

Introduced by Senator JacksonFebruary 24, 2015

An act to amend Sections 232, 232.5, and 1197.5 of the Labor Code, relating to private employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 358, as introduced, Jackson. Conditions of employment: wages and working conditions: gender wage differential.

Existing law regulates the payment of compensation to employees by employers and prohibits an employer from conditioning employment on requiring an employee to refrain from disclosing the amount of his or her wages, signing a waiver of the right to disclose the amount of those wages, or discharging an employee for making such a disclosure. Existing law establishes similar prohibitions in connection with disclosing an employer's workplace conditions.

This bill would extend the prohibitions described above to discussions and inquiries regarding the wages of an employee, the wages of other employees, and workplace conditions. The bill would require an employer to post these provisions in a conspicuous location frequented by employees during the hours of the workday.

Existing law generally prohibits an employer from paying an employee at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. Existing law establishes exceptions to that prohibition where the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex. Existing law makes it a misdemeanor for an

employer or other person acting either individually or as an officer, agent, or employee of another person to pay or cause to be paid to any employee a wage less than the rate paid to an employee of the opposite sex as required by these provisions, or who reduces the wages of any employee in order to comply with these provisions.

This bill would revise that prohibition to eliminate the requirement that the pay differential be within the same establishment, and would replace the terms “equal” work “and” equal skill, effort, and responsibility “with” comparable work “and” comparable skill, effort, and responsibility. The bill would revise and recast the exceptions to require the employer to affirmatively demonstrate that a pay differential is based upon one or more specified factors, including seniority system, a merit system, a system that measures earnings by quantity or quality of production, or that work is performed at different geographic locations, on different shifts, or at different times of day. The bill would also require the employer to demonstrate that each factor relied upon is applied reasonably, and that the one or more factors relied upon account for the entire differential. By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) In 2013, the gender wage gap in California stood at 16 cents
- 3 on the dollar. A woman working full-time year-round earned an
- 4 average of 84 cents to every dollar a man earned. This wage gap
- 5 extends across almost all occupations reporting in California. This
- 6 gap is far worse for women of color; Latina women in California
- 7 make only 44 cents for every dollar a white male makes, the biggest
- 8 gap for Latina women in the nation.
- 9 (b) While the state’s overall wage gap is slightly lower than the
- 10 national average of 77 cents to the dollar, the persistent disparity
- 11 in earnings still has a significant impact on the economic security

1 and welfare of millions of working women and their families.
2 Collectively, women working full-time in California lose
3 approximately \$36,971,379,159 each year due to the gender wage
4 gap. The wage gap contributes to the higher statewide poverty rate
5 among women, which stands at 18 percent, compared to
6 approximately 15 percent for men, and the poverty rate is even
7 higher for women of color and single women living with children.

8 (c) California has prohibited gender-based pay discrimination
9 since 1949. Section 1197.5 of the Labor Code was enacted to
10 redress the segregation of women into historically undervalued
11 occupations, but it has evolved over the last four decades so that
12 it is now virtually identical to the federal Equal Pay Act of 1963
13 (29 U.S.C. Sec. 206(d)). However, the state provisions are rarely
14 utilized because many loopholes make it nearly impossible to
15 establish a successful claim.

16 (d) Pay secrecy also contributes to the gender pay gap, because
17 women cannot challenge pay discrimination that they do not know
18 exists. Although California law prohibits employers from banning
19 pay disclosures and retaliating against employees for engaging in
20 this activity, in practice many employees are unaware of these
21 protections and others are afraid to exercise these rights due to
22 potential retaliation.

23 (e) To eliminate the gender wage gap in California, the state's
24 equal pay provisions and laws regarding pay disclosures must be
25 improved.

26 SEC. 2. Section 232 of the Labor Code is amended to read:

27 232. ~~No~~An employer ~~may~~ *shall not* do any of the following:

28 (a) ~~Require, as a condition of employment, that~~ *Bar* an employee
29 ~~refrain from disclosing~~ *disclosing, discussing, or inquiring about*
30 ~~the amount of his or her wages.~~ *wages, or from inquiring about*
31 *or discussing the wages of other employees.*

32 (b) Require an employee to sign a waiver or other document
33 that purports to deny the employee the right to ~~disclose~~ *disclose,*
34 *inquire about, or discuss* the amount of his or her ~~wages.~~ *wages,*
35 *or to inquire about or discuss the wages of other employees.*

36 (c) Discharge, ~~formally~~ discipline, or otherwise discriminate
37 against an employee who ~~discloses~~ *discloses, discusses, or inquires*
38 *about* the amount of his or her ~~wages.~~ *wages, or who discusses or*
39 *inquires about the wages of other employees.*

1 (d) An employer shall post a copy of this section and keep it
2 posted in a conspicuous location frequented by employees during
3 the hours of the workday.

4 SEC. 3. Section 232.5 of the Labor Code is amended to read:

5 232.5. ~~No~~An employer ~~may~~ shall not do any of the following:

6 (a) ~~Require, as a condition of employment, that~~ Bar an employee
7 ~~refrain from disclosing information about~~ disclosing, discussing,
8 or inquiring about the employer’s working conditions.

9 (b) Require an employee to sign a waiver or other document
10 that purports to deny the employee the right to ~~disclose~~ disclose,
11 discuss, or inquire about information about the employer’s working
12 conditions.

13 (c) Discharge, ~~formally~~ discipline, or otherwise discriminate
14 against an employee who ~~discloses~~ discloses, discusses, or inquires
15 about information about the employer’s working conditions.

16 (d) This section is not intended to permit an employee to disclose
17 proprietary information, trade secret information, or information
18 that is otherwise subject to a legal privilege without the consent
19 of his or her employer.

20 (e) An employer shall post a copy of this section and keep it
21 posted in a conspicuous location frequented by employees during
22 the hours of the workday.

23 SEC. 4. Section 1197.5 of the Labor Code is amended to read:

24 1197.5. (a) ~~No~~An employer shall not pay any ~~individual in~~
25 ~~the employer’s employ~~ employee at wage rates less than the rates
26 paid to employees of the opposite sex ~~in the same establishment~~
27 for ~~equal comparable~~ work on jobs the performance of which
28 requires ~~equal comparable~~ skill, effort, and responsibility, and
29 which are performed under similar working conditions, except
30 where the payment is made pursuant to a seniority system, a merit
31 system, a system which measures earnings by quantity or quality
32 of production, or a differential based on any bona fide factor other
33 than sex. the employer demonstrates:

34 (1) The pay differential is based upon one or more of the
35 following factors:

36 (A) A seniority system.

37 (B) A merit system.

38 (C) A system that measures earnings by quantity or quality of
39 production.

40 (D) Work is performed at different geographic locations.

1 (E) Work is performed on different shifts or at different times
2 of day.

3 (2) Each factor relied upon is applied reasonably.

4 (3) The one or more factors relied upon account for the entire
5 differential.

6 (b) Any employer who violates subdivision (a) is liable to the
7 employee affected in the amount of the wages, and interest thereon,
8 of which the employee is deprived by reason of the violation, and
9 in an additional equal amount as liquidated damages.

10 (c) ~~The provisions of Division of Labor Standards Enforcement~~
11 ~~shall administer and enforce this section shall be administered and~~
12 ~~enforced by the Division of Labor Standards Enforcement.~~ *section.*
13 If the division finds that an employer has violated this section, it
14 may supervise the payment of wages and interest found to be due
15 and unpaid to employees under subdivision (a). Acceptance of
16 payment in full made by an employer and approved by the division
17 shall constitute a waiver on the part of the employee of the
18 employee's cause of action under subdivision (g).

19 (d) Every employer shall maintain records of the wages and
20 wage rates, job classifications, and other terms and conditions of
21 employment of the persons employed by the employer. All of the
22 records shall be kept on file for a period of two years.

23 (e) Any employee may file a complaint with the division that
24 the wages paid are less than the wages to which the employee is
25 entitled under subdivision (a). ~~These complaints~~ *The complaint*
26 shall be investigated as provided in subdivision (b) of Section 98.7.
27 ~~The division shall keep confidential the name of any employee~~
28 ~~who submits to the division a complaint regarding an alleged~~
29 ~~violation of subdivision (a) shall be kept confidential by the~~
30 ~~division until the division establishes the validity of the complaint~~
31 ~~is established by the division, or complaint, unless the division~~
32 ~~must abridge confidentiality must be abridged by the division in~~
33 ~~order to investigate the complaint.~~ The name of the complaining
34 employee shall remain confidential if the complaint is withdrawn
35 before the confidentiality is abridged by the division. The division
36 shall take all proceedings necessary to enforce the payment of any
37 sums found to be due and unpaid to these employees.

38 (f) The department or division may commence and prosecute,
39 unless otherwise requested by the employee or affected group of
40 employees, a civil action on behalf of the employee and on behalf

1 of a similarly affected group of employees to recover unpaid wages
 2 and liquidated damages under subdivision (a), and in addition shall
 3 be entitled to recover costs of suit. The consent of any employee
 4 to the bringing of any action shall constitute a waiver on the part
 5 of the employee of the employee’s cause of action under
 6 subdivision (g) unless the action is dismissed without prejudice
 7 by the department or the division, except that the employee may
 8 intervene in the suit or may initiate independent action if the suit
 9 has not been determined within 180 days from the date of the filing
 10 of the complaint.

11 (g) Any employee receiving less than the wage to which the
 12 employee is entitled under this section may recover in a civil action
 13 the balance of the wages, including interest thereon, and an equal
 14 amount as liquidated damages, together with the costs of the suit
 15 and reasonable attorney’s fees, notwithstanding any agreement to
 16 work for a lesser wage.

17 (h) A civil action to recover wages under subdivision (a) may
 18 be commenced no later than two years after the cause of action
 19 occurs, except that a cause of action arising out of a willful
 20 violation may be commenced no later than three years after the
 21 cause of action occurs.

22 (i) If an employee recovers amounts due the employee under
 23 subdivision (b), and also files a complaint or brings an action under
 24 subdivision (d) of Section 206 of Title 29 of the United States
 25 Code which results in an additional recovery under federal law for
 26 the same violation, the employee shall return to the employer the
 27 amounts recovered under subdivision (b), or the amounts recovered
 28 under federal law, whichever is less.

29 SEC. 5. No reimbursement is required by this act pursuant to
 30 Section 6 of Article XIII B of the California Constitution because
 31 the only costs that may be incurred by a local agency or school
 32 district will be incurred because this act creates a new crime or
 33 infraction, eliminates a crime or infraction, or changes the penalty
 34 for a crime or infraction, within the meaning of Section 17556 of
 35 the Government Code, or changes the definition of a crime within
 36 the meaning of Section 6 of Article XIII B of the California
 37 Constitution.

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