

ASSEMBLY BILL

No. 2317

Introduced by Assembly Member Oropeza

February 19, 2004

An act to amend Section 1197.5 of the Labor Code, relating to gender pay equity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2317, as introduced, Oropeza. Gender pay equity.

Existing law prohibits employers from paying an employee at a wage rate 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, except where the payment differential is made pursuant to a bona fide factor other than sex. Existing law further imposes penalties on employers who violate this provision, subjecting them to civil action and specifying liquidated damages that may be paid to employees who are paid unfairly in violation of existing law.

This bill would increase the amount of liquidated damages due to employees who are paid unfairly in violation of existing law and would mandate the types of damages those employees should recover if successful in bringing a civil action against their employer.

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

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

1 SECTION 1. Section 1197.5 of the Labor Code is amended to
2 read:

1 1197.5. (a) No employer shall pay any individual in the
2 employer's employ at wage rates less than the rates paid to
3 employees of the opposite sex in the same establishment for equal
4 work on jobs the performance of which requires equal skill, effort,
5 and responsibility, and which are performed under similar
6 working conditions, except where the payment is made pursuant
7 to a seniority system, a merit system, a system which measures
8 earnings by quantity or quality of production, or a differential
9 based on any bona fide factor other than sex.

10 (b) Any employer who violates subdivision (a) is liable to the
11 employee affected in the amount of the wages, and interest
12 thereon, of which the employee is deprived by reason of the
13 violation, and in an additional equal amount as liquidated
14 damages.

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

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

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



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

14 (g) Any employee receiving less than the wage to which the
15 employee is entitled under this section ~~may~~ shall recover in a civil
16 action the balance of the wages, including interest thereon, and an
17 ~~equal~~ amount *equal to treble the balance of the wages* as liquidated
18 damages, together with the costs of the suit and reasonable
19 attorney's fees, notwithstanding any agreement to work for a lesser
20 wage. *If it is determined that the employer willfully violated this*
21 *section, the employee shall recover as liquidated damages an*
22 *amount equal to five times the balance of the wages due.*

23 (h) A civil action to recover wages under subdivision (a) may
24 be commenced no later than two years after the cause of action
25 occurs, except that a cause of action arising out of a willful
26 violation may be commenced no later than three years after the
27 cause of action occurs.

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

