



**FREEMAN FREEMAN &
SMILEY, LLP**

**EMPLOYMENT LAW
BULLETIN**

October 13, 2015

*Specializing in
Employment Law and
Business Litigation*

Bradley D. Ross

310.255.6180

bradley.ross@ffslaw.com

Teresa R. Tracy

310.255.6176

teresa.tracy@ffslaw.com

ffslaw.com

Employees' Pay Under Increasingly "Fair" Scrutiny

Three recent developments have focused increasing scrutiny on "fair pay" issues.

California Fair Pay Act

SB 358, which amends Labor Code § 1197.5, affects employers with California employees. It:

(a) prohibits an employer from paying any of its employees at wages less than those paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility;

(b) requires the employer to affirmatively demonstrate that a wage differential is based upon one or more specified factors, including a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a bona fide factor other than sex (e.g., education, training or experience);

(c) requires the employer to demonstrate that each factor relied upon is applied reasonably, and that the one or more factors relied upon account for the entire differential;

(d) increases the employer's recordkeeping requirements from 2 to 3 years (the statute of limitations for a violation of the equality of pay provision is 2 years; a "willful" violation extends it to 3 years) and allows an employee who has not been paid in compliance with the law to bring a civil action within 2 or 3 years depending on whether the violation is alleged to be "willful";

(e) prohibits an employer from discriminating or retaliating against an employee from invoking or assisting in any manner the enforcement of the new provisions;

(f) forbids an employer from prohibiting an employee from disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging another employee to exercise his or her rights under the law; and

(g) allows an employee to bring a civil action for a violation of (e) or (f) to bring a civil action within one year of the cause of action occurring and to be awarded reinstatement, lost wages and benefits, an equal amount as liquidated damages, interest, equitable relief, and attorney's fees.

OFCCP Pay Transparency Regulations

Effective January 1, 2016, federal contractors subject to OFCCP compliance requirements cannot discharge or discriminate against employees or applicants who inquire about, discuss, or disclose their compensation or the compensation of other employees or applicants. An



**FREEMAN FREEMAN &
SMILEY, LLP**

**EMPLOYMENT LAW
BULLETIN**

October 13, 2015

*Specializing in
Employment Law and
Business Litigation*

Bradley D. Ross

310.255.6180

bradley.ross@ffslaw.com

Teresa R. Tracy

310.255.6176

teresa.tracy@ffslaw.com

ffslaw.com

exception exists if the disclosure is based on information obtained in the course of performing essential job functions.

NLRB Concerted Activities Focus

The General Counsel for the NLRB issued a report opining that numerous employer policies restricting employees from discussing employee information were unlawful.

Written by [Teresa R. Tracy](#)

* * *

This Bulletin is made available for educational purposes and to provide general information on current legal topics, not to provide specific legal advice. The publication of this Bulletin does not create any attorney client relationship, and this Bulletin should not be used as a substitute for competent legal advice from a licensed professional attorney.