



Introduction

In January 2016, SB 358 “the California Fair Pay Act” took effect. The momentum is strong in California to redress gender pay inequity, and nationwide it continues to grow. Many women and their allies recognize that we are in a moment of real change. We have the opportunity to take focused action toward finally ending an inequality that has persisted for centuries. California is uniquely positioned to provide our leadership and example on this issue, and the CCSWG is uniquely positioned within California to help ensure effective and meaningful implementation of the strongest equal pay law in the country.

Mission: Ensure effective implementation of the strongest equal pay law in the nation by supporting meaningful compliance and active awareness through the facilitation of ongoing dialogue among diverse parties and interests.

Proposal

The CCSWG should create a Gender Pay Equity Taskforce. The taskforce should be comprised of no more than fifteen members, each identified and proposed by the CCSWG Gender Equity in the Workplace and Employment Subcommittee. In addition to identifying potential taskforce members, the Subcommittee will seek out and consider nominations from organizations, agencies, and groups with subject-matter expertise and/or experience in workplace policy and compensation. Selected candidates will be approved by the full Commission. The Gender Pay Equity Taskforce could begin convening within six months from the date this proposal is considered and voted upon. The taskforce will elect a Chair, and convene working sessions no less than six times per year. The California Division of Labor Standards Enforcement, which implements and enforces the California Equal Pay Act, including the provisions of SB 358, will provide in-kind professional support to the taskforce. The California Labor Commissioner, a statutory member of the CCSWG, shall serve on the taskforce, and/or can appoint a deputy authorized to act on her behalf. Both members of the CCSWG Gender Equity in the Workplace and Employment Subcommittee will serve on the taskforce. The taskforce will seek out and designate a Diversity Officer, to work closely with the taskforce in fulfillment of its tasks.

Taskforce Members:

- Seats One & Two: California Labor Commissioner, or representative, and Member(s) of the CCSWG Gender Equity in the Workplace and Employment Subcommittee
Commissioner Julie Su and Commissioner Lauri Damrell
- Seats Three & Four: Two California State Legislators, preferably one from each party and from each house of the Legislature, or staff representatives
- Seat Five: Employee Representative One: Preferably, an individual who meets several of the following criteria/backgrounds: works in or represents workers in an industry where wage discrimination is common; a discrimination or employment lawyer with an emphasis on gender equity and with expertise on discrimination against women of color; representatives from women advocacy groups, such as the California Employment Lawyers Association, Equal Rights Advocates and the CA Women’s Law Center
- Seat Six: Employee Representative Two: Labor Union representative
- Seat Seven: Employer Representative One: Preferably, an individual who meets several of the following criteria/backgrounds: in-house corporate representatives from small, mid-size, or large companies in different sectors (e.g., technology, finance, retail, restaurants/hotels, health care, etc.); representative from in-house employment attorneys or human resources compensation executive
- Seat Eight: Employer Representative Two: Representative from the California Chamber of Commerce
- Seat Nine: A Chief Diversity Officer (or equivalent), such as a person who works in human resources responsible for diversity
- Seat Ten: A person with a background in statistical research, particularly in areas of gender analysis
- Seat Eleven: A representative from the Department of Fair Employment and Housing
- Seat Twelve: A Federal Government representative/liaison
- Seat Thirteen: A person with a background in industrial-organizational psychology

Analysis

Administrative Enforcement Provisions

The California Division of Labor Standards Enforcement administers and enforces provisions of the Equal Pay statute, including the following:

- Investigates complaints filed by an employee under the Equal Pay Act when there is an allegation of wages paid less than the wages the employee is entitled to pursuant to the provisions of the Act.
- Supervises the payment of wages and interest found to be due by an employer who violates the law. The employer is liable for the amount the employee is deprived of wages and interest. The employer is also liable for liquidated damages.
- Anti-Retaliation: Employers are prohibited from retaliating against employees for exercising their rights under the Act, including the newly adopted retaliation provisions under SB 358, which extend the existing enforcement mechanisms for wage discrimination under the Equal Pay Act to claims for retaliation, and provides a one-year statute of limitations for retaliation claims filed in civil court. Employees have six-months after the occurrence of the alleged retaliatory action to file an administrative claim.

Civil Enforcement

Any employee aggrieved by a violation of California's Equal Pay Act, including the new standards implemented by the passage of SB 358, may either file an administrative complaint with the Division of Labor Enforcement, or may bring a civil action in court against an employer for violating the law.

The California Division of Labor Standards Enforcement or the Department of Industrial Relations may also commence and prosecute a civil action to recover unpaid wages and liquidated damages on behalf of an employee or affected group, unless the employee or affected group requests otherwise.

Benefits of the Taskforce

As California continues to lead the nation in implementing stronger equal pay protections we are in many ways entering uncharted territory, which gives us the opportunity to think outside the box. A Gender Pay Equity Taskforce can be a proactive measure to create a robust implementation strategy, as opposed to relying solely upon complaint-based enforcement of SB 358, and to provide a forum for engagement and dialogue with diverse interests who have the power to effect change in workplace and compensation policies and practices.

Enforcement is less robust when based solely on waiting for complaints to be filed. Meaningful implementation of California's Fair Pay Act necessarily requires engagement with employers and the private sector. Creating a narrative of empowering employers to understand the law, and to take the appropriate steps toward ensuring pay equity within their companies, through an interactive forum of engagement such as a Gender Pay Equity Taskforce, will provide lasting results in terms of comprehension of the law, compliance with the law, and an informed understanding of the importance of gender equity in the workplace.

As an independent state agency with convening authority the Commission is in a neutral position to bring together stakeholders in order that they may identify the challenges companies have in understanding and/or complying with the new law, and work together to identify solutions. Additionally, the CCSWG is uniquely positioned to facilitate meaningful implementation of SB 358, with the legislation's author Senator Hannah-Beth Jackson, the law's enforcer Labor Commissioner Julie Su, and a practicing employment law attorney Commissioner Lauri Damrell, all currently serving on the Commission.

Goals of the Taskforce

- 1) Bring together diverse parties and interests from the workplace and employment sector to help ensure meaningful implementation of SB 358.
- 2) State agencies, industry liaison groups, employers, advocates, legal experts, policymakers, and employees will speak on a candid level in order to receive information, disseminate information, and foster a dialogue on issues of pay inequity and compliance with the new law.
- 3) Engage the private sector in order to develop solutions to the challenges surrounding compliance. Currently, many companies are working with social scientists and diversity experts to identify the right solutions toward ensuring fairness in pay and workplace policy. The taskforce can borrow from this model by including experts from the fields of social science and corporate diversity to inform the discussion.
- 4) Reach and inform employees of their rights under the new law, as well as other equal pay protections.
- 5) Identify and engage employers who are taking proactive steps to ensure they are not discriminating in compensation; helping them to comply with this law and to support women's equality in the workplace.
- 6) Understanding from employers what they perceive as barriers to compliance and what can be done to remove them.
- 7) Produce a substantive guide to understanding the law—and the importance of gender equity in the workplace and compensation—for both employers and employees to reference and learn from.

- 8) Providing additional and ongoing written guidance as to the purpose of the law, and suggested steps to help with compliance efforts.

Process and Structure

- 1) Sub-committee to identify and select members of the taskforce.
- 2) Commission Chair to approve each nominee.
- 3) Convene the first meeting of the taskforce. At the first convening, identify a small working group for the purpose of creating an agenda for a meeting with various different constituents.
- 4) Hold a constituent meeting no later than one month after the first convening of the taskforce to identify different items for the taskforce to discuss and roundtable on based on input at the constituent meeting.
- 5) Following the constituent meeting, convene the taskforce pursuant to the requirements of the Bagley-Keene Open Meeting Act.
- 6) Identify issue-areas based on the constituent meeting and input. Create two-person subcommittees based on those issue-areas.
- 7) Produce an Interim Report by December 2016.

Proposed Products for Taskforce Discussion

- 1) Create SB 358 *Considerations and Guidelines*.
- 2) Develop best practices and steps for conducting a self-audit, based on examples of what other employers are doing:
 - a. Gathering information, particularly in terms of logistics, from the perspective of smaller companies and the perspective of larger companies, as to the steps taken within their companies to evaluate the factor of gender in compensation, promotion, and hiring.
 - b. Identifying and utilizing an expert knowledgeable in gender equity in compensation, promotion, and hiring, specifically in conducting audits.
 - c. Carefully construct this guidance in the form of a document that is useful to human resources officers, or potential complainants. The document will be user-friendly and inform employees of their rights and the potential remedies available to them, and be a source of guidance she/he can offer to her/his employer.
- 3) Develop best practices as a template or as suggested forms to be used companywide:
 - a. Keeping in mind that there is no-one size fits all model, and that these forms may need to differ based on company size, or other potential factors such as industry, the taskforce will work to develop and disseminate forms, or templates for

forms, that companies can keep within a personnel file and store online to assist with:

- i. Documenting pay decisions and factors.
 - ii. Documenting hiring decisions and factors.
 - iii. Documenting decisions and factors regarding starting pay and promotions.
 - iv. Guiding and informing company policies and procedures, and methods used for documentation of promotion and compensation decisions, when decisions are tied to factors that are not gender related.
- 4) Develop a model performance review system for companies to utilize.
 - 5) Suggest to enforcement agencies proactive measures to prevent the perpetuation of pay inequity, such as ordering as a remedy, or a point of settlement, in a retaliation case or EPA claim, specific training on best practices, or a self-audit.

Budget Projection, Annual Costs

- 1) Meeting Space: \$0 annual costs

The taskforce could convene meetings in the following cities:

- Sacramento
- San Francisco
- Silicon Valley
- Los Angeles
- Orange County

In considering the costs of securing travel, a meeting space, the availability of staff, and the availability of state agency representatives, it is proposed that Sacramento, California be selected as the permanent location for taskforce public meetings. The taskforce will make an effort to meet at least one time per year in each of the following areas: San Francisco, Silicon Valley, Los Angeles, and Orange County.

Options for securing a meeting space in Sacramento include:

- California State Library Conference Room, 900 N Street, Sacramento, Room 340.
\$0
- Department of General Services Conference Room, 707 Third Street, West Sacramento.
\$0
- Stanley Mosk Library and Courts Building, Meeting Room, 914 Capitol Mall, Sacramento.
\$0
- Orrick law firm, 400 Capitol Mall, Suite 3000, Sacramento
\$0

Options for securing meeting spaces in other major metropolitan areas: (accessible to the public; must have ground-level meeting space or elevators)

- San Francisco, The Orrick Building, 405 Howard Street, San Francisco, CA
- Silicon Valley, 1000 Marsh Road, Menlo Park, CA
- Los Angeles, 777 South Figueroa Street, Suite 3200, Los Angeles, CA
- Orange County, 2050 Main Street, Suite 1100, Irvine, CA

2) Administrative Costs: \$60,000

CCSWG staff time broken out between three staff members:

- 25% Policy Director (AGPA) for coordination among taskforce members including agencies and legislative offices, research, reports, and basic administrative duties
- 25% Public Outreach (SSA) for communications, outreach, website coordination, and basic administrative duties
- 15% Executive Director for oversight of staff work, networking, coordination of resources, and budget management

3) Research Costs: \$ 0

- Coordinated with a Legislative Office and the California Research Bureau

4) Supplies: \$ 1,000

- Deducted from the Commission's estimated expenditure authority for "Goods"

5) Printing: \$1,000

- Deducted from the Commission's estimated expenditure authority for "Printing"

6) Outcomes: \$6,000-\$200,000

Substantive written materials and guides, including a toolkit and comprehensive reports, will be informed through the taskforce process. Once the taskforce begins convening and identifying the information gaps and needs of employees and employers, the composition and extent of guidance documents will be determined through a next steps framework.

- Online *Considerations and Guidelines*, in addition to publication of best practices guide and model forms and templates, created and posted on a designated page of the CCSWG website \$6,000

- Online *Considerations and Guidelines*, in addition to publication of best practices guide and model forms and templates, created and posted on a website designed specifically for the Gender Pay Equity Taskforce and its guidance documents
\$15,000
- Comprehensive Public Education Outreach Plan, including all materials and staff work
\$200,000

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