

California Pay Equity Task Force

Agenda

January 10, 2018

10:00 a.m. – 4:00 p.m.

Orrick, Herrington & Sutcliffe, LLP, 400 Capitol Mall #3000

Sacramento, California 95814

One or more of the Task Force members will participate in this meeting at the teleconference sites listed below. Each teleconference location is accessible to the public, and the public will be given an opportunity to address the Task Force at each teleconference location.

The public teleconference site(s) for this meeting are as follows:

Orrick, Herrington & Sutcliffe, LLP – 777 South Figueroa Street, Suite 3200 Los Angeles, CA 90017

Orrick, Herrington & Sutcliffe, LLP – 405 Howard Street San Francisco, CA 94105

Further teleconference sites may be added. 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. 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 of November 13, 2017 Meeting
- V. Review and Approval of Finalized Documents
- VI. Lunch
- VII. Review Other Documents/Tools
- VIII. Outreach Discussion
- IX. Other Items
 - a. Jury Instructions – Update on the process
 - b. Glossary
 - c. Other items if necessary
- X. Website Update
- XI. Questions/Comments/Feedback
- XII. Public comment
- XIII. 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.

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Contact Information

Please contact stephanie.tseu@women.ca.gov or 916-651-5405 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.

MINUTES

Meeting Minutes

November 13, 2017

10:00 a.m. – 4:00 p.m.

Orrick, Herrington & Sutcliffe, LLP

[400 Capitol Mall #3000](#)

[Sacramento California, 95814](#)

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Orrick, Herrington & Sutcliffe, LLP – [51 West 52nd Street New York, NY 10019](#)

I. Welcome and Call to Order – Co-Chairs

Co-Chairs Lauri Damrell and Julie Su welcome everyone to the meeting.

II. Roll Call

Stephanie Tseu calls roll. In attendance are: Co-Chair Julie Su, Co-Chair Lauri Damrell, Kevin Kish, Peter Pawlick, Victoria Pynchon, Jennifer Reisch, Tamekia Robinson, Leslie Simon, Jeanna Steele, Rhoma Young. Jennifer Barrera came shortly after roll call and Kimberlee Shauman arrived shortly before 1:00pm.

III. Establish Quorum – Adopt Agenda

A quorum was established. The agenda was approved. Tamekia Robinson made the first motion and it was seconded by Rhoma Young. Yes votes were made by Co-Chair Su, Co-Chair Damrell, Kevin Kish, Peter Pawlick, Victoria Pynchon, Jennifer Reisch, Tamekia Robinson, Leslie Simon, Jeanna Steele, and Rhoma Yong. There were no “no” votes.

IV. Approve Minutes of September 28, 2017 Meeting

Minutes were approved. Leslie Simon made the first motion and Peter Pawlick seconded. Yes votes were made by Co-Chair Su, Co-Chair Damrell, Kevin Kish, Peter

Pawlick, Victoria Pynchon, Jennifer Reisch, Tamekia Robinson, Leslie Simon, Jeanna Steele, and Rhoma Yong. There were no “no” votes.

There was a quick discussion regarding recently passed legislation which was provided in the meeting materials. AB 168 (Eggman) will have an impact on materials the Task Force is creating. There was discussion regarding whether AB 46 (Cooper) applies to state workers who are in a bargaining unit. After discussion, the Task Force voted to include language that says, “Effective January 1, 2018, EPA applies to public employees.” Additionally, use language directly from the bill when defining employer. Co-Chair Lauri Damrell made the motion and Rhoma Young seconded. Yes votes were made by Co-Chair Su, Co-Chair Damrell, Kevin Kish, Peter Pawlick, Victoria Pynchon, Jennifer Reisch, Tamekia Robinson, Leslie Simon, Jeanna Steele, and Rhoma Yong. There were no “no” votes.

V. Website Overview

Emily Van Atta showed everyone the draft Pay Equity Task Force website. The group asked that “draft” or “under construction” be added to the website since the public can view the site. It was explained that the Department of Technology will be building the official PETF website. The site the Task Force viewed is only an example and the final product will be designed with the Department of Technology’s expertise and assistance. All materials and content will need to be provided from Task Force finalized materials. Task Force members discussed the need for a Website Subcommittee. Victoria Pynchon, Lauri Damrell and Jennifer Reisch volunteered for the subcommittee. If others are interested, please let Stephanie Tseu know so we can plan a public meeting in January or February.

VI. Employee Materials

There was discussion regarding “Equal Pay Act” and “Fair Pay Act.” It was decided that the Task Force would use “Fair Pay Act” as this is what SB 358 (Jackson) was called. Commission staff will update materials to make sure this change is made throughout all the materials.

While materials were reviewed, it was agreed upon that materials would be finalized, circulated and then voted on at our next Task Force meeting. This means that all Task Force members who would like to have input in the finalizing of items should respond as soon as possible when materials are circulated to ensure their thoughts and comments are reflected in the final documents.

Materials need to be updated with “union” instead of employee organization.

Notes and changes were made as the group moved through the provided materials. Those notes and updates will be included in materials and will be sent out to Task Force members for feedback.

“Wage rate” will be defined in the glossary. Doris Ng and Jennifer Barrera will connect on the definition of wage rate. Equal Pay Act and Fair Pay Act should also be defined in the glossary.


Task Force members had many thoughts about the “disclaimer” regarding race and ethnicity provided in the materials. Task Force members were asked to send thoughts and edits to Stephanie Tseu. Members agreed to remove the word “disclaimer” as well. Commissioner Julie Su and Jennifer Reisch agreed to work on this language. Once received, it will be provided to Task Force members for review.

Stephanie Tseu will fill in the employee map and send to Jennifer Reisch for review. This document will be discussed at the next meeting. This is essentially the “looking for work” FAQ.

At the next meeting, each document or tool will be presented as individual materials, so the Task Force can vote on each item separately.

Victoria Pynchon offered to work with Commission staff to create examples of flow charts and checklists that might be offered as tools on the website.

VII. Lunch
VII. Employer Materials



The Starting Salary document was reviewed, and Task Force members were asked to send any feedback to Stephanie Tseu. Discussion included preprinted forms that smaller companies use, including 3rd parties such as head hunters and recruiting agencies, expanding on what an employee is to do if they are asked about current salary – “you do not have to answer, and it is unlawful to be asked...” There was discussion regarding pay scale vs pay range. Range is for the position. Co-Chair Lauri Damrell will update and Stephanie Tseu will send out to the Task Force for feedback.

The DSLE will be updating their FAQs to incorporate AB 168 guidance.

The “Why” document will be updated with notes from the meeting and will be sent out for feedback.

There were edits to the Step-by-Step document that will be incorporated and shared with the Task Force for feedback. The group decided to remove the words “pro-rata” from examples.

Stephanie Tseu will update the culture document and send to Task Force members for feedback. There was discussion regarding #7 and negotiating and rewording the title to “Negotiating in the Hiring Process.” #6 needs updated with information regarding prior salary.

Task Force members discussed the lifecycle of the text included on the website. This topic will be discussed at the next meeting.

On page 105, the Task Force discussed the chart and whether to rework any parts of it. Peter Pawlick offered to review the footnotes and disclaimers. Peter Pawlick will work with Dan Kuang to update with comments and this will be provided for review prior to the next meeting. The group decided to change the word minimum to basic.

Orrick has a document that might be helpful. Stephanie Tseu will send around the chart for review.

VIII. Outreach Discussion

Due to time constraints, outreach will be discussed at the next meeting. The Task Force will also discuss social media outreach at the next meeting.

Kimberlee Shauman discussed the Pay Equity Conference that UCD will be hosting in April 2018. The draft agenda was included in the meeting materials and was discussed during the meeting. Kimberlee Shauman is looking for input for the afternoon session, keynote speakers, a possible dinner the night before with Task Force members and conference participants, etc. Once finalized, Task Force members will be asked to share with their networks to ensure a large, engaged turnout. Task Force members were asked to send any feedback to Stephanie Tseu.

X. Other Items

a. Jury Instructions

This item was not discussed. Stephanie Tseu will schedule a call between Doris Ng, Bruce, Lauri Damrell, Jessica James and Victoria Pynchon.

b. Glossary

This was discussed throughout the meeting.

c. Other items if necessary

XI. Questions/Comments/Feedback

XII. Public comment

Dana Ochoa spoke to the Task Force about pay inequality in the automotive retail business. She described habitual segregation by gender. How many sales managers do you see that are women? Very very few women and it affects women's ability to grow in their careers. Ms. Ocha suggested asking your local dealerships if they have any female sales managers. This would provide pressure on dealerships to include women in all leadership positions at dealerships.

XIII. Adjourn – meeting was adjourned at 3:25pm.

DRAFT

FOR VOTE

But I need to make sure I make enough money, what do I do?

Before you even begin applying for jobs or interviewing, you're right, you need to be aware of what possible pay ranges or options exist. Doing so will help guide your research into what training you might need to increase your earnings and other requirements for possible jobs. And, you can use pay range information when you interview and are hired to make sure you are asking for and being offered pay that is similar to people with similar jobs.

Labor Market Information on EDD's website occupation profiles (<http://www.labormarketinfo.edd.ca.gov/occguides/>) also offers basic information about potential salaries and pay rates for specific jobs. This tool is a handy way to learn about the possible income/pay rate for a job in which you are interested.

DRAFT

Employee subcommittee: Tamekia N. Robinson and Rhoma Young

Checklist for beginning a job search.

This checklist will help you to ask the right questions to get you started on your job search. Answering these questions and using the free tools suggested above will bring you closer to choosing the right occupation for you and to be paid fairly for the work.

About me:

- What are my qualifications, skills, and experience (have check boxes derived from EDD's website)?
- What is my education level?
- What is a reasonable salary/pay range for me to start? To earn after two years?

About jobs:

- What kinds of jobs sound interesting to me?
- How much do people usually earn in this job?
- Is there a gender pay gap in this occupation?
- Is there a demand/anticipated need for this occupation in my area and in the state?
- Who should I talk to find out more about this occupation? (Informational Interviews? Research? Linked in? Associations?)
- Do my current qualifications, skills, and experience already *match* the job requirements?
- What kind of training do I need?
- How and where do I get needed training? Community Colleges? Free online courses? How long will it take?
- How much will the training cost?
- Is there available public transportation to these jobs?

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
 - 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.
- ☐ ***Take Proactive Steps to Avoid Occupational Separation.*** In the event that the audit shows that jobs are segregated by gender, or by race/ethnicity, with one gender or race working primarily in lower paying jobs, the parties could negotiate for training to be provided so that employees can transfer to higher paying classifications as openings occur.

How can unions address issues of pay equity in the bargaining process?

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, could 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.

[Insert Tool #14 Model Information Request]

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.

[Link to Tool #15 Model CBA Language]

How do I connect with a prospective employer?

Networking. Networking is the key process by which people find jobs. It means asking questions and getting into conversations with everyone you can think of and anyone your personal connections can think of about their jobs.

LinkedIn. A good networking tool that also helps you organize your qualifications, skills, experience, and education is LinkedIn. LinkedIn has free services that allow you to create an employee profile about you that employers can see. It also helps you to connect with other people who are in the jobs you want so you can ask them questions and learn more about the job you want.

Informational interviews. happen when you meet with a prospective employer, ask them more about the job you want, and provide them more information about you. It can be done in-person, on the phone, and even via chat online.

[Insert tool #11 for informational interviewing]

Industry, occupation, professional, and trade organizations and associations form a very important role in networking. These organizations and associations are often national, but they do have local and regional connections. Go online and search for associations and organizations that include the occupations in which you want to work. For example, if you are interested in information technology or computers then you could look into the Women in Technology Association (<http://www.womenintech.org/>) or National Center for Women and Information Technology (<https://www.ncwit.org/>). Or, if you are interested in helping professions you might look into the California Chapter of the National Association of Social Workers (<http://www.naswca.org/>). If you are using LinkedIn, search for the association there and join online. Attend meetings and conferences of the associations and organizations representing the industry and occupations in which you are interested and call or message them to ask questions about the occupation and jobs.

How do I create a résumé and cover letter once I am ready to apply?

Do you have an up-to-date-résumé? If not, free résumé templates can guide you as you develop your personalized resume (<https://templates.office.com/en-us/Resumes-and-Cover-Letters>).

Whether you are building your résumé from scratch or have one already, try signing up for LinkedIn. LinkedIn is a social media site you can freely join, similar to Facebook, but for job seekers and those already employed. The site prompts you to enter information about your work experience, education, skills, accomplishments, and interests. Saving your information on a site like LinkedIn is useful:

- It stores your résumé information in one place easily updated.
- You can look at other people's profiles to think about how to create yours.
- LinkedIn allows you to convert your information into a résumé format (<https://www.resumonk.com/resume-builder/help/import-from-linkedin>).
- You can connect with people who are already in the jobs you want.

Remember as you apply for job:

- Keep track of the jobs you apply and any follow-up you want to do.

[Insert Tool #10 Job Tracking]

- Connect your skills to a job announcement by emphasizing those skills you have that match what the employer is asking for.
- Write a compelling cover letter. There are many websites with examples of cover letters. (<https://www.careeronestop.org/ResumesInterviews/Letters/CoverLetterTemplate.aspx> and <https://www.thebalance.com/best-cover-letters-a-z-list-of-examples-2060172>)

How Does the Fair Pay Act Apply to Unions and Their Members?

- The Fair Pay Act/Equal Pay Act covers employees in all industries in California;
- There is no carve out under the Fair Pay Act/Equal Pay Act for employees covered by Collective Bargaining Agreements, as there is for overtime, and there is no minimum number of employees needed for this law to apply;
- Unions and employers can, however, negotiate bona fide merit or seniority based systems that can be the basis for wage differentials under the law;
- In light of the recent Amendments to California law, unions may wish to review provisions in the collective bargaining agreement that relate to employee compensation – such as hiring and selection criteria, job classifications and definitions, pay scales, promotion and pay raise provisions, etc. – to ensure that these provisions comply with the law;
- Unions and their members may wish to evaluate historical inequities in pay (e.g. between female- and male-dominated positions) to determine potential issues that conflict with the law, especially when negotiating an initial contract.
- Finally, as employers, unions may utilize the tools and guidance for employers with respect to conducting pay audits and correcting any inequities, available here [\[Link to those tools\]](#)

What Can a Union Representative Tell an Employee or Union Member Who Believes She is Not Being Paid Fairly?

- A Union representative can educate members about the existence of the Equal Pay Act, and her rights under the law and that the Union has the ability to get information from the employer that could help to evaluate and address the issue;
- Depending on the terms of the Collective Bargaining Agreement, union represented employees may have a remedy through the negotiated grievance and arbitration procedure, or the individual employee may need to seek representation from an outside attorney or file a claim with the California Labor Commissioner. ([Link to the employee tool/Tip Sheet](#)).
- A Union representative may tell employees who are not already represented by the union that they have the same rights under state law but also that issues of pay equity can be, and often are, addressed in the collective bargaining process. The employee may also want to know that the gender wage gap is much smaller among unionized workers than non-union workers.

Informational interviewing

Informational interviewing with other women in a company or occupation in which you're interested is a great strategy to get 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. Start with, "You have a great reputation for being knowledgeable and experienced in your field," or some similar observation. If you have a personal referral, that's even better. Let your prospective employer know who you know. 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 often continues longer, and you have more opportunities to let them get to know you, too. Possible or sample questions to ask and information to share during an informational interview 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 exactly what I want to do, but the important things to me are the ability to contribute, to grow, and 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 (occupation)?
- Is the field already crowded?
- Do you feel you are in the right job? The right field? How? When did you know that you were in the right job?
- Do feel you are fairly paid? Is there a difference in how men and women are paid in (company name or industry)?
- If you were starting over today, would you make different choices? What would you choose differently?
- If you knew what you know now about being a (occupation) 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 I speak with? What particular reason do you have in making that suggestion? Or, what should I say when I contact this person?

Once I have an idea of what job/career I want, where do I find open jobs?

To find open jobs, it is helpful to go to a basic career website or portals that advertise and announce current job openings. Begin exploring jobs that are open by going to sites like Cal Career, <https://www.cccregistry.org/jobs/searchForm.aspx>, Craigslist, <https://csucareers.calstate.edu/>, Glassdoor, higheredjobs.com, Idealist, Indeed, Monster, San Francisco Business Times Books of Lists, <https://jobs.universityofcalifornia.edu/>, or unionjob.com.

Ask family and friends about what they do. What do they dis/like about their jobs? Their responses will not make your job decision for you, but information from people who are already doing the job you might want to do are good starting points to spark your interest. 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.

Challenges and Barriers Subcommittee: Jeanna Steele and Jennifer Barrera

Online information - Market data information EDD

There are many resources that employers and employees may wish to consult to determine appropriate compensation for a particular role. Please also note that job titles are not determinative but just an initial step in determining appropriate compensation for a particular role. The Task Force recommends consulting resources that provide a pay range, rather than the median compensation for a particular role. It is also recommended that more than one resource be consulted. Possible resources include, but are not limited to:

- **California's Employment Development Department.** The California EDD provides quarterly information regarding median wages paid for various positions in different regions of the state. See <https://data.edd.ca.gov/Wages/Occupational-Employment-Statistics-OES-/pwxn-y2q5>.
- **The Department of Labor Bureau of Labor Statistics: Occupational Outlook Handbook.** The Department of Labor Bureau of Labor Statistics publishes the Occupational Outlook Handbook, which provides information about the characteristics of various jobs, the skills, education and training required for them, typical salaries and future outlook for the occupation. It is organized by job family. See <http://www.bls.gov/ooh/>.
- **The Department of Labor Bureau of Labor Statistics: O*Net Online.** The DOL also publishes O*Net Online, which is a deep database that provides job related info by a number of different search techniques, such as industry, occupation growth rates, level of training and preparation needed (job zones) and other characteristics. See <https://www.onetonline.org/>.
 - See also the median weekly earnings of full-time and salary workers by detailed occupation and sex at <http://www.bls.gov/cps/cpsaat39.pdf>.
- **Glass Door.** Glass Door is a database of information about employers that includes salary reports submitted by both employer and employee users of the site. See <https://www.glassdoor.com/index.htm>.
- **Salary.com.** Salary.com is a database that allows employers to analyze their internal pay practices against market rates. See <http://www.salary.com/>.
- **Payscale.** Payscale is a database that compiles individual salary profiles through crowdsourcing and big data technologies for use by employers and employees. See <http://www.payscale.com/>.

[Insert Additional Resources]The resources provided above are not an exhaustive list and the Task Force does not endorse reliance on any particular resource. Please also note that the data provided in the resources above may change following implementation of California's Pay Equity Law.

Employee Organization/union Subcommittee: Leslie Simon and Jennifer Reisch

DRAFT 3-20-2017

Pay Equity and Collective Bargaining

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, could 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 union's right to information that is relevant and necessary to performing its duties to represent its members stems from Section 8(a)(5) of the National Labor Relations Act which requires the parties to negotiate in good faith. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). Unions should be prepared to show why information requested is relevant and necessary to properly representing its members.

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	<p>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.</p> <p>Because the union is requesting information about employees who are not part of the bargaining unit, the employer may have concerns about confidentiality of information provided, and the union should be prepared to discuss ways to protect the confidentiality of information provided.</p>

TYPE OF INFORMATION	TYPE OF EMPLOYEE(S)	LAWS RELATED TO RECORDKEEPING OF THIS INFORMATION	POTENTIAL RELEVANCE TO COLLECTIVE BARGAINING
		(EEO-4 Report), and elementary-secondary school districts with 100+ employees (EEO-5 Report).	
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.

TYPE OF INFORMATION	TYPE OF EMPLOYEE(S)	LAWS RELATED TO RECORDKEEPING OF THIS INFORMATION	POTENTIAL RELEVANCE TO COLLECTIVE BARGAINING
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.
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 performance evaluations for the past 3-years for each employee in the bargaining unit and in substantially similar

TYPE OF INFORMATION	TYPE OF EMPLOYEE(S)	LAWS RELATED TO RECORDKEEPING OF THIS INFORMATION	POTENTIAL RELEVANCE TO COLLECTIVE BARGAINING
			classifications.
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.

What do I tell a member or non-represented employee who believes she is being unfairly paid?

- A Union representative can educate members about the existence of the *Fair Pay Act*, and her rights under the law and that the Union has the ability to get information from the employer that could help to evaluate and address the issue
- Depending on the terms of the Collective Bargaining Agreement, union represented employees may have a remedy through the negotiated grievance and arbitration procedure, or the individual employee may need to seek representation from an outside attorney or file a claim with the California Labor Commissioner
-
- A Union representative may tell employees who are not already represented by the union that they have the same rights under state law but also that issues of pay equity can be, and often are, addressed in the collective bargaining process. The employee may also want to know that the gender wage gap is much smaller among unionized workers than non-union workers.

What is the California *Fair Pay Act*?

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.

https://www.dir.ca.gov/dlse/California_Equal_Pay_Act.htm

What is the gender pay gap, and why should I care?

Starting out in the same pay range as men is a good idea to avoid a gender pay gap over your lifetime. Gender pay gaps happen when men are paid more than women are for substantially similar work. The pay gaps at companies are often produced and made larger during the hiring process. If a company offers women applying for jobs pay rates below what men are getting paid for doing substantially similar work, the pay gap can begin, continue, and get wider if she accepts the job. Once women earn less, even when they are awarded raises, those raises build on what they currently earn. So, if a woman starts out being paid lower than a man, then her pay will likely stay lower even if they are given the same raises. And, in some cases, when women promote or switch jobs, their prior salaries can be factored into their new salaries.

~~[Insert Tool #1 wage rate tool here]~~

Negotiating for a fair wage can be difficult task requiring more than just confidence. Effective wage negotiation also requires good information. There are free sites on the web (<https://www.pon.harvard.edu/daily/negotiation-skills-daily/negotiation-skills-whats-the-best-process/>) that can tell you more about how to negotiate so you feel more comfortable. There are also free courses about negotiation among many topics (<https://www.coursera.org/courses?query=negotiation>). These sites do have courses that cost money, but we emphasize using the free alternatives..

Where can I go to find out information about jobs/careers in which I may be interested?

The first step in a job search is deciding which job/career you wish to consider. California's Employment Development Department (EDD) My Next Move website (<https://www.mynextmove.org/>) will help you choose from many possible jobs based on your interests, skills, education, personality, desired salary, experience, and knowledge. If you are not sure what you want to do, EDD's Labor Market Information for Job Seekers and Students ([http://www.labormarketinfo.edd.ca.gov/LMID/SelfAssessment for Career Exploration.html](http://www.labormarketinfo.edd.ca.gov/LMID/SelfAssessment_for_Career_Exploration.html)) even provides self-assessments so you can match *you* to a job or career.

California Occupational Guides (<http://www.labormarketinfo.edd.ca.gov/occguides/>) and Occupations in Demand (<http://www.labormarketinfo.edd.ca.gov/data/occupations-in-demand.html>) will also help you find out more about which jobs are in growing fields and offer more opportunities, education/training for those jobs, and what might be the basic pay rate for new and more experienced staff. This site even tells you where those jobs are in California and specific companies that hire people in the job you want.

Another great resource is American Job Centers (<https://www.careeronestop.org/site/american-job-center.aspx>) where they can help you look for and apply for a job.

What do I do if I am being paid inequitably?

If you learn you are being paid inequitably there are several options for you to seek equal pay for substantially similar work:

- Talk to your boss. The *Equal Pay Act* protects you from retaliation for asking and from employers basing differences in pay from prior salary...[need text]
- Talk to your union or union representative. [need text]
- File a complaint.

**FOR
ADDITIONAL
REVIEW AND
VOTE**

California Pay Equity Task Force
Human Resources Subcommittee Draft Tool on Starting Salary
Updated December 7, 2017

NOTE: This document is drafted solely for discussion during the January 10, 2018 Task Force meeting and should not be construed as legal advice or a final recommendation of this subcommittee or the Task Force.

Under California law, employers cannot:

- Seek salary history, including “compensation and benefits,” of an applicant
- Rely on salary history information in determining whether to offer employment or what salary to offer unless the applicant voluntarily and without prompting discloses their salary history
- Rely on prior salary, by itself, to justify any disparity in compensation

The law also requires employers to provide the pay scale for a position to an applicant who makes a reasonable request for that information.

In this tool, we provide suggested practices for employers for setting starting salaries based on factors other than prior salary. Each organization is different, and there is no one-size-fits-all strategy. However, we aim to provide high level tips, examples, and factors for employers to consider. Ultimately, each employer must determine how best to develop, implement and maintain a non-discriminatory compensation system. Nothing expressed here mandates or requires employers to follow any of the suggested guidance. Nor will a failure by an employer to follow this guidance be construed as a violation of the law.

Suggested Practices for Employers in Setting Starting Salaries

Compensation Philosophy. Before determining what any given employee should be paid, you should consider developing and documenting the organization’s compensation philosophy. In other words, how does your organization think about compensation? What do you value in your employees? What factors are important in recruiting new hires? What different forms of compensation do you offer? Documenting this information and communicating it to those involved in hiring and setting compensation—whether through training, written policies, or otherwise—is important so that you can (1) be consistent in setting pay; and (2) later demonstrate legitimate reasons for any pay differences if necessary.

All organizations use and state their compensation philosophy differently. Generally, any compensation philosophy should be based on the premise that employees will be paid in a fair and non-discriminatory

manner. Key considerations for setting compensation might include, but not be limited to, some combination of those listed below:

- Rewarding employees for job performance that is evaluated based on gender-neutral factors.
- Rewarding employees for their impact or contribution to the organization, e.g., have they contributed to a particularly meaningful project that advanced the organization's competitive goals or increased revenue?
- Employee retention: Is any component of the compensation package designed to encourage employees to stay? For example, some employers offer deferred compensation that is paid out over a period of years so long as the employee stays with the organization for a certain period of time.
- Market competitiveness: Is it important to your organization to offer a compensation package that is competitive with the market in which you are competing for talent as reflected, for example, in market surveys or other external market data?
- Employee motivation: Are certain forms of compensation designed to motivate employees to achieve certain goals or performance metrics? For instance, some employers pay commissions to sales employees based on sales revenue achieved.
- Budget: How much money is available for employee compensation considering other organization expenses?
- Profitability: Are certain components of compensation based on your organization's financial performance?
- What is the scope, breadth, and/or depth of the role and its impact on your organization?

In addition, consider what factors are important to you in recruiting new hires. Some examples are provided below, though various other factors could be considered as well.

- Relevant experience
- Relevant education
- Relevant training
- Relevant skills or knowledge
- Market conditions
- Geography/location
- Competing offer

If you rely on any of the considerations above, either upon hire or during employment, you must still show that each is a bona fide factor other than sex, is reasonably applied, is job related, and is consistent with business necessity. [LINK TO STEP BY STEP DOCUMENT]

Imagine, for example, that your company sells widgets and you are looking to compete in the marketplace by making a new state-of-the-art widget. You conduct market research and find that there are few in the industry who have the experience necessary to make that type of widget. Due to high demand, those employees tend to be paid more than other widget makers. Your company makes a strategic decision to pay above market to recruit and retain those who have the specialized experience. This market consideration may justify pay disparities between widget makers. However, it would not justify a disparity if your company does not consistently consider this specialized experience when setting pay.

What if one of the widget makers with the specialized experience says they have a competing offer for higher pay? This may reflect growing competition in the market and may justify making a higher counteroffer. However, you should consider asking the applicant what it would take for them to accept the job with your company. Would they expect to make the same amount? Have they considered the total compensation package you are offering? Is the competing offer for a role that is substantially similar to the position for which the applicant applied? Do the applicant's qualifications support their increased compensation expectations? Would the counteroffer otherwise be consistent with your compensation philosophy? The answers to these questions may later help you justify this employee's higher rate of pay.

Finally, an employer's compensation philosophy should also account for what forms of compensation are offered. Examples include:

- Base pay
- Bonus
- Stock or stock option awards
- Commission or other incentive compensation
- Benefits like medical insurance and retirement
- Other non-financial benefits such as:
 - Time away from work,
 - Flexible starting times,
 - Commute allowances,
 - The ability to work from home X number of days a week or month,

- Special training opportunities,
- Tuition reimbursement
- 1025 benefit coverage, FLSA advantages
- Childcare assistance/provision

Internal Equity. When setting pay for new employees, consider what current employees are making in jobs that are substantially similar [LINK TO STEP BY STEP DOCUMENT]. If there is a disparity between what you are hoping to pay the new employee as compared to current employees, evaluate whether the entire disparity can be justified based on a bona fide factor other than sex that is reasonably applied, job related, and consistent with business necessity.

Setting Salary Ranges. Consider setting salary ranges for each job position prior to interviewing applicants. To do this, you can look at external market data and the salaries of your existing employees in jobs that are substantially similar when viewed as a composite of skill, effort, and responsibility. This will help you evaluate the reasonable value to your organization of each job position. Employers generally aim to place new hires in the salary range based on the applicant's readiness for the position. A fully qualified applicant is likely to be placed in the mid-point of the range, absent appropriate differentiating factors that may support placement at the higher or lower end of the range.

Communicating with the Prospective Employee about Starting Salary. Strategies exist for evaluating what to pay new employees without asking their prior salary or other prior forms of compensation or benefits. Ultimately, you want to know if there is a possible "match" between the applicant's expectations and the realities of the total compensation for the position you are discussing.

To accomplish this, you can:

- Ask the applicant, "What are your salary expectations?" and ask why they believe their qualifications are in line with their expectations.
- If the applicant mentions that he or she would be forfeiting deferred equity by leaving their current job, focus back on the applicant's expectations: "What does that mean in terms of your compensation expectations? What will it take for you to take a job at this organization?"
- Be ready to discuss your pay scale (i.e. salary range) for the specific position for which you are considering the applicant and for which the applicant is qualified, whether that be an internal or external applicant. Remember that the law requires employers to provide the pay scale for a position to an applicant applying for employment who makes a reasonable request for that information. If you do not already have a pay scale for the job, be prepared to provide the range of what you are prepared to pay for the position. If there is only one static rate as opposed to a range, prove the rate.

- Be prepared to discuss your compensation philosophy, which may help guide the applicant in setting their salary expectations and explain their basis for them.
- Be able to clearly define the “total” compensation being offered, especially if there are performance-based bonuses or rewards. This should also include a discussion of what other non-financial incentives the organization offers.

Document What You Considered in Setting the Employee’s Compensation. Take the time to appropriately document the factors you consider in setting each employee’s pay upon hire to ensure that you are making decisions that are consistent with your compensation philosophy and to enable the organization to better defend these decisions if later challenged.

If you conduct individualized reference checks, take notes about responses, including what the references said and on what date they said it. This information can be key in making a more accurate assessment about the applicant. Below are examples of questions that you can ask an applicant’s references to further solidify the responses gathered from the applicant:

- What the applicant did in the previous position
- Confirm the applicant’s title and the scope of their responsibilities
- What were their major strengths? (ask for example)
- Was there any area that needed more development? If so, what?
- What did you value and appreciate most about this applicant?
- What were the applicant’s major accomplishments? Impact on the workplace?
- Were they a team player? How do you define that?
- Were they reliable and dependable? Define?
- Did you respect and trust/not respect and trust them? Why?
- Would you hire/rehire this person? Into what types of job?
- Any other question you feel is key to the job.
- If they show reluctance, explain a little bit about the position and ask if they feel the prospective applicant could do that work: Do you see any difficulty in the match between the job and the employee? What?

HIGH PRIORITY RECORDKEEPING REQUIREMENTS

Record	Legal Authority	Summary of Requirements	Length of Time
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP)			
External outreach and recruitment efforts related to protected veterans and individuals with disabilities	41 C.F.R. §§ 60-300.44(f)(4), 741.44(f)(4)	Requires documentation of: 1. External outreach and recruitment efforts for hiring protected veterans and individuals with disabilities; and 2. Annual written assessment of the effectiveness of each of the contractor's activities.	3 years
Data collection analysis (related to protected veterans and individuals with disabilities)	41 C.F.R. §§ 60-300.44(k), 741.44(k)	Requires contractors to document and update annually: 1. Number of applicants who self-identified as protected veterans or individuals with disabilities; 2. Total number of job openings and jobs filled; 3. Total number of applicants for all jobs; 4. Number of protected veterans and individuals with disabilities hired; and 5. Total number of applicants hired.	3 years
Annual hiring benchmark (related to protected veterans)	41 C.F.R. § 60-300.45	Requires documentation of the benchmark used by the contractor each year, including each of the factors considered in establishing the hiring benchmark and the relative significance of each of these factors (if the contractor chooses to create its own benchmark consistent with the regulations, rather than simply use the national percentage of veterans in the civilian labor force, which will be published and updated annually on	3 years

		the OFCCP Web site).	
All other documents required to be retained for OFCCP compliance	41 C.F.R. §§ 60-1.12(a), 300.80(a), 741.80(a)	Applies to “any personnel or employment record made or kept by the contractor . . . from [1] the date of the making of the record or [2] the personnel action involved, whichever occurs later.”	2 years
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)			
Personnel records	29 C.F.R. § 1602.14	<p>Private employers must preserve all “personnel records . . . from the date of the making of the record or the personnel action involved, whichever occurs later.” This includes, but is not limited to, “requests for reasonable accommodation, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship.”</p> <p><i>Note:</i> Because these records that must be preserved substantially overlap with the documents required for OFCCP compliance, employers may find it easier to preserve those same documents for 2 years regardless of the EEOC’s requirements.</p>	1 year
CALIFORNIA REQUIREMENTS			
Applications and referral records	CAL. GOV. CODE § 12946	Employers must maintain records of “all applications, personnel, membership, or employment referral records.”	2 years
Terms and	CAL. LAB.	Employers must maintain records of the “wages and wage rates, job classifications, and other terms and conditions of	

conditions of employment	CODE § 1197.5(d)	employment” of employees for purposes of the California Equal Pay Act.	3 years
Payroll records	CAL. LAB. CODE § 1174(d)	Employers must maintain payroll records showing the daily hours worked by the employees and the wages paid to them.	3 years
Wage deductions	CAL. LAB. CODE § 226(a)	Employers must maintain copies and a record of any wage deductions showing the month, day, and year of the deduction.	3 years
Personnel records	CAL. LAB. CODE § 1198.5(a), (c)(1)	Employers must maintain a copy of each employee’s “personnel records” for at least three years. This requirement applies to “personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.”	3 years
Employee information and time records	Wage orders issued by the California Industrial Welfare Commission. <i>See, e.g., IWC ORDER 4-2001(7)</i> (applicable to “professional, technical, clerical, mechanical, and similar occupations”)	Employers must maintain records with the employee’s: <ol style="list-style-type: none"> 1. Full name, home address, occupation and social security number; 2. Birth date, if under 18 years, and designation as a minor; 3. Time records showing when the employee begins and ends each work period. 4. Meal periods, split shift intervals and total daily hours worked; 5. Total wages paid each payroll period, including other compensation actually furnished to the employee; 6. Total hours worked in payroll period and applicable rates of pay. 	3 years

Federal and State Laws concerning Equal Pay

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

In California, the Labor Commissioner's Office (also known as the Division of Labor Standards Enforcement or DLSE) has the authority to enforce Labor Code Section 1197.5, which prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex, or of a different race or ethnicity for substantially similar work.

See https://www.dir.ca.gov/dlse/California_Equal_Pay_Act.htm.

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 employees of the opposite sex, or of a different race or ethnicity equally 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 when viewed as a composite of skill, effort, and responsibility" to reflect 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 the employer's reason for the pay difference must 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 federal 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?

California law requires equal wages for employees of the opposite sex, or of a different race or ethnicity, who perform the same or substantially similar work. 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 a pay equity analysis of all employees' wages?

There is no mandate to conduct an audit. However, it may be a good practice for employers wishing to proactively comply with the law. Employers may want to consider conducting any audit with the advice of an attorney or HR professional.

(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, liquidated damages, lost work benefits, attorney's fees, etc. If there is discrimination or retaliation involved, emotional distress and punitive damages may also be assessed.

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

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 confidential wage information 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.

(7) How does the California Equal Pay Act define "wage rate"?

[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).

I want to perform a gender pay equity analysis

California law requires that employers pay women and men doing substantially similar work the same wage rate. To comply, businesses will want to evaluate the jobs their employees do and compare wages by gender:

- Collect the right data
- Identify employees doing similar work
- Compare wage rates by gender
- Determine reasons for any differences in pay
- Remedy disparity that can be attributed to gender.

Collect the right data

Beginning a pay equity analysis means having the right information to analyze. Generally, this means collecting information about employees, jobs, business/company practices, market data, and salaries, though the size of your business may impact what you collect and what makes sense to collect.

For employers of all sizes, retaining information to perform a pay audit will help you 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.

[Insert Tool #1 wage rate tool here]

[Insert Tool #2 infrastructure and systems tool here]

There are many resources that employers and employees may wish to consult to determine appropriate compensation for a particular role. Please also note that job titles are not determinative but just an initial step in determining appropriate compensation for a particular role. The Task Force recommends consulting resources that provide a pay range, rather than the median compensation for a particular role. It is also recommended that more than one resource be consulted. Possible resources include, but are not limited to:

- **California's Employment Development Department.** The California EDD provides quarterly information regarding median wages paid for various positions in different regions of the state. See <https://data.edd.ca.gov/Wages/Occupational-Employment-Statistics-OES-/pwxn-y2q5>.
- **The Department of Labor Bureau of Labor Statistics: Occupational Outlook Handbook.** The Department of Labor Bureau of Labor Statistics publishes the Occupational Outlook Handbook, which provides information about the characteristics of various jobs, the

skills, education and training required for them, typical salaries and future outlook for the occupation. It is organized by job family. See <http://www.bls.gov/ooh/>.

- **The Department of Labor Bureau of Labor Statistics: O*Net Online.** The DOL also publishes O*Net Online, which is a deep database that provides job related info by a number of different search techniques, such as industry, occupation growth rates, level of training and preparation needed (job zones) and other characteristics. See <https://www.onetonline.org/>.
 - See also the median weekly earnings of full-time and salary workers by detailed occupation and sex at <http://www.bls.gov/cps/cpsaat39.pdf>.
- **Glass Door.** Glass Door is a database of information about employers that includes salary reports submitted by both employer and employee users of the site. See <https://www.glassdoor.com/index.htm>.
- **Salary.com.** Salary.com is a database that allows employers to analyze their internal pay practices against market rates. See <http://www.salary.com/>.
- **Payscale.** Payscale is a database that compiles individual salary profiles through crowdsourcing and big data technologies for use by employers and employees. See <http://www.payscale.com/>.

The resources provided above are not an exhaustive list and the Task Force does not endorse reliance on any particular resource. Please also note that the data provided in the resources above may change following implementation of California's Pay Equity Law.

JR comments (ERA) – ~~title-I think the title~~ of this document ~~needs to be~~ should just be “Am I being paid fairly under California’s equal pay law?” (currently entitled: Am i being paid fairly under hte [sic] California Equal Pay Act [it was actually called the Fair Pay Act] of 2015?”] The current heading is inaccurate in how it calls the legislation of 2015 and also because it conflates the changes made to the existing law with the law itself. You could remove the phrase below, “...as amended by the Fair Pay Act of 2015” and it would be accurate and less legalistic.

I also think the heading of this paragraph does not actually match what the resources listed are designed to help people discover: these are tools designed to help women figure out which fields or types of jobs they could be making more in, or where there can expect to experience the greatest and lease wage gaps with men. They are NOT designed to tell women whether or by how much they are being paid less than men doing the same jobs as they currently hold. So while I offered some line edits to the first sentence here, in looking at the actual tools, I think the entire heading needs to be rewritten to say something more about or like, “So how can I find out if women in my field are paid less than men?” Or, “What are some jobs I could do that pay more?” Ask Tomekia and Rhoma but I think this heading does NOT capture what they’re going for here.

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Subcommittee on Employees: Rhoma Young and Tamekia N. Robinson

Am I being paid fairly under ~~the Equal~~ California’s equal pay law, as amended ~~Pay Act of~~ by the Fair Pay Act of 2015?

~~So what Suppose if~~ you’ve been at a job ~~long for enough a~~ while and, you suspect that you ~~might are getting paid less than men at your company, agency, or organization be for~~ doing similar work – but you don’t know for sure ~~to men at your company or agency, and think they might be getting paid more than you are?~~ You’d like to do some research, but where do you start?

Below are pay gap calculators you might find useful to help estimate if there is a gender pay gap where you work.

- 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/>

How can I find out if I am being paid what I'm worth?

There are many ways you can find out if you're being appropriately compensated for your work and your particular role. Check out the resources below to learn more about what the pay range looks like for people with your job and/or in your occupation in a particular area. Remember that job titles vary and can be helpful, but are not determinative, in figuring out what the appropriate compensation level is for a particular position. Resources that provide pay ranges, rather than just the average or median salary for a particular type of job, are generally more helpful. You can also cross-check different sources to find out more about what people in your job or field make, and how your salary or hourly rate compares. Some places to look for information include:

- Pay Scale (provides a free pay equity report): <http://www.payscale.com/>
- Employment Development Department (<http://www.labormarketinfo.edd.ca.gov/>)
- Your co-workers!
- Colleagues who do similar work as you do but work for a different employer (especially if they work in the same geographic area or region as you)

Comment [JR1]: By field? Position? Geographic area?

Comment [JR2]: Andrea Obando of ERA put together a whole chart of external pay resources. I thought we would include or link to it? Do you not have that chart anymore?

I want to know if I am being paid equitably

Under California's equal pay law, employers may not pay any employee of one sex, race, or ethnicity less than another employee of a different sex, race, or ethnicity for doing "substantially similar work" under similar working conditions, unless there is a legitimate reason for the pay difference that has nothing to do with the employees' sex.

- How can I find out if I am being paid equitably?
- What can I do if I am being paid inequitably?

Comment [JR3]: I don't like this passive voice and I think the use of "equitably" is going to throw most people off. Make it simpler: I want to know if my employer is following the law. Or: How do I know if I am getting "equal pay"?

Comment [JR4]: Again, don't think this question will be recognizable to many as the question they'd ask themselves. Hardly anyone understands that "equitable" and "equal" are different, so I think we need to rethink. Also, not sure where the content for each of these bullets is, but I am fairly certain I commented on the first one at least and found there were two documents with the same or very similar headings. Need to be consolidated and corrected so that the content provided actually answers the headings.

Comment [JR5]: This should lead to the information about options for employees – talk to your boss (and bring a co-worker with you as a witness, to support you and establish that you're engaging in protected, concerted activity); consult with an attorney (e.g. ERA or Legal Aid at Work); file a claim with Labor Commissioner; file a claim in court.

I want to ~~know my rights~~ file a claim for wages

~~An~~ If you are an employee who has experienced an Equal Pay Act violation (you've been paid less than a co-worker of a different sex, race, or ethnicity for doing substantially similar work), you ~~can file a n administrative claim before~~ with the Labor Commissioner's office or file an action in court against your employer to seek the difference in pay. In order to succeed on such a claim, ~~Under the new law, an employee must~~ you will need to show that he or she is being your employer paid you less than it paid another employee(s) of the opposite sex [or different race or ethnicity] who is for performing substantially similar work sometime in the past two years. You may be able to go back three years if you can show your employer's violation of the law was "willful" (done with knowledge). The Your employer must will then have the chance then to show that it has a legitimate reason for there is a legitimate reason for the pay difference that has nothing to do with sex. 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. ~~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~~ Remember that you employee does may, but do not have to, file an administrative claim before filing an action in court. (For more information, see https://www.dir.ca.gov/dlse/California_Equal_Pay_Act.htm)

Overview of the Current State Law

For decades, the California Equal Pay Act (CA Labor Code ~~S~~section 1197.5) has prohibited an employer from paying its employees less than employees of the opposite sex for equal work.

In October 2015, Governor Brown signed the Fair Pay Act ~~of 2015~~ (SB 358 - Jackson), which changed the law ~~which and~~ strengthened ~~the our state equal pay law~~ Equal Pay Act in a number of ways, including:

- ~~Requiring Prohibiting unequal rates of pay for employees of the opposite sex who perform "substantially similar work, when viewed as a composite of skill, effort, and responsibility," instead of "equal work;"~~
- Eliminating the requirement that ~~the employees' wage rates being only be compared to those of other employees d-working in the same physical location or office (at the "same establishment."):~~
- ~~Making it more difficult~~ Making it more difficult for employers ~~to to justify satisfy~~ paying an employee of one sex less than another when they do substantially similar work by narrowing the defenses available ~~the "bona fide factor other than sex" defense;~~
- ~~Ensuring Requiring that any legitimate whatever factors relied upon by the an~~ employer ~~relies on to justify a difference in pay (like different levels of education, training, or experience) be job-related, used are applied reasonably, and account for the entire pay difference;~~
- ~~Explicitly stating that~~ Specifically making it illegal to retaliate or discriminate ion against employees who ~~seek to enforce the law is illegal, and making it illegal for employers to prohibit employees from discussing or ask about pay, or take some step to enforce their own or a co-worker's equal pay rights inquiring; and about their co-workers' wages.~~
- Extending the number of years that employers must maintain ~~wage and other employment-related~~ records related to pay from two ~~years~~ to three years.

In September 2016, Governor Brown signed further amendments to the Equal Pay Act including:

- The Act (SB - Hall), Adding adding race and ethnicity as protected categories to the Equal Pay Act and ~~Therefore, an employer is thereby prohibip~~prohibiting employer ~~sted~~ from paying its employees of one race or ethnicity less than employees of ~~the opposite sex, or of another race or , or of another ethnicity~~ for substantially similar work. ~~(The remaining parts of this law. The provisions, protections, procedures, and remedies relating to race or ethnicity-based claims are identical to the ones relating to sex.~~
- The Act (AB - Campos), amending the Equal Pay Act to barProhibiting employers from justifying relying on an employee's prior salary (by itself) to justify unequal pay between employees doing substantially similar work, a sex, race, or ethnicity-based pay difference solely on the grounds of prior salary

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In October 2017, Governor Brown signed two further amendments to the law which ~~will go into~~take effect ~~on~~ January 1, 2018.

~~The Act (AB 168 by Assemblymember Susan Eggman (D-Stockton- Eggman))~~ prohibits all employers, including the Legislature, the ~~S~~state, and local government ~~agencies~~, from seeking salary history information about an applicant for employment and requires ~~an~~ employers to provide the pay scale for a position to an applicant upon reasonable request.

~~The Act (AB 46 by Assemblymember Jim Cooper) declares that (D-Elk Grove) Applies the~~ Equal Pay Act ~~within the Labor Code to~~ also applies to public sector employers, ~~including the State itself, by which are generally governed by the Government Code, and thus, defin~~ing “employer” to include both public and private employers.

PROPOSED REVISED LANGUAGE: The California Fair Pay Act of 2015, effective January 1, 2016, applied to gender pay equity. As of January 2017, protections requiring pay equity on the basis of race and ethnicity were added. Because the Task Force was initially created in 2016 by the California Commission on the Status of Women and Girls to provide guidance and tools on the original Act, these materials primarily focus on gender. We recognize the intersection of race and gender and that more work needs to be done to address the ~~gender~~ pay gap for ~~people~~women of color and in particular women of color. Our hope is that the principles and materials here can provide a useful starting point in the goal of achieving pay equity throughout California for all.

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

California first passed an Equal Pay Act in 1949. Before SB 358 (Cal.Stats. 2015, Ch. 546; “the Fair Pay Act of 2015”) was enacted, Labor Code section 1197.5 prohibited an employer from paying an employee less than employees of the opposite sex who perform the same job, requiring the same skill, effort, and responsibility, in the same establishment, under similar working conditions. Exempt from this prohibition are payments made pursuant to systems based on seniority, merit, or that measure earnings by quantity or quality of production; or differentials based on any bona fide factor other than sex. Enforcement was by the California Division of Labor Standards Enforcement. Until recently, Labor Code Section 1197.5 (a) provided:

No employer shall pay any individual in the employer's employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions

Effective January 1, 2016, the “Fair Pay Act of 2015” expanded California’s Equal Pay Act by removing the requirement that the pay differential be within the same “establishment,” and replaced the “equal” and “same” job, skill, effort, and responsibility standard, with a new standard that only requires a showing of “substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.” These changes make it easier for an employee to bring an equal pay suit, permitting a plaintiff to compare him or herself with employees of the opposite gender working at any location for the same employer, and in any similar job.

As amended, California’s Equal Pay Act further requires employers to affirmatively demonstrate that any wage differential is based entirely and reasonably upon one or more factors. Added to the three existing factors (seniority, merit, or production-based) is a “bona fide factor”: that is, a factor not based on or derived from a sex-based differential in compensation, which is related to the position in question and is consistent with a “business necessity” (defined as “an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve”). The “bona fide factor” defense is inapplicable if the plaintiff demonstrates that an alternative business practice exists that would serve the same business purpose without producing the wage differential. With the enactment of SB 358, the California Labor Code 1197.5 (a) provides:

(a) An employer shall not pay any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, except where the employer demonstrates:

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

(A) A seniority system.

(B) A merit system.

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

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

(2) Each factor relied upon is applied reasonably.

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

California’s Equal Pay Act was amended again in 2016 by SB 1063 (Cal.Stats. 2016, Ch. 866). Effective January 1, 2017, Labor Code Section 1197.5, in addition to prohibiting sex discrimination in wages, now prohibits wage discrimination based on race or ethnicity. Labor Code Section 1197.5 (b) provides, in pertinent part:

(b) An employer shall not pay any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions . . .

California’s Equal Pay Act was again amended in 2017, as was another relevant law. AB 46 (Cal.Stats 2017, Ch. 776) specifies that this act applies to public and private employers. Also, AB 168 (Cal.Stats. 2017, Ch. 688) added Section 432.3 to the Labor Code, prohibiting employers from relying on an applicant’s salary history and requiring employers, upon request, to provide a pay scale to the applicant. Both bills are effective January 1, 2018.

Labor Code Section 1197.5 (l) now provides, in pertinent part:

As used in this section, “employer” includes public and private employers.

Labor Code Section 432.3 provides, in pertinent part:

.

(a) An employer shall not rely on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant.

(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment.

(c) An employer, upon reasonable request, shall provide the pay scale for a position to an applicant applying for employment.

The federal Equal Pay Act was passed in 1963 (Pub.L. 88-38; 77 Stat. 56). This act amended the Fair Labor Standards Act of 1938, as amended (29 U.S.C. et seq.), by adding a new subsection (d).

(d) (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

The Department of Labor had responsibility for enforcement of the federal Equal Pay Act until the federal Reorganization Plan No. 1 of 1978, which, as of July 1, 1979, shifted responsibility for enforcing both the Equal Pay Act and the Age Discrimination in Employment Act from the Labor Department to the Equal Employment Opportunity Commission. <https://www.eeoc.gov/eeoc/history/35th/thelaw/epa.html>

Statutory History of Employment Discrimination Laws in California and the United States

California's and the federal equal pay laws have always been distinct from laws generally prohibiting employment discrimination. California's Fair Employment Practice Act enacted in 1949 prohibited employment discrimination because of race, religious creed, color, national origin, or ancestry, and did not prohibit sex discrimination. Sex was added as a prohibited basis of discrimination in 1970 (Cal.Stats. 1970, ch. 1508). Enforcement was through

the Fair Employment Practice Commission, later named the Fair Employment and Housing Commission.

Title VII of the federal Civil Rights Act of 1964 (Pub. L. 88-352) prohibited race, color, religion, sex, or national origin discrimination in employment (42 USC Sec. 2000e). The administrative agency responsible for enforcement of Title VII is the Equal Employment Opportunity Commission.

DRAFT

1. Overview

Online Tool Information - scenarios of skill, effort, and responsibility:

~~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 ~~anyour~~ attorney to obtain legal advice ~~aboutwith respect to~~ any particular issue or problem. The materials do not represent the opinions or conclusions of individual members of the Task Force. The posting of these materials does not create requirements or mandates.

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 the California Equal Pay Act. The examples provided are meant to help readers understand the California Equal Pay Act. ~~While reading the examples,~~ keep in mind that if employers assign different tasks to male and female employees, they must have reasons for doing so that are not related to the employees' gender, or they may be violating other workplace laws, such as the California Fair Employment and Housing Act or Title VII of the Civil Rights Act of 1964.

2. Determine ~~whethercategories of employees arewho performing~~ substantially similar work:

The term "substantially similar work when viewed as a composite of skill, effort, and responsibility and performed under similar working conditions" means that the employer should look at the overall job content and actual duties performed to determine if the jobs are substantially similar.

Employers should group together those positions that require the same skill, effort and responsibility (when viewed as a composite) 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

Comment [KK1]: I'm using a traditional outline format for purposes of this word document, but would recommend dropping the numbers and letters for an online version. The online version could begin with a hyperlinked table of contents consisting of each heading and subheading.

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Comment [KK2]: I think these materials are supposed to reflect the position of the task force as a whole, which is why we're going to vote on them.

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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?" Consider whether relying on "job family" is consistent with whether the job requires the same skill, effort, and responsibility when viewed as a composite and performed under similar working conditions.

Comment [KK3]: I'm not sure why this paragraph is located here. I would move it to the top, before the discussion of skill, effort, responsibility, and similar working conditions.

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Jobs that share a common core of tasks are substantially similar. ~~Precise identity of functions and duties are not required. The law does not require job functions and duties to be identical. It is a totality of the circumstances analysis.~~ Occasional, trivial, or minor differences in duties that only consume a minimal amount of the employee's time will not render the work dissimilar.

Comment [KK4]: Consider removing – not sure this legal term is useful.

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Example: Male hospital orderlies spend a small percentage of their time performing catheterizations. Female hospital aides do not perform catheterizations. That difference alone would not necessarily render these two jobs substantially dissimilar where the jobs share a majority of common core duties.

Comment [KK5]: Throughout, I have left "male" and "female" as adjectives, but used the nouns "men" and "women" in place of "males" and "females."

a) Job titles and job descriptions are relevant to the consideration, but not determinative of whether employees are performing substantially similar work.

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Example: A male records clerk ~~who~~ primarily performs duties including typing, filing, and answering phones. He works in the same office and on the same floor as a female stenographer likely perform substantially similar work as compared to a female stenographer, who also primarily performs duties including typing, filing, and answering phones. ~~and the working conditions are the same in that both work in an office setting on the same floor without exposure~~ Neither employee is exposed to any physical hazards. They likely perform substantially similar work, despite the difference in job titles.

b) Composite of skill, effort, and responsibility and when performed under similar working conditions is applicable to the actual job duties

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performed, not the person. Additionally, the analysis should be applied to a full work cycle, not just a snap shot of a particular time period or day.

Comment [KK6]: I'm not sure what it means to apply the analysis to the actual job duties, not "the person." Do we mean we analyze the actual job duties, rather than the written job duties?

Example: Two employees work as bookkeepers performing the same duties, but the male employee has the additional responsibility of performing clerical duties. Although the responsibilities of these jobs may not be substantially similar, one must consider the other factors (skills, effort, working conditions) to determine if overall the jobs are substantially similar.

Comment [KK7]: I'm not sure this example illustrates the point.

Example: Two employees both perform custodial duties at a school. However, Employee A works all months of the year and performs additional duties that require heavier physical labor than Employee B, who only works 9 months out of the year. For purposes of determining whether the two jobs are substantially similar, it is necessary to scrutinize the job as a whole and to look at the characteristics of the jobs being compared over a full work cycle. The kinds of activities required for a given job and the amount of time devoted to such activities may vary throughout the year.

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e)a) **Skill.** Skill is measured by factors such as the experience, ability, education, and training required to perform a job.

Example: 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 may be substantially similar.

Comment [KK8]: I think "CP" stands for complainant. If so, we should explain up front or use the word complainant throughout this section. But we should also consider avoiding that legal term and just talk about employees. I can make those changes but want input from full body first.

Example: 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 may not be equal.

Example: 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 may be substantially similar.

b) Effort. Effort is the amount of physical or mental exertion needed to perform a job. Effort may be exerted by two employees in a different way, but may still be similar.

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Example: A male employee and a female employee both work as "Assistant Managers," but the male employee oversees three different stores. Although the female manager only oversees one store, that store is the employer's largest and brings in the most revenue. The effort used by both employees may be similar.

Example: A male employee and a female employee are sales account managers. However, the male employee is responsible for the accounting and maintenance of significantly higher revenue accounts than the female employee. Generally, the greater the responsibility—~~imposed~~, the greater the ~~effort~~~~exertion~~ that is necessary to ~~meet~~~~discharge~~ it. The effort exerted by these two employees may not be similar.

Example: CP alleges that she and other female grocery store workers are paid less than ~~men~~~~males~~ who perform substantially similar work. Most of the tasks performed by the ~~m~~~~en~~~~ales~~ and ~~women~~~~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, so the amount of effort required to perform the jobs may be ~~or likely~~ substantially the same.

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Example: CP alleges that she and other female grocery store workers are paid less than ~~m~~en~~ales~~ who perform substantially similar work. Most of the tasks performed by the ~~m~~en~~ales~~ and ~~women~~females are the same, except two of the male grocery store workers also regularly haul heavy crates from trucks into the store. In this case, the effort required to perform the jobs may not be substantially similar. ~~Or...~~In this case, the employer may be able to lawfully pay a higher rate to the persons who perform the extra task.

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ii) c) Responsibility. Responsibility is the degree of accountability required in performing a job.

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Example: Two employees work as "Project Managers" and have the same general job descriptions. One manages 20 employees in four different locations and actually performs duties not listed on the job description. The other Project Manager only manages one employee. The two jobs may not be substantially similar due to the difference in responsibility.

Example: 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 may not be substantially similar due to the difference in responsibility.

Example: CP, a female sales clerk, claims that a male sales clerk performs substantially similar work for higher compensation. 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 may be substantially similar.

Example: CP, a female sales clerk, claims that a male sales clerk performs substantially similar work for higher compensation. 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 may be substantially similar because the difference in responsibility is minor. However, if the "walk around" of the building requires a substantial amount of time because it is a large facility and includes checking for security of the premises, including entryways, security cameras, and ~~other duties~~ THEN TAKING ANY ACTION TO CORRECT IDENTIFIED PROBLEMS, it may justify a difference in compensation.

Example: 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 may not be substantially similar.

d) Similar Working Conditions: This means the physical surroundings and hazards. It does not include job shifts.

Example: A female assembly worker is paid less than a male assembly worker in the same department. That he works the night shift does not render their jobs substantially dissimilar. [However, the employer may have a defense if the employer pays all employees who work the night shift higher wages, regardless of gender.]

~~e) Group positions that require the same skill, effort and responsibility (when viewed as a composite) 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?" Consider whether relying on "job family" is consistent with whether the job requires the same skill, effort, and responsibility when viewed as a composite and performed under similar working conditions.~~

3) Compare the wage rate for employees performing substantially similar work 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, including, but not limited

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Comment [KK9]: I'm not sure why this paragraph is located here. I would move it to the top, before the discussion of skill, effort, responsibility, and similar working conditions.

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to, wages and salaries, bonuses, commissions, stock options, vacation, and pension. The California EPA generally does not cover disparate treatment in other terms and conditions of work, such as promotions, assignment, work hours, overtime worked, harassment, training, reasonable accommodations, lay off, termination, suspension or other employment actions that may be challenged under the Fair Employment and Housing Act. [The anti-retaliation provisions of the EPA do cover adverse actions taken by an employer in retaliation for an employee exercising rights under the EPA.]

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.

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4) ~~4) Valid/Bona Fide Factor for a Identify Factors that Account for any Differences 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 that is job related and consistent with business necessity. "Business necessity" means an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve. This defense shall not apply if the employee demonstrates that an alternative business practice exists that would serve the same business purpose without producing the wage differential. 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:

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i) ~~a) Is the difference due to a seniority system?~~ Seniority?

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(1) A seniority system rewards employees according to the length of their employment.

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(2) In order for a seniority system to be considered a valid basis for paying employees different wage rates, 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).

~~(2)~~ 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.

Example: A salary retention policy for an employer that rewards an employee based upon length of service may justify a wage disparity if it is applied equally amongst female and male employees and explains the entire wage difference.

ii) ~~b) Is the difference due to a merit system?~~ Merit

A merit system rewards employees for exceptional job performance.

~~(1)~~

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).

~~(2)~~

~~(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) ~~c) Incentive/Production~~ Is the difference due to a system that measures earnings by an "incentive system"?

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An incentive or production system provides compensation on the basis of the quality or quantity of production.

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(1)

(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. Example: An employer may assert a wage disparity is justified on a factor other than sex where its compensation structure is a merit or reward system that bases salaries for branch managers at a specific, uniform percentage of the branch's projected earnings. \

iv) d) Other Bona Fide Factors ~~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?~~

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(1) In addition to the factors listed above, other factors unrelated to sex, race, or ethnicity can justify paying employees different wage rates for substantially similar work. These factors include education, experience, ability, and training. 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

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otherwise benefits the employer's business.¹ 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.² 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.³

Comment [KK10]: If we have a detailed section with references at the end, do we need footnotes?

(2)(1) **Education.** An example of a bona fide factor is providing an employee higher compensation for an employee's education. That prior education must be job-related and serve a legitimate business purpose.

(2)(2) **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.

Example: An employer may assert defense of a wage disparity based on a factor other than sex between a male art college professor who has significantly more years of experience in teaching and has a master's degree in art, than a female music college professor, with fewer years of prior teaching but similar education.

Example: 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

¹ 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).

² 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).

³ 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.").

charge claiming that the difference in starting salaries was unlawful. The employer proves that the salary difference was based on the successor's extensive experience as an office manager, as compared to CP's lack of any job-related experience. The difference in experience may qualify as a factor other than sex justifying the compensation disparity.

Example: 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. The evidence shows that the employer relies inconsistently on work experience in setting salaries for office manager jobs, and that ~~men~~^{women} who lacked experience were offered higher starting salaries than CP. This may be a violation.

Example: 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 did have job-related experience, though her successor had a slightly greater amount of experience. The difference in their experience may not be commensurate with the \$8,000 difference in starting salaries.

~~(4)(3)~~ **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.⁴ 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.

⁴ 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).

(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 may be found.

(5)(4) **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) An employer can raise as a defense additional job duties that render the two positions dissimilar and justify the wage disparity. However, any pay for the additional duties must be commensurate with the higher pay provided.

Example: Male employees who perform additional duties only part of the time as compared to female employees, and where such additional work has only limited value to employer, would not justify a 10% wage difference between male and female employees performing substantially similar work.

~~6) 5) Taking Steps to Decrease Differences in Wage Rates~~
~~Factor Exists to Justify Wage Difference:~~ If there is no factor listed above in
(4) that justifies the difference in wage rates differential paid to employees

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doing substantially similar work, 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.

➤ **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. **As of January 1, 2018, employers cannot ask an applicant about their prior salary.** Additionally, the Fair 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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Substantially similar work when viewed as a composite of skill, effort, responsibility and under similar working conditions

This term requires a comparison of the job held by the person claiming unequal pay with the job of the person who earns more. When comparing the two jobs, keep the following principles in mind:

- **Look at overall job content/Consider the totality of the circumstances**

Example: A female hotel housekeeper alleges she is paid less than a male janitor. When comparing the hotel housekeeper job with the janitor job to determine whether they are substantially similar, one would consider all the duties and responsibilities of each job, and all the facts and circumstances of the work.

Comment [KK11]: This section (until we reach the case reference section) seems tacked on. It's also repetitive, sometimes verbatim, of some of the previous examples. To the extent this last section discusses general principles, consider moving up front. For example, there could be a discussion of affirmative defenses at the top of this document as part of the overall summary, before delving into the specific elements/examples. I'd be happy to do this but want to make sure others are on board.

Actual job content matters/Jobs titles, classifications, and

descriptions employee has the additional significant responsibility of creating daily detailed reports. Although the responsibilities of these jobs may not be substantially similar, one must also consider the other factors (skills, effort, working conditions) to determine if overall the jobs are substantially similar.

Jobs that share a common core of tasks are substantially similar/Where the skills, effort, responsibility, as performed under similar working conditions are substantially similar, so are the jobs

Example: A male records clerk who primarily performs duties including typing, filing, and answering phones, performs substantially similar work as compared to a female stenographer, who also primarily performs duties including typing, filing, and answering phones, and the working conditions are the same in that both work in an office setting on the same floor without exposure to any physical hazards.

- **Minor differences in the jobs do not mean jobs are not substantially similar/Occasional performance of certain tasks does not necessarily render the jobs sufficiently dissimilar/Incidental tasks or tasks that consume only a small amount of time will not render jobs sufficiently dissimilar**

Example: Male hospital orderlies spend a small percentage of their time performing cauterizations. Female hospital aides do not perform cauterizations. That difference alone would not necessarily render these two jobs substantially dissimilar where the jobs share a majority of common core duties.

- **Look at the day-to-day content of the jobs over a full work cycle, not just a snapshot**

Example: Two employees perform the same paralegal job, but one works year-round, and the other does not.

- **This element looks at the jobs themselves, not the people who have those jobs**

Example: Two employees perform the same accountant job. To determine whether the jobs are substantially similar, the actual requirements of the jobs are considered. At this point in the analysis,

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the relative education level, skills, training, experience, etc. of the individuals who are performing the jobs is not relevant. [These factors may be asserted as a defense to any wage disparity.]

- **Effort may be exerted in different way, but may still be substantially similar**

Example: A male employee and a female employee both work as “Assistant Managers,” but the male employee oversees three different stores. Although the female manager only oversees one store, that store is the employer’s largest and brings in the most revenue.

Example: A male employee and a female employee are sales account managers. However, the male employee is responsible for the accounting and maintenance of significantly higher revenue accounts than the female employee. Generally, the greater the responsibility imposed, the greater the exertion that is necessary to discharge it.

- **Similar working conditions means the physical surroundings and hazards/Does not include job shifts**

Example: A female assembly worker is paid less than a male assembly worker in the same department. That he works the night shift does not render their jobs substantially dissimilar. [The employer may point to the shift differential as a potential defense.]

- **Burden of Proof of Prima Facie Case/Affirmative Defenses**

- The employee has the burden to establish a prima facie case that an employee of the opposite sex performs substantially similar work when viewed as a composite of skill, effort, and responsibility and performed under similar working conditions and is paid a higher wage rate.

- **Affirmative Defense**

- Once a prima facie case is established, the burden shifts to the employer to prove the wage disparity is based upon one of the four factors: a seniority system, a merit system, a system that

measures earning by quantity or quality of production, or a bona fide factor other than sex, such as education, training, or experience, that is consistent with a business necessity and is job related.

- An employer may also prove that the higher paid employee performs additional duties to justify the wage disparity. However, any pay for the additional duties must be commensurate with the higher pay provided.
- Example: An employer may assert defense of a wage disparity based on a factor other than sex between a male art college professor who has significantly more years of experience in teaching and has a master's degree in art, than a female music college professor, with fewer years of prior teaching but similar education.
- Example: An employer may assert a wage disparity is justified on a factor other than sex where its compensation structure is a merit or reward system that bases salaries for branch managers at a specific, uniform percentage of the branch's projected earnings.
- Example: A salary retention policy for an employer that rewards an employee based upon length of service may justify a wage disparity if it is applied equally amongst female and male employees and explains the entire wage difference.
- Example: Male employees who perform additional duties only part of the time as compared to female employees, and where such additional work has only limited value to employer, would not justify a 10% wage difference between male and female employees performing substantially similar work.

Case References

The Task Force reviewed the following federal cases and authority to develop the above principles, but only to the extent that the protections and analysis would be similar to the California EPA. The Task Force does not endorse the outcome of these cases.

- **Look at overall job content/Consider the totality of the circumstances**

- *Brennan v. South Davis Community Hospital*, 538 F. 2d 859 (10th Cir. 1976) (“[W]e need not find precise identity of functions before an equal work determination is possible...” “The occasional or sporadic performance of an activity which may require extra physical or mental exertion is not alone sufficient to justify a finding of unequal effort.”)
- *Ewald v. Royal Norwegian Embassy*, 82 F. Supp. 3d 871 (D. Minn. 2014)
 - Plaintiff and male co-worker were hired as two high-level staff of the “New Model Consulate” of Norway located in Minnesota. She held the Higher Education and Research position and he held the Innovation and Business position. She was paid about \$30K less and evidence demonstrated that the positions were equally important and had almost identical responsibilities.
 - Court reasoned that “[w]hether two jobs are substantially equal requires a practical judgment on the basis of all the facts and circumstances . . . [n]either job classifications nor titles are dispositive for determining whether jobs are equal.”
- EEOC Guidance, available at: <https://www.eeoc.gov/policy/docs/compensation.html>
 - “Job content, not job titles or classifications, determines the equality of jobs.” See *Katz v. School Dist. of Clayton, Mo.*, 557 F.2d 153, 156-57 (8th Cir. 1977) (teacher’s aide performed duties of teacher and job was substantially equal to that of teacher).
- EEOC Q&A Compliance Manual, available at: <https://www.eeoc.gov/policy/docs/qanda-compensation.html>
 - “How do you determine whether employees are similarly situated? The jobs the employees hold should be similar enough that one would expect the jobs to pay the same. This need not be an overly rigid process. The key is what people actually do on the job, not job titles or departmental

designations. Skill, effort, responsibility, and the general complexity of the work are guideposts in determining job similarity.”

- *E.E.O.C. v. Port Authority of New York and New Jersey*, 768 F.3d 247, 256-258 (2nd Cir. 2014)
 - Focus on overall “job content” as a “constant in the context of the EPA;” plaintiff must establish that jobs compared entail common duties, requirements and performance, and do not simply overlap in titles or classifications. Court relies on EEOC regulations to define the underlying criteria of skill, effort, and responsibility, measured in terms of the “performance requirements of the job.”
- *Beck-Wilson v. Principi*, 441 F.3d 353, 359–63 (6th Cir. 2006)
 - “Whether a job is substantially equal for purposes of the EPA, is determined on a case-by-case basis and ‘resolved by an overall comparison of the work, not its individual segments.’” (at 359-60)
 - Court compared pay of physicians’ assistants at Veterans’ Administration facilities—most of whom were men—to that of registered nurses in same facilities—most of whom were women, and concluded jobs were substantially equal.
 - Proper focus is on work performed and job requirements rather than on job titles and classifications; focus in determining whether jobs are substantially equal should be on actual job requirements rather than job titles and classifications.
- *Marshall v. Dallas Indep. Sch. Dist.*, 605 F.2d 191, 195 (5th Cir. 1979)
 - Work performed by “custodial helpers” and “maids” was not substantially equal where “custodial helpers” worked all months of year and performed work requiring heavier physical labor than seasonal “maids.”

- Court emphasizes need to consider all circumstances related to job content. “In applying the various tests of equality to the requirements for the performance of such jobs, it will generally be necessary to scrutinize the job as a whole and to look at the characteristics of the jobs being compared over a full work cycle. This will be true because the kinds of activities required to perform a given job and the amount of time devoted to such activities may vary from time to time.” *Id.* at 195.
- *Conti v. Universal Enters., Inc.*, 50 F. App’x 690, 696 (6th Cir. 2002) (noting that to determine substantial equality “an overall comparison of the work, not its individual segments” is necessary), quoting *Odomes v. Nucare, Inc.*, 653 F.2d 246, 250 (6th Cir. 1981).
- *Hunt v. Neb. Pub. Power Dist.*, 282 F.3d 1021, 1030 (8th Cir. 2002) (“Whether two jobs are substantially equal ‘requires a practical judgment on the basis of all the facts and circumstances of a particular case’ including factors such as level of experience, training, education, ability, effort, and responsibility.”) (quoting *Buettner v. Eastern Arch Coal Sales, Co.*, 216 F.3d 707, 719 (8th Cir. 2000)).
- *Buntin v. Breathitt County Board of Education*, 134 F.3d 796 (6th Cir. 1998) (“[w]hether the work of two employees is substantially equal ‘must be resolved by the overall comparison of the work, not its individual segments.’”)
 - “A successful EPA claim depends on the comparison of actual job content; broad generalizations drawn from job titles, classifications, or divisions, and conclusory assertions of sex discrimination, cannot suffice.”
 - “Job codes, again, say nothing of actual job duties and are thus peripheral to an EPA claim. The use of identical evaluative criteria such as ‘project management,’ ‘communication,’ ‘flexibility and adaptability,’ and ‘attendance,’ moreover speaks only to the breadth of the standards used, not to whether the
- *EEOC v. Port Authority of New York and New Jersey*, 786 F.3d 247, 256-258 (2nd Cir. 2014).

attorneys subject to evaluation face varying workplace demands.”

- *Chapman v. Pacific Tel. & Tel. Co.*, 456 F.Supp. 65, 69 (N.D. Cal. 1978) (“The regulations and cases make it clear that it is actual job content, not job titles or descriptions which is controlling.”)
- **One for one match between skills, effort, and responsibility not required/if one factor is not substantially similar, that will not necessarily mean the jobs are not substantially similar; must consider other factors**
 - EEOC Guidance
 - “If two jobs generally share a common core of tasks, the fact that one of the jobs includes certain duties that entail a lower level of skill would not defeat a finding that the jobs are equal. For example, if two people work as bookkeepers, and one of the individuals performs clerical duties in addition to bookkeeping tasks, the skill required to perform the two jobs would be substantially equal. . . . On the other hand, if the jobs require different experience, ability, education, or training, then the jobs are not equal. For example, a vice president of a trade association could not show that her work was equal to the work performed by other vice presidents, where they performed key policymaking for the association, a skill that her position did not require.” See *Stopka v. Alliance of Am. Insurers*, 141 F.3d 681, 685 (7th Cir. 1998).
 - *Brennan v. Prince William Hospital Corp.*, 503 F.2d 282, 285-286 (4th Cir. 1974) (“One of the most common grounds for justifying different wages is the assertion that male employees perform extra tasks. These may support a wage differential if they create a significant variation in skill, effort, and responsibility between otherwise equal jobs.”)
 - *Brennan v. South Davis Community Hospital*, 538 F.2d 859, 863 (10th Cir. 1976) (“[W]e need not find precise identity of functions before an equal work determination is possible; only substantial equality of

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skill, responsibility, and effort and similar working conditions must be shown to preclude a wage differential.”)

- **Jobs Titles and Job Descriptions are Relevant, but Not Determinative.**

- EEOC Guidance:

- “The fact that jobs are in different departments is not determinative, although in some cases it may be indicative of a difference in job content.” See *Strag v. Board of Trustees*, 55 F.3d 943, 950 (4th Cir. 1995) (professorship in Mathematics department of university was not substantially equal to professorship in Biology department because of difference in skills and responsibilities required by the departments).
- *E.E.O.C. v. Port Authority of New York and New Jersey*, 768 F.3d 247, 256-258 (2nd Cir. 2014)
 - Court rejects argument that “an attorney is an attorney is an attorney” and holds that a “successful EPA claim depends on a comparison of actual job content; broad generalizations drawn from job titles, classification, or divisions, and conclusory assertions of sex discrimination, cannot suffice”; in order for jobs compared to be “substantially equal,” a plaintiff must establish that the jobs compared entail common duties or consent, and do not simply overlap in titles or classifications.
- *Randall v. Rolls-Royce Corp.*, 637 F.3d 818, 822–23 (7th Cir. 2011)
 - Job title of “Director of Operations” held by both female and male employees who allegedly were paid more for same work, was irrelevant to EPA claim because title covered multitude of positions differing in authority and responsibility; female employees in air and marine engine manufacturing plant failed to identify any male worker who was paid more for substantially same work; jobs not substantially equal.
 - Assessing skill, effort, and responsibility when mixed within same job title. Court rejects application of “comparable

worth”; emphasizes that job title is not determinative for comparator groups in context assessing skill, effort and responsibility when mixed within job title, as a “title covers a multitude of positions differing in authority (such as number of employees supervised) and responsibility.”

- *Brennan v. Prince William Hospital Corp.*, 503 F.2d 282, 288 (4th Cir. 1974) (“Job descriptions and titles, however, are not decisive. Actual job requirements and performance are controlling.”)
- *Ingram v. Brink’s, Inc.*, 414 F.2d 222, 231 (1st Cir. 2005) (“The EPA is more concerned with substance than title.”)
- **Jobs that share a common core of tasks are substantially similar/where majority of the skills, effort and responsibility are substantially similar, so are the jobs**
 - EEOC Guidance:
 - In evaluating whether two jobs are substantially equal, an inquiry should first be made as to whether the jobs have the same “common core” of tasks, i.e., whether a significant portion of the tasks performed is the same. *See Stopka v. Alliance of Am. Insurers*, 141 F.3d 681, 685 (7th Cir. 1998) (critical issue in determining whether two jobs are equal under the EPA is whether the two jobs involve a “common core of tasks” or whether “a significant portion of the two jobs is identical”).
 - If a significant portion of the tasks performed in the two jobs is the same, an inquiry should be made as to whether the comparators perform extra duties which make the work substantially different. Jobs with the same common core of tasks are equal, even though the comparators perform extra duties, if the extra duties are insubstantial. *See:*
 - *EEOC v. Central Kansas Med. Ctr.*, 705 F.2d 1270, 1272-73 (10th Cir. 1983) (janitors and housekeepers performed equal work; any extra work performed by the

janitors was insubstantial or was balanced by additional responsibilities performed by housekeepers).

- *Corning Glass Works v. Brennan*, 417 U.S. 188, 203 n.24 (1974) (noting that Court of Appeals concluded that extra packing, lifting, and cleaning performed by night inspectors was of so little consequence that the job remained substantially equal to those of day inspectors).
- *Goodrich v. International Bhd. of Elec. Workers*, 815 F.2d 1519, 1525 (D.C. Cir. 1987) (job of female union employee was not substantially equal to that of males who did the same work because males had additional duties which, though consuming little time, were essential to the operation and mission of the union).
- *Merillat v. Metal Spinners, Inc.*, 470 F.3d 685, 695–97 (7th Cir. 2006)
 - Two jobs are not substantially equal where one employee has broader strategic planning responsibilities, supervisory duties, and authority over personnel than another employee.
 - “In order to determine whether or not two jobs are equal for purposes of EPA, courts look to whether the jobs have a ‘common core of tasks, i.e., whether a significant portion of the two jobs is identical; once a plaintiff establishes a ‘common core’ of tasks, court asks whether any additional tasks make the jobs substantially different” (quoting *Cullen v. Indiana Univ. Bd. Of Trs.*, 338 F.3d 693, 704 (7th Cir.2003)).
- **Minor differences in the jobs do not mean jobs are not substantially similar/occasional performance of certain tasks does not necessarily render the jobs sufficiently dissimilar/incidental tasks or tasks that consume only a small amount of time will not render jobs sufficiently dissimilar**
 - EEOC Guidance

- “[M]inor differences in the job duties, or the skill, effort, or responsibility required for the jobs will not render the work unequal. In comparing two jobs for purposes of the EPA, consideration should be given to the actual duties that the employees are required to perform.”
- EEOC Q&A Compliance Manual:
 - “How similar do jobs have to be under the Equal Pay Act? Under the Equal Pay Act, jobs must be substantially equal, but not identical. Therefore, minor differences in job duties, or the skill, effort, or responsibility required for the jobs will not render them unequal. Also, differences between the people in the jobs are not relevant to whether the jobs are substantially equal, though differences in qualifications could ultimately be a defense to a claim of pay discrimination.”
- OFCCP Sex Discrimination Guidelines Revised 2016 - 41 CFR 60.4(a)
 - “Relevant factors in determining similarity may include tasks performed, skills, effort, levels of responsibility, working conditions, job difficulty, minimum qualifications, and other objective factors. In some cases, employees are similarly situated where they are comparable on some of these factors, even if they are not similar on others.”
- *Shultz v. Wheaton Glass Co.*, 421 F.2d 259, 266 (3d Cir. 1970) (10% wage differential not justified despite fact that male selector-packers spent up to 18% of their time on 16 tasks not performed by females, the work in general was “substantially identical” under EPA).
- *Brennan v. South Davis Cmty. Hosp.*, 538 F.2d 859, 862 (10th Cir. 1979) (minimal amount of time spent by orderlies performing catheterization of patients each day, even though it was task requiring some skill, did not justify differential in pay between male orderlies and female aides; court reasoned that disparity is “not justified by performance of extra duties of equal skill effort and responsibility, when supposed extra duties do not in fact exist, or when extra task consumes minimal amount of time and is of peripheral importance.”).

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- **Look at the day-to-day content of the jobs**

- *Marshall v. Dallas Indep. Sch. Dist.*, 605 F.2d 191, 195 (5th Cir. 1979).
 - Work of “custodial helpers” and “maids” was not substantially equal where “custodial helpers” worked all months of year and performed work requiring heavier physical labor than “maids.”
 - Court emphasizes need to consider all circumstances related to job content. “In applying the various tests of equality to the requirements for the performance of such jobs, it will generally be necessary to scrutinize the job as a whole and to look at the characteristics of the jobs being compared over a full work cycle. This will be true because the kinds of activities required to perform a given job and the amount of time devoted to such activities may vary from time to time.” *Id.* at 195.
- *Sims-Fingers v. City of Indianapolis*, 493 F.3d 768, 770 (7th Cir. 2007) (job of female manager who supervised six-acre park with limited facilities was not equal in terms of skill, effort, and responsibility required to that of male manager who was to oversee much larger park with extensive facilities including pool).
- *Katz v. School Dist.*, 557 F.2d 153, 156 (8th Cir. 1977) (“two employees are performing equal work when it is necessary to expend the same degree of skill, effort, and responsibility in order to perform the substantially equal duties which they do, in fact, routinely perform with the knowledge and acquiescence of the employer”).

- **This element looks at the jobs themselves, not the people who have those jobs**

- EEOC Guidance
 - “The important comparison in determining whether the “equal work” requirement is met is the comparison of the jobs, not the people performing the jobs. Thus, a difference between the comparators has no bearing on whether the jobs are equal. The critical question at this point in the analysis is whether the jobs involve equal work. However, a difference between the

comparators could qualify as a defense to a compensation disparity.”

- *Miranda v. B&B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1533 (11th Cir. 1992) (“A plaintiff establishes a prima facie case by comparing the jobs held by the female and male employees, and by showing that those jobs are substantially equal, not by comparing the skills and qualifications of the individual employees holding those jobs.”)
- **Effort may be exerted in different way, but may still be substantially similar**
 - 29 C.F.R. § 1620.17 (Differences in the degree of responsibility required in the performance of otherwise equal jobs cover a wide variety of situations.)
 - OFCCP Final Rule (41 C.F.R. § 60-20.4 Discriminatory Compensation)
 - “Relevant factors in determining similarity may include tasks performed, skills, effort, levels of responsibility, working conditions, job difficulty, minimum qualifications, and other objective factors. In some cases employees are similarly situated where they are comparable on some of these factors, even if they are not similar on others.”
 - *Chapman v. Pacific Tel. & Tel. Co.*, 456 F.Supp. 65, 69-70 (N.D. Cal. 1978) (“Effort is measured by the amount of physical and mental exertion needed for the performance of the job. Responsibility reflects the degree of accountability required in the performance of the job. In this case, involving a comparison of managerial jobs, these two factors are closely related; the greater the responsibility imposed, the greater the exertion necessary to discharge it.”)
- **Similar working conditions means the physical surroundings and hazards/does not include job shifts**
 - EEOC Guidance:
 - “While a difference between night and day work is not a difference in “working conditions,” it could constitute a “factor

other than sex" that justifies a compensation differential. A shift differential operates as a defense only if both sexes have an equal opportunity to work either shift, if sex was not the reason the employer established the compensation differential, and if there is a business purpose that the shift differential is being used reasonably to serve."

- *Shultz v. American Can Co.-Dixie Prods.*, 424 F.2d 356, 361 (8th Cir. 1970).
 - No justification for paying male night-shift workers more than female day-shift workers; males had to load heavy rolls of paper, but this consumed only small amount of time, and employer's own pay practices suggested that this was not real reason for disparity.

Burden of Proof;/Affirmative Defenses:

- *Bearden v. International Paper Co.*, 529 F.3d 828, 833 (8th Cir. 2008) ("Once an employee has established a prima facie case, the burden shifts to the employer to prove any of four statutory affirmative defenses.")
- *Beck-Wilson v. Principi*, 441 F.3d 353, 363 (6th Cir. 2006) ("Because the comparison at the prima facie state is of the jobs and not the employees, 'only the skills and qualifications actually needed to perform the jobs are considered.' Factors like education and experience are considered as a defense to an employer's liability rather than as part of a plaintiff's prima facie case.")

We therefore held that the Equal Pay Act's exception that a factor other than sex can be an affirmative defense, 'does not include literally any other factor, but a factor that, at a minimum, was adopted for a legitimate business reason.' "

- *Merillat v. Metal Spinners, Inc.*, 470 F.3d 685, 695 (7th Cir. 2006)
 - "Under the EPA, differences in education and experience may be considered factors other than sex."
 - "An employer may take into account market forces when determining the salary of an employee."

WHAT CAN I DO TO COMPLY WITH THE CA EQUAL PAY ACT AND THE FEDERAL EQUAL PAY ACT?

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

1. **Conduct an Audit** 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 and make any compensation adjustments as necessary.
2. **Review Job Descriptions** 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.
3. **Educate Managers** 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.
4. **Document Compensation Decisions** 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**).
5. **Systematize Documentation** 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.

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~~6. How do I handle information about a candidate's prior salary~~

~~a. ROMA/LD document with updates due to new law.~~

- ~~7.6~~ **Do not retaliate** Employers should not retaliate and clearly prohibit retaliation against employees for asserting rights under California or federal fair pay laws, as well as ensure that they have a reporting mechanism in place for complaints. This can be part of an employer's existing equal employment opportunity policy.

WHAT CAN I DO TO PROMOTE A CULTURE OF PAY EQUITY

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.
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. Review part time or flexible schedule policies to ensure that they reflect equal pay for substantially similar work on a pro-rata basis.
16. **Design Fair Incentive Compensation Plans.** Review incentive plans to ensure fairness in criteria applied to determine incentive pay eligibility, including whether part time employees are being evaluated and paid on a pro-rata basis for substantially similar work.
17. **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.

18. **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)
19. **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.

Memo about “WHY? From Rhoma Young.

NOTE: This document is drafted solely for discussion during the September 28, 2017 Task Force meeting and should not be construed as legal advice or a final recommendation of this subcommittee or the Task Force.

Why should I care that my employees are paid equitably?

Beyond legal compliance, it's the right thing to do. There are also some practical reasons to commit to pay equity. You can brag about it. A company's good reputation makes it easier to recruit and retain employees in today's competitive and informed workforce. And, if you are open and transparent about pay practices, you are ready and primed to quickly and accurately respond if an employee complains or publicly accuses the company of paying them unfairly.

If you can clearly articulate your compensation philosophy and your commitment to pay equity, you are much more likely to avoid a PR nightmare. It is not just a “feel good” management approach, it is a logical, business like stance to recruit and retain your workplace heroes. Some employers say that their workers are their most important asset. So, it is important to demonstrate that you care, why you care and how you plan to continue your commitment to workplace fairness and equity.

OUTREACH DISCUSSION

Date: November 6, 2017

To: Gender Equity/Pay Parity Task Force of CCSWG

From: The Deliverables Subcommittee and Stephanie Tseu

Re: *Teleconference with Kelly Jenkins-Pultz and Stephanie Tseu re Work of the Deliverables Subcommittee.*

The best move you can make in negotiation is to think of an incentive the other person hasn't even thought of - and then meet it. Eli Broad

If women were to participate in the economy identically to men, they could add as much as \$28 trillion or 26 percent to annual global GDP in 2025, Anu Madgavkar, Kweilin Elingrud, & Mekala Krishnan in the Stanford Social Innovation Review.

The purpose of this memo is to provide a structure for a discussion at the next Task Force Meeting about the means by which we can most efficiently and effectively roll out the new Pay Equity Act for both employers and employees.

The Challenge: *The deconstruction of the administrative state.*

To say we're experiencing an anti-regulatory fever in the United States at present is likely an understatement. Frankly, that's not surprising. No one wants to be told what to do. It's always been challenging to introduce new workplace regulations to the business community and more so when the very idea of an unfair gender wage gap remains a hotly contested issue.

The primary task of the deliverables sub-committee is quite simple to identify but a great challenge to realize: to explain to both employers and employees why pay transparency and parity are good for business and easily accessed by employees.

The purpose of this memo is to begin a conversation in which the Task Force can spread the good news to California employers and employees that the new Fair Pay laws of 2016 and 2017 provide greater benefits than impositions.

The Sub-Committee Teleconference on Potential Roll-Out and Follow-On Materials and Conference:

The deliverables sub-committee (Kelly Jenkins-Pultz and Victoria Pynchon) participated in a teleconference with Stephanie Tsue in October regarding potential plans to provide materials (power point presentations, FAQs, social media materials, memes and talking points) for use in presentations at women's and employer and/or employee conferences on and after Equal Pay

Day 2018 as well as to identify conferences that would be natural venues to roll the Equal Pay Amendments out.

The General Topics Discussed

We discussed pros and cons, as well as the extent and reach, of impactful Pay Equity materials that had some chance of meeting the law's goal of achieving culture change, not simply imposing a new set of restrictions and requirements on business and a concomitant burden on employees to advocate for themselves, singly, in groups or even with the assistance of organizations with limited resources to advocate for individuals, particularly those the parity law is most concerned with – women on the lower and lowest end of the pay scale.

Why Culture Change is Needed and Who It Benefits

We begin with the fact that every time Senator Jackson speaks, she tells us the legal remedies of the 50+ year old California Pay Equity Law have done little to move the ball of the gender gap, particularly for minimum wage workers, the majority of whom are women.

The National Women's Law Center reported this past August that

Women represent nearly two-thirds of minimum wage workers across the country, and close to three-quarters of minimum wage workers in some states. . . . [I]n almost every state, the minimum wage leaves a full-time worker with two children near or below the poverty level.

Although we tend to think of Appalachia and the rust belt as having the highest poverty rates in the country, when the federal census bureau examined California wages in the context of the cost of living here, we rocketed to the top as having the highest poverty rate among the states at 20.6 percent.

This somewhat shocking revelation is particularly bad for families in which women are the sole or co-breadwinners. In 2015, 42 percent of the nation's mothers were the sole or primary breadwinners in their families and 22.4 percent were co-breadwinners, bringing home 25 to 49 percent of earnings for their families.

This is not just bad for individuals and families below the poverty line. It's also bad for business. A 2015 report by the International Monetary Fund opined that a one percentage point income increase for the top 20% drags down growth by 0.08 percentage points over five years, while a rise in income for the bottom 20% boosts growth. But how does inequality affect economic growth rates? This is just one benefit of pay parity to the American economy and the businesses that flourish within it. Other positive effects include:

- ***A more robust consumer culture.***

As commentators often point out, there are only so many consumer goods – cars, refrigerators, televisions, computers, etc. – that a single wealthy family will purchase. To pick a round number, when a million people earn enough to buy a new car every five to ten years, at least a million cars will be sold. When a millionaire who earns enough to buy twenty cars, or thirty, or a hundred, at most only a hundred cars will be sold. Nearly everyone will recall Henry Ford’s then radical action of doubling his workers’ wage. Ford did so because in Ford’s own words:

The owner, the employees, and the buying public are all one and the same, and unless an industry can so manage itself as to keep wages high and prices low it destroys itself, for otherwise it limits the number of its customers. One’s own employees ought to be one’s own best customers.

- ***Outsized costs of attrition.***

- Ford again: Higher wages were necessary to retain workers who could handle the pressure and the monotony of his assembly line.
- The [Harvard Business Review](#) in the *High Cost of Low Wages* compared Costco’s relative high wages and benefit package against Wal-Mart’s and found
 - Costco’s turnover to be unusually low at 17% overall and just 6% after one year’s employment and Sam’s Club to be average compared to all competitors but Costco - 44% a year;
 - The total annual cost to Costco of employee churn to be about \$244 million to Sam’s Club’s cost of \$612 million.

- ***A more engaged and productive workforce***

- [Happy employees boost productivity by 12% while unhappy employees are 10% less productive](#)
- [Bigger salaries make people more productive and keep them in their jobs longer](#)

Similar effects have been reported for pay transparency by business-centered publications like this one at the [Wall Street Journal – Why Being Transparent About Pay is Good for Business](#).

The Secret Sauce of the Task Force

We understand that the Task Force “secret sauce” is its representative nature, i.e., we represent business interests and labor interests, women’s interests and men’s interests (think of the essential female salary to families), and, hopefully, the interests of marginalized minorities for whom the wage gap is far less than the combined wage gap of all women in the workforce.

We can add that secret sauce to all of the deliverables we produce. There are already dozens of power point presentations and talking points on the requirements of the amendments to the Equal Pay Act, in which pay transparency (the requirement to reveal pay ranges) and former compensation (the requirement not to inquire into former comp because it tends to perpetuate the wage gap) have been covered.

The employer-side presentations tend to focus on a benefit we haven't yet touched on here – risk avoidance. See below (a few of dozens)

- Winston and Strawn <https://www.winston.com/images/content/1/1/v2/115629/9-29-16-CA-Fair-Pay-eLunch-PPT-FINAL.pdf>
- CAHR Conference http://cahrconference.org/wp-content/uploads/Chris_Olmsted_Handout-CA-New-Fair-Pay-Law-What-it-Means-for-Your-Business.pdf
- Association of Corporate Counsel http://cahrconference.org/wp-content/uploads/Chris_Olmsted_Handout-CA-New-Fair-Pay-Law-What-it-Means-for-Your-Business.pdf
- Gallagher Benefit Services, Inc. <https://www.aig.com/media/1697914/california-fair-pay-act-new-obligations-for-employers-or-a-paper-tiger.pdf>

Employee-side presentations tend to focus on rights and remedies:

- EqualRights.org <https://www.equalrights.org/wp-content/uploads/2014/11/ERA-Gender-Justice-Toolkit-Addressing-Fair-Pay-Issues.pdf>
- California Labor Commissioner https://www.dir.ca.gov/dlse/Equal_Pay_Act_Instruction_Guide.pdf

(frankly, these are much harder to find by simple google searches than are the employer-side articles, white papers, power point productions and the like)

The Materials Prepared Should Explain the Law But Emphasize Its Benefits

In the Deliverables Sub-Committee last report to the Task Force we suggested that our sub—committee should “first translate [the materials prepared by other sub-committees] into power point presentations, talking points, pamphlets and social media memes, announcements and educational materials tailored to our two main audiences: employers of low- to —minimum wage workers as well as minimum- to low-wage employees.

How Culture Change Is Driven: The Social Norms Approach

You'd have to be living under a rock not to notice we are undergoing a culture change in regard to the reporting of sexual harassment in the entertainment industry that has spilled over into

many different fields. Why our social norms appear to be changing in everything from reporting by victims, coverage by the media and response by employers and organizations with whom the charged individual is affiliated will undoubtedly be studied for decades to come.

In our research of best practices to cause culture change, a social norms approach was seen as the most effective way to reach the desired goals. It is an approach that has been adopted by the U.S. Airforce in response to sexual harassment, a critical issue for the armed services because conflict among identity groups (here men on the one hand and women on the other) and among individuals damages group cohesion, an existential issue for the men and women who fight our wars.

Part of the purpose of this memorandum is to ask whether a social norms approach to the Pay Parity roll out could be adopted, even in its most primitive form (given the paucity of financial resources available to the Task Force.

The approach has been precisely defined and articulated at socialnorms.org, which we greatly summarize here:

The social norms approach to behavior change combines lessons learned from a variety of fields including social marketing, sociology, behavioral psychology and evaluation research. Some foundational ideas underlying the social norms approach to behavior change are:

- Our perceptions of our peers' attitudes and behaviors have a great influence on our own attitudes and behaviors.
- Our perceptions are often inaccurate: We tend to over-estimate the number of our peers who value and make [unproductive] choices and under-estimate the number who value and make [more productive] choices." Think of the Costco/Sam's Club example.
- If . . . most people [in a group] are making [productive] choices but most people believe that their peers are making [unproductive] choices, then a social norms marketing campaign may reduce the misperception and further encourage [productive] choices.
- Social norms marketing campaigns are based on current, accurate information about the intended audience and adhere, in process and content, to good social marketing principles.

Some important lessons learned in the course of several decades of research include:

- The effectiveness of social norms marketing interventions can be undermined if the overall environment supports and promotes unhealthy choices.
- The effectiveness of social norms marketing interventions can be enhanced if the norms that are promoted reflect a group that the individuals closely identify with.
- Social norms marketing campaigns are perhaps best conceptualized as culture change interventions, taking more than one year to realize the behavioral change effects.

The social norms approach focuses on positive messages about [productive] behaviors and attitudes that are common to most people in a group:

- It does not use scare tactics or stigmatize an [unproductive] behavior.
- It avoids moralistic messages from authorities about how the target group “should” behave. Instead, it simply presents the [productive] norms already existing in the group.
- It builds on the assets already in the community, through participation by community members, and by highlighting those who make [productive] choices

How we could incorporate some of these ideas to our media campaign is open for discussion.

DRAFT

Pay Equity Task Force: Educate and Inspire

We Are Not Just Educating, We Are Also Inspiring, Encouraging and Selling

Senator Jackson on Pay Equity Bill

- *Because of the wage gap, our state and families are missing out on \$33.6 billion dollars a year.* <http://www.fresnobee.com/opinion/editorials/article22614516.html#storylink=cpy>
- Jackson said that . . . *the wage gap [isn't going] to disappear . . . with the singing of the law, we need a culture change and commitment from employers. [But] it starts with this policy. It starts today.* <http://www.paradisepost.com/article/ZZ/20150824/NEWS/150828188>

The Task Force Public Statements

- The solution to the wage gap isn't just a new set of laws but "getting our cultural norms to catch up." Laurie Damrell, *L.A. Times* <http://www.latimes.com/politics/la-pol-sac-california-gender-pay-gap-20170516-story.html>
- Purpose of Task Force is to "encourage more collaboration between employers and employees in finding solutions to the high-profile issue" of pay equity <https://blogs.orrick.com/equalpaypulse/2016/08/15/laure-damrell-co-authors-pay-equity-column-with-california-labor-commissioner/#more-1415>

Who Does the Task Force Serve?

- Employers
- Employees and their spouses, children and communities
 - 74.6 million women in the civilian labor force.
 - Almost 47 percent of U.S. workers are women.
 - 3 out of 10 female veterans serve their country as government workers.
 - Among married- couple families with children, 61.1 percent had both parents employed
 - 42 percent of the nation's mothers are the sole or primary breadwinners in their families
 - 22.4 percent are co-breadwinners, bringing home 25 to 49 percent of earnings for their families.
 - Minimum wage workers and their families
 - women represent nearly two-thirds of minimum wage workers across the country
 - In almost every state, the minimum wage leaves a full-time worker with two children near or below the poverty level.

Who Else Does the Task Force Serve?

- Women of Color are 33% of all women in the workforce
 - 13 percent of women in the labor force are Hispanic;
 - 13 percent of women in the labor force are African American;
 - 5 percent of women the labor force are Asian.
- Men in the workforce
 - No longer required to provide past salary information to prospective employers
 - Entitled to same pay transparency requirements as women
 - Entitled to equal pay for substantially similar work
- The State of California
 - Has the highest poverty rate among the states at 20.6
 - Budgeted \$13 billion from the General Fund for human services programs in 2016

What Culture Change Do We Seek?

- For employers:
 - Pay transparency instead of pay secrecy
 - Market value pay rather than pay based on most recent compensation
 - Equal pay for substantially similar work
- For employees:
 - Embolden workers to share compensation among themselves
 - Embolden workers to ask for pay ranges if the employer has them
 - Embolden workers to refuse to divulge prior pay

What Other Cultural Changes Do We Seek?

- Voluntary corporate social responsibility over grudging adherence to government regulations
- The principle that everyone who works full time deserves to be paid a living wage, not a government enforced minimum

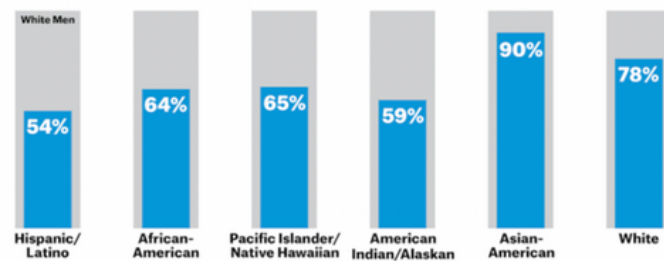
Pay Gap Statistics *

- All women combined earn 80.5 percent of all men's earnings
- Hispanic women earn 54.4 percent of white men's earnings
 - Median earnings for a year of full-time work for Hispanic women are below the qualifying income threshold for eligibility for food stamps for a family of four
- Black women earn 62.5 percent of white men's earnings in 2016

* If part-time and part-year workers were included, the ratio of women's to men's earnings would be lower, as women are more likely than men to work reduced schedules, often in order to manage childrearing and other caregiving work.

The Wage Gap is Intersectional

The Gender Pay Gap for Women of Color



Source: American Association of University Women

NEW REPUBLIC

The Governor on Race, Nationality

- The Governor suggested that legislators look to the work of the task force before making the Pay Equity Act applicable to race and nationality (is this right? I can't find it based on an internet search)

Eliminating the Pay Gap Benefits Everyone

- Equal pay would cut poverty among working women and their families by more than half
- Equal pay would add \$513 billion to the national economy
- McKinsey report (see <https://www.theatlantic.com/business/archive/2016/04/paying-women-equally-would-be-a-boon-for-everyone-else-too/477582/>)
 - By 2025, complete labor-force parity would add \$4.3 trillion to the U.S. GDP
 - less optimistically, if every U.S. state rose to the level of the states making the greatest progress on gender wage equality, the GDP would be increased by \$2.1 trillion by 2025

More Benefits of Pay Equity

- Nearly 60 percent of women would earn more if working women were paid the same as men of the same age with similar education and hours of work.
- Nearly two-thirds (65.9 percent) of working single mothers would receive a pay increase.
- Providing equal pay to women would have a dramatic impact on their families.
 - The poverty rate for all working women would be cut in half, falling from 8.0 percent to 3.8 percent.
 - The very high poverty rate for working single mothers would fall by nearly half, from 28.9 percent to 14.5 percent.
 - For the 15.3 million single women—divorced, widowed, separated, and never married women living on their own—equal pay would mean a significant drop in poverty rates from 10.8 percent to 4.4 percent.
 - Approximately 25.8 million children would benefit from the increased earnings of their mothers if they received equal pay.
 - The number of children with working mothers living in poverty would be nearly cut in half, dropping from 5.6 million to 3.1 million.
- The United States economy would have produced additional income of \$512.6 billion if women received equal pay; this represents 2.8 percent of 2016 gross domestic product (GDP).

What is Pay Transparency

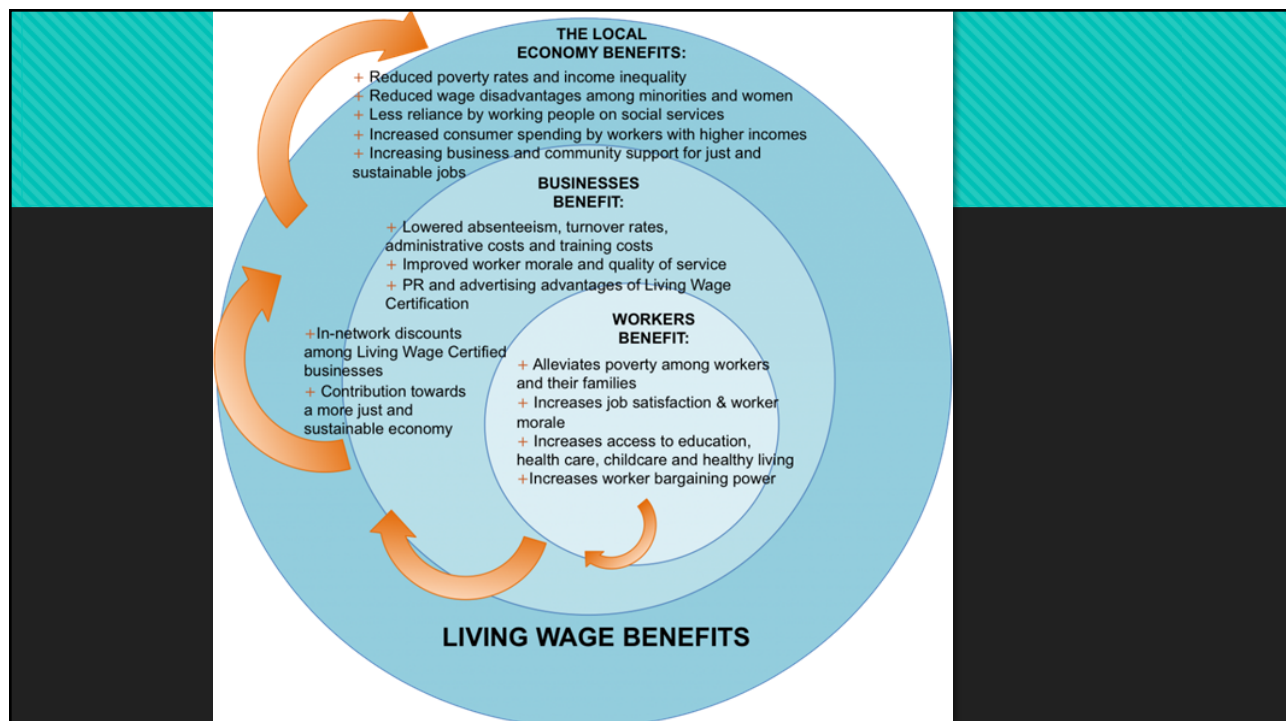
- Process: how set; range per position; requirements for raises, bonuses
- Full compensation transparency: how much everyone at organization earns
- Equal Pay Act Transparency
 - Employees may ask but can refuse to tell
 - Employers are not obliged to tell

Benefits of Pay Transparency

- 47% of all top performing companies are transparent about pay (payscale.com)
- 82% of employees are comfortable with low pay if the rationale is explained (id.)
- 35% of top performing companies change pay strategies for millennials who are pay transparency positive; pay secrecy negative (id.)
- *Transparency builds fairness, fairness drives engagement, engagement drives business success.* Mark A. Szytko, IBM Smarter Workforce Solutions
- Ends speculation and back-biting among workers (ENTREPRENEUR.COM)
- Motivates employees with proven bottom line profitability increases (ID.)
- Reduces turnover immediately cutting costs of attrition - turning more of revenue into profit (id.)
- promotes culture of trust, increasing revenues that result from team effort (id.)

Benefits of Paying Employees Living Wage

- Increased worker morale,
- Better worker health
- Better quality of service.
- Lower absenteeism,
- Fewer turnover, recruiting and training
- higher worker productivity
- lowered administrative costs.
- Enables self-sufficiency, less reliance on social services.
- Stimulates the economy through increased consumer spending and the money multiplier effect.



Assuring Employers Some Practices Don't Have to Change

- Pay differentials can still be based on:
 - Seniority
 - Merit
 - Performance (quality or quantity of production)
 - Other job related factors such as education, training, experience, geographic locale, cost of living
- Pay audits are not required
- Employees are not required to disclose compensation on request by co-workers
- HR and managers with confidential pay information cannot disclose it without consent of the employee

What Would an Effective Marketing Campaign Look Like?

- Social Norm Campaigns
 - Are based on current, accurate information about the intended audience and adhere, in process and content, to good social marketing principles.
 - Theoretical bases
 - Our perceptions of our peers' attitudes and behaviors have a great influence on our own attitudes and behaviors.
 - We tend to over-estimate the number of our peers who value and make [unproductive] choices and under-estimate the number who value and make [more productive] choices."
 - Think of the Costco/Sam's Club example.
 - If . . . most people [in a group] are making [productive] choices but most people believe that their peers are making [unproductive] choices, then a social norms marketing campaign may reduce the misperception and further encourage [productive] choices.

Social Norm Marketing

- The social norms approach focuses on positive messages about [productive] behaviors and attitudes that are common to most people in a group
 - It does not use scare tactics or stigmatize an [unproductive] behavior.
 - It avoids moralistic messages from authorities about how the target group "should" behave. Instead, it simply presents the [productive] norms already existing in the group.
 - It builds on the assets already in the community, through participation by community members, and by highlighting those who make [productive] choices
- How we could incorporate some of these ideas to our media campaign is open for discussion.

Public/Private Partnerships

- We should recruit companies already on pay equity train to
 - Make a pledge
 - Share best practices
 - Circulate task force material
 - Provide materials to task force for its consideration/use
- Can we give these companies a badge like those that support the Olympics?

Social Media

- The Task Force should have facebook, twitter, and instagram accounts
 - FB posts and tweets can be drawn from materials approved by the Task Force as posted on the Task Force website
- Should the Task Force also have tumblr and other social media accounts?
- The deliverables committee can submit lists of FB posts, tweets and the like for approval by the Task Force

Power Points and White Papers

- The Deliverables Sub-Committee can provide power points and white papers for members of the Task Force to use and disseminate

OTHER ITEMS

Human Resources Subcommittee: Commissioner Lauri Damrell and Rhoma Young

California Pay Equity Task Force

Draft Glossary of Terms

This document is drafted solely for discussion should not be construed as legal advice or a final recommendation of this subcommittee or the Task Force.

360-degree Feedback

A performance appraisal process, where an employee is rated on his/her performance by people who are usually directly connected with his/her work. Peers, supervisors, managers, customers or clients, familiar with the employee's work can be included in the feedback process. Typically used for assessing competence development needs and succession planning in the organization rather than for determining pay or promotions. Such feedback is usually anonymous. *Also called multi-rater assessment, multi-source assessment or multi-source feedback.*

401(K)

A 401(k) is a feature of a qualified profit-sharing plan that allows employees to contribute a portion of their wages to individual accounts. Employers sometimes match a certain % of the employee contribution.

Accommodation (see also Reasonable Accommodation)

Reasonable accommodation is any change to a job, the work environment, or the way things are usually done. It is often allows an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other individuals in the workplace. Agencies are required by law to provide reasonable accommodation to qualified individuals with disabilities, unless doing so would impose an undue hardship to the agencies. In addition, Executive Order 13164 requires Federal agencies to develop written procedures for providing reasonable accommodation for a qualified disability.

Adverse Impact –Usually refers to a negative impact to an employee involving a material difference in the work, pay or circumstances. Also a “term of art” used in Affirmative Action Plan Analyses.

Affirmative Action

Any formal program, policy or procedure that an employer implements in order to correct past defined discrimination and prevent current and future discrimination within the workplace. It is also an active effort to improve the employment or educational opportunities of members of protected classes.

Affirmative Action Plan (AAP)

An AAP includes the policies, practices and procedures that a U.S. federal contractor (contracts of \$50,000 or more and employing 50 or more people) implements with a focus towards providing qualified applicants and employees equal opportunity for recruitment, selection, advancement, and other terms and privileges associated with employment. This written set of results-oriented procedures is intended to remedy disparities between or underutilization of women and minorities. The effectiveness of the plan is measured by the results it actually achieves rather than by the results intended and by the good faith efforts undertaken by the contractor to increase the pool of qualified women and minorities in all parts of the organization.

Americans with Disabilities Act (ADA) of 1990

The ADA is a federal anti-discrimination law which prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training and other terms, conditions and privileges of employment.

Appraisal (also Performance Planning)

Performance appraisal is the process of reviewing employee performance, setting new performance objectives, documenting the review, and also possibly delivering the review verbally in a face-to-face meeting between the employee and the supervisor. Annual performance reviews are typically intended to give mutual feedback on performance to the employee and often also to the supervisor, set new performance objectives and justify and form the basis for personnel decisions, e.g. compensations and benefits and sometimes, promotions.

Attorney / Client Privilege

A client's privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications between the client and his or her attorney. Such privilege protects communications between attorney and client that are made for the purpose of furnishing or obtaining professional legal advice or assistance. For additional guidance regarding the application of the attorney client privilege, please consult legal counsel.

Back Pay

A type of damages awarded in an employment lawsuit that represents the amount of money the employee would have earned in the past if the alleged discrimination had not occurred.

Base Salary

Pay received for a given work period, as an hour or week, but not including additional pay, as for overtime work. It is used as the basis for calculating other allowances and benefits.

Benchmarking – (also Best Practice Benchmarking or Process Benchmarking)

A process used in management and particularly strategic management, in which organizations evaluate various aspects of their processes in relation to best practice, usually within their own sector or industry. This allows organizations to develop plans for adopting and adapting such best practice for increasing their performance. Benchmarking is considered a continuous process in which organizations should continually seek to challenge and improve their practices.

Benefits

Some see benefits as a form of supplement paid by employers to employees over and above the amount of pay specified as cash compensation. For others, benefits are a portion of a total compensation package or total rewards for employees. A comprehensive, common set of benefits could include many components e.g., career development, support for work-life balance, personal security, pension schemes, health insurance, life insurance, PTO or paid time off. (for discussion with Definitions and Systems and Functional Infrastructure subcommittees)

Best practices

The practices of an organization that enables them to achieve superior organizational performance results. It usually reflect an “ideal” or hoped for standard.

Bias

Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair to one or more “protected” groups.

Bona fide occupational qualification (BFOQ)

A very narrowly interpreted exception to EEO laws that allows employers to base employment decisions for a particular job on such factors as sex, religion or national origin, if they are able to demonstrate that such factors are an essential qualification for performing a particular job.

Bonus

An after-the-fact reward or payment (may be either discretionary or nondiscretionary) based on the performance of an individual, a group of workers operating as a unit, a division or business unit, or an entire workforce. Payments may be made in cash, shares, share options or other items of value, such as a special event, travel or gift card. In the context of sales compensation, a defined, pre-established amount of money to be earned for achieving a specified performance goal. Planned bonus amounts commonly are expressed as a percent of the incumbent's base salary, salary range midpoint, percentage of target cash compensation or incentive compensation, or a defined dollar amount.

Calibration

A process designed to ensure different managers are applying similar and consistent standards in measuring and evaluating the performance of their subordinates. The process typically involves managers (and, often, HR) meeting to review and discuss the proposed performance ratings for the employees, and then adjusting ratings for accuracy and consistency.

California Labor Commissioner

Sets and enforces regulations for employee wages, paycheck deductions, breaks, vacation, jury/witness duty, or temporary military leave, the workweek, minors, employee access to personnel files, “lawful conduct” discrimination, exempt status, and independent contractor status. The commissioner also assess fines and files charges with the District Attorney on behalf of underpaid employees, and investigates, holds hearings, takes action to recover wages, assesses penalties, and makes demands for compensation.

Call in pay – Additional compensation awarded to employees who are required to remain on call during off-duty hours.

Casual Employment

The practice of hiring employees on an as-needed basis, either as a replacement for permanent full-time employees who are out on short- and long-term absences or to meet employer's additional staffing needs during peak business periods.

Civil Rights Act of 1964

A federal statute enacted to further guarantee the constitutional rights of individuals and prevent employment discrimination based on race, color, sex, religion, national origin or age.

Civil Rights Act of 1991

A federal statute that amended the Civil Rights Act of 1964 enacted to strengthen and improve federal civil rights laws by providing for damages in cases of intentional employment discrimination, clarifying provisions regarding disparate impact actions and for other purposes.

COBRA (*Consolidated Omnibus Reconciliation Act (COBRA) of 1985*)

Under the Consolidated Omnibus Budget Reconciliation Act of 1985, if an employee (of a certain size) terminates employment with the company, the employee is entitled to continue participating in the company's group health plan for a prescribed period of time, usually 18 months. (In certain circumstances, such as an employee's divorce or death, the length of coverage period may be longer for qualified dependents). The employee typically pays the premium. COBRA coverage is not extended to employees terminated for gross misconduct.

COLA (*Cost of Living Adjustment*)

An annual adjustment in wages to offset a change in purchasing power, as measured by the Consumer Price Index (CPI). The Consumer Price Index is used rather than the Producer Price Index because the purpose is to offset inflation as experienced by the consumer, not the producer.

Collective Bargaining Agreement (CBA)

A collective agreement is a labor contract between an employer and one or more unions about the terms and conditions of employment of employees. Typical issues are salaries and wages, hours of work, working conditions and grievance procedures and the rights and responsibilities of trade unions.

Collective Bargaining

The process by which an employer negotiates employment contracts and working conditions with one or more unions collectively for all employees.

Commission

Compensation paid to an employee based on a proportional amount of sales of the employer's property or services. Is most frequently called incentive pay and used primarily for sales positions. Mutually agreed upon, or fixed by custom or law, fee accruing to an agent, broker, or salesperson for facilitating, initiating, and/or executing a commercial transaction.

Common law employment test

Refers to the IRS's 20-question common law test which examines the level of control exercised over a worker by an employer in order to determine whether the individual is an employee or an independent contractor.

Comparable Worth

The concept that jobs can be compared and scored through objective analysis of skill, effort, responsibility and working conditions, and that jobs with similar scores or values should be paid the same, particularly where there are differences in the gender or race of the workers who hold similarly valued jobs.

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~~The concept that women and men should be paid equally when they perform different work that nonetheless requires comparable skills and responsibility or is of equal value to the employer.~~

Compensation

All forms of pay going to employees and arising from their employment. Typically compensation includes base elements such as wages and salaries and variables such as bonus and incentives

Compensation philosophy

A compensation philosophy is simply a formal statement documenting the company's position about employee compensation. It essentially explains the why behind employee pay and creates a framework for consistency. Compensation philosophies are typically developed by the human resources department in collaboration with the executive team. The philosophy is based on many factors, including the company's financial position, the size of the organization, the industry, business objectives, salary survey information, and the level of difficulty in finding qualified talent based on the economy, as well as the unique circumstances of the business.

Competencies / Competency

Competencies are the knowledge-skills and the attitude needed by any individual employee to carry out their job effectively. Another way to define competency is 'an underlying characteristic of a person' 'motive, trait, skill, aspect of one's self-image or social role, experience or a body of knowledge'.

Condition of employment

An organization's policies and work rules that employees are expected to abide by in order to remain continuously employed.

Confidentiality agreement

A contract restricting an employee from disclosing confidential or proprietary information.

Contingent Workers

Contingent workers are employed when the employer needs them, without defined job security or long-term commitments. Part-time workers, temporary and contract workers, self-employed workers and independent contractors are examples.

Contractor

Under Executive Order 11246, a contractor is a firm that does business with the federal government. A prime contractor receives \$50,000 or more in contracts each year and employs more than 50 people in total

employment. A subcontractor performs part of the contract at the direction of the prime contractor and receives \$10,000 or more in subcontracts each year.

CPI (Consumer Price Index)

An index of prices used to measure the change in the cost of basic goods and services in comparison with a fixed base period. Also called *cost-of-living index*.

Craft worker

An individual employed in a profession or activity that uses experienced hands to make something. Apprenticeships are often required and post-secondary vocational schools also offer such craft oriented training. Training time can be over a course of years and require certification examinations. Examples: electrician, plumber, tool and die maker, machinist, HVAC specialist, journeyman carpenter, cabinet maker.

DBA

Stands for “doing business as” and is an official and public registration of a business name. DBAs are also known as Fictitious Names, Fictitious Business Names, Assumed Names, and Trade Names.

De minimis rule

Described by IRS guidelines as any benefit, property or service provided to an employee that has so little value (taking into account how frequently similar benefits are provided to employees) that accounting for it would be unreasonable or administratively impracticable. Cash, no matter how little, is never excludable as a de minimis benefit, except for occasional meal money or transportation fare.

Deductible

Usually, in the employee insurance context this is a fixed amount or percentage of an insurance claim that is the responsibility of the insured, and which the insurance company will deduct from the claim payment. Sometimes deductibles are voluntary (to qualify for a lower premium rate) but usually they are imposed by the insurer to avoid paying a large number of small claims.

Defined benefit plan

A retirement plan that is not an individual account plan and pays participants a fixed periodic benefit or a lump sum amount, calculated using specific formulas that include such items as age, earnings and length of service.

Defined contribution plan

An individual account plan in which the employer contributes a specific amount of money into each year that is to be distributed among the accounts of each plan participant.

Department of Fair Employment and Housing (DFEH)

State agency that enforces California’s non-discrimination laws. DFEH has jurisdiction over private and public employment, housing, public accommodations, and public services. DFEH receives and investigates discrimination complaints, and provides technical assistance to employers regarding their responsibilities under the law.

Department of Industrial Relations (DIR)

Seeks to improve working conditions for California's wage earners and to advance opportunities for profitable employment in California. DIR has these major areas of responsibility: labor law, workplace safety and health, apprenticeship training, Workers' Compensation, statistics and research, mediation, and conciliation.

Department of Labor (DOL)

U.S. Department of Labor, federal agency, administers a variety of federal labor laws including those that guarantee workers' rights to safe and healthful working conditions, a minimum hourly wage and overtime pay, freedom from employment discrimination, Unemployment Insurance, and other income support.

DFEH

See Department of Fair Employment and Housing

Disciplinary Procedure

An employment management procedure carried out in the workplace in the event of an employee behaving in a manner contrary to the terms of the employment agreement. It is often part of a defined process called Progressive Discipline.

Discretionary Bonus

A plan in which management determines the size of the bonus pool and the amounts to be allocated to specific individuals after a performance period. These have no predetermined formula or promises, and are not guaranteed.

Discrimination

The making of a distinction in favor of or against, a person based on the group, class, gender, ethnicity, sexual preferences, religion or category to which that person belongs rather than on individual performance or merit.

Dismissal

Involuntary termination of employment by employer.

Disparate (Adverse or Unequal) Impact

Refers to an employment practice that appears neutral but discriminates against a protected class in practice.

Disparate (Unequal) Treatment

Refers to an applicant or employee who belongs to a protected class receiving different treatment because of his or her membership in a protected class.

Diversity

A broad definition of diversity ranges from personality and work style to all of the visible dimensions of diversity such as race, age, ethnicity or gender, to secondary influences such as religion, socioeconomics and education, to

work diversities such as management and union, functional level and classification or proximity/distance to headquarters.

Diversity Training

A fundamental component of a diversity initiative that represents the opportunity for an organization to inform and educate senior management and staff about diversity. The purpose of training is not only to increase awareness and understanding of workplace diversity, but also to develop concrete skills among staff that will facilitate enhanced productivity and communications among all employees.

Division of Labor Standards Enforcement (DLSE)

Investigates wage claims and discrimination complaints and enforces California's labor laws (including the California Fair Pay Act) and Industrial Welfare Commission (IWC) Wage Orders.

DOL

See Department of Labor.

Domestic partnership

A domestic partnership is not identical to marriage, but it provides some of the same benefits. Some states refer to the institution as a "civil union," but the definitions vary from one city or state to the next.

Downsizing

The process of reducing the number of people working for an organization by terminations, retirements and spinoffs. Often referred to in a shorthand way as a RIF (or a reduction in the workforce)

EAP (Employee Assistance Plan)

A work-based intervention program designed to identify and assist employees in resolving personal problems (i.e., marital, financial or emotional problems, family issues, substance/alcohol abuse) that may be adversely affecting the employee's performance. It is usually confidential and usage may not be known to the employer.

Educational assistance / tuition reimbursement plan

An employer sponsored program for providing eligible employees with financial assistance up to \$5,250 per year in the pursuit of undergraduate and graduate education. The coursework does not have to be job related and payments can be applied to expenses directly related to education including tuition, fees, books, supplies and equipment. Each employer generally defines the criteria and amount per annum.

EEO (Equal Employment Opportunity)

A policy statement that equal consideration for a job is applicable to all individuals and that the employer does not discriminate based on race, color, religion, age, marital status, national origin, disability or sex.

EEOC

See Equal Employment Opportunity Commission

Employee Profile

(for discussion with Systems and Functional Infrastructure subcommittee) This is usually a summary of highlights about an employee's career progression in an organization and includes salary, raises, job title and respective dates occurred that are maintained on the employer data base.

Employee Relations

A broad term, which is used to refer to the general management and planning of activities related to developing, maintaining, and improving employee-management relationships typically by communicating with employees, processing grievances/disputes, etc. It also is a usual part of HR that focuses on addressing workplace problems and facilitating resolution.

Employee Retention

Systematic effort by employers to create and foster an environment that encourages current employees to remain employed by having organizational policies and practices in place to address their diverse needs effectively.

Employment "at will"

A legal doctrine that states that an employment relationship may be terminated by the employer or employee at any time and for any or no reason.

Equal Employment Opportunity Commission

A federal agency that interprets discrimination law, collects employment data and handles employee complaints. They also offer mediation and research plus legal advocacy.

Equal Pay Act of 1963

A federal law prohibiting employers from discriminating between male employees and female employees in terms of pay when they are performing jobs that are essentially the same or of comparable worth.

Equity adjustment

Equity adjustments are salary changes outside of the normal salary programs (promotions, reclassifications, merits, etc.) to remedy salary issues such as external pressure in high demand areas, internal salary compression, and/or retention considerations. Equity adjustments are not granted to reward performance.

Ethics

A philosophy principle concerned with opinions about appropriate and inappropriate moral conduct or behavior by an individual or social group. Many companies have a separate ethics policy

Executive Order 11246 of 1965

The Executive Order prohibits federal contractors and federally-assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The Executive Order also requires Government contractors to take affirmative action to ensure that equal opportunity

is provided in all aspects of their employment. Additionally, Executive Order 11246 prohibits federal contractors and subcontractors from, under certain circumstances, taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers.

Exempt employees

Employees who meet one of the FLSA exemption tests and who are paid on a fixed salary basis and not eligible for overtime.

Exit Interview

An exit interview is a meeting between an employee who is leaving the organization and a representative of the organization, usually from the Human Resources department. The purpose is to get feedback about the reasons for leaving, the job the employee held, the work environment, and the organization; especially what the employee would like to change. Usually not be carried out by employee's immediate superior.

External Market Data

(for discussion with Systems and Functional Infrastructure subcommittee)

Fair Employment and Housing Act (FEHA)

California law prohibiting discrimination/harassment on the basis of race/color, religious creed, national origin/ancestry, physical disability, mental disability, medical condition (including no genetic testing), marital status, sex, age, and sexual orientation.

Family Medical Leave Act (FMLA) of 1993

The Family and Medical Leave Act (FMLA) allows employees who have met minimum service requirements (12 months employed by the company with 1,250 hours of service in the preceding 12 months) to take up to 12 weeks of unpaid leave per year for: (1) a serious health condition; (2) to care for a family member with a serious health condition; (3) the birth of a child; or (4) the placement of a child for adoption or foster care.

Female Dominated Job

A job class that has traditionally been held and performed by a majority of women, or jobs where 60% of the workers or more are women.

Flex Time

Variable work hours requiring employees to work a standard number of core hours within a specified period of time, allowing employees greater flexibility in their starting and ending times.

Flexible benefit plan

A benefit program regulated under IRC 125 that offers employees a choice between permissible taxable benefits (including cash) and nontaxable benefits such as life and health insurance, vacations, retirement plans and child/dependent care. Although a common core of benefits may be required, the employee may determine how

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his or her remaining benefits dollars are allocated for each type of benefit from the total amount offered by the employer.

Front Pay

A type of damages awarded in an employment lawsuit that represents the amount of money the employee could have earned into the future if he or she had not experienced the alleged discrimination.

FTE (Full-time Equivalent)

A value assigned to signify the number of full-time employees that could have been employed if the reported number of hours worked by part-time employees had been worked by full-time employees instead.

Functional Job Analysis

A method of job analysis that produces standardized occupational information specific to the performance of a particular job.

Geographical differential

The variance in pay established for same or comparable jobs based on variations in labor and costs of living among other geographic regions.

Goal Setting

The systematic process of setting and assigning a set of specific and attainable goals to be met by an individual, group or organization.

Good Faith Bargaining

A duty to conduct negotiations where two parties meet and confer at reasonable times on matters within the scope of their representation, with open minds and with the intention of reaching an agreement.

Grievance

In a HR context, a grievance is a formal complaint or allegation brought by the employee or the organization to an employment contract against another party, about unfair, inconsistent treatment or violation of a union contract.

Harassment

Conduct or actions, based on protected characteristics such as race, religion, sex, national origin, age, disability, military membership or veteran status, severe or pervasive enough to create a hostile, abusive or intimidating work environment for a reasonable person.

High potential employee

Often the top 3-5 % of company employees ranked in performance review ratings. High potentials consistently and significantly outperform their peer groups in a variety of settings and circumstances. While achieving these superior levels of performance, they exhibit behaviors that reflect their companies' culture and values in an exemplary manner. Moreover, they show a strong capacity to grow and succeed throughout their careers within an organization—more quickly and effectively than their peer groups do.

Hire date

Hire date is normally the date an employee completes new hire paperwork, including the W-4 and I-9. Start date is the first day the employee actually works.

Hostile Environment Harassment

Sexual or other discriminatory conduct that is so severe and pervasive that it interferes with an individual's ability to perform the job, creates an intimidating, offensive, threatening or humiliating work environment or causes a situation where a person's psychological well-being is adversely affected.

Hourly employee

An employee who is paid by the hour and who must be paid overtime under the FLSA or a state wage hour statute.

HR Audit

A method for assessing the effectiveness of human resource functions. Can be carried out internally or by engaging external HR audit systems.

HRIS (Human Resource Information System)

A computer database used to gather, store, maintain and retrieve relevant employee and HR-related information.

Human Capital

From an organization point of view - the collective knowledge, competencies, health, skills and abilities of all the organization's employees. Human capital, unlike structural capital, is not reflected in financial statements and can walk out when employees leave unless it is systematically recorded in the organization's procedures and systems. From an individual point of view – the set of skills an employee acquires on the job, through experience and training, which increases the employee's value in the job market.

Human Resources Management System

(for discussion with Systems and Functional Infrastructure subcommittee) Also called HRIS, which is a computer based system used in the administration, record keeping and documentation of HR data.

Implicit Bias (or Unconscious Bias)

Unlike explicit bias (which reflects the attitudes or beliefs that one endorses at a conscious level), implicit bias is the bias in judgment and/or behavior that results from subtle cognitive processes (e.g., implicit attitudes and implicit stereotypes) that often operate at a level below conscious awareness and without intentional control.

Incentive Compensation

Compensation that is linked to performance by rewarding employees for actual results achieved instead of seniority or hours worked.

Incentive Pay

Additional financial compensation used to motivate and to reward employees for reaching and/or exceeding standard performance or productivity goals.

Independent Contractor

A self-employed individual who performs a service for an employer under an express or implied agreement and who is not subject to the employer's control, or right to control, regarding the method and means in which the service is performed. Can also be a person who works as an entrepreneur but has a contract for services with another person / organization, and is not considered an employee. [See Common Law Employment Test]

Individual Employment Agreement

An individual employment agreement is a formal, legally binding agreement between an employer and employee outlining terms of employment such as duration, compensation,

benefits, etc.

Individual Retirement Account (IRA)

Tax-deferred retirement schemes that can be started by anyone who earns employment income. Individuals who earn less than a certain amount (or who do not participate in their employer's retirement plan) can generally deduct a part or all of their contribution to such schemes from their taxable income. Money in an IRA is taxed only when it is withdrawn.

Insubordination

The willful or repeated disobedience to a directive from a higher level manager. Often part of a laundry list of more serious employment infractions.

Interactive process

A process in which the employee, health care provider and employer each share information about the nature of a disability and the physician outlined limitations that may affect the employee's ability to perform the essential job duties. This process is referred to as an interactive process. It entails a good-faith effort by the employer and the employee to discuss the limitations or performance issues the employee's disability may pose. The purpose of this discussion is to determine what (if any) accommodations may be needed or possible. The interactive process involves a review of the [accommodation request](#) from the employee or his or her health care provider.

Intermittent Leave

Under FMLA, intermittent and reduced schedule leave is used to describe leave that is not taken on a consecutive basis but rather taken in increments of days or hours.

Internal Recruitment

The practice of assessing the employer's current workforce to determine whether or not current employees possess the required skills or qualifications to fill specific vacancies either through promotion or transfer.

Interpretive Guidelines on Sexual Harassment

EEOC issued guidelines defining sexual harassment and the employer's responsibility for maintaining a workplace environment which is free from sexual harassment or intimidation.

Job Accommodation Network (JAN)

A service of the Office of Disability Employment Policy (ODEP) of the U.S. Department of Labor. JAN's mission is to facilitate the employment and retention of workers with disabilities by providing employers, employment providers, people with disabilities, their family members and other interested parties with information on job accommodations, self-employment and small business opportunities and related subjects. This is considered a key and valuable resources for employees and employers.

Job Analysis

Job analysis is a systematic study of a job to determine what activities and responsibilities are included, their relationships with other jobs, the personal qualifications necessary for performance of the jobs, and the conditions under which work is performed. Job analysis usually results in a job description as well as recruiting plans.

Job description

A written description of a job based on a job analysis, which includes information about the nature of the work to be performed, specific responsibilities and duties, and the employee skills and characteristics required to perform the job, scope and working conditions, job title and the name of the person to whom the person holding the job reports.

Job Evaluation

Job evaluation is usually a system for analyzing and comparing different jobs and placing them in a ranking order according to the overall demands of each one. The objective is to assess which jobs should get more pay than others. There are two kinds of job evaluation programs: non-analytical and analytical. Non-analytical programs compare a job with others. In an analytical program, a job is split up into a number of different aspects and each factor is measured separately. Job evaluations assess the content of a job, not an individual's performance of that job.

Job expectations

What an employee must accomplish, in a position, to be considered a successful employee.

Job family

Groups of similar occupations based on work performed and on required skills, education, training, and credentials (similar types of work and requiring similar training, skills, knowledge, and expertise.). (for discussion with Systems and Functional Infrastructure subcommittee)

Job Grading

Jobs are assigned a job grade based on the job value determined during the job evaluation. Jobs are classified into a grade/category structure or hierarchy. Each job is assigned to a specific grade/category. Jobs are placed with other jobs of similar requirements, duties, and responsibilities. The higher the job grade, the greater the level of responsibility and the higher the salary range.

Job Leveling

(for discussion with Systems and Functional Infrastructure subcommittee) A systemic method of objectively and accurately assigning value to individual positions within an organization. It is a process that defines and evaluates the knowledge and skills that are necessary to perform the job and establishes the job's duties, responsibilities, tasks and level of authority within the organization's job hierarchy.

Job Posting

The method of advertising for vacancies internally by posting a notice of the opening on a bulletin board, etc.

Job title

A specific name given to a particular job which is used to distinguish that job from other jobs within the organization.

Key Performance Indicators

Key Performance Indicators or KPI's are quantifiable measurements, agreed to beforehand, which reflect the critical success factors and organizational goals of an organization. They differ according to the nature and the field of the organization. From a performance management point of view, KPI's measure how tasks agreed between an employee and the person to whom the employee reports, have been carried out in the agreed time and manner.

Knowledge worker

Employees whose job functions are primarily of an intellectual nature.

KSAs

Knowledge, skills and abilities – the personal attributes that a person requires to perform the job.

Labor Commissioner

See California Labor Commissioner

Labor Law Posting

Federal and state regulations requiring employers to post in conspicuous places a variety of labor law posters, including, but not limited to, information regarding employee rights under EEO, FMLA, OSHA, ADA, FLSA, as well as other labor laws.

Labor Market

A geographical or economic area of economic exchange in which workers seek jobs and employers seek workers. Labor markets can be primary labor markets, which provide secure employment with good benefits and good working conditions or secondary labor markets, which are occupations with insecure jobs, little benefits and low wages.

Layoff / RIF (Reduction in Force)

Layoff is a temporary termination of employees, or the elimination of jobs, during periods of economic downturn or organizational restructuring. **RIF** is an involuntary separation of an employee or groups of employees due to economic pressures, lack of work, organizational changes or other reasons of business necessity that require a reduction in staff.

LOA (Leave of Absence)

A period of time that one must be away from one's primary [job](#), while maintaining the status of [employee](#). This contrasts with normal periods away from the workplace, such as [vacations](#), [holidays](#), hiatuses, [sabbaticals](#), and "working from home" programs, in that they are considered exceptional circumstances, rather than benefits. Generally such an arrangement has a predefined termination at a particular date or after a certain event has occurred.

Long-Term Bonus

Usually a form of deferred compensation that establishes an income stream in the form of a bonus over time, typically at a predetermined age or upon retirement.

Lump Sum Payment

In an HR Context, a fixed negotiated payment, which is not typically included in an employee's annual salary but given in place of regular pay increases.

Management Employee

An employee who meets the salary basis test and regularly manages or supervises two or more employees.

Market rate

The usual price in the market / typical rate for a specific job.

Matrix Organization

A matrix shaped multifunctional team organizational structure, where employees from different functional disciplines (e.g. accounting, marketing, engineering) report to more than one manager or supervisor without being removed from their respective positions.

Mean Wage

The average wage for a worker in a specified position or occupation, which is determined by adding together the total wages for all incumbents in a specific position or occupation and then dividing it by the total number of incumbents.

Median Wage

The margin between the highest paid 50 percent and the lowest paid 50 percent of workers in a specific position or occupation.

Mediation Services

In an HR context, a system of alternative dispute resolution or the process of intervention by an independent specialist in an employment dispute.

Medicare

A health insurance program administered by the Social Security Administration which is broken into two distinct categories: 1) Medicare Part A helps with hospital costs; and 2) Medicare Part B requires a monthly fee and is used to pay medical costs for people 65 years of age and older, and some disabled people under 65 years of age and people.

Mentoring

A one-to-one systematic interaction process between an employee and a senior or more experienced individual, who acts as an advisor, counsellor or guide. The mentor provides support and gives feedback to facilitate learning. May be formal or informal.

Merit pay / salary increase

Higher wage rate paid to an employee on the basis of an agreed upon criteria such as efficiency and performance. Also called merit bonus.

Mid-Point

The point on a continuum at which half of the distribution is above the mean and half is below.

Minimum qualifications

The attributes of a job description which establishes a baseline for meeting the qualifications for a particular position.

Minimum wage

The lowest hourly rate an employer can pay an employee. The government sets this rate by law.

Minorities

Men and women of those minority groups for whom EEO-1 reporting is required; that is, black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native. The term may refer to these groups in the aggregate or to an individual group.

Mission Statement

A brief written description of a company's core purpose and focus, which normally remains unchanged, whereas business strategies and practices may frequently change to adapt to the changing circumstances. Also called company mission, corporate mission or corporate purpose.

National Labor Relations Act (NLRA) of 1947

The National Labor Relations Act (NLRA), passed in 1935, provides that all employees have the right to form, join and assist labor organizations and to bargain collectively with their employers.

National Origin

The country – including those that no longer exist – of one's birth or of one's ancestors' birth. "National origin" and "ethnicity" often are used interchangeably, although "ethnic group" can refer to religion or color, as well as country of one's ancestry.

Non-compete Agreement

A contract restricting an employee from obtaining employment with a competitor within a specified industry, distance and/or time frame.

Non-Discretionary Bonus

A plan in which management determines the size of the bonus pool and the amounts to be allocated to specific individuals after a performance period. These use a predetermined formula and promises.

Non-Disclosure Agreement

A contract restricting an employee from disclosing confidential or proprietary information.

Non-traditional jobs

Jobs that are typically not held by one gender of worker, or where 25% or fewer of the workers in the job are female or male.

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Non-exempt employee

An employee who does not meet any one of the Fair Labor Standards Act exemption tests and is paid on an hourly basis and covered by wage and hour laws regarding hours worked, overtime pay, etc.

Occupational Groups

Used to classify specific occupations into a specific category, such as professionals, technical/hi-tech, administrative/clerical, sales, service, retail, etc.

Occupational Segregation

The distribution of workers within the full range of jobs in the labor market into clusters based on gender, race, national origin or other demographic characteristics.

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~~The systematic concentration of groups of workers (e.g., women, people of color) in particular jobs.~~

Office of Federal Contract Compliance Programs (OFCCP)

This division of the Department of Labor holds those who do business with the federal government – contractors and subcontractors – responsible for complying with the legal requirement to take affirmative action and not discriminate on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or status as a protected veteran. In addition, contractors and subcontractors are prohibited from discharging or

otherwise discriminating against applicants or employees who inquire about, discuss or disclose their compensation or that of others, subject to certain limitations.

Onboarding

Onboarding is the process of integrating employees into their new work environment. A relatively new term, it is slightly more comprehensive than orientation as it links new employees with team members very early in the employment process and continuing after the traditional orientation program ends.

Open Door Policy

A policy encouraging employees to bring employment issues to the attention of the employer, rather than going outside the company.

Organization chart (org chart)

A graphic representation outlining how authority and responsibility are distributed within an organization.

Organizational Culture

The specific collection of values and norms that are shared by people and groups in an organization and that control the way they interact with each other and with stakeholders outside the organization.

Orientation (New employee orientation)

The introduction of employees to their jobs, co-workers, and the organization by providing them with information regarding such items as policies, procedures, company history, goals, culture, and work rules.

Outplacement

The process of facilitating a terminated employee's search for a new job by providing professional services, such as job counseling, training and assistance paid for by the former employer as a benefit.

Overtime pay

In accordance with the Fair Labor Standards Act (FLSA), it is the term used to define work that is performed in excess of 40 hours per week.

Paid Time Off (PTO)

A benefit program granting employees a specific number of vacation or personal days off which that are paid by the employer. The number of days is generally based on the employer's policy for accrual of paid time off.

Parental Leave

A benefit designed to provide employees with approved paid or unpaid time off following the birth or adoption of a child or to care for a dependent.

Part-Time Employee

An individual who continually works less than 40 hours per week (standard workweek hours are based on individual employer policy, therefore, a 40-hour workweek is only a guideline; this number could be higher or lower).

Pay Rate

A fixed amount of payment based on a unit of time or a piece of work performed.

Pay Scale

(for discussion with Systems and Functional Infrastructure subcommittee)

Performance Appraisal

A periodic review and evaluation of an individual's job performance. May be verbal (informal) or written (more formal)

Performance Improvement Plan

Performance Improvement Plan is a tool to monitor and measure the work processes and/or behaviors of a particular employee or a unit in order to improve performance or modify behavior. It provides employees with constructive feedback, facilitate discussions between an employee and his or her supervisor regarding performance-related issues, and outline specific areas of performance requiring improvement, often over a specific time period.

Performance management

A process of identifying, evaluating and developing the work performance of employees in an organization. This is to foster organizational objectives are more effectively achieved and understood by employees, through the use of performance assessment tools, coaching and counseling as well as providing continuous feedback.

Personal Grievance

Any grievance that an employee may have against the current employer or former employer. The most common types of personal grievance are dismissals, or threats of dismissal, sexual harassment, racial harassment, duress, and discrimination. Some organizations have a formal policy on grievance handling and procedures, sometimes contained in a CBA

Piece Rate

An amount paid for completing a particular task or making a particular piece of goods.

Position Analysis

A questionnaire used in an organization to collect quantifiable data about the responsibilities and requirements of jobs in that particular organization.

Pregnancy / maternity LOA

A period of approved absence for a female employee granted for the purpose of giving birth and taking care of infant children. Maternity leave may last anywhere from several weeks to a period of months depending on the

organization, and may be paid or unpaid depending on policies. A certain amount of maternity leave may also be legally mandated for some states or municipalities.

Prevailing Wage

A rate of pay determined by the U.S. Department of Labor based upon the geographic area for a given class of labor and type of project.

Probation / Probationary Period

When hiring new employees, many employers use probationary employment periods to ascertain whether the new workers will be able to handle the duties and challenges associated with their new job. Also called trial period. Probation or probationary periods, which can be from two weeks to several months helps the employer evaluate the employee before making the employment permanent.

Professional Development Plan

The Professional Development Plan outlines how the professional capabilities of the employee will be developed over a defined period. This plan may include formal training, participation in work related activities (projects or committees), access to coaching, mentoring or any other opportunities for experience to enhance the skills, knowledge or personal attributes of the employee.

Progressive discipline

A form of discipline with increasing penalties are awarded each time an employee is disciplined for the same or a different performance infraction or policy or work-rule violation. Generally, the sequence is an oral warning to written warnings to suspension and finally termination.

Promotion

Career advancement within an organization, which includes increased authority, level of responsibility, status and (usually) pay.

Protected class / group

A legal term describing certain groups, such as women, older and disabled individuals, veterans and minorities.

Race / Gender (Sex) / Ethnic Categories

Race is a division of humans with certain distinguishing characteristics in common which indicate distinctive origins or cultural heritage. **Gender / Sex** is the classification of people as male or female. **Ethnic Categories** is a grouping of individuals who are of the following descent: American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White.

Reasonable Accommodation (see also Accommodation)

Modifying or adjusting a job process or a work environment to better enable a qualified individual with a disability to be considered for or perform the essential functions of a job.

Records retention

Number of years prescribed by a law for which certain records must be kept before their final disposition.

Recruitment

The process of bringing into an organization personnel who will possess the appropriate education, qualifications, skills, competence and experience for the post offered.

Red circle rate / Red Circling

A **Red Circle Rate** is a pay rate that is usually above the maximum range assigned to the job grade. Employees are usually not eligible for additional pay increases until the range maximums exceed the individual pay rate. **Red Circling** is when an employee's pay rate is approved to be above the established salary maximum for that position.

Regular Rate of Pay

The calculated amount of an employee's actual earnings, which may include an hourly rate, commission, bonuses, piece work, and the value of meals and lodging. (may require further discussion with definitions subcommittee)

Representation

Members from various demographic groups, (can be legally protected groups or classes), such as race, ethnicity, religion, sex, national origin, age and physical and mental disabilities.

Reprimand

An oral or written reproach given to an employee as part of disciplinary action.

Rest break

The Fair Labor Standards Act (FLSA) does not require breaks or meal periods be given to workers. Some states may have requirements for breaks or meal periods. If a state does not require breaks or meal periods, these benefits are a matter of agreement between the employer and the employee (or the employee's representative). California requires: Paid 10-minute rest period for each 4 hours worked or major fraction thereof; as practicable, in middle of each work period. Not required for employees whose total daily work time is less than 3 and ½ hours.

Résumé / CV

A document setting out a summary of a person's education, training, professional history, skills, competences and job qualifications, which is used typically when applying for a job. The term CV (Curriculum Vitae) can more common in more academic or technical fields.

Retaliation

Retaliation occurs when an employer negatively treats an employee for engaging in "legally protected activity". It can include a negative job action, such as demotion, discipline, firing, salary reduction, or job or shift reassignment.

Retention

Effective employee retention is a systematic effort by employers to create and foster an environment that encourages current employees to remain employed by having policies and practices in place that address their diverse needs.

Right-to-sue letter

A letter issued by the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing, once a charge has been recorded and processed, informing individuals who filed the charge that they have the right to further pursue their charges in a federal or state court.

Right-to-work

A state law preventing labor-management agreements requiring an individual to join a union as a condition of employment.

Salary

A fixed amount of money for each payroll period, whether weekly, bi-weekly, semi-monthly, or monthly.

Salary grade / level

A compensation level expressed as a salary range, which has been established for each position within the organization.

Salary range

A range of pay rates, from minimum to maximum, set for a specific pay grade.

Salary survey

Tools used to determine the median or average compensation paid to employees in one or more jobs. Compensation data, collected from several employers, is analyzed to develop an understanding of the amount of compensation paid.

Seniority

Status determined by the length of time an employee has worked for a specific employer, department or position within the organization.

Severance Pay

Usually a one-time payment given by employers when terminating an employment. It is often a trade off for an employee waiver or release in agreeing to sue the company.

Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment. Sexual harassment can occur in a variety of circumstances, including but not limited to the following: The victim as well as the harasser may be a woman or a man. The victim does not have to be of

the opposite sex. The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.

Sick Leave

Paid time off granted to employees who are out of work due to an illness or injury.

Skill Based Pay

A compensation system based on the repertoire of skills an employee can perform, rather than the specific skill that the employee may be using at a particular time. Pay increases generally are associated with the addition and/or improvement of the skills of an individual employee, as opposed to better performance or seniority within the system.

Stock options

The right to purchase stock of the employer at a given price at some designated time in the future. Stock Options usually come in two types: Incentive stock options (ISOs) in which the employee is able to defer taxation until the shares bought with the option are sold. Nonqualified stock options (NSOs) in which the employee must pay income tax on the 'spread' between the value of the stock and the amount paid for the option.

Succession planning

Succession planning is a process for identifying potential candidates to replace core individual employees either known to be leaving the firm at some point in the future and/or whose sudden departure would pose a risk to the operation of the firm. Succession planning differs from *replacement planning*, as it is much broader in scope. The aim is to ensure predictable organizational stability and consistency by identifying critical skill sets and developing methods such as job sharing, job trading, mentoring, coaching, cross training to maintain and develop these skill sets across the organization.

Suspension

A form of disciplinary action resulting in an employee being sent home with or without pay and forbidden to come to work for a specified period of time.

Talent management

Broadly defined as the implementation of an integrated strategies or systems designed to increase workplace productivity by developing improved processes for attracting, developing, retaining and utilizing people with the required skills and aptitude to meet current and future business needs.

Temporary employee / work

An individual who works on either short- or long-term assignments with an employer without being treated as a permanent employee and lacking the benefits of permanent employees. Normally utilized by employers to meet seasonal or other demands that they do not have the internal resources to meet.

Termination

Separation from employment due to a voluntary resignation, layoff, retirement or dismissal.

Termination-at-will

A rule allowing an employee or employer to terminate the employment relationship at any time for any or no reason at all.

Third-Party Sexual Harassment

Harassment of an employee by someone other than another employee, such as a client, customer, vendor or service provider.

Title VII, Civil Rights Act of 1964

Federal law prohibiting employers of 15 or more employees from discriminating on the basis of race, color, religion, sex, or national origin.

Total Compensation

The complete pay package awarded employees on an annual basis, including all forms of money, benefits, services and in-kind payments. The total cash remuneration plus the valued perquisites and benefits awarded employees on an annual basis. In valuing perquisites and benefits, the value of long-term benefits are usually included. Typical items included are medical expenses, vacation tickets, special events children's education, terminal benefits (gratuity, provident fund, social security), share purchase plans, club memberships etc. Also known as total remuneration.

Total Rewards

The monetary and non-monetary compensation provided to employees in exchange for their time, talents, efforts and results. Total rewards include key elements that effectively attract, motivate and retain the talent required to achieve desired business results. Total rewards can be seen to include compensation, benefits, work-life balance, career development, recognition programs.

Total Rewards Statement

An annual statement issued individually to each employee of an organization that quantifies the total value of his or her rewards received in the previous calendar year. Statement includes income from all compensation sources as well as the cash value of all benefits and work experience elements received. The objective of the statement is to communicate the value of employer expenditures on behalf of each employee.

Turnover

In an HR context, turnover is the number of employees hired to replace those who left or were fired during a 12-month period.

UI (Unemployment Insurance) / SDI (Short-term Disability Insurance)

UI is a statutory benefit. Unemployment insurance is designed to provide workers who have been laid off a weekly income during short periods of unemployment. The system is run and funded by state and federal taxes paid by employers. **SDI** is a benefit designed to provide temporary income replacement for worker absent due to illness or injury, but who is expected to return to work within a specified timeframe.

Union dues

Union dues are a regular payment of money made by members of unions. Dues are the cost of membership; they are used to fund the various activities which the union engages in. Nearly all unions require their members to pay dues.

Unions

Groups of workers who have joined to form incorporated associations relating to the type of work that they perform in order to protect their common interests and improve their working conditions.

Vacation pay

A benefit that employers typically give full-time employees that allows the employees to take a paid vacation. Most full-time jobs start with two weeks paid vacation with the option to earn more throughout years of service.

Wage or Wages

Money received by an employee for labor performed of every description, whether the amount is fixed or determined by the standard of time, task, piece, commission or other methods of calculation. (for discussion with definitions subcommittee)

Wellness program

Programs, such as on-site or subsidized fitness centers, health screenings, smoking cessation, weight reduction/management, health awareness and education, that target keeping employees healthy, thereby lowering employer's costs associated with absenteeism, lost productivity and increased health insurance claims.

Whistleblower Protection Act of 1989 / Whistle Blower

Whistleblower protection is the federal law that provides protection to employees against retaliation for reporting illegal acts of employers. An employer may not rightfully retaliate in any way, such as discharging, demoting, suspending or harassing the whistle blower. Employer

retaliation may result in the whistle blower filing a charge with a government agency and/or filing a law suit against the employer.

Whistle Blower is a person who reveals wrongdoing within an organization to the public or to those in positions of authority.

Work-Life Balance

Work-life balance is a concept for prioritizing between career and ambitions and family, leisure, pleasure and spiritual development. Work-life balance is not the same for everyone as people have different priorities in life.

Worker's Compensation

State laws enacted to provide workers with protection and income replacement benefits due to an illness or injury suffered *on the job*. Employers must carry appropriate workers' compensation insurance, as required by state law, or have a sufficient source of funding for claims incurred.

Workplace bullying

Persistent, offensive, abusive, intimidating or insulting behavior or unfair actions directed at another individual, causing the recipient to feel threatened, abused, humiliated or vulnerable.

Workplace violence

Assaults and other violent acts or threats that occur in or are related to the workplace and entail a substantial risk of physical or emotional harm to individuals or damage to company resources or capabilities.

Resources:

- [A Handbook of Human Resource Management Practice 10th Edition by Michael Armstrong. Kogan Page 2006](#)
- [Glossary of HR Terms by Rana Sinha \(http://www.dot-connect.com\)](#)
- [hbr.org](#)
- [HRM Guide Network http://www.hrmguide.net/](#)
- [Legal-dictionary.thefreedictionary.com/attorney-client+privilege](#)
- [OPM.gov](#)
- [Reward Management Associates http://www.reward-management.com/Definitions.htm](#)
- [Society for Human Resource Management http://www.shrm.org](#)
- [The Essential HR Handbook: A Quick and Handy Resource for Any Manager or HR Professional by Sharon Armstrong. Career Press 2008](#)
- [World At Work: The Total Rewards Association http://www.worldatwork.org/waw/Glossary](#)
- [www.agilehr.com](#)
- [www.businessdictionary.com](#)
- [www.CalChamber.com](#)
- [www.dol.gov](#)
- [www.dol.gov/ofccp/aboutof.html](#)
- [www.dol.gov/ofccp/regs/compliance/ca_11246.htm](#)
- [www.gerstco.com/affirmative-action-planning/what-is-affirmative-action-plan.php](#)
- [www.henry.fi/files/180/Glossary_of_HR_terms.pdf](#)
- [www.hr-survey.com](#)
- [www.humanresourceblog.com](#)
- [www.irs.gov/retirement-plans/401k-plans](#)
- [www.ncsc.org/~media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/Implicit%20Bias%20FAQs%20rev.ashx](#)

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