



California Pay Equity Task Force  
Agenda

April 4, 2017, Equal Pay Day  
10:00 p.m. -4:00 pm

1020 N Street, Suite 100  
Sacramento, California 95814

320 W. 4th Street, 10th Floor  
Los Angeles, California 90013

Teleconference sites might be added as needed. Public comments will be taken on agenda items at the time the specific item is raised, unless it is a closed session item. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. Please check the California Commission on the Status of Women and Girls (CCSWG) website for updates, as the meeting may be rescheduled. For verification of the meeting, access the Commission's website at [www.women.ca.gov](http://www.women.ca.gov). Time limitations for discussion and comment will be determined by the Co-Chairs.

- I. Welcome and Call to Order – Co-Chairs
- II. Roll Call
- III. Establish Quorum – Adopt Agenda
- IV. Approve minutes
  - a. February 1, 2017 Task Force meeting
  - b. February 16, 2017 subcommittee meeting
- V. Outreach and Communications
  - a. Website
  - b. Conference
  - c. Partners
  - d. Communication plan
- VI. Materials
  - a. For approval/voting
  - b. For review
- VII. Subcommittees
  - a. Materials in process
  - b. Materials needed
- VIII. Public comment

## IX. Adjourn

\*In addition to public comment regarding each agenda item, the Commission affords an opportunity to members of the public to address the Task Force on items of interest that are within the Commission's jurisdiction but are not on the noticed agenda. The Commission is not permitted to take action on items that are not on the noticed agenda, but may refer items for future consideration.

### Disability Access

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### Contact Information

Please contact Stephanie Flores at 916-651-5405 or [Stephanie.Flores@women.ca.gov](mailto:Stephanie.Flores@women.ca.gov) to submit written material regarding an agenda item or to request special accommodations for persons with disabilities, or non-English language translations and for requests for information prior to the meeting. To view this agenda online please visit our website at [www.women.ca.gov](http://www.women.ca.gov).

# February 16, 2017

## Task Force Minutes

## California Pay Equity Task Force

February 16, 2017

### MINUTES

**CALL TO ORDER:** Commissioner Lauri Damrell calls the meeting to order at 10:05 am. Nancy Kirshner-Rodriguez calls the roll. Those attending are Co-chair Commissioner Lauri Damrell, Director Kevin Kish, Jennifer Barrera, Dr. Daniel Kuang, Peter Pawlick, Tamekia N. Robinson, Dr. Kimberlee Shauman, Bethany Renfree attends representing Senator Hannah-Beth Jackson, and Tamara McDonald. Jeanna Steele, Jennifer Reisch, Peter Pawlick, and Doris Ng attend via teleconference from San Francisco. Co-chair Commissioner Julie A. Su, Tamara McDonald, Victoria Pynchon, and Leslie Simon attend via teleconference from Los Angeles.

CCSWG Staff attending are Nancy Kirshner-Rodriguez, Marian Johnston, Stephanie Flores, Dr. Tonya D. Lindsey, and Ashley Anglesey.

**MOTION TO ADOPT THE AGENDA:** Members review and adopt the agenda. Tamekia N. Robinson motions to approve the agenda. Dr. Kimberlee Shauman seconds. Nancy Kirshner-Rodriguez takes roll. All present aye.

**MINUTES FROM OCTOBER 24, 2016 MEETING:** Members review minutes from the October 24, 2016 meeting. Jennifer Barrera motions to approve the minutes. Jennifer Reisch seconds. Nancy Kirshner-Rodriguez takes roll. All present aye.

**SUMMARY OF SUBCOMMITTEE WORK:** Commissioner Lauri Damrell provides an update of the subcommittee work from January and February 2017 subcommittee public meetings.

**ROAD MAP OF TASK FORCE WORK:** Nancy Kirshner-Rodriguez and Dr. Tonya D. Lindsey provide overview of work Task Force subcommittees are doing for small and large employers, employees, and employee organizations. Jennifer Reisch, Commissioner Lauri Damrell, Leslie Simon.

**DISCUSSION OF WHAT IS USEFUL FOR EMPLOYEE ORGANIZATIONS AND UNIONS:** Tamekia N. Robinson, Jennifer Reisch, Dr. Kimberlee Shauman, Commissioner Lauri Damrell, Doris Ng, Jeanna Steele, member of the public.

**DISCUSSION OF INFRASTRUCTURE DATA TO COLLECT DOCUMENT:** Peter Pawlick and Dr. Daniel Kuang present information about data for employers to collect. Members also discuss importance of each data item and connecting one page more detailed documents to each item. Dr. Kimberlee Shauman, Nancy Kirshner-Rodriguez, Victoria Pynchon, Commissioner Damrell, Marian Johnston, Commissioner Julie A. Su, Doris Ng.

Action item: Dr. Daniel Kuang and Peter Pawlick to revise document for Task Force approval at next meeting.

**DISCUSSION OF CHANGING EMPLOYER CULTURE DOCUMENT:** Jennifer Barrera and Jeanna Steele present information about their changing employer culture document. Members also discuss language used, examples of practices, the accrual of seniority, and importance of training managers, Employment Development Department information, and outreach. Commissioner Damrell, Kim, Dr.

Kimberlee Shauman, Doris Ng, Director Kevin Kish, Jennifer Reisch, Nancy Kirshner-Rodriguez, member of the public, Commissioner Julie A. Su.

Action item: Jeanna Steele and Jennifer Barrera will revise document.

**DISCUSSION OF FREQUENTLY ASKED QUESTIONS ABOUT STATE AND FEDERAL LAW DOCUMENT:**

Jennifer Barrera and Jeanna Steele present information about frequently asked question document. Commissioner Lauri Damrell, Dr. Kimberlee Shauman, and Victoria Pynchon.

**DISCUSSION OF WAGE DATA DOCUMENT:** Jennifer Barrera and Jeanna Steele present information about wage data document. Members also discuss other resources for information about wage data. Commissioner Lauri Damrell, Damrell, Commissioner Julie A. Su, Dr. Kimberlee Shauman, Peter Pawlick, Victoria Pynchon, Nancy Kirshner-Rodriguez, Doris Ng, Dr. Daniel Kuang.

**PUBLIC MEMBER COMMENT:** Commissioner Lauri Damrell asks if there is any public comment. No public comment.

**LUNCH BREAK**

**SUBCOMMITTEE MEETING ON DEFINITIONS AND TERMS BREAKOUT GROUP**

Commissioner Lauri Damrell briefs group about definitions subcommittee work done since December.

**DISCUSSION OF TERMS:** Jennifer Barrera, Jennifer Reisch, Marian Johnston, Doris Ng, Jeanna Steele, Commissioner Lauri Damrell.

**DISCUSSION OF JURY INSTRUCTIONS:** Doris Ng, Commissioner Lauri Damrell, Bethany Renfree, Jennifer Reisch, Kevin Kish.

**NEXT STEPS:**

1. Complete filling out bullet points on document from Doris Ng in definitions subcommittee.
2. Decision about jury instructions or regulations.
3. Circulate Doris Ng's jury instructions document.

Commissioner Lauri Damrell, Jennifer Reisch, Doris Ng.

**DISCUSSION OF ADDITIONAL TERMS TO DEFINE:** Marian Johnston, Commissioner Lauri Damrell. Discussion of other terms to define. Marian, C. Damrell,

**DISCUSSION OF SCHEDULING FOR NEXT DEFINITIONS SUBCOMMITTEE MEETING:** March 16 is the reserved date. Jennifer Reisch, Doris Ng, Commissioner Lauri Damrell.

**MINUTES FROM JANUARY 19, 2017 MEASURING THE PAY GAP, EVALUATING JOB CLASSIFICATIONS, SYSTEMS AND FUNCTIONAL INFRASTRUCTURE, AND HUMAN RESOURCES SUBCOMMITTEES MEETING:**

Dr. Daniel Kuang motions to approve. Jennifer Reisch seconds. Dr. Daniel Kuang aye, Peter Pawlick aye, Commissioner Lauri Damrell aye. Commissioner Julie A. Su, Dr. Kimberlee Shauman, and Rhoma Young not present.

**MINUTES FROM FEBRUARY 1, 2017 DEFINITIONS SUBCOMMITTEE MEETING:** Jennifer Barrera motions to approve. Jennifer Reisch seconds. Jennifer Reisch aye, Jennifer Barrera aye, Commissioner Lauri Damrell aye.

**DISCUSSION OF STEP-BY-STEP JOB EVALUATION DOCUMENT:** Jennifer Barrera presents information in document.

**DISCUSSION OF SUBSTANTIALLY SIMILAR WORK:** Commissioner Lauri Damrell, Dr. Daniel Kuang, Director Kevin Kish, Jeanna Steele, Peter Pawlick, Marian Johnston, Jennifer Barrera, Jennifer Reisch.

**DISCUSSION OF WAGE RATE VERSUS WAGE:** Jennifer Barrera, Doris Ng.

**DISCUSSION OF COST OF LIVING VERSUS COST OF LABOR:** Peter Pawlick, Jennifer Barrera, Jennifer Reisch, Doris Ng, Jeanna Steele.

**DISCUSSION OF PRIOR SALARY:** Jennifer Reisch, Jennifer Barrera, Jeanna Steele, Doris Ng.

**NEXT STEPS:**

1. Jennifer Barrera and Jeanna Steele will redraft Step-by-step and FAQs document by next definitions subcommittee meeting.

**SUBCOMMITTEE MEETING ON OUTREACH AND DELIVERABLES BREAKOUT GROUP:** Members attending subgroup are Tamekia N. Robinson, Dr. Kimberlee Shauman, Commissioner Julie A. Su, Tamara McDonald, Victoria Pyncheon, and Leslie Simon. Others attending include Nancy Kirshner-Rodriguez, Marian Johnston, and Stephanie Flores.

**DISCUSSION PLAN FOR DISSEMINATION AND COMMUNICATIONS STRATEGY:** Instagram and reaching out to Sheryl Sandberg, Facebook, and Lean In; website; and social media.

**DISCUSSION OF CONTENT AND PARTNERS:** Who can we partner with to deliver message in a consistent way. Concrete model of content. For example tip sheet, facts and statistics, flow chart, links to more detailed information.

**DISCUSSION OF WORKPLACE JUSTICE SUMMIT FOR EMPLOYERS.**

**DISCUSSION OF WEBSITE.**

**DISCUSSION OF ADDITIONAL CONTENT.**

**DISCUSSION OF FOCUS GROUPS.**

**NEXT STEPS:**

1. Nancy Kirshner-Rodriguez and Stephanie Flores will develop timeline and concrete models of content with basic, charts, graphs, and data on a website for release on Equal Pay Day with Report.

**BREAK**

**REPORT BACK TO LARGER GROUP ABOUT OUTREACH:** Leslie Simon, Nancy Kirshner-Rodriguez, Tamekia N. Robinson, Roger White, Jennifer Reisch.

**NEXT STEPS:**

1. Website ready before April 4.
2. Timeline how to do outreach etc.
3. Avenues for Communications plan.

**REPORT BACK TO LARGER GROUP ABOUT DEFINITIONS:** Jennifer Barrera.

**MOTION TO ALLOW TONYA TO RECEIVE TASK FORCE MEMBER EDITS, MAKE CHANGES, AND GET FINAL APPROVAL FROM CO-CHAIRS:** Tamekia N. Robinsons motions. Jennifer Barrera seconds. All present aye.

**DISCUSSION OF ADDITIONAL INFORMATION IN INTERIM REPORT:** Add timeline in deliverables with projected dates of completion. Remove footnote regarding current legislation. Deadline to submit comments is February 3. Have to Tonya by March 3. The report is due to go to Commission meeting in March 2017. Should we solicit public feedback on report via email? Dr. Kimberlee Shauman, Bethany Renfree, Jennifer Barrera, Nancy Kirshner-Rodriguez, Marian Johnston, Commissioner Lauri Damrell, Director Kevin Kish.

**ANNOUNCEMENT ABOUT UPCOMING HEARING** : Nancy Kirshner-Rodriguez, Marian Johnston,

**DISCUSSION ABOUT FINAL REPORT, UPDATED TIMELINE, PLANNING:** Doris Ng, Marian Johnston,

**PUBLIC COMMENT:** Commissioner Lauri Damrell asks for public comment. See none. The meeting is adjourned.





# March 16, 2017

## Task Force

### Subcommittee Minutes

California Pay Equity Task Force  
Definitions, Planning, and  
Challenges and Barriers Joint Subcommittee

March 16, 2017

MINUTES

**CALL TO ORDER:** Commissioner Lauri Damrell calls the meeting to order at 1:15 PM. Tonya D. Lindsey calls the roll. Those attending are Co-chair Commissioner Lauri Damrell and Jennifer Barrera. Jeanna Steele and Jennifer Reisch attend via noticed conference call locations. Jennifer Reisch joins the meeting at 1:30 pm.

Staff attending are Nancy Kirshner-Rodriguez, Dr. Tonya D. Lindsey, Stephanie Flores, Doris Ng, and Tamara McDonald.

Members of the public are present in Sacramento and Los Angeles.

**AGENDA:** Members already adopted. Commissioner Lauri Damrell asks for a motion to adopt the agenda. Jennifer Barrera motions to adopt the agenda, Jeanna Steel seconds. Tonya D. Lindsey calls the roll for a vote. Commissioner Lauri Damrell, aye. Jennifer Barrera, Aye. Jeanna Steele Aye. Jennifer Reisch and Commissioner Julie Su not present for vote.

**DISCUSSION OF CASE LAW DOCUMENT AND ADDING A DISCLAIMER:** One for one match between skills, effort, and responsibility not required if one factor is not substantially similar. It will not necessarily mean the jobs are not substantially similar; must consider other factors. Commissioner Lauri Damrell, Jennifer Barrera, Doris Ng, Jeanna Steele, Megan Lane, Nancy Kirshner-Rodriguez.

**DISCUSSION OF HOW TO PRESENT MATERIAL FOR AUDIENCES:** Use of scenarios with case law references. Compliance and enforcement manuals. Present topic, provide example, include disclaimer. Commissioner Lauri Damrell, Jennifer Barrera, Doris Ng, Jeanna Steele, Jennifer Reisch.

**WAGE RATE DOCUMENT AND DISCUSSION OF WHAT CONSTITUTES A WAGE:** What do people who perform pay audits look at? Could add a reference to fringe benefits in culture document. Doris Ng, Jennifer Barrera, Jennifer Reisch, Nancy Kirshner-Rodriguez, Jeanna Steele.

**DISCUSSION OF THE SIZE OF PAY DIFFERENTIAL:** Commissioner Lauri Damrell and Jennifer Barrera, Jennifer Reisch.

**DISCUSSION OF EXISTING ENFORCEMENT GUIDANCE AND MANUAL:** Doris Ng, Jennifer Reisch. Commissioner Lauri Damrell.

**NEXT STEPS:**

1. Everyone review and think about the cases.
2. Case law document and definitions. Should there be a change to the structure? For example, present factual scenarios, and then cite case? Doris Ng, Jennifer Barrera, and Jennifer Reisch will work on this document.

3. Tonya D. Lindsey will place case law and definitions document on google docs and circulate only to Doris Ng, Jennifer Barrera, and Jennifer Reisch.
4. Wage data information document will be edited by Jeanna Steele and Commissioner Lauri Damrell.
5. FAQ document. Jennifer Reisch and Jennifer Barrera will be working on this document.
6. Tonya D. Lindsey will verify with Commission counsel, Marian Johnston, about work assignments.
7. Nancy Kirshner-Rodriguez will send outlook invite to all Task Force members for future Task Force meetings.

Meeting adjourned.

DRAFT



# Timeline 2017-2018

<b>Goal</b>	<b>Responsible Entity</b>	<b>Purpose</b>	<b>Estimated Date of Completion</b>
<b>Task Force approval on drafted tools</b>	Task Force	Approval for tools to include on website and include the toolkit	Each full Task Force meeting
<b>Communication plan drafted for vote</b>	Commission staff	To outline goals for communications for 2017	April 4, 2017
<b>Release Interim Report</b>	Commission staff	To update the public about Task Force progress and goals	April, 4 2017
<b>Publish website under construction</b>	Commission staff	Unveil structure of work	April, 4, 2017
<b>Finalize materials to be made available</b>	Task Force	Approval for tools to include on website and include the toolkit; those produced or identified by Task Force	November 13, 2017–January 2018
<b>Focus Group</b>	TBD	Audience feedback about information	November 13, 2017–January 2018
<b>Final toolkits</b>	Commission staff; contractor	For release at conference	March 2018
<b>Final website</b>	Commission staff; Task Force	For release at conference	March 2018
<b>Conference</b>	Commission staff; UC Davis;	Information directly to stakeholders	April 10, 2018

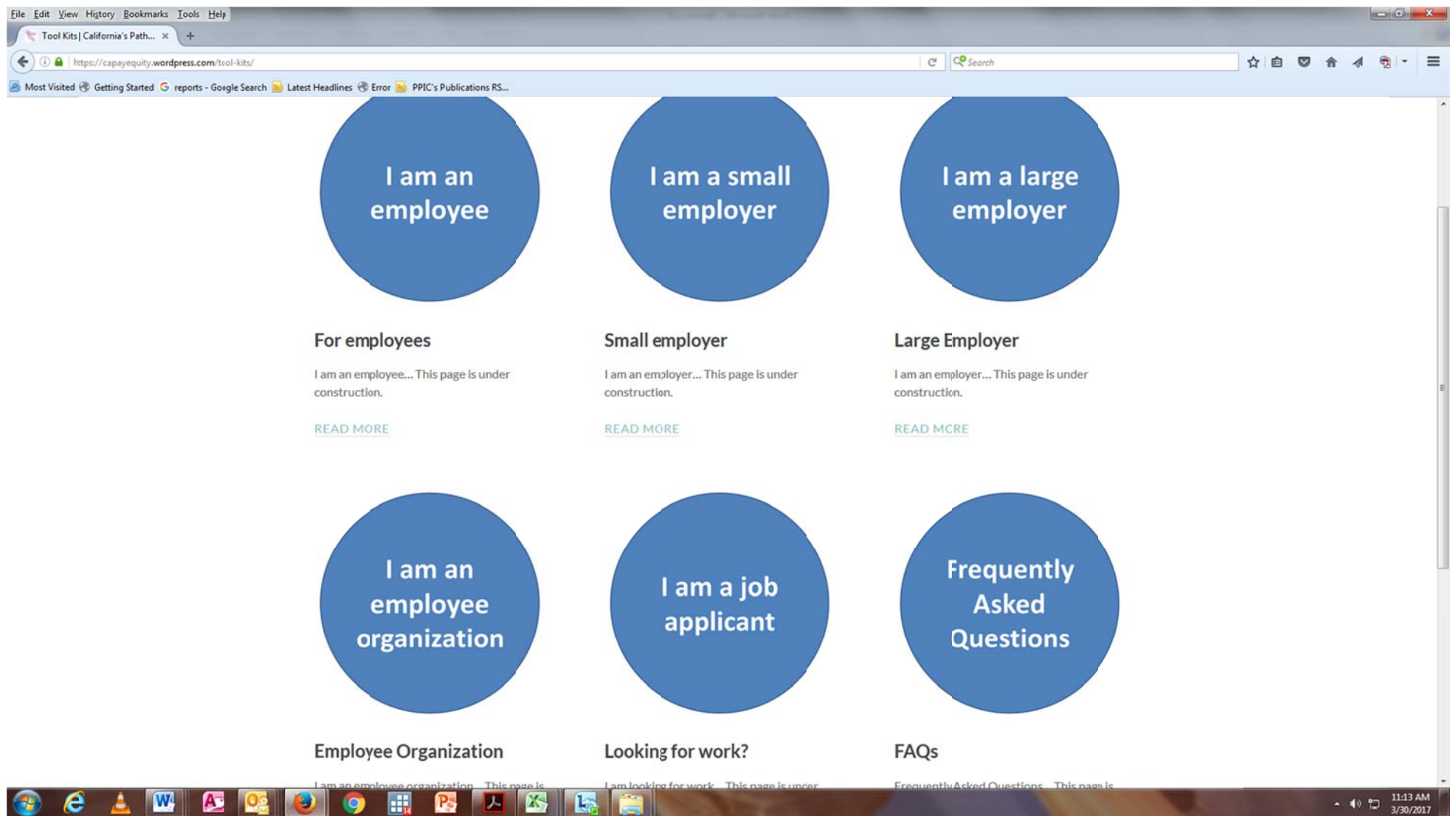
<b>Meeting Date</b>	<b>Meeting Type</b>	<b>Time and Location</b>	<b>Teleconference Locations</b>
<b>April 4, 2017</b>	Full Task Force; Equal Pay Day; Interim Report and Landing Page Release	10 AM–4 PM Sacramento, Ca.	As needed
<b>May 25, 2017</b>	Joint Subcommittee	TBD	As needed
<b>June 1, 2017</b>	Full Task Force	10 AM-4 PM TBD	As needed
<b>August 17, 2017</b>	Joint Subcommittee	TBD	As needed
<b>September 14, 2017</b>	Full Task Force	10 AM-4PM TBD	As needed
<b>October 6, 2017</b>	Joint Subcommittee	TBD	As needed
<b>November 13, 2017</b>	Full Task Force	10 AM-4PM TBD	As needed
<b>December TBD, 2017</b>	Joint Subcommittee	TBD	As needed
<b>January TBD, 2018</b>	Full Task Force	10 AM-4PM TBD	As needed
<b>February TBD, 2018</b>	Joint Subcommittee	TBD	As needed
<b>March TBD, 2018</b>	Full Task Force	10 AM-4PM TBD	As needed
<b>April 10, 2018</b>	Full Task Force;	10 AM-4PM TBD	As needed

# Website



## Homepage





# Toolkits



# EITC Example Partner Toolkit



## CalEITC4Me PARTNER TOOLKIT

***We look forward to working with your office to maximize the benefits of CalEITC for working families in your district.*** Together, we will work to ensure that every eligible working household – an estimated 600,000 in California – claim refunds they've earned, and that more families file for the federal EITC. The economic impact of this program is profound, adding hundreds of millions of dollars to the state's economy in income, business sales, new jobs, and tax revenue.

To ensure a coordinated, amplified effort, we have created an easy-to-use toolkit:

- 1) **About CalEITC4Me**
- 2) **Sample News Release**
- 3) **EITC Fact Sheet**
- 4) **Sample Social Media**
- 5) **Sample PSA Scripts**
- 6) **Website Button Link to CalEITC4me.org**

For more information, or to get involved contact:

Holly Martinez, 916-606-2470  
[holly@goldenstateopportunity.org](mailto:holly@goldenstateopportunity.org)

Marika Rose, 916-601-9737  
[marikarose@surewest.net](mailto:marikarose@surewest.net)



## ABOUT CalEITC4Me

**Please join us as a partner and help spread the word about the Earned Income Tax Credit!**

**CalEITC4Me** is a statewide outreach campaign that serves as a one-stop shop to encourage lower income working Californians to claim the new state earned income tax credit (CalEITC). Many low-income working Californians struggle to provide for their families. EITC provides extra cash for basic necessities - education, food and housing – providing an economic lifeline for struggling working families.

CalEITC4Me's goals are to ensure that every eligible working household – an estimated 600,000 – claim refunds they've earned, and that more Californians file for the federal EITC. The majority of Californians eligible for the EITC are single, women and working part time. The economic impact of the state EITC alone is profound, adding hundreds of millions of dollars to the state's economy in income, business sales, new jobs, and tax revenue.

Add to that the billions of federal EITC available to working Californians, \$1.8 billion of which goes unclaimed each year.

In 2016, its first year, CalEITC4me efforts resulted in nearly 30,000 free tax preparations and made 118,000 referrals to free local VITA tax preparation centers. More than 400,000 low-income working Californians claimed nearly \$200 million dollars in refunds. In addition to the direct benefits to families, those dollars were reinvested in local economies.

In its second year, CalEITC4me will reach even more eligible households through expanded multi-lingual education and grassroots outreach, enhanced web tools, free tax preparation services and partners that are well-positioned to spread the word.

This comprehensive statewide campaign is an initiative of Golden State Opportunity <http://goldenstateopportunity.org/> which works to improve the lives of working Californians through a program of research, analysis, public information and education – reaching Californians community-by-community, where they live, work, learn, worship, shop and tweet. Core campaign elements include:



## Community Partners

Neighborhoods, and the people and organizations within them, are at the center of our effort. CalEITC4Me is working on a daily basis hand-in-hand with trusted community partners who serve and interact with those most likely to be eligible. Campaign activities include distribution of helpful multi-lingual materials, free tax filing events, neighborhood resource centers, extended hours at free tax prep sites, and on-the-ground outreach including door-to-door campaigns.

## CalEITC4Me.org

We've created a one-stop shop headquarters online. Our multi-lingual website is a go-to hub of information, providing up-to-date resources, content, tool kits, fact sheets, videos, social media campaigns and other user-friendly resources for partners, community organizations and filers throughout the tax season.

Our online multi-lingual CalEITC4Me **Calculator** allows individuals to determine their eligibility for the state and federal EITC, including their potential cash-back refund in a few easy steps. The calculator, created for California by Inuit Financial Freedom Foundation, links to the **Free Tax Prep Finder** tool, which connects families to free tax preparation services in their neighborhoods. In addition, the CalEITC4Me Interactive **Heat Map** helps nonprofits, government agencies and others identify key regions of eligible filers by ZIP code and other searchable criteria to better target education and outreach efforts on the ground.

## A Strong, Diverse Coalition

This statewide campaign brings together multiple state agencies and a broad coalition of local and statewide community, faith, civic, education, workforce, business, and media leaders committed to fostering economic opportunity and financial security for Californians barely making ends meet. It was initiated by Golden State Opportunity, a new foundation created by California entrepreneur Joseph N. Sanberg.

For more information, or to get involved contact:

Holly Martinez, 916-606-2470  
[holly@goldenstateopportunity.org](mailto:holly@goldenstateopportunity.org)

Marika Rose, 916-601-9737  
[marikarose@surewest.net](mailto:marikarose@surewest.net)



## SAMPLE NEWS RELEASE

### For Immediate Release

Contact: XXX

### (XXX) Joins CalEITC4me to Raise Awareness of

#### Hundreds of Millions in Cash-Back Tax Refunds for Working Californians

(City) – (Organization/Name) has partnered with [CalEITC4Me](#), the statewide education and outreach campaign to get the word out to more than 600,000 eligible low-income working Californians about the state's earned income tax credit (CalEITC) program. In 2017, the campaign aims to maximize claims for state and federal earned income tax credits, which provide an economic boost for struggling working families and communities.

EITC's economic impact is profound. In its first year, CalEITC cash-back refunds to low-income working Californians totaled nearly \$200 million. Add to that the billions of federal EITC available to working Californians, \$1.8 billion of which goes unclaimed each year.

(Insert county data from **Fact Sheet** below) "In XXX County, XXX million working families are eligible for CalEITC. This translates to \$XXX million in cash-back refunds that families can spend on food, education, housing and other necessities," said XXXX. "Businesses also benefit when working families have extra income to spend in their communities."

CalEITC4me.org is a one-stop shop for filers and community organizations throughout the year. The multilingual website provides eligibility information, resources, tool kits, fact sheets, videos, social media and other user-friendly resources:

- The multilingual (English, Spanish, Mandarin) **Calculator** allows individuals and partners to quickly assess eligibility, including the approximate amount of their potential refund. <http://caleitc4me.org/earn-it/>.
- The **Free Tax Prep Finder** is a map that connects families to free tax preparation services in their neighborhoods, featuring approximately 1,400 VITA sites. Individuals can go online and enter their address or zip code and find this information, which includes addresses, contact information, days and hours services are available, languages offered and whether an appointment can be made. <http://caleitc4me.org/get-it/>.



- The CalEITC4Me Interactive **Heat Map** helps the campaign, non-profits, agencies and others identify key regions of eligible filers by ZIP code and other searchable criteria to maximize participation.  
<http://caleitc4me.org/caleitc-heatmap/>

Californians must file their taxes by April 18 to qualify for the California Earned Income Tax Credit.

*ABOUT CalEITC4Me.org*

*CalEITC4Me is statewide outreach and education campaign to spread awareness of the state and federal Earned Income Tax Credit and put more money into the hands of hard-working Californians. CalEITC4ME, an initiative of Golden State Opportunity, is a one-stop, multilingual online hub of information and interactive resources. To learn more about CalEITC4Me, visit [CalEITC4Me.org](http://CalEITC4Me.org). To learn more about Golden State Opportunity, the organization focused on creating economic security for everyone, visit [goldenstateopportunity.org](http://goldenstateopportunity.org)  
[@CalEITC4Me](https://www.facebook.com/CalEITC4Me)  
[Facebook.com/CalEITC4Me](https://www.facebook.com/CalEITC4Me)*

###



## EITC FACT SHEET



### Why the EITC is so important:

- The EITC is one of the most effective tools in America to lift families out of poverty
- Last year, the Cal EITC put almost \$200 Million directly into the hands of nearly 400,000 working Californians for the first time
- The Federal EITC delivers over \$7 Billion to low-income Californians every year
- Research shows children whose families receive a boost in income from EITC perform better in school and have better health.
- The EITC enjoys wide bipartisan support for encouraging work and continued employment
- Families use the EITC to buy shoes, put food on the table, pay bills, and cover basic needs for their kids
- Governor Brown described the CalEITC as one of his most important achievements

### Why EITC Outreach and Education Matters:

- Every year California leaves \$2 Billion of unclaimed EITC money on the table
- Research suggests outreach around state level EITC's increase uptake of the Federal EITC.
- About one-third of the EITC eligible population turns over each year
- Workers move into and out of eligibility based on changes in their marital, parental and financial status
- Three out of five who receive the credit use it temporarily, for one or two years.
- You must claim the credit to receive it. Over 50,000 working people filed California taxes last year and failed to claim the credit
- Many people who qualify for the credit and are eligible for up to \$6,000 fail to simply file taxes because they make below the required income threshold



### Why CalEITC4me:

CalEITC4me is the public-private partner with the State of California to engage Californians eligible for the State and Federal Earned Income Tax Credit.

The CalEITC4me campaign works to reach people where they live, eat, work, worship and shop to help them access their money, and create security for their lives.

### Top Ten California Counties in terms of CalEITC eligibility:

Listing reflects the number of households eligible and estimated CalEITC cash-back refunds available (according to the Franchise Tax Board). We can provide data for other counties or by District upon request.

#### **Fresno County**

25,000 eligible, \$13 million available

#### **Kern County**

17,500 eligible, \$9 million available

#### **Los Angeles County**

More than 100,000 eligible, more than \$50 million available

#### **Orange County**

35,000 eligible, \$18 million available

#### **Riverside County**

35,000 eligible, \$18 million available

#### **Sacramento County**

25,000 eligible, \$13 million available

#### **San Bernardino County**

45,000 eligible, \$24 million available

#### **San Diego County**

45,000 eligible, \$24 million available

#### **San Joaquin County**

12,500 eligible, \$6.5 million available



## SAMPLE SOCIAL MEDIA POSTS

- 1) We are proud to partner with @CalEITC4Me to educate Californians on the #CalEITC. For more information, visit CalEITC4Me.org



- 2) Get your #EITC cash back refund this tax season. Follow @CalEITC4Me to learn how.



- 3) Join us and follow @CalEITC4Me! They will provide you with all the resources you need to claim #CalEITC on your 2016 CA tax return.



- 4) Think what your family could with your EITC cash back refund. Visit CalEITC4Me.org to find out if you are eligible.





## CalEITC4Me SAMPLE PSAs

1.)

The California earned income tax credit – CalEITC – is making hundreds of millions of dollars available for eligible working Californians this tax season. That's cash back that you've earned!

You could be eligible for a \$6,000 dollar cash-back refund and can even file your taxes for free tax preparation site in your neighborhood.

Text "CASH" to (760) 970-8396 to find out if up to \$6,000 is waiting for you!

Visit CalEITC4Me.org to learn more

Don't wait. Check it out. CalEITC4Me.org.

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2.)

If you're a working Californian making up to \$54,000 per year, you could get a big cash refund at tax time.

CalEITC is a new program that gives money back to working families and individuals. But you need to file your taxes by April 18 to get it!

Text "CASH" to (760) 970-8396 to find out if up to \$6,000 is waiting for you!

You can learn more by visiting CalEITC4Me.org today to find out how much cash back you can get, and how to file your taxes for FREE.

Don't let it pass you by! Get your hard-earned money today.

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3.)

If you make up to \$54,000 a year there's a State program to put hundreds of million back into the pockets of working Californians like YOU. It's called CalEITC and it's easy to claim.

Visit CalEITC4Me.org today to find out, on-the-spot, if you're eligible for a cash refund up to \$6,000 this tax season and get FREE assistance filing your taxes.

(insert free tax event info if applicable)

Or text "CASH" to (760) 970-8396 to find out if you qualify!

Don't wait. Check it out. CalEITC4Me.org.



## WEBSITE BUTTON TO LINK TO CALEITC4ME.ORG

Put one of our CalEITC buttons on your website to link to us! Choose a size:  
[93x69](#) or [234x60](#)



For more information, or to get involved contact:

Holly Martinez, 916-606-2470  
[holly@goldenstateopportunity.org](mailto:holly@goldenstateopportunity.org)

Marika Rose, 916-601-9737  
[marikarose@surewest.net](mailto:marikarose@surewest.net)



# Data and Information to Collect

*Draft – For Discussion Purposes Only: The materials provided on this website have been provided by individual Task Force members or staff to provide access to resources that are available on the issues considered by the Task Force. The materials provided on this web site are 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 or conclusions of the Task Force. The posting of these materials does not create requirements or mandates.*

#### Infrastructure / Systems

For employers of all sizes, a commitment to providing resources to:

- Establish and/or change existing management practices
- Ensure that sufficient data for a pay equity analysis are captured and stored in an accurate manner with appropriate retention schedules
- Analyze and take action on pay equity data.

This document summarizes suggested infrastructure and data that would be useful in conducting a pay equity analysis. These may not always apply based on industry or employee population. There may be other data points that may be relevant that may not be listed here. While not explicitly required by law, this data may facilitate compliance with the law.

Function	Description	Pay Equity Data <sup>1</sup>			
		Small (50)		Med/Large (500+)	
		Minimum	Desirable	Minimum	Desirable
Human Resources Management System (HRMS)	<ul style="list-style-type: none"> <li>o Time in Company<sup>A</sup></li> <li>o Time in Position</li> <li>o Pay Rate History (including Starting Salary<sup>B</sup>)</li> <li>o Gender</li> <li>o Race<sup>C</sup></li> <li>o Employee Job History, Management Level History, Location History, Compensation History<sup>D</sup></li> <li>o Geographic Salary Ranges reflecting external market data</li> <li>o Team Size (total team size and direct reports)</li> </ul>	✓		✓	
		✓		✓	
		✓		✓	
		✓		✓	
		✓		✓	
			✓	✓	
			✓	✓	
			✓		✓
Payroll	<ul style="list-style-type: none"> <li>o Payroll Data</li> </ul>	✓		✓	
Time and Attendance	<ul style="list-style-type: none"> <li>o Earnings</li> <li>o Hours Worked</li> </ul>	✓		✓	
		✓		✓	
Talent Management	<ul style="list-style-type: none"> <li>o Talent assessment data<sup>E</sup></li> <li>o Accomplishments; Performance against goals; Productivity</li> <li>o Goals/Objectives</li> <li>o Long-Term Career Potential (High Potential or Key Role); Training &amp; Development</li> <li>o Positions; Fast-track / leadership development<sup>F</sup></li> <li>o Employee Profiles (internal/external employment history, experience, institutional knowledge, education, accomplishments, competencies)<sup>G</sup></li> <li>o Competency assessments</li> <li>o Succession planning</li> <li>o Scope of Role - Budget P&amp;L Responsibility, Complexity of channels, geographies</li> </ul>		✓	✓	
			✓	✓	
			✓		✓
			✓		✓
			✓		✓
			✓		✓
			✓		✓
			✓		✓
Recruiting / Talent Attraction	<ul style="list-style-type: none"> <li>o Job Profiles/Descriptions</li> <li>o Candidate Resumes<sup>G</sup></li> </ul>	✓		✓	
			✓	✓	
External Market Data	<ul style="list-style-type: none"> <li>o Salary Survey analysis</li> <li>o Salary Surveys with benchmark jobs</li> </ul>		✓		✓
			✓		✓
Company Practices**	<ul style="list-style-type: none"> <li>o Definition / Statement of Compensation Strategy (Pay for Performance; Pay for Tenure/Service; Pay for Role)<sup>H</sup></li> <li>o Definition of Recruiting Practices (Prior Salary; Blind Resume; Documentation of pay/hiring decisions)<sup>I</sup></li> </ul>		✓		✓
			✓		✓
Internal Job Structure Data	<ul style="list-style-type: none"> <li>o Job Functions / Job Families</li> <li>o Career leveling matrix indicated breadth and depth of role scope</li> </ul>		✓		✓
			✓		✓

Notes:

<sup>1</sup> Elements of this checklist that are required to conduct a pay equity analysis should not be construed as legal requirements. They are suggested management practices that will help facilitate a pay equity analysis.

<sup>A</sup> In service date to account for missing periods in tenure.

<sup>B</sup> A very useful field to capture because currently the majority of the pay gap is due to starting salary.

<sup>C</sup> SB 1067 expanded SB 358 to cover race. Include Non-Reported vs. Opt-Out as options; Cross-over with Definitions and HR: Need to define best practice for survey form for Race/Ethnicity including available options and differentiate opt-out vs. not captured.

<sup>D</sup> Cross-over with Definitions: Need definition of compensation (pay rate vs. earnings and additionally bonus/stock)

<sup>E</sup> Cross-over with Human Resources: Important that talent/performance assessment systems do not perpetuate bias or disparate impact.

<sup>F</sup> Cross-over with Human Resources

<sup>G</sup> Should External or Internal Resumes be maintained

<sup>H</sup> Cross-over with Human Resources: Define practices surrounding pay decisions; regularly review internal and external equity; leverage calibration discussions (more than one person making decision)

<sup>I</sup> Cross-over with Human Resources: Define practices surrounding recruiting; asking for pay history; placing employee into correct role and job level; re-level jobs based on changes in scope and business priority



# Job Searches and Interviewing

## 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 to 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?

Draft – For Discussion Purposes Only: The materials provided on this website have been provided by individual Task Force members or staff to provide access to resources that are available on the issues considered by the Task Force. The materials provided on this web site are 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 or conclusions of the Task Force. The posting of these materials does not create requirements or mandates.

# Changing Employer Culture

## Promoting a Culture of Pay Equity – Suggested Action Items:

Pay disparities in the workplace amongst men and women, or different races or ethnicities, can be the result of direct and indirect bias. Examples of indirect bias include assuming women perform certain jobs or duties instead of men; presuming women are not interested in advancement or promotions; making subjective pay determinations that are not based upon job-related factors; or basing an individual's compensation solely on prior wage or salary history. The Task Force recommends that employers consider adopting some or all of the below Action Items to promote a culture of pay equity within the employer's organization. These Action Items are not required by law and may not be feasible for all employers. However, adopting some, or all, of these action items may assist in promoting a culture of pay equity in the workplace.

### Action Items:

1. **Increase Diversity of Applicant Pool:** Develop tools to increase the diversity of the employer's candidate pool, particularly in jobs that are majority male. Achieving at least 25% women candidates in an applicant pool has been shown to reduce the likelihood of unconscious gender bias and stereotyping, thus increasing the likelihood that more female candidates are hired.
2. **Remove Bias from Hiring Process:** Increase the representation of women who make hiring decisions and participate in applicant interviews. Although not required by law, employers should also consider whether to make the initial pre-employment screening blind to the candidate's gender, race or ethnicity (e.g., no name initially provided, just initials). The Task Force also recommends that employers provide training on implicit bias to employees involved in hiring decisions.
3. **Train Supervisors or Managers:** Train managers on how to create a culture of pay equity. The Task Force recommends that employers train any supervisor or manager who has input regarding employee's compensation about unconscious bias and the law's pay equity requirements, under both federal and state law. Train supervisors and managers on how to make valid compensation decisions or recommendations that are based on objective, job-related factors and not on an employee's gender, race or ethnicity. Training managers promotes job satisfaction and morale among employees generally, and reduces employee turnover.
4. **Encourage Employee Communication:** Encourage employees to communicate with one another regarding compensation without the fear of retaliation. Encourage employees to ask the employer questions about their compensation without any concern of retaliation or an adverse employment action. Similarly, employers should consider encouraging managers and supervisors who are communicating compensation decisions to employees to explain the basis for any compensation changes.
5. **Job Classifications and Descriptions:** Review job classifications and job descriptions on a regular basis to make sure the classifications and descriptions accurately reflect the work being performed.
6. **New Hire Evaluations:** Base any offer of compensation to a new hire according to the objective, job-related factors and not on the applicant's gender, race, or ethnicity. Additionally, although employers may consider an applicant's prior compensation information, employers should not base any offer of compensation solely on the applicant's prior salary or compensation. Employers may consider excluding prior salary from the hiring process to eliminate any risk of perpetuating any pay disparity to women and minorities who may have been underpaid in a prior role. Focus on paying applicants what a job is worth and not basing a pay decision on the candidate's current salary. Review market data to determine the median wage for similar positions in the same geographical area as well as the compensation of other existing employees who are performing the same or substantially similar responsibilities.

7. **Consider Removing Negotiation from the Hiring Process/Lockstep Salary Bands:** Consider either empowering women to negotiate, or removing negotiation from the hiring process. If using salary bands, employers should limit how high within a range new hires can be paid and require an objective justification for any difference between an incumbent and the new hire (e.g. years of experience, relevant industry experience, etc.)
8. **Review/Adjust Incumbent Pay:** Require a review of incumbent compensation if new hires are brought in at higher salaries than their current workforce. Adjust current workforce upwards to match higher compensation offered to a new candidate unless there are objective factors that justify any pay disparity.
9. **Compensation Reviews:** Regularly review employee compensation to evaluate any noticeable disparities amongst employees performing the same or substantially similar jobs. Review compensation to make sure the wages provided adequately compensate the employee for the job being performed.
10. **Increase diversity at senior levels and in the compensation department:** Provide structural supports to move women and minorities up the talent pipeline, e.g. leadership training for top female and minority managers. Require that all important meetings include 30-50% women/minorities (e.g. Salesforce: Women Surge). Increase the representation of women/minorities who make compensation decisions for their workforce. A study of senior executive compensation at public companies revealed that women executives were better compensated when the compensation committee included women. There was a substantial gap in compensation when the committees included either no women or just one woman. See, e.g., <http://www.businessinsider.com/salesforce-ceo-explains-women-surge-2015-3>.
11. **Limit Discretion in Pay Decisions:** For larger employers with a separate compensation department, consider requiring that manager compensation requests/recommendations be reviewed and approved by the Company's compensation department.
12. **Promote Wage Transparency/Standardize Compensation:** Although not required by law, employers may consider publishing salary ranges by level. Standardize discretionary compensation such as bonuses and equity and remove discretion in compensation decisions from individual managers. A recent study by the City of Boston found that in industries where there was high compensation "ambiguity" — meaning limited knowledge of the negotiating range and appropriate standards of compensation — recent women MBAs received salaries that were 10% lower than male classmates with the same skills and experience. In industries where salary ranges and standards were clear, male and female MBAs earned the same. See *Boston, Closing the Wage Gap* (2013), at [https://www.cityofboston.gov/images\\_documents/Boston\\_Closing%20the%20Wage%20Gap\\_Interventions%20Report\\_tcm3-41353.pdf](https://www.cityofboston.gov/images_documents/Boston_Closing%20the%20Wage%20Gap_Interventions%20Report_tcm3-41353.pdf).
13. **Design Fair Performance Evaluations:** Review performance evaluations to ensure fairness in the performance criteria. Publish and gain commitment for employee performance criteria.
14. **Offer Training and Other Accommodations:** Offer management training, skills training, or other learning opportunities to all employees so that both women and men have the same opportunities for promotions. Support training programs for women in the trades. Pre-apprenticeships programs help strip away some of the barriers that preclude women from participating in apprentice training.
15. **Improve Workplace Flexibility/Change Subtle Drivers of Discrimination:** Offer flexible work arrangements. Train managers to manage a flexible workforce and reorient workplace culture to emphasize results. Offer subsidized child care or back up child care.

16. **Offer Paid Parental/Family Leave for both Women and Men:** Offer and publicize paid parental/family leave for both women and men and actively encourage both men and women to use it. Smaller employers, who may not have the capacity to provide paid parental/family leave, should consider accommodating employee requests for family leave when feasible.
17. **Parental Leave Policies:** Adopt and publicize policies that specify that employees will continue to accrue seniority during parental leave, including but not limited to Pregnancy Disability Leave, Bonding Leave (CFRA), and FMLA. See <http://www.dfeh.ca.gov/resources/frequently-asked-questions/employment-faqs/pregnancy-disability-leave-faqs/pdl-cfra-fmla-guide/>. Note that CFRA specifically requires accrual of benefits and seniority during CFRA leave. Cal. Code Regs. tit. 2, § 11092(e)
18. **Create a Culture of Equality:** Embrace and publicize the pay equity issue as an issue that impacts men as much as it impacts women and acknowledge their role in closing the wage gap.

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# FAQ State and Federal Laws

## **Frequently Asked Questions:**

(1) What state and federal agencies enforce equal pay laws?

In California, the Division of Labor Standards Enforcement (DLSE) has the authority to enforce Labor Code Section 1197.5, that requires an employer to pay an equal wage rate for substantially similar work. The Department of Fair Employment and Housing (DFEH) enforces the Fair Employment and Housing Act (FEHA), which among other things, precludes the discrimination in employment on the basis of gender, ethnicity, and race. Paying different wages due to an employee's gender, race, or ethnicity is considered discrimination.

At the federal level, the Equal Employment Opportunity Commission (EEOC) enforces the federal Equal Pay Act, which requires employers to pay equal wages for equal work performed in the same establishment. The EEOC also enforces Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act of 1967, and Title I of the American Disabilities Act of 1990, which preclude discrimination in employment, such as unequal compensation, based upon protected classifications.

(2) What are the main differences between California's Equal Pay Act and the Federal Equal Pay Act (EPA)?

Before SB 358 (Jackson), which became effective January 1, 2016, California's Equal Pay Act was very similar to the EPA. The significant changes made to the California law were: (1) changing the term "equal work," to "substantially similar work," in order to codify existing case law (see definitions and examples); (2) eliminating the "same establishment" requirement for purposes of comparing wages of employees who perform substantially similar work; and (3) defining "bona fide factor" to mean that it has to be job related and satisfy a business necessity; (4) specifying that an employer cannot prohibit employees from discussing their wages; (5) prohibiting retaliation against employees who exercise their rights under the law or assists another employee with exercising their rights under the law.

Under the EPA, comparison of wages is still limited to employees at the same physical establishment and is limited to equal pay for equal work.

(3) Does California law require employers to pay all employees who perform the same or substantially similar job the same wage rate?

No. California law just prohibits an employer from paying employees who perform the same or substantially similar work a different wage rate based upon sex, race, or ethnicity. An employer can still adjust wages based upon factors such as seniority, merit or performance, or another bona factor such that is job related and necessary for the business such as education, training, experience, or the geographical location of the employee and cost of living in that area. Employers should consider conducting a privileged pay equity analysis to determine whether wages should be adjusted within their organization to comply with the Equal Pay Act.

(4) Does an employer have to conduct an audit of all employees' wages?

No. There is no mandate to conduct an audit. However, in order to avoid any potential legal liability, it is a good practice in which to engage. Employers may want to consider conducting any audit with the advice of an attorney.

(5) What is the liability an employer can face if there is a wage differential that cannot be explained or justified by one of the recognized or bona fide factors?

An employer could face an enforcement action by one of the above listed state or federal agencies or a civil lawsuit, and may potentially have to pay back wages, lost work



benefits, and attorney's fees. If there is discrimination or retaliation involved, there may be punitive damages as well.

(6) What can an employer do to comply with the California Equal Pay Act and the federal EPA?

Although not required, an employer can take several proactive steps to comply with California's Equal Pay Act and the federal EPA:

- (a) An employer can conduct an annual or regular audit of its pay practices and employee wages to identify any significant disparities in wages amongst employees who perform the same or substantially similar work.
- (b) Employers should regularly review job descriptions to make sure that the description accurately reflects the overall job content, including the required skill, effort, and responsibility for that position. Although job titles, classifications, or descriptions are not determinative of whether two employees are performing substantially similar work, it is relevant and does provide some basis for comparison.
- (c) An employer should also educate its managers and supervisors who make compensation recommendations regarding the law and what factors they can and cannot utilize in their decision making.
- (d) An employer should document all compensation decisions and identify the basis for any adjustments. An employer should retain such documents for no less than 4 years (See Chart of Employer Record Retention Requirements).
- (e) An employer should systematize documentation of the factors relied upon to support difference in wage rates between employees (e.g., education, experience, etc.). This practice encourages pay equity and can be referenced if the employer's compensation decisions are challenged.
- (f) Prohibit retaliation against employees for asserting rights under California or federal fair pay laws and ensure that you have a reporting mechanism in place for complaints. This can be part of your existing equal employment opportunity policy.

(7) Can an employee discuss his or her wages with other employees?

Yes. Employees can discuss wages with one another, including asking an employee about his or her wages, without fear of retaliation by the employer. There is no obligation on any employee to disclose his or her wage or engage in these discussions. Employers can take reasonable measures to protect the privacy of information regarding employees' compensation, including prohibiting employees who have access or control over wage information of other employees given their job duties and responsibilities, from disclosing such information without the consent of those employees. However, employers should be cautious about employees' rights under the Labor Code to report violations as well as assist employees with their rights to pursue equal pay.

(8) Who can an employee contact if the employee believes the employer has violated the California Equal Pay Act?

An employee can contact the Division of Labor Standards Enforcement:  
<http://www.dir.ca.gov/dlse/DistrictOffices.htm>.

An employee can contact the Department of Fair Employment and Housing:  
<http://www.dfeh.ca.gov/contact-us>.

(9) What constitutes the "wage rate" for purposes of determining whether an employer is in compliance with the California Equal Pay Act?

[Wage Rate Definition to be provided by the Definitions Subcommittee]

For further information regarding frequently asked questions about California's Equal Pay Act, please visit the Division of Labor Standards Enforcement website: [http://www.dir.ca.gov/dlse/California Equal Pay Act.htm](http://www.dir.ca.gov/dlse/California_Equal_Pay_Act.htm).

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FOR VOTE

# Step-by-step Evaluation for Employers

## Step-By-Step Job Evaluation Template for Employers to Determine Wage Rate:

Generally, California law requires employers to pay the same wage rate to employees who perform substantially similar work. Below is a list of steps an employer can complete to analyze compliance with California law:

- 1) **Determine categories of employees who perform substantially similar work:** Please refer to the proposed definition of “substantially similar work” here as well as the included examples for guidance on how to evaluate whether employees perform substantially similar work when viewed as a composite of skill, effort, and responsibility.
  - a) Group positions based on function (e.g., HR, Legal, Marketing, etc.) and role from entry level to VP (e.g., assistant, director, vice president). Ask yourself when grouping positions, “Is the position fungible? Can you move someone from one position to another?” Ask, “Does this position involve the same depth, or breadth of scope? Does the role require the same skill, effort and responsibility?” Avoid relying on internal levels of convenient existing groupings such as job family.
  - b) **Skill.** Skill is measured by factors such as the experience, ability, education, and training required to perform a job.
    - i) **Example 1 (Skill):** A bona fide factor would include a college degree *if* that college degree is necessary to perform the job. CP, a hotel clerk, alleges that she is paid less than a male who performs substantially similar work. CP only has a high school degree, while the male comparator has a college degree. However, performance of the two jobs requires the same education, ability, experience, and training. A college degree is not needed to perform either job. Therefore, the skill required to perform the two jobs is substantially similar.
    - ii) **Example 2 (Skill):** CP, a male, works for a telephone company diagnosing problems with customer lines. He alleges that he is paid less than his female predecessor in violation of the EPA. The evidence shows that the job of CP's predecessor required expert training in diagnostic techniques and a high degree of specialized computer skill. The respondent switched to a newer, more advanced computer testing system after CP's predecessor resigned. The job now requires much less overall skill, including computer skill, than was required when CP's predecessor held it. Therefore, the skill is not equal, and no violation is found.
    - iii) **Example 3 (Skill):** CP, a sales person in the women's clothing department of the respondent's store, alleges that she is paid less than a male sales person in the men's clothing department. The respondent asserts that differences in skills required for the two jobs make them unequal. The investigation reveals, however, that the sale of clothing in the two departments requires the same skills: customer contact, fitting, knowledge of products, and inventory control. Therefore, the skill required for the two jobs is substantially similar.
  - c) **Effort.** Effort is the amount of physical or mental exertion needed to perform a job.
    - i) **Example 1 (Effort):** CP alleges that she and other female grocery store workers are paid less than males who perform substantially similar work. Most of the tasks performed by the males and females are the same. In addition to those same tasks, the male employees place heavy items on the store shelves, while the female employees arrange displays of small items. The extra task performed by the men requires greater physical effort, but the extra task performed by the women is more repetitive, making the amount of effort required to perform the jobs substantially the same.
    - ii) **Example 2 (Effort):** Same as Example 1, except two of the male grocery store workers also regularly haul heavy crates from trucks into the store. In this case, the employer can lawfully pay a higher rate to the persons who perform the extra task. On the other hand, a violation would be found if all males receive higher compensation based on the extra effort required for only some of the males' jobs.
  - d) **Responsibility.** Responsibility is the degree of accountability required in performing a job.
    - i) **Example 1 (Responsibility):** CP, a female sales clerk, claims that a male sales clerk performs substantially similar work for higher compensation. The evidence shows that the male comparator, in addition to performing the tasks that CP performs, is solely responsible for determining whether to accept personal checks from customers. That extra duty is

significant because of potential losses if bad checks are accepted. The two jobs are not substantially similar due to the difference in responsibility.

- ii) **Example 2 (Responsibility):** Same as Example 1, except that CP, her male comparator, and the other sales clerks rotate handling the additional responsibility of determining whether to accept personal checks. In this case, the jobs are substantially similar.
  - iii) **Example 3 (Responsibility):** Same as Example 1, except the only difference in responsibility between the jobs of CP and her comparator is that the comparator occasionally is given the responsibility for performing a "walk around" inside the building at the end of the day to make sure nothing is out of the ordinary. In this case, the jobs are substantially similar because the difference in responsibility is minor.
  - iv) **Example 4 (Responsibility):** A manager responsible for a 6-person department has a different scope of responsibility than a manager responsible for a 600 person team and therefore the two roles are not substantially similar.
- 2) **Compare the wage rate for each employee in the same category:** The term "wage rate" is not limited to just an employee's annual salary or hourly wage, but includes other forms of compensation for an employee's performance. Please see the Task Force's definition of "wage rate" here for guidance on what types of compensation should be included in the comparison.
- 3) **No Difference in Wage Rate:** If there is no difference in the wage rate of employees who perform substantially similar work, then there is no need to do anything further.
- 4) **Valid/Bona Fide Factor for a Difference in Wage Rate:** If there is a difference in the wage rate of employees who perform substantially similar work, then the employer needs to identify the factor(s) for the difference to determine if an adjustment in the wage rate needs to be made. The employer must determine if the difference is due to a valid or invalid factor. There are several valid factors identified in California law for a wage rate difference. One or more of the following factors can be a valid basis for a wage difference. Please note, the factor(s) must be applied reasonably and account for the entire pay difference:
- i) Is the difference due to a seniority system?
    - (1) A seniority system rewards employees according to the length of their employment.
    - (2) In order for a seniority system to be considered valid, it must be well-established, consistently utilized, and based upon the length of time of employment. Courts are more likely to consider a seniority system valid if it includes the following: (1) a rule on when the seniority clock begins ticking; (2) the circumstances under which seniority may be forfeited; (3) the lengths of service that will count toward accrual of seniority; and (4) the types of employment decisions that will govern seniority. See *California Brewers Association v. Bryant*, 444 U.S. 598 (1980).
    - (3) To be a bona fide system, it must not have been adopted with discriminatory intent; it must be based on predetermined criteria; it must have been communicated to employees; and it must have been applied consistently and even-handedly to employees of both sexes.
  - ii) Is the difference due to a merit system?
    - (1) A merit system rewards employees for exceptional job performance.
    - (2) A valid merit system requires employers to show that there is well-established, organized and structured procedure to evaluate an employee's performance according to predetermined criteria. See American Bar Association Model Jury Instructions Employment Litigation, P 106 § 2.04(2)(c).
    - (3) To be a bona fide system, it must not have been adopted with discriminatory intent; it must be based on predetermined criteria; it must have been communicated to employees; and it must have been applied consistently and even-handedly to employees of both sexes.

- iii) Is the difference due to a system that measures earnings by an “incentive system”?
- (1) An incentive system provides compensation on the basis of the quality or quantity of production.
  - (2) Employers may provide compensation incentives for greater output or better quality of production. Compensation tied to quantity refers to an equal dollar per unit rate so that the rate of pay is actually the same among employees, but the total compensation may differ. A compensation system based on the quality of production rewards employees who make superior products. See American Bar Association Model Jury Instructions Employment Litigation, P 106 § 2.04(2)(d).
  - (3) To be a bona fide system, it must not have been adopted with discriminatory intent; it must be based on predetermined criteria; it must have been communicated to employees; and it must have been applied consistently and even-handedly to employees of both sexes.
- iv) Is the difference due to any other bona fide factor other than sex, race, or ethnicity such as an applicant or employee’s education, experience, ability, or training?
- (1) While the relative education, experience, training, and/or ability of individual jobholders are not relevant to determining whether their jobs require equal skill, these factors can, in some cases, justify a compensation disparity. Employers can offer higher compensation to applicants and employees who have greater education, experience, training, or ability where the qualification is related to job performance or otherwise benefits the employer’s business.<sup>1</sup> Such a qualification would not justify higher compensation if the employer was not aware of it when it set the compensation, or if the employer does not consistently rely on such a qualification.<sup>2</sup> Furthermore, the difference in education, experience, training, or ability must correspond to the compensation disparity. Thus, a very slight difference in experience would not justify a significant compensation disparity. Moreover, continued reliance on pre-hire qualifications is less reasonable the longer the lower paid employee has performed at a level substantially equal to, or greater than, his or her counterpart.<sup>3</sup>
  - (2) **Education.** An example of a bona fide factor is providing an employee higher compensation for an employee’s education. That prior experience must be job-related and serve a legitimate business purpose.
  - (3) **Experience and Ability.** Examples of bona fide factors are providing an employee higher compensation for an employee’s length of experience or ability where the qualification is related to the job and serves a legitimate business purpose.
    - (a) **Example 1 (Experience).** CP had been employed as an office manager. Her starting salary was \$42,000. She resigned one year later. Her male successor was hired at a starting salary of \$50,000. CP filed a charge claiming that the difference in starting salaries violated the EPA. The employer proves that the salary difference was based on the successor’s extensive experience as an office manager, as compared to CP’s

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<sup>1</sup> See, e.g., *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1312 (2d Cir. 1995) (employer who claims that experience justifies higher salary for male employee must prove both that it based the higher salary on this factor and that experience is a job-related qualification for the position in question); *EEOC v. First Citizens*, 758 F.2d 397, 401 (9th Cir.) (greater experience of male comparator did not justify pay disparity where the main qualities necessary for the job were speed and accuracy, not experience; greater education of another comparator also did not justify pay disparity where that qualification was only marginally related to the job), cert. denied, 474 U.S. 902 (1985).

<sup>2</sup> See *EEOC v. White and Son Enters.*, 881 F.2d 1006, 1010 (11th Cir. 1989) (male employees’ prior experience did not justify their higher compensation where defendant did not know what prior experience its employees possessed when they began employment).

<sup>3</sup> See *Kouba*, 691 F.2d at 878 (one consideration in determining reasonableness of relying on prior salary to justify a pay differential was “whether the employer attributes less significance to prior salary once the employee has proven himself or herself on the job”); *Jones v. Westside Urban Health Ctr., Inc.*, 760 F. Supp. 1575, 1580 (S.D. Ga. 1991) (“Presumably, defendants initially hired [the female comparator] at a higher rate of pay because, in their informed judgment, they assumed that experience and education would make her perform at a higher level than [the male plaintiff,] a less-educated novice. Defendants have offered no explanation for clinging to a salary discrepancy when their underlying assumption has been proved, as plaintiff alleges, grossly incorrect.”).

lack of any job-related experience. The difference in experience qualifies as a factor other than sex justifying the compensation disparity.

- (b) **Example 2 (Experience).** Same as Example 1, except that the evidence shows that the employer relies inconsistently on work experience in setting salaries for office manager jobs, and that males who lacked experience were offered higher starting salaries than CP. A violation of the EPA is found.
  - (c) **Example 3 (Experience).** Same as Example 1, except that CP did have job-related experience, though her successor had a slightly greater amount of experience. The difference in their experience was not commensurate with the \$8,000 difference in starting salaries, and therefore a violation of the EPA is found.
- (4) **Training.** A compensation disparity attributable to participation in a bona fide training program is permissible. While an organization might offer numerous types of training programs, a bona fide training program that can justify a compensation disparity must be a structured one with a specific course of activity. Elements of a legitimate training program include: (1) employees in the program are aware that they are trainees; (2) the training program is open to both sexes; and (3) the employer identifies the position to be held at the program's completion.<sup>4</sup> If the training involves rotation through different jobs, the compensation of an employee in such a training program need not be revised each time he or she rotates through jobs of different skill levels.
- (a) **Example (Training):** CP, a bank teller, alleges that she is paid less than a male bank teller who performs substantially equal work. The respondent alleges that the male comparator is a participant in a management training program that is open to both sexes. The evidence shows, however, that the program is not bona fide because it is not a formal one, no other employees are identified as participants in the program, and the comparator does not receive any formal instruction or even know that he is in a management training program. An EPA violation therefore is found.
- (5) **Geography.** Another bona fide factor may be higher compensation given the geographical location of the employees and the cost of labor in a given region. However, if relying on cost of labor to justify a pay differential be careful to analyze whether every employee in an otherwise substantially similar role should be provided a competitive market increase to account for any pay disparities that might otherwise violate the Equal Pay Act. Differences in compensation based on geography should be analyzed after analyzing skill, effort and responsibility.

**\*\*The employer has the burden to prove that a wage difference is based upon one or more of the above-listed factors, the factors are applied reasonably, and account for the entire wage difference. A good practice is to document the factor(s) for any wage rate offered to an applicant or employee and retain that documentation for future reference if a wage difference is questioned. Please review the chart that sets forth an employer's obligation regarding retention periods for various employment related documents.**

- 5) **No Bona Fide Factor Exists to Justify Wage Difference:** If there is no factor listed above in (4) that justifies the wage rate differential, then the employer should consider: (1) increasing the wage rate of the employee who is performing substantially similar work and being paid less; and (2) compensating the employee for back pay as a result of the wage difference.

An employer may consider contacting legal counsel to assist with this analysis and determining how to mitigate a wage difference that is not supported by a bona fide factor. It is always a good practice to maintain documentation of the analysis conducted above for reference if an employee's wage rate is later questioned or challenged.

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<sup>4</sup> See, e.g., *EEOC v. First Citizens*, 758 F.2d 397, 400 (9th Cir.) (greater experience of male comparator did not justify pay disparity where the main qualities necessary for the job were speed and accuracy, not experience; greater education of another comparator also did not justify pay disparity where that qualification was only marginally related to the job), cert. denied, 474 U.S. 902 (1985).

- 6) **Setting the Wage Rate for a New Hire:** If the individual is a new hire, the same standards apply. An employer must base the new hire's compensation on a bona fide factor, as set forth above. Employers are advised that any reliance on a candidate's prior salary to set pay may increase the risk of liability because the Equal Pay Act provides that: "Prior salary shall not, by itself, justify any disparity in compensation." See Labor Code Section 1197.5. Best practice is to determine in advance such factors as: (1) the employer's budgetary requirements; (2) what the job is worth; (3) seniority issues amongst existing employees; and (4) the employer's potential salary range for the open position. With this advance planning, the employer will be better able to examine the potential candidate based on their qualifications for the position and negotiate within objective salary requirements.

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# Model Contract Language

## Pay Equity and Collective Bargaining

### Collective Bargaining – Contract Language

Unions can play an important role in narrowing the persistent gender wage gap within the industries and organizations where they have bargaining power by raising pay equity as an issue to be addressed in the collective bargaining process. Where a pay equity audit has already been conducted and the parties have identified disparities in compensation between individuals or groups of employees who are of different sexes or races/ethnicities and doing substantially similar work, the parties can specifically negotiate about the wage rates for individuals or classifications affected. Unions can also seek to negotiate over the terms and timeline for conducting and/or overseeing a pay equity audit in circumstances where this has not been done. In addition, they can negotiate for changes in hiring, compensation, promotion, and leave policies that would help to alleviate the root causes of pay inequity.

Below are some examples of potential approaches to addressing pay equity issues through collective bargaining. This is an illustrative rather than an exhaustive list, and not all of the strategies listed below will apply or be useful in every unionized workplace. For example, certain suggested approaches to bargaining over compensation practices and structures may only be relevant in situations in which the collective bargaining agreement allows for discretionary pay increases by management.

- ***Establish a Joint Labor Management Committee to Conduct and/or Oversee a Pay Equity Audit.*** Where a pay equity study has not been conducted, the parties could utilize the collective bargaining process to establish a Joint Labor Management Committee (JLMC) on Pay Equity and provide funds for the JLMC to either conduct a pay equity audit itself or hire an outside expert/consultant to design and carry out such evaluation under its oversight. In either case, parties will need to agree on:
  - the number of union and management representatives on the Committee;
  - the role of the JLMC in the audit process (i.e., as the entity that will carry out the audit or facilitate and oversee it) and its budget;
  - how often and in what manner the JLMC will keep the parties apprised of the progress of the audit and report on its findings;
  - the nature and extent of the JLMC's authority to make recommendations to the parties about changes to policies, wage rates, job classifications, compensation structures, and/or hiring practices that would help to alleviate any gender and/or race-related wage gaps revealed by the audit;
  - the term of the JLMC and timeline for the completion of the initial pay equity audit and issuance of the JLMC's final recommendations, and

- o a schedule of meetings for the JLMC.

In addition to the terms above, contract language should specify whether the pay equity analysis will be conducted during the term of the Agreement with a re-opener to address any pay inequities and/or to negotiate about the JLMC's recommendations. The parties should also ensure there is a clear process for resolving any disputes about whether or how to implement the JLMC's proposed changes. Alternatively, the parties could agree to convene the JLMC and complete an initial pay equity audit *prior to* the start of the next round of negotiations, with any inequities to be addressed at that time. Contract language could also establish the pay equity audit as a periodic event that will occur prior to the expiration of each contract, rather than a one-time snapshot, which would enable the union and management to evaluate the impact and effectiveness of any changes they agree to make.

- ☐ ***Review and update job descriptions.*** As part of the collective bargaining process, the parties may review job descriptions for all covered classifications and positions to ensure that they are accurate and provide sufficiently specific information to be useful in conducting a pay equity analysis.
- ☐ ***Correct inequities in pay rates and pay scales.*** In the event that a pay equity study has already been conducted, and issues of inequity have been determined to exist, the parties should negotiate to correct the inequities, whether for individual employees or whole classifications (where an entire classification is paid on a lower scale than another despite doing substantially similar work under similar working conditions, for example.)
- ☐ ***Increase diversity in recruitment and eliminate bias in hiring.*** While not typically considered a mandatory subject of bargaining, the parties could discuss and agree upon steps that could be taken during the hiring process to increase the gender and racial diversity of the applicant pool for some or all positions and departments. The parties may also negotiate about ways to reduce or eliminate the impact and influence of bias in the hiring process.
- ☐ ***Train hiring managers on appropriate salary criteria.*** If the collective bargaining agreement gives managers any discretion with respect to setting starting salaries for members of the bargaining unit, the parties could agree to a training program for managers who make hiring decisions and initial pay offers to ensure that they understand what the permissible and impermissible criteria for making such decisions are and how to apply them. Where the employer has discretion in setting starting salaries, the parties could negotiate language requiring decisions about initial compensation to be based on objective factors. Such language could also specify that a

newly-hired employee's prior salary or salary history should not be used to set pay, and that any reliance on such factor must be documented (explained in writing) by the hiring manager.

- ☐ **Protect discussion of wages and discourage retaliation.** The parties could negotiate contract language that makes it clear that employees may discuss their salaries with other employees, and that management will not retaliate or discriminate against any employee for exercising their right to do so.
- ☐ **Evaluate new hire v. incumbent salaries.** The parties could agree to language requiring the employer to evaluate the salaries of incumbent employees at any time that a new hire is provided an initial salary that is higher than theirs.
- ☐ **Establish objective performance evaluation process.** The parties could negotiate a fair process for performance evaluations in which employees are evaluated on clear criteria based on the skills and specific tasks performed in the position, and not on subjective criteria subject to potential bias based on gender or race.
- ☐ **Recognize and value employees with caregiving responsibilities.** The parties could negotiate for flexible work hours that recognize the demands of childrearing and other types of caregiving while not diminishing the value that employees who are parents and caregivers bring to the workplace. The parties could also negotiate job-protected, paid parental leave and ensure that it is equally available to employees of all genders, with additional job-protected, paid leave for the parent who actually gives birth. The parties could also negotiate for child care centers at or near the worksite.
- ☐ **Ensure training for potential promotional opportunities is available to all employees.** In the event that the audit finds that one reason for a pay gap between genders or between races/ethnicities is caused by more frequent promotions to one group of employees than to another, the parties could negotiate to provide training opportunities for all employees in management skills, or other skills needed for jobs that provide a promotional opportunity.

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# Model Information Request

Submitted by:

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DRAFT 3-20-2017

## Pay Equity and Collective Bargaining

### Information requests

In unionized workplaces, the issue of pay equity, whether for individual union members or for historically lower-paid classifications with predominantly female and/or non-white workforces, can and should be addressed as part of the bargaining process. Establishing protocols for sharing information about employee compensation can help unions and management to work cooperatively and proactively to address these issues before and during contract negotiations, rather than only address them at the bargaining table or in an adversarial manner. To facilitate informed, arm's-length negotiations about pay equity issues and enable the union to adequately represent its members during the bargaining process, both sides need to have equal access to the same information about the compensation and job duties of represented employees as well as employees working in classifications that arguably are performing substantially similar work under similar working conditions. The following is an illustrative, not necessarily exhaustive, list of the types of information and data that unions and employers may need to compile and exchange or share with one another in order to evaluate and address pay equity issues within the collective bargaining process. This list also may serve as a point of reference to guide the information gathering process that a Joint Labor Management Committee authorized to address pay equity issues could undertake.

TYPE OF INFORMATION	TYPE OF EMPLOYEE(S)	LAWS RELATED TO RECORDKEEPING OF THIS INFORMATION	POTENTIAL RELEVANCE TO COLLECTIVE BARGAINING
Name, sex, race and/or ethnicity, and job classification of all bargaining unit members and all employees in substantially similar job classifications outside of the bargaining unit.	All bargaining unit members and all employees in substantially similar job classifications (to be specified by union in request for information)	Section 709(c) of Title VII of the Civil Rights Act of 1967, as amended by the Equal Employment Opportunity Act of 1972 and 29 C.F.R. §§ 1602.7-1602.14 require such records to be kept and reported to the U.S. Equal Employment Opportunity Commission on an annual basis by employers with 100+ employees and federal contractors with 50+ employees (EEO-1 Report), and on a biennial basis by local unions (EEO-3 Report), state and local government agencies (EEO-4 Report), and elementary-secondary school districts with 100+ employees (EEO-5 Report).	To detect/identify pay disparities along gender, race or ethnicity lines between or among employees doing substantially similar work; this information is needed to determine if any pay equity issues exist.

TYPE OF INFORMATION	TYPE OF EMPLOYEE(S)	LAWS RELATED TO RECORDKEEPING OF THIS INFORMATION	POTENTIAL RELEVANCE TO COLLECTIVE BARGAINING
Date of hire and job history with employer (including start dates in any new classification)	All bargaining unit members and all employees in substantially similar job classifications (to be specified by union in request for information)	California Labor Code §§ 226 (employee payroll records), 432 (any documents signed by employee or applicant relating to employment) 1174 (payroll records of hours worked), 1197.6(d) (wages, wage rates, job classifications, other terms and conditions) and 1198.5 (employee personnel files and records).	To understand differences in compensation that may be related to longevity with company and/or other aspects of employees' employment history.
Pay rate/salary history, including starting salary	All bargaining unit members and all employees in substantially similar job classifications (to be specified by union in request for information)	See above; see also Industrial Welfare Commission Wage Orders 1-17, codified at 8 Cal. Code Regs. §§ 11001-11017, subd. 7 ("Records"); U.S. Department of Labor Wage and Hour Division, recordkeeping regulations under the Fair Labor Standards Act, 29 C.F.R. §§ 516 <i>et seq.</i>	To identify starting salary differences and track pay increases between employees doing substantially similar work.
Hours worked annually/per contract year (if applicable)	All bargaining unit members and all employees in substantially similar job classifications (to be specified by union in request for information) who are employed on an hourly basis	California Labor Code §§ 226, 1174 and 1197.5; Industrial Welfare Commission Wage Orders 1-17, 8 Cal. Code Regs. §§ 11001-11017, subd. 7 ("Records"); Revised Employer Information Report (EEO-1) form, pursuant to 81 FR 45479, Dkt. No. EEOC-2016-0002.	To compare total compensation among employees in same and substantially similar classifications, which may be based on their hours worked.
Documents describing policies relating to benefits that are not provided to bargaining unit members.	Non-bargaining unit employees in substantially similar job classifications	[ERISA - ??]	In order to compare total compensation, it is necessary to have complete information about benefits provided to non-represented employees that are not provided to represented ones.

TYPE OF INFORMATION	TYPE OF EMPLOYEE(S)	LAWS RELATED TO RECORDKEEPING OF THIS INFORMATION	POTENTIAL RELEVANCE TO COLLECTIVE BARGAINING
Accounting of any compensation received in addition to salary (e.g., bonuses or stipends)	Salaried employees in the bargaining unit and in substantially similar job classifications	California Labor Code §§ 226 and 1197.5(d)	In order to do a pay equity analysis, complete information about total compensation is required.
For each job classification and/or job position, descriptions containing or summarizing: primary duties/responsibilities; required knowledge, skills, abilities, and experience; educational qualifications or requirements; physical requirements (if applicable); and any licensure or certification requirements (if applicable).	All bargaining unit job classifications and all job classifications or positions outside bargaining unit that are substantially similar to bargaining unit classifications	California Labor Code §§ 1197.5(d)	In order to compare whether positions are substantially similar, detailed information about the work performed, skills utilized, training or education required is essential.
Performance evaluation form(s) utilized in setting pay or making pay decisions	All bargaining unit members and all non-bargaining unit employees in job classifications that are substantially similar to bargaining unit classifications	California Labor Code §§ 1197.5(d) (terms and conditions of employment) and 1198.5 (personnel files and records)	The form used in evaluating employees provides insight into what aspects of work performance are valued for employees in a classification. When negotiating a first contract, or when the collective bargaining agreement allows for merit pay increases, it would also be important to obtain a copy of the perform evaluations for the past 3-years for each employee in the bargaining unit and in substantially similar classifications.



TYPE OF INFORMATION	TYPE OF EMPLOYEE(S)	LAWS RELATED TO RECORDKEEPING OF THIS INFORMATION	POTENTIAL RELEVANCE TO COLLECTIVE BARGAINING
Any audit of pay equity conducted by the employer in the past 3 years.	All bargaining unit job classifications and all job classifications or positions outside bargaining unit that are substantially similar to bargaining unit classifications.	??	The audits will show whether any issues of pay equity have been raised and will assist in evaluating whether concerns have been addressed.
Any employer policy with respect to job families and/or promotional paths for employees.	All bargaining unit job classifications and all job classifications or positions outside bargaining unit that are substantially similar to bargaining unit classifications.	??	This will help to analyze how the employer views the classifications being compared in relation to their value to the employer.
Dates and numbers of days absent and all leaves of absence taken	All bargaining unit job classifications and all job classifications or positions outside bargaining unit that are substantially similar to bargaining unit classifications.	??	This will help to analyze whether leaves of absence based on child care responsibilities which often fall on women, has affected pay rate paid to employees in the bargaining unit as compared to the employees in the substantially similar job classification.

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# Diagram for Employee Button on Website

↓ am a worker, and I want to know my rights



Baseline info. about the FPA  
→ link to outside/ERA materials



How can I find out if I'm being paid unequally?  
→ link to Glassdoor and others

The person who makes more works at a different location. Can I still do something?  
→ answer

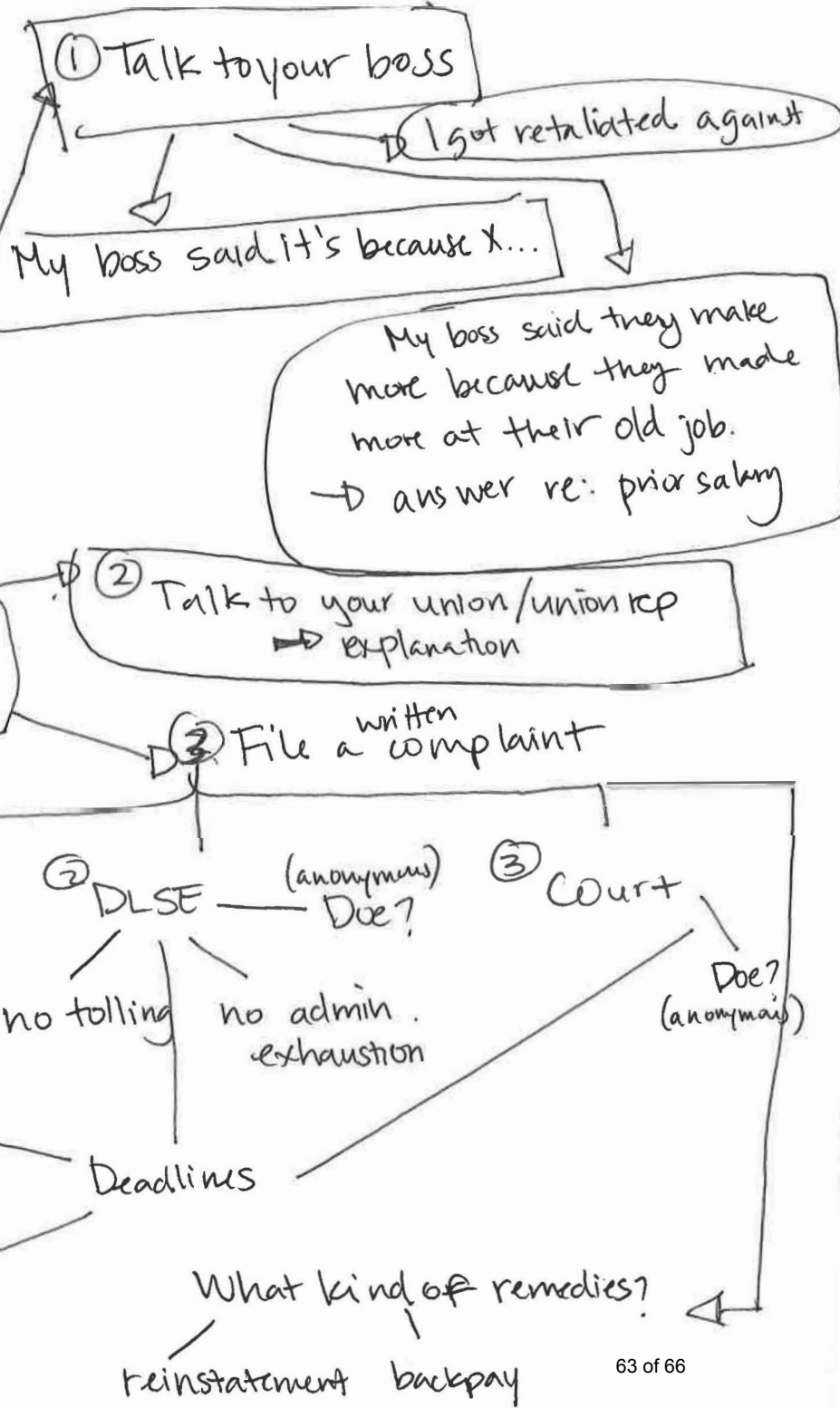
The other person works a different shift ...  
→ answer highlighting focus on similar working conditions

The other person is a supervisor, but they do mostly the same work ... ?  
→ answer highlighting responsibility, effort, & skills

The other person only does the same work as me some of the time ... ?  
→ answer highlighting composite approach / de minimis

I tried talking to my coworkers & my boss said I couldn't ...  
→ answer re: pay secrecy & retaliation

I learned I'm being paid unequally. What can I do?



# Jury Instructions

This follows up on two items: (1) what is process for proposing CA jury instructions? and (2) what is the process for developing regulations interpreting the EPA?

### (1) CA Jury Instructions

California uses the CACI jury instructions (Judicial Council of California Civil Jury Instructions). CACI is regularly updated by the Advisory Committee on Civil Jury Instructions of the Judicial Council. I spoke with Bruce Greenlee who staffs this committee:

The Advisory Committee has engaged in joint drafting of proposed jury instructions in the past, for example, with various State Bar committees. He thought the same joint process could work for working with a smaller grouping of our Task Force for EPA jury instructions. In around Dec 2016 or January 2017, we would give him a list of proposed instructions, first drafts of the language, and authority. He would work on the language, placement, and connect with the Advisory Committee to form a working group with target of June/July 2017 to present for full approval to the Judicial Council. If we meet that date, then post for public comment in August 2017, and then a January 2018 effective date. He seemed to think doing this for EPA made sense. I told him I'd get back to him asap to let him know if the Task Force wants to pursue this.

### (2) Regulatory Process

A preliminary question is: if we want to further define certain terms in the EPA, e.g., "substantially similar work," must we go through the regulatory process? If the answer is yes, then what does that process entail?

I spoke with my colleague, Robert Villalobos. He explained that generally, if we are developing a guidance that merely sets forth cases and statutory language on an issue, then we do not have to do regs. If we develop a guidance that interprets the EPA or makes it specific, or governs its procedure, then we need to do regs. Govt. Code sec. 11342.600 defines regulations as:

"Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

"Underground regulations" are guidelines that ought to have been regs, but were not adopted through the regs process. Underground regs are void and can be challenged with the Office of Admin Law.

Alternatively, there are "opinion letters" that do not get as much deference as regs, but can be used to apply EPA to certain facts. We get specific requests from public for opinion letters.

If we do regs, the Administrative Procedures Act (APA) sets forth the general process: Notice, comment and response, possible public hearing also, possible additional notice, comments, response, and then prepare materials for filing with the Office of Administrative Law. Takes more than 4 months. Before engaging in regs process, our office would need to get approval from the DIR and the Secretary. Attached is a flow chart that Robert sent me that I thought was helpful.

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DISCUSSION DRAFT