

This the first of four (4) in a series of updates for California employers for the upcoming 2016 year. This update address the Fair Pay Act and the Minimum wage increase.

**The information below is designed to provide general information and guidance concerning employment-related issues. It is presented with the understanding that Greear Consultant Group, LLC is not engaged in rendering any legal opinions. If a legal opinion is needed, please contact the services of your own legal advisor, or ask GCG for a referral.**

First up is a reminder that Minimum Wage goes up to \$10 Per Hour effective 1/1/16, make sure you adjust your exempt employees' wages. For example under the executive or management exemption the salaried wage must be 2Xs the minimum wage. Under the inside sales exemption the wage must 1 ½ xs the minimum wage. Employers frequently forget to adjust their exempt wages to properly reflect the hourly wage increase.

*Senate Bill (SB) 358 - Fair Pay Law<sup>1</sup>*

California employers may no longer pay employees of one sex less than employees of the opposite sex for substantially similar work. Governor Jerry Brown signed Senate Bill No. 358, the Fair Pay Act, which strengthens California's equal pay law. In the bill, the California Legislature found and declared that, "[i]n 2014, the gender wage gap in California stood at 16 cents on the dollar" meaning that "[a] woman working full time year round earned an average of 84 cents to every dollar a man earned." The stated purpose of the Fair Pay Act is to improve California's equal pay provisions and thereby eliminate the gender wage gap in California.

The new law puts the burden on employers to demonstrate that any discrepancy between male and female employees for substantially similar work is attributable to (1) a seniority system, (2) a merit system, (3) a system that measures earnings by quantity or quality of production, or (4) another bona fide factor other than sex, such as education, training, or experience.

***The definition of substantially similar work, is viewed as a composite of skill, effort, and responsibility and whether the work is performed under similar working conditions.***

In addition the new law is noteworthy because it specifically forbids employers from prohibiting employees, including managers and supervisors, from disclosing or discussing their salaries. The reasoning behind this is simple, if I can't ask my male counterpart how much he is making for doing the same work, how would I know I potentially have a lawsuit.

Governor Brown has referred to the new law as "the strongest equal pay law in the nation"

From an employment stand point the new law places the burden of proof on the employer, not the employee. In addition it allows for double damages (the wage disparity plus an equal amount for liquidated damages) plus attorneys' fees. So it could be litigation dream come true for the employee and a liability nightmare for you the employer.

Here are 5 things you can do now to minimize your exposure to claims of pay discrimination.

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<sup>1</sup> Sources Mondaq.com and SHRM.org

1. Get your handbooks updated. Review your equal employment opportunity policy and compensation guidelines to ensure they contain language specifically prohibiting pay discrimination.
2. Make sure your handbook addresses that you DO NOT prohibit employees from discussing their compensation. That practice has been illegal in California before, but the new law reinforces that prohibition.
3. Understand what factors can legitimately be used to justify pay disparities. These include education, training, and experience. Systems that base compensation on seniority, merit, and production are also acceptable.
4. Build your defense now by evaluating your compensation system to make sure that any pay disparities can be explained using legitimate factors. Even where those factors are present, you will need to be prepared to show that they were applied reasonably and that they account for the entire differential in wages..
5. Provide guidelines and training to those making compensation decisions so that they understand their legal obligations and what factors are permissible.

Good luck out there California Employers.