

CONCURRENCE IN SENATE AMENDMENTS

AB 1209 (Gonzalez Fletcher)

As Amended September 1, 2017

Majority vote

ASSEMBLY: 48-19 (May 31, 2017)

SENATE: 23-13 (September 7, 2017)

Original Committee Reference: **L. & E.**

SUMMARY: Requires employers of 500 or more employees in California to collect information as specified on gender wage differentials for exempt employees and board members located in California and submit it to the Secretary of State (SOS) for publication on its internet website.

The Senate amendments make the reporting requirement biennial. Specify that a gender wage differential in the information provided is not, in itself, a violation of existing law and that these provisions do not limit, in any way, the ability to demonstrate the basis of a wage differential for purposes of Labor Code Section 1197.5. Provide clarifying changes that this measure only applies to California employees. Provide for other technical and clarifying changes.

See policy committee analysis for existing law and background.

FISCAL EFFECT: According to the Senate Appropriations Committee, "SOS would incur costs in the hundreds of thousands of dollars annually to implement the provisions of this bill."

COMMENTS: The author argues that, "On average, American women only earn 78 cents for every dollar compared to their male counterparts. The annual average gender gap is slightly better in California at 85 cents on the dollar. However, California has one of the largest wage gaps for African American women and Latinas, who only earn 64 and 54 cents, respectively, for every dollar a white man makes.¹ On average, California women with full-time jobs lose out on approximately \$37.7 billion every year due to this wage gap (using 2016 data).² This has a significant impact on the economy, because women made up 42.3% of the 12.6 million employed Californians in 2015.³ Additionally, nearly two-thirds of women in California are employed and nearly four in 10 mothers in the United States are primary breadwinners in their households.⁴ In California, almost 58% of working mothers were breadwinners or co-breadwinners in 2015."⁵

Arguments in Support

As the sponsors of this measure the Equal Rights Advocates write in support, "Despite the existence of state and federal laws that prohibit employers from paying employees of the opposite sex different amounts for performing the same or substantially similar work, the wage gap between men and women persists in virtually every industry and economic sector in this country... Measures that increase pay transparency are an important strategy for addressing, and

¹ <https://www.aauw-ca.org/equal-pay-day-april-4-2017>

² <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/4-2016-ca-wage-gap.pdf>

³ <http://www.bizjournals.com/sanjose/news/2017/02/21/california-silicon-valley-pay-gap-women.html>

⁴ http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SCR37

⁵ <http://www.sandiegouniontribune.com/news/data-watch/sd-me-breadwinners-20161221-story.html>

eventually closing, the gender wage gap because workers and, in many cases employers themselves, are frequently unaware that pay disparities exist within their own companies. Research has shown that pay transparency requirements increase awareness of pay gaps and result in the shrinking these gaps, as occurred within California's own civil service workforce after a law was enacted requiring publication of salary information. Pay transparency policies have similarly been enacted in several countries in Europe to combat the unjust pay gap, further supporting the conclusion that pay data analysis and transparency initiatives are one important part of the solution. It is time for California, as the sixth largest economy in the world, to implement a gender wage gap disclosure policy for large companies, which is one concrete policy solution that will help to close the persistent and pernicious gender wage gap."

Arguments in Opposition

The California Chamber of Commerce and coalition of organizations write in opposition, "Collecting pay data in the aggregate will likely demonstrate wage disparity amongst employees in the different job classifications or titles according to gender. However, a disparity in wages does not automatically translate into wage discrimination or a violation of SB 358/Labor Code Section 1197.5 (SB 358), which is our primary concern with the proposed data collection. The aggregate data proposed to be collected fails to compare equal jobs or those that are "substantially similar." Specifically, AB 1209 seeks to collect pay data according to job descriptions or title, not according to whether the jobs are "substantially similar" for purposes of comparison. Job titles and descriptions are not determinative of whether two jobs are the same for purpose of equal pay under SB 358 or the federal Equal Pay Law... Given the lack of any reliable or useful data that AB 1209 will actually provide regarding wage discrimination or unequal pay, there is no valid purpose for which this data should be collected, much less posted on the internet...We strongly disagree that the state should mandate data collection for this purpose and expose employers to unnecessary investigations and lawsuits for purported wage discrimination and unequal pay where none exists."

Related/ Prior Legislation

AB 46 (Cooper) of the current legislative session is pending on the Senate Floor. This bill expands California's pay equity laws for women and minorities to encompass all employees in both the public and private sectors.

AB 168 (Eggman) of the current legislative session is pending on the Senate Floor. This bill prohibits an employer, including the Legislature, state and local government employers, from seeking salary history information about an applicant for employment, as provided. It also requires an employer, upon reasonable request, to provide the pay scale for a position to an applicant for employment.