

Senate Bill 358

Fair Pay Act

Senator Hannah-Beth Jackson

SUMMARY

The California Fair Pay Act will strengthen the state's existing equal pay law by eliminating loopholes that prevent effective enforcement and empowering employees to discuss pay without fear of retaliation.

BACKGROUND

Working women in California continue to make less than men for the same or substantially equal work. The persistent disparity in earnings across every occupation has a significant impact on the welfare and economic security of millions of women and their families in our state and contributes to the higher poverty rate among women—especially among women of color and single women living with children. As a group, working women in California lose over \$33 billion each year due to the wage gap. In 2013, the average woman in California working full-time, year-round earned a median of 84 cents to every dollar earned by a man. The problem is even worse for women of color: for example, African American and Latina women working full-time in California make an average of just 64 cents and 44 cents, respectively, for every dollar earned by white men. California has the *worst* Latina gender wage gap in the nation.

Wage discrimination is often “hidden from sight,” and pay secrecy undermines attempts to reduce the gender wage gap. Workers who lack information about pay, or who are prohibited from discussing or asking about the wages of other employees doing the same or substantially equal work, cannot discover pay discrimination. Workers are also less likely to inquire or complain about pay disparities if they fear punishment or retaliation from their employer for doing so.

California has laws which attempt to address pay inequality, including the California Equal Pay Act (EPA). However Labor Code provisions codifying the Act (which were first enacted in 1949 and last amended in 1985) contain out-of-date terms, as well as loopholes that make it difficult to enforce in practice. In addition, while other Labor Code provisions prohibit retaliation against employees for “disclosing” their own wages, there is

currently no specific protection for inquiring about the wages of other employees, if the purpose of such inquiry is to exercise one's right to be paid equally for equal work.

SOLUTION

SB 358 will contribute to the elimination of the gender wage gap in California by:

- Ensuring that employees performing substantially similar work are paid fairly;
- Eliminating the outdated “same establishment” requirement;
- Clarifying the employee's and employer's burdens of proof under the EPA;
- Revising the “bona fide factor other than sex” defense to also require the employer to prove a business necessity for using the factor;
- Ensuring that any legitimate, non-sex related factor(s) relied upon are applied reasonably and account for the entire pay differential; and
- Discouraging pay secrecy by explicitly prohibiting retaliation or discrimination against employees who disclose, discuss, or inquire about their own or co-workers' wages.

SPONSORS

Equal Rights Advocates
California Employment Lawyers Association
Legal Aid Society-Employment Law Center

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9to5 California, National Association of Working Women
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AAUW
Alliance of Californians for Community Empowerment
American Association of University Women - California
American Civil Liberties Union of California
Bet Tzedek Legal Services
Business & Professional Women of Nevada County

CalAsian Chamber of Commerce
California Chamber of Commerce
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California Hospital Association
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California Women's Law Center
California Work and Family Coalition
Career Ladders Project
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Civil Justice Association of California
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National Domestic Workers Alliance
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Organization of SMUD Employees
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Planned Parenthood Affiliates of California
Planned Parenthood Northern California Action Fund

Raising California Together
Redlands Area Democratic Club
Restaurant Opportunities Centers United
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San Diego County Court Employees Association
San Francisco Unified School District
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TradesWomen Inc.
Ultra Violet
Western Center on Law and Poverty
Women In Non Traditional Employment Roles
Women's Foundation of California
Women's Law Project

NEUTRAL

National Federation of Independent Business

OPPOSITION

California National Organization for Women

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