

# The California Fair Pay Act



- Amends the California Equal Pay Act (Labor Code section 1197.5) through Senate Bill 358
- Modeled after the federal Paycheck Fairness Act
- Constitutes the most employee-friendly equal pay legislation in the country
- Became effective January 1, 2016

# The California Fair Pay Act



- “Substantially similar” work when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.
- Eliminates the requirement that comparator employees be at the same establishment.

# Increased Burden on Employers to Justify Exceptions



- Same four exceptions (factors) apply, but:
  - Employer must show each factor relied upon is applied “reasonably”
  - Employer must show the factor(s) relied upon account for the entire wage differential
  - If employer relies upon “a bona fide factor other than sex,” employer also must show the factor (1) is not based on or derived from a sex-based differential in compensation, (2) is job related, and (3) is consistent with business necessity. Employee can still prevail by showing an alternative and equally effective business practice exists without producing a wage differential

# New Anti-Retaliation and Recordkeeping Requirements



- Prohibits retaliation against employees who seek to enforce the provisions of the new law.
- Expands protections under California Labor Code 232: employers may not prohibit employees from disclosing their own wages, discussing or inquiring about the wages of others, or aiding or encouraging others to exercise their rights under the new law. Also prohibits retaliation based on these activities.
- Authorizes a new type of civil action for retaliation under this section (one year statute of limitations).
- Increases record-keeping requirements from 2 to 3 years.

# What More Should Employers Do?



- Analyze and articulate the different factors and circumstances that affect individual pay decisions
- Be prepared to articulate (and document) reasonable application of pay factors
- Keep records (3 years)
- Articulate and identify who you regard as “cohorts” (peers)
- Audit pay decisions & cohort pay differences
- Normal business practice vs. privileged audits?
- Training for managers who make pay decisions