



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: March 30, 2017

IBA Report Number: 17-13

Rules Committee Meeting Date: April 5, 2017

Item Number: 3

Comparative Information: Approaches for Addressing Pay Equity

BACKGROUND

On February 8, 2017, Councilmember Chris Ward issued a memorandum requesting that his proposal for an Equal Pay Ordinance (EPO) be docketed at an upcoming Rules Committee for discussion. The proposal (Attachment 1), which is outlined in more detail in the discussion section of this report, would require businesses seeking city contracts to offer equal wages to employees regardless of their gender or ethnicity. Our Office examined equal pay laws at the Federal and State levels, as well as specific efforts directed at contractors in six cities, counties, and states (listed on the right) to provide information about similar equal pay measures. Our report concludes with some lessons learned from other jurisdictions.

*San Francisco, CA
Erie County, NY
State of Minnesota
State of New Mexico
Albuquerque, NM
Tempe, AZ*

DISCUSSION

Councilmember Ward's proposed EPO would require that the City's contractors provide equal pay to employees regardless of gender or ethnicity. Proposed requirements include that contractors will: 1) certify compliance with the EPO; 2) allow the City access to its employment records, when requested, to confirm equal pay of employees; and 3) post a notice in the workplace noting the business complies with the City's EPO, and inform new hires of the company's equal pay policy. The proposed EPO would provide the City with a right to audit businesses to check contractors for pay disparities or unjust hiring practices.

It is proposed that all City contracts, including those for goods, services, construction, leases, and grants would be subject to these rules beginning on July 1, 2017. The provision of equal pay would apply to all of a contractor's employees within the City limits, even if they are not directly working on a City contract, and would also apply to employees outside of the City limits if they are working on a City owned or occupied property in connection with a City contract.

OFFICE OF THE INDEPENDENT BUDGET ANALYST
202 C STREET MS 3A SAN DIEGO, CA 92101
TEL (619) 236-6555 FAX (619)-236-6556

Due to Purchasing and Contracting's current role in ensuring contract compliance, the proposed ordinance requests that enforcement of an EPO be executed by this department.

As proposed, penalties for non-compliance could include: 1) a determination of a breach of contract; 2) cancellation, termination, or suspension (in whole or part) of the contract; 3) money due may be retained by the City; 4) potential for debarment from future contracts (for three years or until penalties and restitution has been paid); and 5) any other legally allowable remedies.

Since Councilmember Ward's proposal would complement State and Federal pay equity laws, we have included a discussion of what these laws entail.

Relevant State Law

The State of California has, since 1949, required equal pay for equal work within the same establishment. However, the California Equal Pay Act was recently amended by two bills of note: SB 358, and SB 1063.

The California Fair Pay Act, or SB 358, went into effect on January 1, 2016. The bill amended the California Equal Pay Act to require equal pay for "substantially similar work," and is no longer limited to employees at the same establishment¹. Employers must demonstrate that the wage differential between employees of the opposite sex is based on: 1) seniority; 2) a merit system; 3) a system that measures earnings by quantity or quality of production; or 4) a bona fide factor other than sex (e.g. education, training, or experience)². Employers are required to keep relevant wage and employment records for three years instead of two, and may not prohibit employees from discussing their wages with their coworkers.

SB 1063, which went into effect on January 1, 2017, builds on the California Fair Pay Act by also prohibiting an employer from paying any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work. The language of this bill very closely mirrors the changes made to the Equal Pay Act by SB 358.

In addition to the Equal Pay Act, the Fair Employment and Housing Act (FEHA) prohibits pay inequity because of 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.

State Enforcement Efforts

Wage discrimination complaints can be filed with the Division of Labor Standards Enforcement (DLSE) at the Department of Industrial Relations and/or the Department of Fair Employment & Housing (DFEH). The DLSE is responsible for the enforcement of the Equal Pay Act, and the DFEH is responsible for enforcement of the FEHA. A complainant also has the right to file a civil lawsuit, although for FEHA violations, a complaint must be filed with the DFEH first. The filing

¹ Previously, the "same establishment" provision could prevent employees of the same company and holding the same position from comparing their wages if they worked at different locations.

² SB 358 also includes more restrictive language for "a bona fide factor other than sex." For example, it must be job related with respect to the position, and consistent with a business necessity, which makes this more challenging for employers to prove under the revised law.

deadlines, processes, and potential remedies differ for these two types of complaints, and are outlined in more detail on the Department of Industrial Relations' website³.

Relevant Federal Laws and Regulations

At the Federal level, there are several laws related to equal pay and compensation. The Equal Pay Act requires equal pay for men and women who work in the same establishment and who perform substantially similar work⁴, except when the pay difference is due to seniority, a merit or incentive system, or a factor other than sex.

Title VII of the Civil Rights Act prohibits employers (with at least 15 employees) from discriminating against employees, including with respect to pay, on the basis of race, color, religion, sex, or national origin. In 2009, President Obama signed the Lilly Ledbetter Fair Pay Act, which made it easier for employees to file claims of pay discrimination against their employers. Prior to this Act, complaints had to be filed within 180 days of an employer's decision to pay an employee less than others with the same job title and at the same establishment (even if the employee did not know about the inequity until after that time). Now, each discriminatory paycheck resets the 180 day deadline for filing complaints.

Related to contractors, Executive Order 11246 prohibits federal contractors (with contracts over \$10,000) from discriminating against their employees in their employment decisions, including pay, based on race, color, religion, sex, or national origin.

Federal Enforcement Efforts

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title VII of the Civil Rights Act and the Equal Pay Act. EEOC receives thousands of Title VII charges of employee discrimination a year, and almost 1000 complaints a year regarding Equal Pay Act violations. Violations of the Equal Pay Act and Title VII can result in civil action, and can result in the payment of unpaid wages, or other relief, depending on which law is violated.⁵

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces Executive Order 11246, and can seek back pay for victims of discrimination, and impose sanctions against federal contractors as appropriate.

Recently, the EEOC and OFCCP worked together to update the "Employer Information Report" or EEO-1. By March 31, 2018, all private employers and federal contractors with 100 or more employees will be required to submit a revised EEO-1. In past years, employers of this size were required to submit data regarding the number of employees in each EEO-1 job category by sex, race and ethnicity. The revised EEO-1 includes summary pay data as well, with the intention that EEOC will be able to use this data as a first assessment during discrimination investigations. Additionally, OFCCP will use the new EEO-1 data to help identify which federal contractors and subcontractors to review for compliance under Executive Order 11246.

³ See the Equal Pay Handout at https://www.dir.ca.gov/dlse/Equal_Pay_Cases_Handout.pdf.

⁴ Similar work, in this instance, includes equal skill, effort, and responsibility in similar working conditions.

⁵ For additional information, see the Department of Labor's website <https://www.dol.gov/wb/EqualPay/>.

Comparative Information

States, cities, and counties across the country have utilized various approaches to address pay equity. Some municipalities have focused on education efforts, offering resources for private businesses to conduct internal analyses to measure their wage gaps, or have partnered with non-profit agencies to offer negotiation training for members of the public. Several places have passed laws prohibiting employers from asking about job applicants' prior salaries, and have clarified that employers may not prohibit employees from discussing their wages with coworkers.

Since Councilmember Ward's proposal would require the City's contractors to pay equal wages to its employees regardless of gender or ethnicity, our review is focused on six cities, states, and counties who have passed regulations regarding contractor compliance with wage equity laws.

San Francisco, California

In December 2014, San Francisco's Board of Supervisors unanimously passed an ordinance requiring contractors to file pay equity reports that include summary data on the pay, gender, and race of its employees. The pay equity reports must be submitted annually to the Human Rights Commission (HRC), which is tasked with developing rules and regulations, and enforcing the ordinance.

Contractors, beginning July 3, 2017⁶, will be required to submit annual Equal Pay Reports if:

1. They have at least 20 employees worldwide; and
2. Their contract or subcontract is greater than or equal to a certain amount, depending on the type of contract⁷.

San Francisco's Equal Pay Ordinance included the creation of an Equal Pay Advisory Board, which was established to analyze and recommend data collection methods to help identify gender- and race-based wage gaps. The Advisory Board was also asked to develop a data collection method that would minimize the burden on its contractors. The Advisory Board met throughout 2015, and made a number of recommendations for the Board of Supervisors to consider⁸. Recommendations included that the Human Resources Department conduct an internal assessment to ensure that there is not a wage gap among the City/County's own employees, which has been completed. Additionally, it was suggested that the Controller's Office conduct a pilot study with several businesses to test its data collection efforts. The Controller's Office has conducted a survey of the City/County's contractors to determine what types of data they already collect, and is utilizing that information in a pilot study now.

⁶ Originally, the Equal Pay Ordinance required contractors to submit Equal Pay Reports no later than January 31, 2016, but that was pushed back to July 3, 2017 in response to a recommendation in the [December 23, 2015 Report of the San Francisco Equal Pay Advisory Board to the Board of Supervisors](#). It is possible that this date could be pushed back again since the Controller's Office is currently conducting a pilot, and may need additional time to finalize reporting requirements.

⁷ Currently, these amounts are \$600,000 for Public Works or improvement contracts, \$110,000 for the procurement of goods and services, and \$50,000 for nonprofit grant recipients.

⁸ The December 23, 2015 Report of the San Francisco Equal Pay Advisory Board to the Board of Supervisors is available online at: <http://sf-hrc.org/sites/default/files/Report%20on%20the%20Equal%20Pay%20Ordinance.pdf>

San Francisco's effort is still in development, so elements of it could change with Board of Supervisor action. However, as proposed San Francisco is unique in that it will examine gender and race/ethnicity related wage gaps. The current ordinance will allow the HRC to use the data it collects to determine which businesses it may want to audit. Since the HRC already has a process for discrimination complaints, HRC could use equal pay complaints to further drive its auditing efforts.

Penalties in San Francisco's administrative code Chapter 12B (Nondiscrimination in Contracts) include:

- Penalties of \$50 a day for each person who is discriminated against in violation of the Chapter
- Terminating or suspending any contract, property contract, or subcontract, and all money due may be forfeited to or retained by the City
- Considering a violation of this Chapter as a breach of contract, and prohibiting a contractor from contracting or subcontracting with the City for a period of up to two years or until it has established and carried out a nondiscrimination program that complies with the code

Of note, San Francisco's Equal Pay Ordinance requires the HRC to provide a report to the Board of Supervisors and the Mayor's Office if it takes any actions against an employer. The Commission is also required to submit annual reports to the Board of Supervisors, including: 1) a summary of the effectiveness of the information obtained from Equal Pay Reports; 2) recommendations for needed legislative changes; and 3) a summary of investigations that occur as a result of the Equal Pay Reports.

Erie County, New York

On November 6, 2014, the Executive of Erie County signed an Executive Order requiring contractors with the County to submit an Equal Pay Certification stating that they are in compliance with state and federal equal pay laws. The order:

- Included an implementation date of January 1, 2015;
- Was implemented for all County offices, departments, and units for all bids, requests for proposals (RFPs), and other contract solicitations;
- Requires contractors to certify that they have not been the subject of adverse findings under Federal or State equal pay laws in the last five years, and will disclose any pending claims;
- Specifies that violations of equal pay laws or filing false and misleading information may constitute grounds for immediate termination of contracts and may result in disqualification from participation in future contracts; and
- Requests that the Law Department prepare an Equal Pay Certification that the County can use, and that the County's Division of Equal Employment Opportunity (DEEO) establish a procedure for monitoring compliance and auditing certification records.

Of note, the DEEO will not use employee complaints to determine which contractors will be audited. Instead, the DEEO will use a computer-generated random selection process to select contractors for compliance evaluations, and give companies 30 days from the receipt of the notice

to submit: 1) a completed copy of the Pay Equity Data Entry Form⁹; 2) a copy of the company's most recent Withholding, Unemployment, and Wage Reporting Form, with social security numbers and information relating to employees outside of the County redacted; and 3) an optional section that provides companies an opportunity to explain "the validity of, or the non-discriminatory nature of," identified gender-based pay discrepancies.

If after the DEEO's review, a contractor is found to not be in compliance, the County will work with the company to try to resolve the matter. If it remains unresolved, the DEEO has the option of referring the matter to the New York State Division of Human Rights, the New York State Department of Labor, and/or the EEOC.

The Executive Order was implemented on January 1, 2015; however, it has taken some time to implement the compliance evaluation component of this order. In 2016, the County partnered with a business that volunteered to participate in a pilot of the process. The DEEO updated its Pay Equity Data Entry Form as a result of this pilot, and is hoping to randomly select between 6-8 contractors this year for compliance desk audits.

State of Minnesota

Since 1969, Minnesota's Human Rights Act has included provisions prohibiting women from being paid less than men, without a legitimate, non-discriminatory reason. In the 1980s, Minnesota also passed two pay equity laws requiring State government departments and local governments to analyze their pay structures for evidence of inequities.

More recently, in May 2014, the Governor of Minnesota signed the Women's Economic Security Act (WESA) into law. It amended the State's Human Rights Act to require that certain contractors apply for and receive an Equal Pay Certificate from the Minnesota Department of Human Rights prior to contracting with the State. Beginning on August 1, 2014, contractors with 40 or more employees in the state of its principal place of business, and that are likely to contract with the State for more than \$500,000 are required to pay a \$150 filing fee and submit an equal pay certificate application form¹⁰.

The application asks contractors to confirm:

- Compliance with various federal and state laws regarding equal pay;
- The average compensation for female employees is not consistently below the average of male employees;
- Promotion and retention decisions are made without regard to sex; and
- Wage and benefit disparities are promptly addressed.

⁹ The Pay Equity Data Entry Form is available online at:

<http://www2.erie.gov/eo/sites/www2.erie.gov/eo/files/uploads/Copy%20of%20Copy%20of%20Pay-Equity-Data-Entry-Form%20%28Revised%203-10-16%29%20%283%29.xlsx>

¹⁰ The Equal Pay Certificate Application Form is available online at

https://mn.gov/mdhr/assets/Equal_Pay_Application_6_8_15_tcm1061-213243.docx

The application also asks contractors to indicate how often wages and benefits are evaluated to ensure compliance with identified laws, and to indicate how employee compensation is determined (e.g. market pricing, prevailing wage or union contract requirements, performance pay, internal analyses). Approved businesses are issued a certificate, and the certificates are valid for four years.

Under Minnesota statute §363A.44, the Commissioner of the Department of Human Rights may audit a contractor's compliance with the section. When we spoke with the Department, we were told that the selection of companies for these audits was random; however, the Department also accepts employment discrimination complaints through a separate unit to address complaints related to equal pay. An audit begins with the Department requesting information ranging from job position or title, gender, race, employment start date, starting salary, annual salary, and total compensation of employees who are working on State contracts. Contractors are asked to provide additional information about what criteria is used to determine starting wages, as well as how promotional decisions are made.

The Commissioner can void certain contracts if a contractor does not have an equal pay certificate or has not submitted the required certificate and fee. Additionally, if the Commissioner finds that a business is out of compliance and has not made a good faith effort to comply with the law, the contractor's equal pay certificate can be revoked or suspended. However, an effort must be made to work with the contractor to correct wages and benefits due to employees.

The Commissioner is also required to provide reports biennially to the Governor and to relevant Senate and House Committees about the number of equal pay certificates issued, the number of audits conducted, the processes used by contractors to ensure compliance, and a summary of auditing efforts.¹¹

State of New Mexico

Under former New Mexico Governor Bill Richardson, the State of New Mexico took several steps to address pay equity gaps between men and women who do the same or comparable work. Governor Richardson requested a study of classified employees' wages to determine if pay inequity existed within the State's classified system. He also, as part of Executive Order 2009-004, established a Task Force on Fair Pay and Equity, which was responsible for researching and making recommendations to: 1) close the wage gap and reduce job segregation in the State's classified workforce; and 2) require the State's contractors to examine and address pay equity and job segregation within their own businesses.

As a result of the Task Force's recommendations, the Governor issued Executive Order 2009-049¹² that, in part, convened a working group composed of various departments to develop pay equity reporting requirements for contractors. The working group was asked to identify which contractors should be required to submit reports, develop a system for incentivizing pay equity progress made by contractors, and develop possible timelines for including race and ethnicity in

¹¹ The first of these reports was issued in April 2016, and can be retrieved from: https://mn.gov/mdhr/assets/Equal-Pay-Report-4-7-16_tcm1061-229713.pdf

¹² Executive Order 2009-049 is available online at <http://www.generalservices.state.nm.us/uploads/FileLinks/864df4748b2440569b3af8a95ce155d8/eo2009-049.pdf>

future pay equity reports. The Executive Order allows the State Auditor to audit pay equity reports, and outlines some of the types of information that should and should not be collected in the pay equity reports submitted by contractors.

In general, State contractors that employ ten or more employees¹³ must submit the reports. Initially, reports filed between July 1 and September 30, 2010 were informational only. Those submitted October 1, 2010 and later were required as part of the State's RFP process and were expected to be a part of an incentive program. However, due to the election of a new Governor, an incentive program has not yet been implemented. When our Office spoke with staff in the State Purchasing Division, we were told that contractors are still required to submit pay equity reporting information as part of the RFP process.¹⁴ We also learned from the Office of the State Auditor that it is beginning its first audit of the program. The State Auditor will assess if the State's reporting requirements are being complied with, and what trends the State can see based on the information submitted by contractors.

Of note, New Mexico purposely chose to use the Federal government's EEO-1 job categories because many contractors and payroll processing firms have experience with these categories.

Albuquerque, New Mexico

The City of Albuquerque has mirrored many of the contracting requirements implemented by the State of New Mexico. In November 2013, the City Council unanimously approved an ordinance requiring its contractors to submit the same Pay Equity Reporting Form that was developed by the State of New Mexico. The City chose to use the same form to limit the additional effort required of its vendors and contractors. Additionally, the City uses Federal EEO-1 reporting categories to simplify reporting for contractors who may already submit this data to the federal government. In 2015, the City Council approved an ordinance to amend the City's code to provide a 5% preference in the bidding stage for companies that can show a calculated weighted average wage gap of 10.00% or less¹⁵.

The City requires the submission of the reporting form¹⁶ as part of a company's bid application (as opposed to the State which requires the forms only if a contract is awarded), because it offers a preference in the bidding stage. Failure to include a signed reporting form will result in a bid being deemed unresponsive. Albuquerque does not exempt small employers and out-of-state employers from submitting the pay equity reporting form. Companies that have no employees working in New Mexico are exempt from entering employee data, but still must submit the reporting form with the employer's information (e.g. company name, mailing address, Federal Employer

¹³ The Executive Order also applies to businesses with fewer than ten employees who have eight or more employees who do the same job.

¹⁴ The State's pay equity worksheets, implementation guidance, and other contractor reporting instructions, can be viewed at http://www.generalservices.state.nm.us/statepurchasing/Pay_Equity.aspx.

¹⁵ A gap of 10% was selected as a starting point for the incentive program to allow for some explainable differences in pay (e.g. education, seniority, etc.), but the City has indicated that it will reassess this number and hopes to lower it in the future.

¹⁶ Albuquerque's Pay Equity Employee Data spreadsheet, instructions, bid preference information, and Frequently Asked Questions are available online at <https://www.cabq.gov/womens-pay-equity-task-force/albuquerque-pay-equity-initiative-instructions>

Identification Number, etc.). Additionally, contractors who subcontract more than 10% of the value of their contract with the City are required to submit forms for each of its subcontractors.

The City of Albuquerque's Office of Diversity and Human Rights is responsible for determining if a business is eligible for the preference, and issues Pay Equity Certificates within five days of submission of the reporting form. Although the Pay Equity Report Worksheet that businesses fill out includes information like employee ID, job category, gender, full/part time status, total annual compensation, and total annual hours, the form submitted to the City only includes the number of females and males in each job category, with the pay gap listed as a percentage. This limited information is requested to protect the privacy of businesses and their employees. However, as the City notes in its Frequently Asked Questions, the Office of Diversity and Human Rights can audit the reports, and can randomly select locations for audit. Additionally, if the authenticity of a contractor's numbers are challenged, the contractor may "have to provide documentation from a third party auditor attesting to the validity of the numbers provided to the City" at its own expense.

Tempe, Arizona

The City of Tempe, Arizona created a four pillared approach to address the gender wage gap. First, Tempe updated its Anti-Discrimination Ordinance in 2014, which provides a process for pay discrimination complaints to be investigated by the Diversity Office. The process is largely focused on mediation. As part of the update to the Anti-Discrimination Ordinance, contractors with the City of Tempe are required to provide a copy of their anti-discrimination policies to the City's procurement officer if they have 15 or more employees. Alternatively, smaller business may attest in writing that they comply with the ordinance.

The second pillar of Tempe's pay equity initiative is an *Equal Pay for Equal Work Business Partner Designation*. The program is voluntary and is currently being piloted. Businesses that participate are asked to use a self-assessment tool to determine if there are pay gaps at various position levels. Although the self-assessment¹⁷ includes detailed information including employee ID, job category, gender, full or part time status, annual base salary, and total annual hours to determine the average pay gap between men and women in various job categories, the data actually submitted to the City is much more limited to protect employer and employee privacy. The goal is for businesses to show a pay gap of 8% or less for each job category, but the submittal sheet allows businesses to explain if a larger pay gap is reflective of: 1) a seniority system; 2) a merit system; 3) a system that measures earnings by quantity or quality of production; or 4) a differential based on any other factor other than sex. Businesses that meet the criteria are awarded a one-year designation, listed on the City's website, and are given a window decal to note the business' commitment to equal pay and its participation in the program.

A third pillar, which is still in development, will include quarterly workshops for businesses. Topics of the workshops will include diversity and inclusion, anti-discrimination, and equal pay for equal work, among other topics. The City plans to charge businesses a nominal fee for these workshops to cover their expenses.

¹⁷ Tempe's self-assessment tool for businesses, instructions for completing the worksheets, and submittal form are available at <http://www.tempe.gov/city-hall/strategic-management-and-diversity/equal-pay-for-equal-work>.

Finally, the fourth pillar in Tempe's Equal Pay initiative is to provide free negotiation training classes. The classes were developed to help community members "build confidence and skills around salary negotiation, market worth, tools of persuasion and business strategies." According to staff in the Strategic Management and Diversity Office, the trainings have been very successful. They provide two trainings a month, with 40 people in each class, and the classes are full through May. Due to the success of the program, the City is hoping to double the number of classes next year, and recently added \$17,000 to its budget for this purpose.

CONCLUSION

Based on our review of six cities, counties, and states that require pay equity from their contractors, we found that there are various methods for implementing components of the program, and there are opportunities to learn from their experiences. For instance:

Contractor requirements

1. Minnesota and Erie County ask contractors to submit equal pay certificates to certify compliance with equal pay laws, but do not collect gender and wage data from contractors unless they are selected for audits.
2. San Francisco will require gender, race/ethnicity, and wage data up front from contractors, but will exempt small businesses and contracts under certain amounts.
3. Albuquerque requests gender and wage data from contractors as part of the bidding process, but uses it to incentivize smaller wage gaps by offering bid preferences.
4. Tempe offers a voluntary equal pay business designation, and requests that the pay gap percentage (by job category) be submitted to the City to determine if a business qualifies for the distinction.

Assessing compliance/audits

Our review of other programs found that although a few places like Erie County and Minnesota conduct random compliance audits, others, like San Francisco will be able to use the data they collect from contractors to determine which businesses may need to be examined more closely. Additionally, like the City of San Diego, all of the places we examined have a process for citizens to submit employment discrimination complaints, which are or could be used to support compliance-based auditing.

Exemptions

Exemptions varied by the equal pay law/program. For example, Minnesota and San Francisco offer (or will offer) exemptions for businesses under a certain size, or who have smaller contracts. Cities such as Albuquerque do not offer exemptions based on size or the location of a business, but do limit the data requested from businesses who do not have employees in the State of New Mexico.

Contractor Burden

In our review of other programs, we found that a goal of many of these programs was to improve pay equity, while also identifying ways to limit the burden on contractors. Below are some of the strategies employed to alleviate some of these contractor concerns:

1. Minnesota asks its contractors to certify their compliance with equal pay laws and indicate how pay, benefits, and other compensation are determined, but does not ask contractors for specific wage data unless audited.

2. Cities such as San Francisco will require wage, gender, and race/ethnicity data up front from contractors, but also include exemptions for small businesses and smaller contracts.
3. The City of Albuquerque utilizes reporting standards already required at the state and federal levels (e.g. the Federal EEO-1, and the Pay Equity Reporting Form used by the State of New Mexico) to make the submission of wage data less of a burden for contractors.
4. Many provided publicly accessible certifications and self-assessment worksheets to help businesses conduct wage gap assessments, and to provide transparency about the process.

Staff workload

1. Requesting certifications of compliance as a part of contracts instead of collecting wage gap data up front can reduce staff workload.
2. Conducting audits in response to complaints or randomly (instead of auditing or reviewing data from all contractors) can reduce staff requirements.
3. Erie County refers businesses and their employees to the EEOC, New York State Division of Human Rights, and/or the New York State Department of Labor for more serious complaints.

Privacy

Protecting the privacy of employees and employers was addressed in a variety of ways. Some places that required information up front from contractors, like San Francisco, will require only summary data from businesses that exceed a certain size to protect the privacy of individual employees. Others, like Tempe and Albuquerque provide worksheets for businesses to assess their wage gaps at a detailed level, but require the submission of less detailed information. For instance, the percentage wage gap, as opposed to the monetary gap between employees of one sex versus another. This information protects both the employees (especially in situations where there may only be one or two people in a position), and the employer who may consider wage data a trade secret. San Francisco also included specific language in its ordinance to protect confidential data.

Cost

Depending on the approach utilized by the City, there could be additional staffing or resource needs for education, administration, and enforcement of an EPO. For instance, San Francisco added budget and a staff member for its Human Rights Commission for this work, and Tempe added additional budget to fund more negotiation trainings due to high demand.

Assessing gaps due to race and ethnicity

San Francisco's Equal Pay Advisory Board highlighted a few challenges related to the use of race and ethnicity in its endeavor to assess wage gaps. The way the Federal Government categorizes race and ethnicity can be viewed as limited and/or confusing. For instance, if a person does not identify with any of the options listed for race, they may skip the question altogether, or identify as "other." San Diego may want to more closely examine how San Francisco, and the State and Federal governments are addressing these types of responses.

Program Updates

Several cities and states included yearly or biennial updates for their legislative bodies about their equal wage requirements for contractors. If the EPO is approved, yearly updates from staff


regarding its implementation could provide Council with an opportunity to assess the impact of the program, and consider any needed updates to the ordinance.

To conclude, the Committee is being asked to direct Council District Three to work with the Office of the City Attorney, Office of the IBA, Office of the Mayor and appropriate City Department(s) to bring forth amendments to the appropriate sections of the San Diego Municipal Code to the full City Council for implementation of an Equal Pay Ordinance. If the action is approved, the City Attorney may require additional specificity related to the following, in order to draft the necessary amendments:

- Timeline for implementation
- Contractor exemptions (if any)¹⁸
- Employee and subcontractor applicability¹⁹
- Process for assessing ordinance compliance, handling of employee complaints, and determinants for audits
- Information to be collected from contractors in audits
- Penalties and/or fees for violations
- Whether to require periodic updates from City staff



Trisha Tacke
Research Analyst



APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachments: 1. Councilmember Ward's Equal Pay Ordinance Memorandum

¹⁸ For example, should other government entities, businesses with fewer than X number of employees, or businesses receiving contracts and grants under a threshold be exempt?

¹⁹ For example, should this be expanded to apply to all employees who are working on a City contract and who live in the State of California? Should subcontractors who conduct a certain portion of the contractor's work for the City (e.g. 10% or more) be required to certify compliance as well?



OFFICE OF COUNCILMEMBER CHRISTOPHER WARD THIRD COUNCIL DISTRICT

MEMORANDUM

DATE: February 8, 2017

TO: Council President Myrtle Cole

FROM: Councilmember Christopher Ward, Third Council District

SUBJECT: Equal Pay Ordinance

Background

Despite the Equal Pay Act of 1963, the wage gap between men and women remains a durable problem. Working women in California continue to make less than men for the same or substantially equal work. A woman who works full time in California makes a median salary of \$42,486, compared to a median salary of \$50,539 for a man, according to an analysis of Census Bureau data conducted by the National Partnership for Women and Families. That makes for a difference of about 84 cents to every dollar earned by a man or the equivalent of \$8,000 per year, the average cost of six months of rent in the state.

The problem is even worse for women of color: for example, African American and Latina women working full-time in California make an average of just 64 cents and 44 cents, respectively, for every dollar earned by white men. California has the worst Latina gender wage gap in the nation.

The persistent disparity in earnings has a significant impact on the welfare and economic security of millions of women and their families in our state and contributes to the higher poverty rate among women—especially among women of color and single women living with children. As a group, working women in California lose over \$38.8 billion each year due to the wage gap. Not only is this a problem of fairness, it makes it more difficult for women to achieve financial independence, provide for their families or prepare for a secure retirement.

Policy Goal

The proposed measure, the Equal Pay Ordinance (EPO), would require businesses seeking city contracts to offer equal wages to its workers regardless of their gender or ethnicity. The EPO is meant to complement and ensure compliance with the State of California's Fair Pay Act (SB 358), which was approved in 2015 and became effective on January 1, 2016. Under the Fair Pay Act, an employer is prohibited from paying employees of the opposite sex lower wage rates for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.

The proposed Equal Pay Ordinance will build upon and strengthen the State Fair Pay Act by requiring that all city contractors certify that it will provide equal pay to its workers regardless of their gender or ethnicity, provide more effective local enforcement, and will better empower employees to discuss pay without fear of retaliation. The purpose of an EPO is equal treatment and equal pay for equal work. It is intended to bring the City's contracting practices in line with non-discrimination laws, prohibiting City contractors from discriminating against employees.

Modeled after the City's very successful Equal Benefits and Living Wage Programs, it is proposed that a similar framework to ensure compliance is provided including assisting contractors in understanding obligations, monitoring contracts, maintaining records, conducting reviews, investigating complaints, and providing reports as needed.

In Fiscal Year 2017 alone, the City is budgeted to have a contract expenditure value of over \$613.5 million. Additionally, the magnitude and demand of the City's \$4 billion Capital Improvements Program has made the City of San Diego the single largest employer of consultants and contractors in the region.

The City of San Diego has a rich history of implementing equal opportunity and labor compliance programs that promote justice and non-discrimination such as the Living Wage, Prevailing Wage, Equal Benefits, Minimum Wage, and Earned Sick Leave policies. To further San Diego's rich history of civil rights, the City of San Diego should implement an Equal Pay Ordinance and put the City's purchasing power to work to further equity for all. Through our contracting process, we can help local businesses adhere to the law and be driving forces for economic equality and assure that companies who choose to do business with the City equalize wages between similarly situated employees, regardless of gender or ethnicity, thereby closing the wage disparity gap in our region.

Recommendation

Attached is a summary of the Equal Pay Ordinance I propose. I respectfully request that this issue be docketed for an upcoming Rules Committee discussion and forwarded to the full City Council for consideration. Additionally, I look forward to working with the Mayor and the appropriate City Departments and seek guidance from the City Attorney in bringing forth amendments to the appropriate sections of the San Diego Municipal Code for implementation of an EPO.

I look forward to working with you on this endeavor.



cc:

Honorable Mayor Kevin Faulconer
Honorable City Attorney Mara Elliot
Andrea Tevlin, Independent Budget Analyst
Kristina Peralta, Purchasing and Contracting Department Director
Marisa Berumen, Rules Committee Consultant

Equal Pay Ordinance

The Equal Pay Ordinance (EPO) applies to all City contracts. The Ordinance requires the City to contract only with entities that provide equal pay to its workers regardless of their gender or ethnicity. The EPO ensures that all firms that enter into contracts with the City are not actively or passively participating in discriminatory practices.

Purpose

The EPO is intended to bring the City's contracting practices in line with its non-discrimination policy and to promote a policy of "equal pay for equal work" for City contracts.

Effective Date

The EPO applies to all City contracts entered into, awarded, amended, renewed, or extended on or after July 1, 2017. This includes agreements for grants, services, the purchase of goods, construction, and leases.

Requirements

- A contractor shall provide equal pay to its workers regardless of their gender or ethnicity.
- A contractor would be required to certify compliance with the EPO through signing the contract.
- A contractor would be required to allow City access to records, when requested, to confirm provision of equal pay.
- A contractor must notify employees of firm's equal pay policy at time of hire and conspicuously post a notice in the workplace that states:
"During the performance of a contract with the City of San Diego, the contractor will provide equal pay to its workers regardless of their gender or ethnicity."
- The EPO would require the City to check contractors for any disparities in pay or unjust hiring practices if reported through audits.

Applicability

Contractors must certify that equal pay is offered to:

- All employees at contractor's operations within City limits, regardless of whether employees at these locations perform work on the contract.
- All employees at contractor's operations on property outside City limits if property is owned or occupied by the City and the contractor's presence is connected to the contract.

Enforcement

I request that the City of San Diego's Purchasing and Contracting Department be responsible for the enforcement of the EPO. Currently, to ensure the success of each and every City contract, each contractor is assigned to a Contract Compliance Officer. The Contract Compliance Officer's role is to assist the contractor in achieving compliance with labor laws and regulations such as prevailing wage, living wage, certified payroll, etc.

If a contractor fails to comply with the ordinance:

- The action may be deemed as a material breach of contract;
- Awarding authority may cancel, terminate or suspend, in whole or in part, the contract;

- Monies due or to become due under the contract may be retained by the City until compliance is achieved;
- City may recommend debarment from future City contracts for a period of three years or until all penalties and/or restitution have been paid, whichever occurs last;
- City may also pursue any and all other remedies lawfully allowed.