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Pay Equity expanded to Race and Ethnicity

Effective January 1, 2017 California expands the pay equity law to include race and ethnicity, *in addition “prior salary shall not, by itself, justify any disparity in compensation¹”*

While law as amended does not reach the level of Massachusetts (where state law **significantly**, forbids companies from asking job applicants about their **salary** history.) The California version sorta limits an employer’s negotiating abilities.

In its simplest form as an example, you have an employee who was making 40K in a previous position, you already have three other employees working in the position the newbie is applying for, so you offer 45K, a nice little bump right??? WRONG! If the other three are making 50K, that’s where the compensation starts, unless the employer can demonstrate that the wage differential is based on either:

- A seniority system;
- A merit system;
- A system that measures quality or quantity of production; or
- A bona fide factor other than **sex, race or ethnicity** (such as education, training, or experience).

The above may sound easy, but it is much harder than one may think and ultimately the burden of proof is on you, the employer.

Some suggested employer actions include:

- 1) Remove salary related questions from your application
- 2) Review your pay practices and policies
- 3) Train your managers who are responsible for hiring to understand the permissible bases for differences in compensation.

Litigation under the FPA will be expensive and uncertain. The standards are vague and some unlucky employers are going to serve as guinea pigs while courts figure out what the law really means.²

¹ SEC. 2. Section 1197.5 as amended D3

² [Fox Rothchild LLP](#)