



Summary Guide on Minimum Wage, Overtime Exemption and Gender Equality

Presented by Employers Group

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Minimum Wage – Resources and References

A. California – Minimum Wage	3
B. Los Angeles County / Los Angeles City – Minimum Wage.....	3
C. California – Cities.....	4
D. California – Counties	6
E. FLSA Final Overtime Exemption.....	7
F. Gender Wage Equality – Fair Pay Act (California).....	8
G. EG Staff Contact List.....	12

A. California– Minimum Wage**California’s State Minimum Wage**

Scheduled Wage Increases (If No Increases Are Paused)

	<u>26 Employees or More</u>	<u>25 Employees or Less</u>
\$10.50/hour	January 1, 2017	January 1, 2018
\$11/hour	January 1, 2018	January 1, 2019
\$12/hour	January 1, 2019	January 1, 2020
\$13/hour	January 1, 2020	January 1, 2021
\$14/hour	January 1, 2021	January 1, 2022
\$15/hour	January 1, 2022	January 1, 2023

California Minimum Wage Fact Sheethttps://www.gov.ca.gov/docs/Fact_Sheet_Boosting_Californias_Minimum_Wage.pdf**California Minimum Wage Poster**<http://www.dir.ca.gov/iwc/MW-2014.pdf>**California Paid Sick Leave FAQ**http://www.dir.ca.gov/dlse/Paid_Sick_Leave.htm**California Paid Sick Leave Poster**[http://www.dir.ca.gov/DLSE/Publications/Paid_Sick_Days_Poster_Template_\(11_2014\).pdf](http://www.dir.ca.gov/DLSE/Publications/Paid_Sick_Days_Poster_Template_(11_2014).pdf)**B. Los Angeles County / Los Angeles City – Minimum Wage****Los Angeles City Minimum Wage and Sick Leave Poster (employers in the geographical boundaries of LA City)**http://wagesla.lacity.org/sites/g/files/wph471/f/MW%20Sck%20Time%20poster_0.pdf**Los Angeles County Minimum Wage Poster (employers in unincorporated areas)**http://file.lacounty.gov/dca/cms1_245570.pdf**Also, see Los Angeles County Minimum Wage Table on page 6**

C. California – Cities

Cities	Covered Employers	General Hourly Minimum Wage Rate	Future Hourly Minimum Wage Rate	Notification Requirements		
California	Berkeley	All Employers	\$12.53 (eff. 10/1/16) \$13.75 (eff. 10/1/17) \$15.00 (eff. 10/1/18)	Yes		
	Cupertino	All Employers	\$10.00 (eff. 1/1/16) \$12.00 (eff. 1/1/17) \$13.50 (eff. 1/1/18) \$15.00 (eff. 1/1/19) Starting 1/1/2020, annually indexed for inflation	Yes		
	Emeryville	Employers with 55 or fewer employees	\$13.00 (eff. 7/1/16)	\$14.00 (eff. 7/1/17) \$15.00 (eff. 7/1/18)	Yes	
		Employers with 56 or more employees	\$14.82 (eff. 7/1/16)	Adjusted annually for inflation (eff. 7/1/17)		
	Long Beach	Employers with 25 or fewer employees	\$10.00	\$10.50 (eff. 1/1/18) \$12.00 (eff. 1/1/19) \$13.00 (eff. 1/1/20) \$14.00 (eff. 1/1/21) \$15.00 (eff. 1/1/22)	Yes	
		Employers with 26 or more employees	\$10.00	\$10.50 (eff. 1/1/17) \$12.00 (eff. 1/1/18) \$13.00 (eff. 1/1/19) \$14.00 (eff. 1/1/20) \$15.00 (eff. 1/1/21)	Yes	
	Long Beach	Employers that own, operate or control hotels with 100 or more guest rooms	\$13.00		Yes	
	Los Angeles	General industry employers with 25 or fewer employees	\$10.00 (eff. 7/1/16)	\$10.50 (eff. 7/1/17) \$12.00 (eff. 7/1/18) \$13.25 (eff. 7/1/19) \$14.25 (eff. 7/1/20) \$15.00 (eff. 7/1/21)	Yes	
		General industry employers with 26 or more employees	\$10.50 (eff. 7/1/16)	\$12.00 (eff. 7/1/17) \$13.25 (eff. 7/1/18) \$14.25 (eff. 7/1/19) \$15.00 (eff. 7/1/20) \$15.00 (eff. 7/1/21)		
		Employers that own, operate or control hotels:	With at least 50 but fewer than 299 guest rooms	\$15.37 (eff. 7/1/16)	Adjusted annually for inflation	No
			1. With 300 or more guest rooms, or 2. with 50 or more guest rooms that are located within the airport hospitality zone	\$15.37	Adjusted annually for inflation	No
	Oakland	All employers	\$12.55 (eff. 1/1/16)	\$12.86 (eff. 1/1/17) Adjusted annually for inflation	Yes	
	Pasadena	Employers with 25 or fewer employees	\$10.00 (eff. 7/1/16)	\$10.50 (eff. 7/1/17) \$12.00 (eff. 7/1/18)	Yes	
		Employers with 26 or more employees	\$10.50 (eff. 7/1/16)	\$12.00 (eff. 7/1/17) \$13.25 (eff. 7/1/18)		
	Palo Alto	All Employers	\$11.00 (eff. 1/1/16)	\$12.00 (eff. 1/1/17) \$13.50 (eff. 1/1/18) \$15.00 (eff. 1/1/19)	Yes	

C. California – Cities (continued)

Cities	Covered Employers	General Hourly Minimum Wage Rate	Future Hourly Minimum Wage Rate	Notification Requirements	
California	Sacramento	Employers with 100 or fewer employees	\$10.00 (eff. 1/1/16)	\$10.50 (eff.7/1/17) \$11.00 (eff. 7/1/18) \$11.75 (eff.7/1/19) \$12.50 (eff.7/1/20) 7/1/21: Indexed to CPI	Yes
		Employers with 101 or more employees	\$10.00 (eff. 1/1/16)	\$10.50 (eff. 1/1/17) \$11.00 (eff.1/1/18) \$11.75 (eff.1/1/19) \$12.50 (eff.1/1/20) 1/1/2021: Indexed to CPI	
	San Diego				
	San Diego		\$10.50 (eff. 7/11/16)	\$11.50 (eff. 1/1/17) As of 1/1/19, increase will be tied to Consumer Price Index	Yes
	San Francisco	All employers	\$13.00 (eff. 7/1/16)	\$14.00 (eff.7/1/17) \$15.00 (eff.7/1/18) As of 1/1/19, increase will be tied to Consumer Price Index	Yes
	San Jose	All employers	\$10.30 (eff. 1/1/16)	\$10.40 (eff. 1/1/2017)	Yes
	San Leandro	All Employers	\$10.00	\$12.00 (eff. 7/1/17) \$13.00 (eff. 7/1/18) \$14.00 (eff. 7/1/19) \$15.00 (eff. 7/1/20)	Yes
	San Mateo	For-Profit Employers	\$10.00	\$12.00 (eff. 1/1/17) \$13.50 (eff. 1/1/18) \$15.00 (eff. 1/1/19) Starting 1/1/2020, annually indexed for inflation	Yes
		Non-Profit Employers	\$10.00	\$10.50 (eff. 1/1/17) \$12.00 (eff. 1/1/18) \$13.50 (eff. 1/1/19) Starting 1/1/2020, wage to equal for-profit employers	Yes
	Santa Monica	General industry employers with 25 or fewer employees	\$10.00	\$10.50 (eff.7/1/17) \$12.00 (eff.7/2/18) \$13.25 (eff.7/1/19) \$14.25 (eff.7/1/20) \$15.00 (eff. 7/1/21)	Yes
		General Industry employers with 26 or more employees	\$10.50 (eff.7/1/16)	\$12.00 (eff.7/2/17) \$13.25 (eff.7/1/18) \$14.25 (eff.7/1/19) \$15.00 (eff.7/1/20) \$15.00 (eff. 1/1/21)	
		Employers that own, operate or control hotels	\$13.25 (eff.7/1/16)	\$15.37 (eff.7/1/17) plus CPI in 2017	

D. California – Counties:

Minimum wage is primarily a city ordinance. However, Los Angeles County differs from the City of Los Angeles.

Cities		Covered Employers	General Hourly Minimum Wage Rate	Future Hourly Minimum Wage Rate	Notification Requirements
California	Los Angeles County*	Large Employers – 26 or more employees	\$10.50 (eff. 07/01/16)	\$12.00 (eff. 07/01/17) \$13.25 (eff. 07/01/18) \$14.25 (eff. 07/01/19) \$15.00 (eff. 07/01/20)	Yes
		Small Employers - 25 or fewer employees	\$10.50 (eff. 07/01/17)	\$12.00 (eff. 07/01/18) \$13.25 (eff. 07/01/19) \$14.25 (eff. 07/01/20) \$15.00 (eff. 07/01/21)	Yes

* Beginning January 1, 2022, County's Chief Executive Officer (CEO) will determine the adjusted rates of the minimum wage based on the Consumer Price Index, which will become effective on July 1, 2022.

Continued on next page

E. FLSA Final Overtime Exemption

Key Provisions of the Final Rule

The Final Rule focuses primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt. Specifically, the Final Rule:

1. Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South (\$913 per week; \$47,476 annually for a full-year worker);
2. Sets the total annual compensation requirement for highly compensated employees (HCE)⁽¹⁾ subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally (\$134,004); and
3. Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.

Additionally, the Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level.

The effective date of the final rule is December 1st, 2016.

The initial increases to the standard salary level (from \$455 to \$913 per week) and HCE total annual compensation requirement (from \$100,000 to \$134,004 per year) will be effective on that date. Future automatic updates to those thresholds will occur every three years, beginning on January 1st, 2020.

⁽¹⁾ ***HCE does not apply to CA, WA or OR***

FLSA Overtime

Overview

<https://www.dol.gov/sites/default/files/overtime-overview.pdf>

FAQ

<https://www.dol.gov/WHD/overtime/final2016/faq.htm>

Employers Guide

<https://www.dol.gov/whd/overtime/final2016/general-guidance.pdf>

F. Gender Wage Equality — Fair Pay Act (California)

Both state and federal law provide protections against wage discrimination on the basis of gender.

California recently enacted the Fair Pay Act, which revises and expands previous state law (Labor Code section 1197.5) relating to gender pay inequality or disparity and provides greater protections than federal law. The Fair Pay Act is effective January 1st, 2016.

Under prior state law, you could not pay an employee less than the rate paid to an opposite-sex employee in the same establishment for **equal work** on jobs that required equal skill, effort and responsibility. However, this standard was removed from California law.

- Under the new California Fair Pay Act, employers are prohibited from paying any of their employees less than employees of the opposite sex for **“substantially similar work.”** The term “substantially similar work” replaced the “equal work” for “equal skill, effort and responsibility” standard contained in the prior law.

The burden is on employers to justify pay differentials from an acceptable list of factors that must be applied reasonably. The relied upon factors must account for the entire wage differential.

Unlike FEHA and Title VII, neither the state Fair Pay Act or the federal Equal Pay Act require an employee to show any discriminatory intent.

The California Fair Pay Act also enacts provisions to address “pay secrecy,” which the legislature found contributes to the gender wage gap “because women cannot challenge wage discrimination that they do not know exists.”

California law provides greater protections than federal law. Other state and federal protections also exist. For more information, see Other Fair Pay Laws.

Proving Unfair Pay

Under the California Fair Pay Act, you are prohibited from paying any of your employees an amount less than employees of the opposite sex for “substantially similar work.”

“Substantially similar work” means a composite of skill, effort and responsibility that is performed under similar working conditions. It does not have to be the exact same job title or function.

Employer Burden to Show No Disparity

Paying different wages to employees of different genders who are performing substantially similar work can only be justified if the employer shows all of the following:

- The pay difference is based on one or more of the following four listed factors:
 - 1) A seniority system
 - 2) A merit system
 - 3) A system that measures earnings by quantity or quality of production
 - 4) A bona fide factor other than sex, such as education, training or experience;
- Each factor you rely on is applied reasonably; and
- The one or more factors you rely on account for the entire pay difference.

To defend a pay differential based on the fourth factor — “bona fide factor other than sex”— you must also demonstrate that the factor:

- Is not gender based;
- Is job related; and
- Is consistent with “business necessity.”

Business Necessity

“Business necessity” is specifically defined under this law to mean that you have an overriding legitimate business purpose and the factor relied upon effectively fulfills the business purpose it is supposed to serve.

If the employee shows that an alternative business practice exists that would serve the same business purpose without creating the pay difference, you cannot rely on this defense.

Geographic Differences, Shift or Hour Differentials

- What happens if employees do not work at the same establishment or even within the same geographic location? The previous version of this law stated that the employee had to show that the pay difference was between employees “within the same establishment.”
- Under the new Fair Pay Act, the employee does not need to meet this requirement. Employees who claim that they are being paid unfairly based on gender can compare themselves to employees working in different geographic locations.
- However, the author of the legislation submitted a letter into the legislative file, stating that differences in geographic locations can be considered a “bona fide factor.” The letter also notes that work performed on different shifts or at different times of day can also be considered bona fide factors.
- It will be the employer's burden to show that a pay difference based on different geographic location, different shifts, or different times of day is consistent with business necessity and job related, as specified above.
- If the pay of an employee in Bakersfield, for instance, is being compared to the pay of an employee in San Francisco it does not automatically disqualify the claim. Instead, the employer must justify why this is a “bona fide factor.”

Pay Secrecy Prohibited

Under California's Fair Pay Act, employers cannot prohibit employees from:

- Disclosing their own wages
- Discussing the wages of others
- Asking about another employee's wages
- Aiding or encouraging other employees to exercise their rights under the Fair Pay Act

However, the Act does not create an obligation to disclose wages when asked.

It is important to remember that the ability of employees to discuss wages is already protected by other existing state and federal laws, even though the Fair Pay Act also includes this same protection. For more information, see “Discussion of Wages or Working Conditions”.

Retaliation Prohibited

The Fair Pay Act also prohibits employers from terminating, discriminating or retaliating against an employee who exercises his/her rights under the Act, assists others in exercising their rights or acts in any way to invoke or enforce the Act, such as bringing a complaint with the Labor Commissioner.

Fair Pay Act Remedies

The law provides different enforcement methods and remedial measures.

Administrative remedies:

- An employee can file a complaint with the Division of Labor Standards Enforcement (DLSE) that the employer has violated the Fair Pay Act. The DLSE can investigate and enforce any payment owed to the employee(s).
- The Department of Industrial Relations (DIR) or the DLSE can bring a civil action on behalf of the employee and other similarly affected employees to recover unpaid wages, an additional equal amount as liquidated damages and costs of suit.— In other words, if \$15,000 of wages were owed due to the unlawful wage differential, the employee would get an additional \$15,000 in liquidated damages.

Civil remedies:

An employee can bring a civil action for the amount of wages not fairly paid, an equal amount of liquidated damages, interest, costs of suit and reasonable attorneys' fees. A civil action must be brought within two year safter the cause of action occurs; if the violation is willful, then the claim must be brought within three years.

An employee who has been retaliated or discriminated against for asserting his/her rights or for protected wage discussions can file a civil action for reinstatement, reimbursement of lost wages and work benefits, interest and other equitable relief. A civil action under this provision must be brought within one year after the cause of action occurs.

Recordkeeping under the Fair Pay Act

You must keep the following employee records for three years:

- Wages and wage rates
- Job classifications
- Other terms and conditions of employment

Previously, the law only required recordkeeping for two years.

How to Evaluate Whether a Pay Differential Exists

Employers may want to examine pay rates for the same or substantially similar jobs in light of the California Fair Pay Act. When determining whether a pay differential may exist, group all employees of the same gender that do substantially similar work into one group. This will be the “comparator group” that must be used by the employee to demonstrate a gender wage disparity. When grouping employees, look at the skills, effort and responsibilities of the job as well as the working conditions. For example, if male employees in the comparator group are paid \$10,000 more a year than a female employee in the same comparator group, then a gender pay disparity exists.

If a gender pay disparity exists, review the four factors listed above and determine whether, based upon the four factors reasonably applied, the differential is justified and accounts for the entire pay difference. Remember that if you rely on the fourth factor — “bona fide factor other than sex” — you must also demonstrate that the factor is not gender based and is job related and consistent with business necessity, as defined.

Pay close attention to market factors when evaluating whether a pay differential exists. While market factors may be relevant when negotiating a compensation package, market factors alone will not overcome a pay differential.

Additionally, take note of any geographic differences between employees located in different locations. Like market conditions, geographic differences can be considered a “bona fide factor,” when justifying the existence of a wage disparity. However, it is no longer the case that geographic differences alone will justify a wage differential.

Because of potential exposure to a Fair Pay Act claim, consider conducting any analysis of pay rates with the advice of an attorney. In addition, documentation of salary decisions is crucial.

Fair Pay Act Guidance

The following are tips to consider:

- Ensure that compensation decisions are based on objective considerations. This includes increases for retention purposes, as well as discretionary bonuses.
- Remember that compensation doesn't just mean straight salary, but includes all forms of compensation, such as bonuses or commissions.
- Document all compensation decisions. This includes all factors relevant to the employee's compensation, such as market factors, geographic location, etc.
- Review job descriptions to ensure that they support salary decisions and reflect actual job duties, functions, skills and responsibilities.
- Ensure that you do not discipline employees for discussing wages and review employee handbooks to remove any prohibitions that may exist.
- Remember that, while an employee can ask about wages, the employer is not required to disclose the wages of other employees.
- Train hiring managers and others that make salary related decisions in compliance with the Fair Pay Act.
- Update, if necessary, your record retention practices to account for the three year record retention requirement under the new law.
- Prohibit retaliation against employees for asserting rights under the Fair Pay Act and ensure that you have a reporting mechanism in place. This can be part of your existing equal employment opportunity policy.

Again, strongly consider working with counsel to develop any fair pay analysis.

Other Fair Pay Laws

In addition to California's Fair Pay Act, the state Fair Employment and Housing Act (FEHA) also prohibits gender discrimination which includes discrimination in compensation decisions.

Moreover, while California law is now broader than federal law, the federal Equal Pay Act,⁴² the federal Lilly Ledbetter Fair Pay Act of 2009 and the federal Title VII also prohibit discriminatory compensation decisions.

The federal Equal Employment Opportunity Commission (EEOC) has settled several matters involving pay discrimination in recent years and considers it a priority enforcement issue.

Amendments to the Fair (Equal) Pay Law Effective January 1, 2017

AB 1676 (Equal Pay Act Amendment): This bill amends California's Equal Pay Act, which makes it unlawful to pay employees of one gender less than similarly situated employees of the opposite gender, to expressly provide that prior salary alone is not alone a sufficient justification for a pay disparity.

SB 1063 (Equal Pay – Race and Ethnicity): This bill expands California's equal pay law, which currently prohibits wage differentials based on gender, to prohibit employers from paying employees of one race or ethnicity less than similarly situated employees of a different race or ethnicity.

California Equal Pay Act: Frequently Asked Questions

http://www.dir.ca.gov/dlse/California_Equal_Pay_Act.htm

Federal Department of Labor Equal Pay Employers Guide

<https://www.dol.gov/sites/default/files/documents/featured/equalpay/equalpay-employer.pdf>

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