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Employee Benefit Plan Review

California's Fair Pay Act Gets a Facelift on Its 10-Year Anniversary

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The California Fair Pay Act is 10 years old. Originally passed in an ongoing effort to bridge the gender pay gap which has historically existed and persisted, it provided for greater exposure in both public postings and in comparable pay for similar job positions. On this anniversary, the legislature responded by revising the bill to create stricter reporting requirements and expansive permissions. Although this revision became law January 1, 2026, it is important to recall and revisit this amendment as it has ongoing requirements for every employer with over fifteen employees, both public and private.

SB 642 altered the California Equal Pay Act by:

(1) expanding the definition of wages;
(2) expanding the statute of limitations;
(3) expanding the scope of what can be recovered as lost pay;
(4) expanding the definition of gender binary language; and
(5) limiting the previously permitted pay ranges in public job postings.

The changes are codified in both section 432.3 and 1197.5 of the Labor Code. This article breaks down what the changes mean and how to implement them.

Expanding the Definition of Wages and Wage Rate

One major expansion is the definition of wages. Rather than permitting the use of the actual hourly wage or salary, SB 642 decided to mirror the federal definition in the Equal Pay Act which includes "all forms of compensation irrespective of the time of payment, whether paid periodically or deferred until a later date, and whether called wages, salary, profit sharing, expense account, monthly minimum, bonus, uniform cleaning allowance, hotel accommodations, use of company car, gasoline allowance, or some other name. Fringe benefits are deemed to be remuneration for employment."[1] To be sure, that is a mouthful and a deviation from what has been previously permitted.

There is some good news. The statute, Labor Code section 1197.5(l)(3), expressly limits this broad definition to just this section.

Key Takeaway No. 1

This is a reminder to schedule and conduct regular pay audits. As your employment lawyer will continually remind you, this is not just a play for the offense to ensure you are complying. But this is a key and important step for defense. With the ongoing and increasing filing of PAGA claims, pay audits work hand in hand with compliance audits not just for this revised law but with the other new laws that are being implemented including recordkeeping requirements, hourly wage requirements, and on. It cannot be stated enough – so we will restate – that PAGA reform has provided a viable and economically beneficial defense to PAGA claims. Pay audits are so important to keep in the forefront of your to do list.

> **Another expansive provision of this revised law is the period for recovery.**

Key Takeaway No. 2

This is a reminder to update your job descriptions to actually mirror the job duties being done. An employee is able to request not just the compensation but the job duties to determine if the position is substantially similar.

Expanding the Statute of Limitations for Recovery

Another expansive provision of this revised law is the period for recovery. The original Equal Pay Act provided workers two years of recovery after the equal pay wage violation occurred, unless there was a showing of willfulness which expanded the period to three years. The legislative history demonstrated an intent to expand this provision to mirror other wage claims or FEHA-related claims.

This revision overshot this a bit. Not only did the statute of limitations get expanded, but the revision permits a three-year look back period. This is based on the continuing violation doctrine which permits expansive recovery if the wage violation is sufficiently connected to conduct that took place with the limitations period. The good news, however, is that the statutory provisions limited the time period to six years.

Key Takeaway No. 3

The code requires that the employer maintain records of a job title and wage rate history for each employee for the duration of that employee's employment plus three years after the end of the employment. This is an absolute requirement. The stated record keeping mandate is to provide the data to determine if a subsequent employee, perhaps of a different gender, is paid differently for this position. These records are to be open for inspection.

Expanding the Scope of Recovery

The earlier statutory provision did not specifically include a definition of wages. As previously discussed, this new provision not only includes a definition but provides a very expansive scope. This includes "all forms of pay, including, but not limited to, salary, overtime pay, bonuses, stock, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits."

The recovery permitted under the statute is:

(1) the balance of the wages due;
(2) interest on said balance; and
(3) an equal amount as liquidated damages.

The revised statute also expressly permits attorneys' fees and costs of the suit.

Key Takeaway No. 4

Although the information does not need to be publicly posted, there must be an understanding internally of what the broader definition of compensation includes, particularly if faced with a request or a lawsuit. This is important to keep at the forefront to provide an understanding to the employees what the compensation standard actually entails.

Expanding the Definition of Gender

Of no surprise is the expanded definition of sex. The stated goal is to align the definition of "sex" with the Fair Employment and Housing Act. Specifically, the law permits the definition to cover gender identity and gender expression.

Key Takeaway No. 5

This is an opportune time to review your policies and handbook to make sure that the definition of sex is more inclusive to include gender identity and gender expression.

Limiting the Pay Range on Public Postings

What has been consistent between the original law and now the revision is the addition of a pay scale in all postings for any employer of 15 employees or more, whether public or private. This, again, is an absolute requirement. Although there was not a definition included, the legislative history provided some examples, one of what not to do. Specifically, they included an example where the improper pay range that was posted ranged from $65,000 to $400,000 – and included a link to the job posting.

Key Takeaway No. 6

Let's not be the example of what not to do. Although the statute does not provide a specific requirement but rather a good faith estimate, the statutory language and history suggest a 10% differential. For example, if the mean pay rate for an advertised job is $65,000, then the range can be $6,500 below and above that rate ($58,500- $71,500).

Note

1. 29 CFR § 1620.10.

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