



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.