



Civil Rights Department

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EQUAL PAY CASES

This document explains the processes of the Labor Commissioner's Office, also referred to as the Division of Labor Standards Enforcement (DLSE or the Labor Commissioner's Office) and the Civil Rights Department (CRD) for equal pay cases. You may file a complaint of sex, race, or ethnicity-based wage discrimination with the Labor Commissioner's Office and/or the CRD.

TYPES OF CLAIMS

Equal Pay Act – The Labor Commissioner's Office and CRD both enforce the Equal Pay Act (Labor Code section 1197.5). The Equal Pay Act prohibits an employer from paying its employees at a wage rate that is less than the wage rate it pays to employees of the opposite sex, or of another race, or of another ethnicity for substantially similar work, when that work is viewed as a composite of skill, effort, and responsibility, and working conditions, unless the employer demonstrates that the difference in wage rate is based on a seniority system, a merit system, a system that measures quantity or quality of production, or a bona fide factor(s) other than sex, race, or ethnicity, such as education, training or experience. Employees are also protected against retaliation when they have asserted their rights under the Equal Pay Act.

Fair Employment and Housing Act – CRD also enforces the Fair Employment and Housing Act (FEHA), which prohibits discrimination, harassment and retaliation based on sex, gender, race, and national origin in employment. This includes, but is not limited to, intentionally paying an employee in a protected class less than other employees for the same or substantially similar work because of their protected status. It may also include the use of a policy or procedure that has the effect of creating pay disparities between individuals in a protected class and other individuals, even if the employer does not intend to discriminate. Employees are also protected against retaliation when they have asserted their rights under FEHA.

FILING DEADLINE

Under the Equal Pay Act, an employee must file a claim with either the Labor Commissioner's Office or with CRD within two years from the date of the violation. If the violation is willful, then an employee must file within three years. Each paycheck that reflects unequal pay is considered a violation for the purpose of calculating the deadline for filing. For example, if an employer pays a female worker less than a male worker for substantially similar work in January 2020, and the employer cannot justify the unequal pay with any available defenses, for a non-willful violation, the female worker has until January 2022 to file a claim to seek recovery going back to January 2020. If she waits until January 2023 to file a claim, and the unequal pay is ongoing, she can seek recovery going back only two years, or for violations from January 2021 to January 2023.

Claims alleging violations of the FEHA must be submitted to the CRD within three years

from the date of the most recent alleged act of discrimination, harassment, or retaliation.

PROCESS

You may choose to file an individual lawsuit (discussed further below) or proceed with filing a complaint with the Labor Commissioner's Office or the CRD. If you file a complaint with the Labor Commissioner's Office or the CRD, each agency will follow their own process:

Labor Commissioner's Office – Will investigate and upon finding there to violation may either (1) under Labor Code section 98.74, issue a citation or (2) under Labor Code section 98.7, issue a determination for possible civil enforcement.

Under the citation route per section 98.74, the person issued the citation may appeal the citation. A DLSE hearing officer will hold a hearing and issue a written decision. The person issued the citation may file a petition for writ of mandate after posting a bond with the Labor Commissioner equal to the total amount of any penalties, lost wages and interest, liquidated damages and other monetary relief. If no petition for writ of mandate is received within 45 days after service of the decision, the order shall become final.

Under the civil enforcement route established by section 98.7, the employer has 30 days after service of the determination to comply. Should the employer fail to comply, the Labor Commissioner's Office will file a civil action in superior court to enforce the determination. The Labor Commissioner's Office has 3 years from the date that the employer failed to comply with the determination to file a civil action.

CRD – Will investigate, attempt to conciliate and, if the case has merit and cannot be resolved, may file a civil action in court. CRD must complete the investigation within one year in most cases.

REMEDY

Under the Equal Pay Act, the Labor Commissioner's Office and CRD can both recover the unpaid wage differential, interest, and an equal amount in liquidated damages.

In addition, FEHA empowers CRD to also recover compensatory damages, including damages for emotional distress. If a case is filed in court, punitive damages may be awarded in some circumstances.

YOUR RIGHT TO FILE A LAWSUIT

You may file a lawsuit under the Equal Pay Act if you file within two years after the cause of action occurs (or within three years if it is determined to be a "willful" violation). You do not need to file a complaint with the Labor Commissioner's Office or CRD before filing your own private lawsuit. If you prevail in civil court, you may be entitled to lost wages,

interest, an equal amount in liquidated damages, and attorney fees and costs.

You may file a lawsuit under the Fair Employment and Housing Act (FEHA), but only after filing a complaint with CRD. If you want to file a lawsuit without a CRD investigation, you can request a Right-to-Sue notice when you file your complaint. You will be given a letter permitting you to proceed in court. If you prevail in a private lawsuit filed under the FEHA, you may be entitled to attorney fees and costs, lost wages and interest, compensatory damages (for emotional distress and out of pocket expenses), and, where appropriate, punitive damages.