Insights: Alerts

California Continues to Broaden the Scope of Its Equal Pay Law

OCTOBER 5, 2016

Written by Susan W. Pangborn, James Smith, Craig A. McDougal, Christin J. Jones

In our October 9, 2015 Legal Alert, we informed readers that California Governor Jerry Brown signed into law the California Fair Pay Act, which amended the existing California equal pay statute to make it easier for employees to establish claims of unlawful sex-based pay differentials, expanded existing employee rights to discuss compensation, and created new protections against retaliation for challenging equal pay violations. On September 30, 2016, Governor Brown strengthened California's pay equity rules yet again by signing into law two new bills, one of which restricts the use of prior pay to justify a pay disparity while the other adopts pay equity standards for pay differences between races and ethnicities similar to those that apply under the Fair Pay Act for gender-based pay differentials. These new laws will take effect on January 1, 2017.

The New Pay Equity Laws

Newly signed bill number SB1676 prohibits California employers from basing compensation solely on a worker's prior wage if that practice results in a pay disparity relating to sex, race, or ethnicity. The new law states that prior salary cannot, by itself, justify a disparity in compensation between employees doing substantially similar work. Violations are criminally punishable as a misdemeanor offense. The purpose of this law is to prevent the perpetuation of unfair wage disparities, thereby helping to close the wage gap between men and women and between different races and ethnic groups.

The other newly signed bill, SB1063, expands the requirements for equal pay beyond gender to reach pay disparities relating to race or ethnicity. The new law builds on the existing 2015 gender pay equity law by extending the same pay equity standards to pay differences between different races and ethnicities. It specifically bars employers from paying workers doing "substantially similar" jobs different wages based on their race or ethnicity. Just as the 2015 amendments did, this change significantly broadens the scope of the potential comparators in an equal pay claim, as the concept of "substantially similar" jobs is not defined, and potential comparators are not limited to workers employed by the employer in the same location as the alleged victim of pay discrimination. It will be up to the courts to determine how broadly the concepts embodied in the new law are applied.

Practical Implications

The California equal pay laws are already regarded as the nation's toughest, and these new measures will likely result in an increase in the number of equal pay claims that are filed in that state. Employers with employees in California should be cognizant of pay differentials that may be a result of an employee's prior wages, as well as differentials throughout their business operations for work that could arguably be characterized as "substantially similar" to work performed by their California employees. Employers should also maintain documentation of the

reasons, if any, for differing compensation rates paid to employees performing comparable work to be able to prove that they were reasonable and accounted for the entire pay differential. In light of the new prohibition against pay disparities resulting from basing compensation on an individual's prior pay, employers with employees in California should consider deleting from their employment applications and other pre-employment screening processes inquiries about applicants' current and past compensation.

Related People



Susan W. Pangborn
t 404.815.6305
spangborn@ktslaw.com



James Smith
t 415.273.4317
james.smith@ktslaw.com



Craig A. McDougal
t 214.922.7157
cmcdougal@ktslaw.com



Christin J. Jones
t 214.922.7148
cjones@ktslaw.com