

# Gender-Expansive Calif. Equal Pay Laws Widen Employer Risk

By **Sarah Abraham and Jacqueline Crispino** (April 14, 2026)

California recently enacted amendments to strengthen its Equal Pay Act and Pay Transparency Act. The California Equal Pay Act, codified under Labor Code Section 1197.5, was originally enacted in 1949 and has since been revised numerous times, including in each of the past three years.[1] The most recent amendments aim to shrink the wage gap, not only for women, but also for nonbinary and transgender employees.



Sarah Abraham

According to the National Women's Law Center, women in California continue to earn 88 cents on the dollar to men.[2] And according to recent statistics from the Human Rights Campaign, nonbinary workers earn 70 cents on the dollar compared to the median wage of all workers in the U.S.[3] Further, the Human Rights Campaign has found that transgender men also earn 70 cents on the dollar, while transgender women earn 60 cents on the dollar, compared to the median wage of all workers in the U.S.[4]



Jacqueline Crispino

As explained below, the EPA's amendments, effective Jan. 1, replace binary gendered language with nonbinary language, define "wages" and "wage rates" to include all forms of pay, extend the period for which employees can recover for an EPA violation from two to three years, and clarify when a cause of action occurs.

Also effective Jan. 1, the amendment to the California Pay Transparency Act, under Labor Code Section 432.3, changes the meaning of the term "pay scale" to require employers' pay disclosures to be transparent about the actual value of compensation packages.

Together, these changes create new obligations for employers to comply with these laws, and likewise increase the potential exposure for employers when the EPA is violated.

## Replacing "Opposite Sex" With "Another Sex"

Historically, the EPA prohibited employers from paying any of its employees less than what it pays employees of the "opposite sex" for substantially similar work. The recent amendment replaced this term with the term "another sex." [5]

In addition, the term "sex" is now defined as having the same meaning as in the Fair Employment and Housing Act, which defines "sex" to include one's gender, gender identity and gender expression, "whether or not stereotypically associated with the person's assigned sex at birth." [6]

These changes open the door to new types of EPA claims. For example, a nonbinary employee can assert a claim for being paid less than women, men or any other employee with a different gender identity or expression for substantially similar work.

For employers, this creates a new obligation that may take careful thought to implement. This may require employers — and specifically, anyone who is setting pay — to be aware of their employees' gender identity or expression to ensure compliance with the new EPA.

At the same time, employers will have to toe the line to avoid improper inquiry into this aspect of an employee's identity. As a result, employers will have seemingly competing obligations to wrestle with. This makes it even more important for employers to undertake an analysis to ensure that pay decisions are grounded in nondiscriminatory, job-related considerations.

### **Defining "Wages" and "Wage Rates"**

The terms "wages" and "wage rates" in the EPA are now defined to include "all forms of pay, including, but not limited to, salary, overtime pay, bonuses, stock, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits." [7]

This definition, which had previously been undefined, puts the California Equal Pay Act closer in line with the federal Equal Pay Act, as the federal statute defines both "wages" and "wage rate." [8] This change addresses the reality that compensation often consists largely of components such as equity grants. Moreover, this change will help address the reality of gender pay inequality, particularly in the realm of technology companies where equity may be the main component of compensation.

The obvious implication of this is that employers must assess their compensation packages to ensure compliance with the EPA when factoring in things like equity grants and bonuses. A nonobvious consideration is that equity grants may be valued wildly differently from one year to the next, and those differences should be taken into account when assessing EPA compliance.

For example, a woman might receive 100 shares in one year, and the following year, a man might also receive 100 shares, but if the value of those shares were double or triple the amount of the shares in the prior year, that may give rise to a pay disparity. Employers must consider whether such a disparity is justified under the EPA.

### **Expanding the Statute of Limitations and Adopting the Continuing Violation Doctrine**

The amendments extended the statute of limitations to an automatic three years, as opposed to only two years when the violation was not willful. [9] In addition, the statute states that an employee is "entitled to obtain relief for the entire period of time in which a violation ... exists, but not to exceed six years." [10]

This essentially codifies the continuing violation doctrine, allowing an employee to recover for violations outside the statute of limitations, as long as at least one violation occurred within the statute of limitations period. [11] The statute also states that "[n]othing in this subdivision shall prohibit the application of the doctrine of 'continuing violation' or the 'discovery rule' to any appropriate claim." [12]

### **Explaining When a Cause of Action Occurs**

The EPA now explains that a cause of action occurs when any of the following three scenarios happen:

- "An alleged unlawful compensation decision or other practice is adopted."

- "An individual becomes subject to an alleged unlawful compensation decision or other practice."
- "When an individual is affected by application of an alleged unlawful compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from the decision or other practice." [13]

In practice, for example, this means that even if the decision to adopt a discriminatory pay policy was made 10 years ago, a cause of action would continue to occur each time an employee is underpaid following that decision.

This change makes it easier for employees to bring timely claims, while employers could be exposed to liability that stems from pay decisions that were made long ago but were never corrected. In order to comply with the rule, employers should correct any persisting pay disparities, including those that stem from obsolete pay policies or practices.

### **Clarifying California's Pay Transparency Act**

The same bill that amended the EPA also modified Labor Code Section 432.3, California's Pay Transparency Act, which requires employers with 15 or more employees to provide the applicable pay scale in any job posting. [14]

This bill altered the definition of "pay scale." [15] While the former statute stated that a pay scale was "the salary or hourly wage range that the employer reasonably expects to pay for the position," [16] the statute now reads that it is a "good faith estimate of the salary or hourly wage range that the employer reasonably expects to pay for the position upon hire." [17]

The motivation behind this change is to prevent employers from providing overly broad salary ranges. Employers must now disclose the starting range that the employer would pay once someone is hired for the position, rather than the pay range for the position generally, which may have included the range that would be paid later in the hire's tenure.

### **Conclusion**

California tends to have strong employee protections, and the latest updates to the California EPA and PTA are no exception. The EPA amendments aim to shrink the wage gap affecting women, as well as nonbinary and transgender employees.

Employers that violate the EPA risk greater exposure on damages, as employees can recoup all forms of lost pay, including equity compensation, and may recover for a longer duration of time.

In addition to heightened obligations under the EPA, amendments to the PTA will likely require employers to change their practices for reporting salary ranges in job descriptions to accurately convey to employees the amount that the job will pay on the new hire's first day.

Going forward, employers must assess their new obligations to ensure that pay disparities across all genders and gender identities are justified by nondiscriminatory, job-related reasons.

---

*Sarah Abraham is counsel and Jacqueline Crispino is an associate at The Jhaveri-Weeks Firm PC.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

[1] S.B. 497, 2023-2024 Reg. Sess. (Cal. 2023); S.B. 1525, 2023-2024 Reg. Sess. (Cal. 2024).

[2] National Women's Law Center, State: California, Mar. 27, 2026, <https://nwlc.org/state/california/>.

[3] Human Rights Campaign, The Wage Gap Among LGBTQ+ Workers in the United States, Mar. 28, 2026, <https://www.hrc.org/resources/the-wage-gap-among-lgbtq-workers-in-the-united-states>; Human Rights Campaign, The LGBTQ+ Wage Gap, <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/Wage-Gap-Appendix.pdf>.

[4] *Id.*

[5] Cal. Lab. Code § 1197.5(a).

[6] *Id.* at § 1197.5(l)(2); Cal. Gov. Code § 12926(r)(2).

[7] *Id.* at § 1197.5(l)(3).

[8] 29 C.F.R. § 1620.10; 29 C.F.R. § 1620.12.

[9] Cal. Lab. Code § 1197.5(i)(1).

[10] *Id.* at § 1197.5(i)(2).

[11] See also *id.* at § 1197.5(i)(4).

[12] *Id.*

[13] *Id.* at § 1197.5(i)(3).

[14] Cal. Lab. Code § 432.3(a), (c)(1)–(c)(3).

[15] *Id.* at § 432.3(m)(1).

[16] S.B. 642, 2025-2026 Reg. Sess. (Cal. 2025) or Cal. Lab. Code § 432.3(m)(1) (2023).

[17] Cal. Lab. Code § 432.3(m)(1).