

## California's new Fair Pay Act aims to close 'gender gap'

By Holly Culhane, Contributing Columnist



With much fanfare, newly elected President Obama signed into law the Lily Ledbetter Fair Pay Act of 2009. It was named after a production supervisor in an Alabama tire plant, who had sued unsuccessfully in federal court contending that she was the target of sexual discrimination because she was paid less than her male counterparts.

Although the long-time employee only learned about the pay disparity six months before her retirement, the alleged discrimination had been going on for years. The U.S. Supreme Court ruled 5-4 against Ledbetter because justices said she filed her complaint too late – more than 180 days after the decision to pay her less was made. In 2009, Congress removed this legal barrier by moving the statute of limitation to the last pay check issued, rather than the date the pay disparity began.

While that was five years ago, the gap between the wages of men and women has closed only slightly. According to a recent U.S. Census report, women nationwide who work full-time, year-round earned 78.6 percent of what similar men did in 2014. That is the smallest gap since 1960, when the government began tracking pay, the *Wall Street Journal* reported.

But in 2007 – two years before the Lily Ledbetter Fair Pay Act was enacted – women made 77.8 percent of what men were being paid.

The Great Recession of 2009 and women's personal decisions, including some women taking lower-paying jobs with family-friendly flex hours, are partially to blame for the slow pace. The Institute for Women's Policy Research now predicts women will not reach pay parity with men until 2059.

Although the pay disparity is less in California, where women reportedly earn 84 cents to every \$1 a man makes, state legislators hope to pick up the pace of closing the gap by sending Gov. Brown the California's Fair Pay Act. Many believe the act, which goes into effect in January, is the strongest equal pay law in the nation.

While some critics believe the law does not go far enough, the California Fair Pay Act gives new protections for workers and presents challenges for employers.

In a nutshell, the act ensures male and female employees who perform "substantially similar" work will receive equal pay, even if their job titles differ, or if they work in different offices for the same employers. For example, unless the employer can document widely different skills and responsibilities, a hotel's housekeepers, who are generally women, should be paid the same as its janitors, who are generally male.

A significant aspect of the new California Fair Pay Act is that it places on the employer the burden of proving a man's higher pay is based on factors other than gender bias. The act also protects employees from retaliation if they ask about pay disparities and discuss wages with their co-workers.

Workers can complain to the state Division of Labor Standards Enforcement about perceived pay discrimination, or file a lawsuit in superior court. Employers found to have violated the act can be liable for unpaid wages, interest and costs, including court and attorney's costs.

Employers should not wait for this far-reaching law to go into effect next year. They should take action now:

--Review all job classifications. Pay differentials should be based on "gender neutral" factors, such as seniority, education, training, experience, merit, quantity or quality of production.

--Review hiring procedures. Stress with recruiters and supervisors the need to establish pay criteria based on gender-neutral factors.

--Review policies. Ensure training and promotions are based on gender neutral factors.

--Communicate. Ensure that supervisors and employees understand retaliation will not occur if a worker raises a concern about potential pay disparity, or if a worker discusses pay issues with his or her co-workers.

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