



# California Pay Equity

## **Statute**

- [California Fair Pay Act, Cal. Labor Code § 1197.5](#)
- [Prohibition on Salary History Inquiries, Cal. Labor Code § 432.3](#)
- [Annual Pay Data Report, Cal. Gov. Code 12999](#)
- [San Diego Equal Pay Ordinance](#)
- [San Francisco Parity in Pay Ordinance](#)

## **Classes Protected**

- Sex, race, ethnicity

## **Key Language on Pay Discrimination**

- "An employer shall not pay any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions[.]"

## **Exceptions for Pay Disparities (Including Affirmative Defenses)**

- Seniority system
- Merit system
- System which measures earnings by quantity or quality of production
- Any bona fide factor other than sex, race, or ethnicity such as education, training, or experience. Employer must demonstrate that the factor is not based on a sex, race, or ethnicity-based differential in compensation, is job related to position in question, and is consistent with a business necessity.

## **Prohibition on Salary History Inquiry**

- "An employer shall not, orally or in writing, personally or through an agent, seek salary history information including compensation and benefits, about an applicant for an employment." Upon reasonable request, an employer shall provide the pay scale for a position to an applicant. This does not apply to salary history information disclosable to the public through a public records request.
- San Francisco precludes employers from asking applicants about current or past salaries. Employers may not disclose a current or former employees' salary history without the

employees' consent unless the information is already publicly available.

### **Anti-Retaliation**

- Cannot discharge, discriminate, or retaliate against any employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of this law

### **Wage Disclosure Requirement**

- Employers with 15 or more employees must include the pay scale for a position in any job posting if the position may ever be filled in California either in-person or remotely
- Not only can applicants request the pay scale for the position that they are applying for, but employers of all sizes must now also provide the pay scale for the position that they are currently employed upon request
- A "pay scale" is defined as the salary or hourly wage range that the employer "reasonably expects" to pay for the position
- If an employer uses a third party to "announce, post, publish, or otherwise make known a job posting," employer must provide the pay scale to the third party and it must include the pay scale on the job posting;
- Employers must further maintain records of job titles and wage rate history for each employee for the duration of their employment plus three years after the end of employment. The DLSE can inspect these records to see if there is a pattern of wage discrepancy employers as you prepare to comply with California's new law.

### **Pay Transparency**

- Employer cannot prohibit an employee from disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise his or her rights under this law

### **Other Key Provisions**

- All private employers of 100 or more employees must submit specific pay data by the second Wednesday of May 2023, and on or before the second Wednesday of each May thereafter, covering the prior calendar, or "Reporting Year." The report must include the number of employees by race, ethnicity, and sex for 10 job categories based on a "snapshot" that counts all employees in each job category by race, ethnicity, and sex, employed during a single pay period of your choice between October 1 and December 31 of the Reporting Year.
- Employers must also report whether employees worked remotely during the snapshot period. A remote worker is defined as "a payroll or labor contractor employee who is entirely remote, teleworking, or home-based, and has no expectation to regularly report in person to a physical establishment to perform work duties." It does not include employees who work "hybrid" schedules (that is, some on-site work, and some remote work).

## ***Pay Equity Team***

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## ***Related Insights***

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