

Comparative Information: Approaches for Addressing Pay Equity

Rules Committee, Item 3

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Independent Budget Analyst



Councilmember Ward's Proposal

Equal Pay Ordinance (EPO)

- Would require businesses seeking city contracts to offer equal wages to employees regardless of their gender or ethnicity
- Contractors would:
 - Certify compliance with the EPO
 - Allow the City access to its employment records
 - Post a notice in the workplace & inform new hires of its equal pay policy
- Would apply to all city contracts, including goods, services, construction, leases, and grants beginning July 1, 2017

Councilmember Ward's Proposal cont'd

- Provision of equal pay would apply to City contractor employees:
 - Within City limits
 - Outside of City limits if working on City owned/occupied property & in connection with City contract
- Enforcement by Purchasing and Contracting Department
- Penalties could include:
 - Determination of a breach of contract
 - Cancellation, termination, or suspension of contract
 - Money due retained by City
 - Potential for debarment from future contracts
 - Other legally allowable remedies

Equal Pay laws and regulations in other Cities, States, and Counties

We examined State and Federal law & contractor requirements in:

- San Francisco, California
- Erie County, New York
- State of Minnesota
- State of New Mexico
- Albuquerque, New Mexico
- Tempe, Arizona

Relevant State Law

- **California Equal Pay Act** has required equal pay for equal work at the same establishment since 1949
 - Recently amended by SB 358 (California Fair Pay Act), and SB 1063
 - Enforced by Division of Labor Standards
- **Fair Employment and Housing Act** prohibits pay inequity for a variety of protected classes including race, color, national origin, sex, gender, gender identity, and gender expression
 - Enforced by the Department of Fair Employment and Housing

Relevant Federal Laws and Regulations

- **Equal Pay Act** requires equal pay for substantially similar work in the same establishment, except when 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 (w/15+ employees) from discriminating against employees, including with respect to pay, on basis of race, color, religion, sex, or national origin
- **Executive Order 11246** prohibits federal contractors (w/contracts over \$10,000) from discriminating against employees in their employment decisions, including pay, based on race, color, religion, sex, or national origin

Relevant Federal Laws and Regulations cont'd

Enforcement

- U.S. Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act & the Equal Pay Act
- U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces Executive Order 11246
- Revised federal EEO-1 Report expected to provide a first assessment for EEOC in discrimination investigations, & help OFCCP identify federal contractors to review for compliance

San Francisco, California

Equal Pay Ordinance

- Passed by Board of Supervisors (BoS) in December 2014
- Will require contractors to file annual pay equity reports
- Focuses on both gender and race wage gaps
- Status: In pilot stage
 - Equal Pay Advisory Board Convened
 - Office of Controller has surveyed contractors and initiated pilot for data collection effort
- Of note:
 - Administrative Code includes penalties
 - BoS will receive updates and annual reports

Erie County, New York

Equal Pay Executive Order

- Signed in November 2014
- Requires contractors to submit Equal Pay Certifications
- Focused on gender wage gap
- Will use random selection process to select contractors for compliance evaluations (desk audits)
- Status: Pilot stage just completed, will begin random audits this year (goal of 6-8 audits each year)
- Of note:
 - Will not use employee complaints to determine which contractors to audit
 - May refer unresolved matters to State or EEOC



State of Minnesota

Women's Economic Security Act

- Amended State's Human Rights Act in May 2014
- Requires contractors apply for & receive an Equal Pay Certificate prior to contracting with the State
- Contractors must confirm compliance with various laws and provide information about measures in place for workplace equity
- Randomly selects contractors for compliance audits, but also includes process for employees to submit complaints
- Status: Implemented August 2014
- Of note:
 - Applies to contractors w/40+ employees w/contracts over \$500K
 - Biennial reports to Governor and Senate/House Committees required

State of New Mexico

Executive Orders 2009-004 & 2009-049

- Governor convened a Task Force on Fair Pay and Equity to close wage gap/reduce job segregation in State's classified workforce, and make recommendations related to State contractor requirements
- Intended to develop an incentive for contractors to close the wage gap, but currently requires the submission of pay equity reports as a condition of contract award. No incentive program in place yet
- Status: Partially implemented in 2010
- Of note:
 - State Auditor allowed to audit pay equity reports, and is beginning its first audit now
 - State uses EEO-1 job categories to reduce burden on contractors



Albuquerque, New Mexico

Pay Equity Initiative

- Requires contractors submit State-developed Pay Equity Reporting Form
- Provides 5% preference in bidding stage for companies that show an average wage gap of 10% or less
- Status: Effective January 2014; bidding preference began in July 2015
- Of note:
 - Failure to submit reporting form results in unresponsive bid
 - Mirrors state reporting requirements, and federal EEO-1 reporting categories to simplify the process for contractors
 - No exemptions for small employers or out-of-state contractors (but reduces reporting requirements for out-of-state contractors)
 - Provides process for auditing contractors, and may require contractors to provide documentation from third party auditor if contractor's numbers are challenged

Tempe, Arizona

Four Pillar Pay Equity Initiative

1. Anti-Discrimination Ordinance (implemented)
 - Contractors must submit copy of anti-discrimination policy or certify compliance with Ordinance
2. Equal Pay for Equal Work Business Partner Designation
 - Voluntary for businesses (pilot just completed)
 - Includes a worksheet for businesses to conduct wage gap self-assessment
 - Wage gap goal of 8% or less for each job category
3. Quarterly Workshops for Businesses (in development)
4. Free Negotiation Trainings (implemented, to be expanded)

Lessons Learned

Based on our review of six cities, states, and counties, we found there are opportunities to learn from their experiences with pay equity requirements:

- Contractor requirements varied
 - Certifications of compliance
 - Required submittal of wage data from contractors as part of bidding process, condition of contract award, or to participate in business designation
- Compliance assessments/audits varied
 - Random audits, use of wage data to select contractors for audit
 - Potential for complaint driven process

Lessons Learned cont'd

- Exemptions based on size of business and/or size of contracts
- Contractor burden addressed through:
 - Certifications of compliance
 - Use of exemptions for certain contracts and/or thresholds for wage gaps (e.g. 8% or 10% due to non-discriminatory related reasons)
 - Mirroring of state and federal reporting standards
 - Use of publicly available certifications and self-assessments
- Staff workload can be reduced by:
 - Requesting compliance certifications instead of wage data up front from all contractors
 - Using complaint-based or random audits (instead of auditing or reviewing data from all contractors)
 - Referring more serious complaints to state & federal agencies

Lessons Learned cont'd

- Privacy of businesses and employees can be protected through:
 - Submission of summary or limited data from businesses, and from businesses of a certain size or larger
 - Privacy/confidentiality provisions in the ordinance
- Cost: Depending on the approach utilized, staffing and/or resources may be needed for education, administration, and enforcement
- Assessing gaps due to race and ethnicity can be challenging due to limited and/or confusing categorizations of race and ethnicity. The City may want to look at how San Francisco, and the State and Federal governments are addressing limited employee data
- Program Updates: some cities and states require annual or biennial updates for their legislative bodies

Conclusion

If the requested 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)
- Employee and subcontractor applicability
- Process for assessing ordinance compliance, handling of employee complaints, and determinants for audits
- Threshold for wage gaps
- Information to be collected from contractors in audits
- Penalties and/or fees for violations
- Whether to require periodic updates from City staff