ann. § 23:301, <i>et. seq.</i>	State employers	Prohibits wage discrimination based on sex in state employment. Provides for employer liability for damages. Louisiana also has a general employment discrimination law that includes a prohibition of wage discrimination based on sex.
Maine	Equal Pay Me. Rev. Stat. Ann. Tit. 26 § 628	All	An employer may not discriminate between employees in the same establishment on the basis of sex by paying wages to any employee in any occupation in this State at a rate less than the rate at which the employer pays any employee of the opposite sex for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility.
Maryland	Equal Pay for Equal Work	All	An employer may not discriminate between employees in any occupation by paying a wage to employees of one sex or gender identity at a

	Md. Labor and Employment Code Ann. § 3-301, <i>et. seq.</i>		rate less than the rate paid to employees of another sex or gender identity or by providing less favorable employment opportunities based on sex or gender identity. Provides cause of action to sue for damages.
Massachusetts	Equal Pay Act Ann. Laws of Mass. Gen. Laws ch. 149, § 105A	All	No employer shall discriminate in any way on the basis of gender in the payment of wages, or pay any person in its employ a salary or wage rate less than the rates paid to its employees of a different gender for comparable work. Provides for employer liability for damages.
Michigan	Unfair Discrimination, Restraint of Trade and Trusts Law Mich. Comp. Laws Ann. § 750.556 Workforce Opportunity Wage Act Mich. Comp. Laws Ann. § 408.423	All Employers with 2 or more employees	Any employer of labor in this state, employing both males and females, who shall discriminate in any way in the payment of wages as between sexes who are similarly employed, shall be guilty of a misdemeanor. An employer having employees subject to this act shall not discriminate between employees within an establishment on the basis of sex by paying wages to employees in the establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs. Provides a cause of action to sue for damages.
Minnesota	Equal Pay for Equal Work Minn. Stat. Ann. § 181.66, <i>et. seq.</i>	All private employers	No employer shall discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate the employer pays to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. Provides a cause of action to sue for damages.
Mississippi	None		None
Missouri	Female Employees Mo. Ann. Stat. § 280.410, <i>et. seq.</i>	All	No employer shall pay any female in his employ at wage rates less than the wage rates paid to male employees in the same establishment for the same quantity and quality of the same classification of work. Provides for employer liability for damages.
Montana	Equal pay for women for equivalent service Mont. Code Ann. 39-3-104	All	It is unlawful for the state or any county, municipal entity, school district, public or private corporation, person, or firm to employ women in any occupation within the state for compensation less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind or description.
Nebraska	Sex Discrimination Neb. Rev. Stat. Ann. § 48-1221, <i>et. seq.</i>	Private employers with 15 or more employees, all public employers	No employer shall discriminate between employees in the same establishment on the basis of sex, by paying wages to any employee in such establishment at a wage rate less than the rate at which the employer pays any employee of the opposite sex in such establishment for equal work. Provides a cause of action to sue for damages.
Nevada	Discrimination on basis of sex prohibited Nev. Rev. Stat. § 608.017	All	It is unlawful for any employer to discriminate between employees, employed within the same establishment, on the basis of sex by paying lower wages to one employee than the wages paid to an employee of the opposite sex who performs equal work.

New Hampshire	Discrimination in the Workplace: Equal Pay N.H. Rev. Stat. Ann. § 275:37	All	No employer or person seeking employees shall discriminate between employees on the basis of sex by paying employees of one sex at a rate less than the rate paid to employees of the other sex for equal work. Provides employer liability for damages.
New Jersey	Discrimination in Wages N.J. Stat. Ann. § 34:11-56.1, <i>et. seq.</i>	All	No employer shall discriminate in any way in the rate or method of payment of wages to any employee because of his or her sex. Provides cause of action to sue for damages.
New Mexico	Fair Pay for Women N.M. Stat. Ann. § 28-23-1, <i>et. seq.</i>	Employers with 4 or more employees	No employer shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in the establishment at a rate less than the rate that the employer pays wages to employees of the opposite sex in the establishment for equal work. Provides employer liability for damages.
New York	Differential in rate of pay because of sex prohibited N.Y. Labor Law §194, 198	Private employers	No employee shall be paid a wage at a rate less than the rate at which an employee of the opposite sex in the same establishment is paid for equal work on a job the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions. Provides employer liability for damages.
North Carolina	No equal pay law Employment discrimination law N.C. Gen. Stat. § 143-422.1		North Carolina has a general employment discrimination law.
North Dakota	Equal Pay for Men and Women N.D. Century Code, 34-08.1-01, <i>et. seq.</i>	All	No employer may discriminate between employees in the same establishment on the basis of gender, by paying wages to any employee in any occupation in this state at a rate less than the rate at which the employer pays any employee of the opposite gender for comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility. Provides for cause of action to sue for damages.
Ohio	Wage discrimination Ohio Rev. Code § 4111.17	All	No employer, including the state and political subdivisions thereof, shall discriminate in the payment of wages on the basis of race, color, religion, sex, age, national origin, or ancestry by paying wages to any employee at a rate less than the rate at which the employer pays wages to another employee for equal work. Provides employer liability for damages.
Oklahoma	Discriminatory Wages 40 Okla. Stat. Ann. § 198.1, <i>et. seq.</i>	All private employers	It shall be unlawful for any employer within the State of Oklahoma to willfully pay wages to women employees at a rate less than the rate at which he pays any employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort and responsibility.
Oregon	Discriminatory wage rates based on sex Or. Rev. Stat. § 652.220, <i>et. seq.</i>	All	No employer shall in any manner discriminate between the sexes in the payment of wages for work of comparable character, the performance of which requires comparable skills. Provides right of action to sue for damages.

Pennsylvania	<p>Equal Pay Law</p> <p>Pa. Stat. Ann. tit. 43 § 336.1, <i>et. seq.</i></p>	All	<p>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.</p> <p>Provides cause of action to sue for damages.</p>
Rhode Island	<p>Wage Discrimination Based on Sex</p> <p>R.I. Gen. Laws Ann. 1956, § 28-6-18, <i>et. seq.</i></p>	All	<p>No employer shall discriminate in the payment of wages as between the sexes or shall pay any female in his or her employ salary or wage rates less than the rates paid to male employees for equal work or work on the same operations.</p> <p>Provides cause of action to sue for damages.</p>
South Carolina	<p>No equal pay law</p> <p>Employment discrimination law</p> <p>S.C. Code § 1-13-30</p>		<p>South Carolina has a general employment discrimination law that includes a prohibition of wage discrimination based on protected class status.</p>
South Dakota	<p>Equal Pay for Equal Work</p> <p>S.D. Codified Laws § 60-12-15, <i>et. seq.</i></p>	All	<p>No employer may discriminate between employees on the basis of sex, by paying wages to any employee in any occupation in this state at a rate less than the rate at which the employer pays any employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility.</p> <p>Provides employer liability for damages.</p>
Tennessee	<p>Sex Discrimination</p> <p>Tenn. Code Ann. § 50-2-201, <i>et. seq.</i></p>	All	<p>No employer shall discriminate between employees in the same establishment on the basis of sex by paying any employee salary or wage rates less than the rates the employer pays to any employee of the opposite sex for comparable work.</p> <p>Provides employer liability for damages.</p>
Texas	<p>Equal Work, Equal Pay</p> <p>Tex. Lab. Code § 659.001, <i>et. seq.</i></p> <p>Employment discrimination law</p> <p>Tex. Lab. Code § 21.001, <i>et. seq.</i></p>	State employers	<p>Prohibits wage discrimination based on sex in public employment only.</p> <p>Texas also has a general employment discrimination law prohibiting discrimination based on protected class status.</p>
Utah	<p>No equal pay law</p> <p>Employment discrimination law</p> <p>Utah Code Ann. § 34a-5-101, <i>et. seq.</i></p>		<p>Utah has a general employment discrimination law prohibiting wage discrimination based on race, color, sex, retaliation, pregnancy, age, religion, national origin, disability, sexual orientation, or gender identity.</p>
Vermont	<p>Fair Employment Practices Act</p> <p>Vt. Stat. Ann. tit. 21 § 495(a)(7), 495(b)</p>	All	<p>Within the general employment discrimination act, prohibiting wage discrimination based on sex.</p> <p>Provides a cause of action to sue for damages.</p>
Virginia	<p>Equal pay irrespective of sex</p> <p>Va. Code Ann. § 40.1-28.6</p>	All	<p>No employer having employees 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.</p>

			Provides a cause of action to sue for damages.
Washington	Wage discrimination due to sex Wash. Rev. Code Ann. § 49.12.175	All	Any employer in this state, employing both males and females, who shall discriminate in any way in the payment of wages as between sexes or who shall pay any female a less wage, be it time or piece work, or salary, than is being paid to males similarly employed, or in any employment formerly performed by males, shall be guilty of a misdemeanor. Provides a cause of action to sue for damages.
West Virginia	Equal Pay for Equal Work W. Va. Code, § 21-5B-1, <i>et. seq.</i>	All private employers	Prohibits wage discrimination for private employers. Provides a cause of action to sue for damages.
	Equal Pay for Equal Work W. Va. Code, § 21-5E-1, <i>et. seq.</i>	State employers	Prohibits wage discrimination for public employers. Provides employer liability for damages.
Wisconsin	No equal pay law Employment discrimination law Wis. Stat. Ann. §111.31, <i>et. seq.</i>		Wisconsin has a general employment discrimination law that includes a prohibition of wage discrimination based on sex.
Wyoming	Equal Pay Wyo. Stat. 1977 § 27-4-301, <i>et. seq.</i>	All	No employer shall discriminate, within the same establishment in which the employees are employed, between employees on the basis of gender by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite gender for equal work. Provides employer liability for damages.

Source: Westlaw 50-state statutory database searches, July 2015.

Note: Different states may exempt certain employers from the equal pay law for reasons other than size. These exemptions will be listed within that state's statute. This table compiles state equal pay laws. Other state employment discrimination laws may apply.

NCSL Member Toolbox

Members Resources

- Get Involved With NCSL
- Jobs Clearinghouse
- Legislative Careers
- NCSL Staff Directories
- Staff Directories
- StateConnect Directory

Policy & Research Resources

- Bill Information Service
- Legislative Websites
- NCSL Bookstore
- State Legislatures Magazine

Accessibility Support

- Tel: 1-800-659-2656 or 711
- Accessibility Support
- Accessibility Policy

Meeting Resources

- Calendar
- Online Registration

Press Room

- Media Contact
- NCSL in the News
- Press Releases

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7700 East First Place
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