



California Equal Pay Act

California Equal Pay Act: Frequently Asked Questions

For decades now, the California Equal Pay Act has prohibited an employer from paying its employees less than employees of the opposite sex for equal work. On October 6, 2015, Governor Brown signed the California Fair Pay Act (SB 358), which strengthens the Equal Pay Act in a number of ways, including by:

- Requiring equal pay for employees who perform “substantially similar work, when viewed as a composite of skill, effort, and responsibility.
- Eliminating the requirement that the employees being compared work at the “same establishment.”
- Making it more difficult for employers to satisfy the “bona fide factor other than sex” defense.
- Ensuring that any legitimate factors relied upon by the employer are applied reasonably and account for the entire pay difference.
- Explicitly stating that retaliation against employees who seek to enforce the law is illegal, and making it illegal for employers to prohibit employees from discussing or inquiring about their co-workers’ wages.
- Extending the number of years that employers must maintain wage and other employment-related records from two years to three years.

This document contains answers to frequently asked questions about California’s Equal Pay Act (CA Labor Code section 1197.5), which was amended by SB 358 (Statutes of 2015).

Q: When do the amendments to California’s Equal Pay Act take effect?

A: Governor Brown signed SB 358 into law on October 6, 2015. SB 358 makes several changes to California’s Equal Pay Act. These amendments took effect on January 1, 2016.

Q: What does the new law provide?

A: The amended Equal Pay Act prohibits an employer from paying any of its employees wage rates that are less than what it pays employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.

Q: What does “substantially similar work” mean?

A: “Substantially similar work” refers to work that is mostly similar in skill, effort, responsibility, and performed under similar working conditions. Skill refers to the experience, ability, education, and training required to perform the job. Effort refers to the amount of physical or mental exertion needed to perform the job. Responsibility refers to the degree of accountability or duties required in performing the job. Working conditions has been interpreted to mean the physical surroundings (temperature, fumes, ventilation) and hazards.

Q: What are the key differences between the old Equal Pay Act and the amended Equal Pay Act?

A: The main differences are that the new law:

- eliminates the requirement that the jobs that are compared must be located at the same establishment;
- replaces a comparison of “equal” work with a comparison of “substantially similar” work;
- makes it more difficult for employers to justify unequal pay between men and women;
- adds new express anti-retaliation protections for workers that assist employees with bringing claims under the Act;
- provides that an employer cannot prohibit workers from disclosing their wages, discussing the wages of others, or inquiring about others’ wages.

Q: Under the new law, what do I have to prove to prevail on my Equal Pay Act claim?

A: Under the new law, an employee must show that he or she is being paid less than an employee or employees of the opposite sex who is performing substantially similar work. The employer must then show that it has a legitimate reason for the pay difference.

Q: Can I file a claim if the person who earns more than I do has a different job title?

Labor Commissioner's Office

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A: Yes, you may file a claim. Because the Equal Pay Act compares jobs that are “substantially similar,” the job titles that are being compared do not have to be the same.

Q: How is “wage rates” defined?

A: Although the law does not specifically define “wage rates,” it refers to the wages or salary paid, and also other forms of compensation and benefits.

Q: Under the new law, how may an employer defeat an Equal Pay Act claim?

A: Under the new law, an employer can defeat an Equal Pay Act claim by proving that the difference in pay for substantially similar work is due to:

- seniority;
- merit;
- a system that measures production; and/or
- a “bona fide factor other than sex.”

In addition, an employer must show that it applies the above factor(s) reasonably and that the factor(s) accounts for the entire difference in wages.

Q: Under the new law, how is the “bona fide factor other than sex” applied?

A: Under the new law, an employer may defeat an Equal Pay Act claim by proving that the wage differential is due to a “bona fide factor other than sex,” but to succeed on this defense, the employer must also prove that the factor is

- not based on or derived from a sex-based factor;
- job related; and
- consistent with a business necessity.

Examples of a “bona fide factor other than sex” include education, training or experience.

Q: When do I need to file my Equal Pay Act claim?

A: Under the Equal Pay Act, an employee must file a claim within 2 years from the date of the violation. If the violation is willful, then an employee must file within 3 years. Each paycheck that reflects unequal pay is considered a violation for the purpose of calculating the deadline for filing.

For example, if an employer decides in January 2016 to pay a female worker less than a male worker for substantially similar work, and the employer cannot justify the unequal pay with any available defenses, for a non-willful violation, the female worker has until January 2018 to file a claim to seek recovery going back to January 2016. If she waits until January 2019 to file a claim, she can seek recovery going back only two years, or January 2017.

Q: Where can I bring a claim to enforce the Equal Pay Act? Must I file an administrative claim before filing a case in court?

A: An employee who has experienced an Equal Pay Act violation can file an administrative claim before the Labor Commissioner’s office or file an action in court. For information about filing a claim with the Labor Commissioner’s Office, go to <http://www.dir.ca.gov/dlse/dlseRetaliation.html>. Depending on the nature of the claim, the employee may also file a claim with the California Department of Fair Employment and Housing. An employee does not have to file an administrative claim before filing an action in court.

Q: What happens after I file my claim with the Labor Commissioner’s Office?

A: Under California Labor Code section 98.7, the Labor Commissioner’s Office investigates your claim and makes a determination as to whether or not the employer violated the Equal Pay Act. If the Labor Commissioner’s Office determines that no violation occurred, it will dismiss the claim. If the Labor Commissioner determines that a violation occurred, it will make a demand for remedies. If the employer fails to comply with the Labor Commissioner’s demand for remedies, then the Labor Commissioner files a civil action in court.

Q: Do I need to file a claim with the California Department of Fair Employment and Housing (DFEH)?

A: The DFEH enforces the California Fair Employment and Housing Act, which prohibits discrimination based on sex, in addition to other protected categories. You may, but are not required to, file a claim with the DFEH if you are only claiming unequal pay based on sex. Because the Labor Commissioner’s Office only investigates the Equal Pay Act, if you have additional claims (for example, if you also claim discrimination in promotion based on sex or if you also claim discrimination based on another protected status), you can also file with the DFEH. For information about deadlines for filing complaints with the DFEH, go to http://www.dfeh.ca.gov/Complaints_ComplaintProcess.htm or call 800-884-1684.

Q: May I file a claim under the Equal Pay Act anonymously or in a group with others?

A: The law states that the Labor Commissioner’s Office shall keep the name of the employee who files an Equal Pay Act claim confidential until it establishes the validity of the claim. However, the Labor Commissioner may reveal the name of the claimant if needed to investigate the claim. Employees who are similarly affected may all file claims against the same employer. These claims may be assigned to the same investigator.

Q: What do I get if I prevail in my Equal Pay Act claim?

A: Under the Equal Pay Act, an employee can recover the difference in wages, interest, and an equal amount as liquidated damages. If an employee files a case in court, he or she can also recover attorney’s fees and costs.

Q: How long must an employer keep records of employee wages and wage rates?

A: Under the amended Equal Pay Act, an employer must keep records of wages, wage rates, job classifications, and other terms and conditions of employment for a period of three years.

Q: Can I ask my employer how much other employees are paid?

A: Yes, an employee can ask his or her employer about how much other employees are paid, however, the law does not require an employer to provide that information.

Q: Can my employer retaliate against me for asking about other employees’ wages?

A: An employer may not prohibit an employee from disclosing his or her own wages, discussing the wages of others, inquiring about another employee’s wages, or aiding or encouraging any other employee to exercise rights under the Equal Pay Act. Accordingly, an employer may not retaliate against an employee for engaging in such conduct.

Q: Am I protected from retaliation if I complain about an Equal Pay Act violation?

A: Yes, the amended Equal Pay Act specifically prohibits an employer from retaliating against an employee for “any action taken by the employee to invoke or assist in any manner” with the enforcement of the Equal Pay Act.

Q: What is my deadline to file a retaliation claim with the Labor Commissioner?

A: An employee must file a retaliation claim within six months of the retaliation.

Q: What do I get if I prevail in my retaliation claim?

A: Under the California Labor Code, an employee who prevails in a retaliation claim may be awarded reinstatement, back pay, interest on back pay, and possibly other remedies.

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