

**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.	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.

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		<p>Equal Employment Opportunity Commission on an annual basis by employers with 100+ employees and federal contractors with 50+ employees (EEO-1 Report), and on a biennial basis by local unions (EEO-3 Report), state and local government agencies (EEO-4 Report), and elementary-secondary school districts with 100+ employees (EEO-5 Report).</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>
<p>Date of hire and job history with employer (including start dates in any new classification)</p>	<p>All bargaining unit members and all employees in substantially similar job classifications (to be specified by union in request for information)</p>	<p>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).</p>	<p>To understand differences in compensation that may be related to longevity with company and/or other aspects of employees' employment history.</p>

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Pay rate/salary history, including starting salary	All bargaining unit members and all employees in substantially similar job classifications (to be specified by union in request for information)	See above; see also Industrial Welfare Commission Wage Orders 1-17, codified at 8 Cal. Code Regs. §§ 11001-11017, subd. 7 (“Records”); U.S. Department of Labor Wage and Hour Division, recordkeeping regulations under the Fair Labor Standards Act, 29 C.F.R. §§ 516 <i>et seq.</i>	To identify starting salary differences and track pay increases between employees doing substantially similar work.
Hours worked annually/per contract year (if applicable)	All bargaining unit members and all employees in substantially similar job classifications (to be specified by union in request for information) who are employed on an hourly basis	California Labor Code §§ 226, 1174 and 1197.5; Industrial Welfare Commission Wage Orders 1-17, 8 Cal. Code Regs. §§ 11001-11017, subd. 7 (“Records”); Revised Employer Information Report (EEO-1) form, pursuant to 81 FR 45479, Dkt. No. EEOC-2016-0002.	To compare total compensation among employees in same and substantially similar classifications, which may be based on their hours worked.
Documents describing policies relating to benefits that are not provided to bargaining unit members.	Non-bargaining unit employees in substantially similar job classifications	[ERISA - ??]	In order to compare total compensation, it is necessary to have complete information about benefits provided to non-represented employees that are not

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			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.

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Performance evaluation form(s) utilized in setting pay or making pay decisions	All bargaining unit members and all non-bargaining unit employees in job classifications that are substantially similar to bargaining unit classifications	California Labor Code §§ 1197.5(d) (terms and conditions of employment) and 1198.5 (personnel files and records)	The form used in evaluating employees provides insight into what aspects of work performance are valued for employees in a classification. When negotiating a first contract, or when the collective bargaining agreement allows for merit pay increases, it would also be important to obtain a copy of the perform evaluations for the past 3-years for each employee in the bargaining unit and in substantially similar classifications.
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	All bargaining unit job classifications and all job	??	This will help to analyze how the employer views the classifications being compared in relation to

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for employees.	classifications or positions outside bargaining unit that are substantially similar to bargaining unit classifications.		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.