

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

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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 (Labor Commissioner's Office) and the Department of Fair Employment and Housing (DFEH) 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 DFEH.

TYPES OF CLAIMS

Labor Commissioner's Office - Enforces the Equal Pay Act (Labor Code section 1197.5), which prohibits an employer from paying its employees less than employees of the opposite sex, or of another race, or of another ethnicity for substantially similar work.

DFEH - Enforces the Fair Employment and Housing Act (FEHA), which prohibits pay inequality based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

FILING DEADLINE

Labor Commissioner's Office - Under the Equal Pay Act, an employee must file a claim within 2 years from the date of the violation. If the violation is willful, then an employee must file within 3 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 2016, and the employer cannot justify the unequal pay with any available defenses, for a non-willful violation, the female worker has until January 2018 to file a claim to seek recovery going back to January 2016. If she waits until January 2019 to file a claim, and the unequal pay is ongoing, she can seek recovery going back only two years, or for violations from January 2017 to January 2019.

DFEH - One year from the date of the most recent alleged act of discrimination, harassment or retaliation.

PROCESS

Labor Commissioner's Office - Will investigate and may hold a hearing and, if necessary, file a civil action in court.

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

LEGAL PROTECTIONS

Labor Commissioner's Office - 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 factor other than sex, race, or ethnicity, such as education, training or experience.

DFEH – The FEHA 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.

REMEDY

Labor Commissioner's Office - Unpaid wages, interest, and an equal amount in liquidated damages.

DFEH - Actual lost wages and interest, 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

The Equal Pay Act (Labor Code section 1197.5) - 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 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.

Fair Employment and Housing Act - You may file a lawsuit under the Fair Employment and Housing Act (FEHA) but only after filing a complaint with DFEH. If you want to file a lawsuit without a DFEH 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.