

Statutory History of Equal Pay laws in California and the United States
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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 California 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 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>

SB 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.