

Achieving Gender Pay Equity in Your Jurisdiction
Guidelines for States, Counties, and Cities

by

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Background

Gender pay equity has been on the national agenda since the Equal Pay Act was passed in 1963. In 1964, sex discrimination in employment (including pay discrimination) was also outlawed by Title VII of the Civil Rights Act. At the time these laws were passed, the pay gap between women and men working full-time, year-round was 41 cents on the dollar. Today, more than 50 years later, it is 22 cents on the dollar.

Both the Equal Pay Act and Title VII prohibit sex discrimination in pay, but neither requires concrete steps by the employer to achieve pay equity. The laws are *complaint-driven*, meaning employees must initiate remedies themselves if they experience pay discrimination. They can bring legal action as individuals, or as a class if several employees are involved. In a select few cases, the federal government may institute lawsuits on behalf of employees.

In the 1980s, the State of Minnesota passed legislation requiring equal pay for jobs of equal value for state government workers, as well as county and local government workers. The law did not apply to the private sector. No other state followed suit, and little or no progress was made until well after the turn of the century.

Since the gender pay gap remains wide despite federal law, and women are nearly 50% of the work force, state and local governments are now beginning to look at how they can achieve pay equity in their jurisdictions through their own actions.

Recent State and Local Actions

The State of New Mexico was the first to institute a concrete gender pay equity requirement for the private sector in 2010. Accomplished with an Executive Order from New Mexico then-Governor Bill Richardson, all potential state contractors with 10 or more employees were required to submit a gender pay equity report as a condition of bidding. In 2014 the state's largest city, Albuquerque, instituted an even more stringent requirement for potential contractors (modeled after the state requirement) by action from the City Council at the request of the Mayor.

Since 2011, a number of other jurisdictions have taken or are moving toward steps following the New Mexico model in varying degrees (Erie County, NY; Tempe, AZ; San Francisco, CA; New York, NY; State of Missouri; Berkeley, CA).

Still others have moved in different directions to close the gender pay gap:

In 2013 the City of Boston instituted the Boston Women's Compact, a voluntary effort on the part of businesses to study and close any gender wage gaps. The Compact is a public-private partnership in which businesses pledge to take concrete, measurable steps to eliminate the wage gap in their establishments, and to report their progress and employee demographic and salary data anonymously every two years. Companies also pledge to learn the causes of the wage gap, and put measures in place to equalize pay.

<http://www.cityofboston.gov/women/workforce/compact.asp>

In October 2015 California passed a strict gender pay equity law that went into effect January 1, 2016. California companies are now required to justify pay differences between male and female employees doing "substantially similar" work regardless of job title or location. It also requires companies citing such factors as education or experience as justification for pay disparities to demonstrate that those factors account for the entire pay disparity. Prohibiting employees from asking about or discussing pay with co-workers is also outlawed.

Building Blocks for Conceiving, Planning, and Implementing Gender Pay Equity Initiatives

Implementing a gender pay equity initiative is neither quick and easy, and should not be entered into lightly. It takes careful planning and dedication on the part of officials, support from stakeholders, and robust participation on the part of staff.

Leadership must be dedicated. Before undertaking a pay equity initiative, be sure the top leadership of the organization is behind it. Otherwise much work can be done and time put in, only to have the project vetoed by the person(s) who are the ultimate "deciders." Once the sign-off from the top has been accomplished, a leader for the initiative must be chosen (usually by the person or persons at the top). This can be a staff member such as someone from the Human Rights or Human Resources department who is knowledgeable about the issue, or it can be an outside consultant or advocate. Whoever it is, the person should already be well versed in the gender pay equity issue, be aware of other pay equity initiatives around the country that should be studied, and have the time and organizational skills to lead the project.

Moral authority must be established. This simply means that an internal pay equity study of the public workforce (state, city, etc.) implementing the initiative should be done. Many public entities already have such information. The reason this is important is that businesses subjected to any new requirements will rightfully ask if the government entity implementing the initiative has subjected itself to the same scrutiny. (The good news is that most government hiring schemes are more formalized than those in the private sector, and gender pay gaps tend to be smaller in public workforces.)

Stakeholder groups must be brought in. It is very important to include all stakeholder groups in discussion and planning of pay equity initiatives. Often advocates have been working for years toward the goal, and in fact leaders may be receptive precisely because of such advocacy over time. Business interests will have concerns, as will staff that might be charged with implementing the initiative. Leaders of community organizations can also provide valuable input.

This is not to say that any of these stakeholders should have veto power. Rather, they should be invited into discussions as to what is being contemplated, timelines, and justifications. One very good way to do this is for the leadership (e.g. governor, mayor, city council, commissioners, etc.) to appoint a task force to make recommendations for moving forward. The person chosen by leadership to lead the initiative should chair or co-chair the task force.

A task force need not be long-lasting, nor does it need more than a few meetings, assuming all of the participants share the goal. It is particularly important that business representatives that support and strive for gender pay equity be appointed, which may involve some personal outreach on the part of leadership. (It is not a good idea to appoint individuals who are set against any action on pay equity. The goal is to get consensus on the general shape of the plan and perhaps the timelines and resources -- not to argue about whether it should be done at all.)

Questions for the task force to explore:

What type of initiative (carrot, stick, or something else)?

This is the most fundamental question that must be decided before any other work is undertaken.

There are several approaches to gender pay equity initiatives by public entities, ranging from asking local businesses to voluntarily undertake to close their gender pay gaps (Boston), to bonuses in the contracting process (Albuquerque), to threats of punishment under existing ordinances (San Francisco).

Are there legal issues that should be explored?

If the jurisdiction has a Human Rights law, Equal Rights Amendment, or other relevant statutes, these can be cited as legal underpinnings and reasons why the initiative is important.

There may also be laws already in place that should be considered when deciding the type of initiative can be undertaken. For example, if there is a procurement code that specifies what kind of incentives can be offered in bidding on public contracts, that must be explored with staff attorneys as to any constraints it would place on incentives for businesses that meet a certain criteria for closing their gender pay gaps.

What are the probable staffing requirements and expense?

Once the type of initiative is decided, staffing can be addressed. It may be possible to implement the initiative using mostly existing staff, particularly if the initiative leader is already employed by the organization. At this stage input from organizational departments that will be involved (e.g. Human Resources, Purchasing, Legal) is essential. If additional staffing is going to be required, that should be spelled out.

What is the timeline for getting policies and procedures in place, and for implementation?

At this point in the process, the task force (again with significant input from staff) should be able to recommend a probable timeline for formalizing policies and procedures, and for actually implementing the initiative.

Once the task force has general consensus on the above questions, it has completed its work, and a public report can be issued with recommendations to the leadership. Details for policies, procedures, and implementation of the initiative should then be left to staff and the initiative leader. This phase can take several months, depending on staff time, size of the government entity, number of businesses affected, and such matters as contracting and bid cycles if relevant.

Timeline

Every jurisdiction will be different, but planning and implementing a gender pay equity initiative will take anywhere from a few months to a year or more. This depends on resources and time the individuals involved have available to devote to the project. Below is a guideline for a city model which imposes pay equity reporting requirements for contractors, though it is appropriate for other types of initiatives, and for states and counties with minor variations.

Months 1 - 3 Leadership (e.g. mayor, city council) explore the types of initiatives that will be possible, given any legal constraints and the goals of the project – voluntary, incentive, or threat of punishment. This phase could take longer if ordinances must be passed or executive orders issued.

Months 3-4 Leadership appoints a task force and someone to lead the project.

Months 4-6 Task force meets to explore details and formalize policies and procedures, followed by a public announcement.

Months 7-9 Staff and project leader finalize rules, work with internal departments (IT, Purchasing, Legal etc.) as necessary for technical support, crafting and distributing information for the public and contractors affected.

Months 10-13 Initial implementation of the requirements for contractors, ideally as a voluntary “phase-in” where companies are not penalized for non-compliance or mistakes.

Month 14 Full implementation of the project.

Months 15-22 Ongoing evaluation and possible adjustments as problems and/or unanticipated consequences occur.

Additional Considerations for a Successful Gender Pay Equity Initiative

Employee resistance: It is sometimes the case that employees charged with implementing an initiative will resist, and in some cases might even claim that the requirements do not apply to their department. For this reason it is desirable to include these individuals early in the process, so that there are “no surprises” when it comes time to do the work necessary to make the project successful. Possible employee resistance is another reason to craft the requirements carefully, so that departments cannot try to exempt themselves. This is another reason for strong leadership at the top that is willing to direct that requirements be met should such resistance materialize.

Getting the business community on board: Once again it is important to include members of the business community in the planning as members of the task force. It is also important to make compliance as easy as possible (e.g. standard forms and reporting requirements), produce informational materials that are clear, and have a resource person to answer questions. There are a number of persuasive arguments that can be put in a Frequently Asked Questions document, such as:

- 1) Employers are already prohibited from discriminating in pay by federal law (The 1963 Equal Pay Act, and Title VII of the 1964 Civil Rights Act). When local pay equity initiatives are implemented, it helps employers to see where they might have a problem that should be fixed before it becomes subject to litigation.
- 2) Reporting on pay by gender and job classification is a matter of transparency in dealing with the government when they accept contracts, and a way to increase accountability to taxpayers who are providing the funds.
- 3) Research has shown that employees who know they are being paid fairly are better workers and have higher loyalty to the employer, reducing turnover and its attendant costs.
- 4) Fair pay makes employers more competitive in attracting and retaining high quality employees.
- 5) If the initiative has a public recognition component for companies that are certified as pay equity leaders, it can be used in advertising and public relations materials.

By way of example, the FAQ from the City of Albuquerque initiative is available at the link below:

<https://www.cabq.gov/womens-pay-equity-task-force/frequently-asked-questions>

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