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## Employer attorneys concerned about lawsuits as wage data bill passes Legislature

By Scott Rodd

A bill aimed at addressing wage disparity through the collection of salary data heads to the governor's desk after it passed in a concurrence vote in the [Assembly](#) this week.

[Assembly Bill 1209](#)— introduced by [Assemblywoman Lorena Gonzalez Fletcher](#), D-San Diego — would require companies with over 500 employees to collect the median and mean salary information for male and female exempt employees and board members.

If Gov. [Jerry Brown](#) signs the bill into law, employers would be required to start collecting the salary data on July 1, 2019, and deliver it to the Secretary of State's office by July 1, 2020. The Secretary of State's office would then publish updated data online every other year.

While equal pay and civil rights advocates praised the measure, employment attorneys who defend large companies are warning about the potential risks posed by the bill.

[David Tyra](#), manager of the labor and employment group at Kronick Moskowitz Tiedemann & Girard, said the data collected by employers and published online will not be presented in the broader context of why pay disparities may exist. The California Equal Pay Act, Tyra said, provides specific, lawful exceptions for pay disparities between employees who do substantially similar work.

"This bill would be significantly improved if it had a provision that allowed employers to include information" on differences in salary due to factors like seniority, training and educational background, Tyra said. [Assembly](#) Bill "1209 does not account for any of that."

This issue had surfaced while the bill worked its way through the Legislature, according to Gonzalez Fletcher. The original version of the bill included a requirement for employers to disclose the reason for pay gaps between employees who do substantially similar work. The requirement was axed, however, in the face of opposition from interest groups in the business community.

According to Gonzalez Fletcher, companies will still have the opportunity to provide information on wage disparities.

"They're more than welcome to put it in their own website to explain it there," she said.

While companies will be able to provide explanations for apparent wage disparities on their own, some attorneys say that will do little to prevent costly litigation.

"I predict 1209 will create a database for attorneys (who) want to find gender pay differentials, which will increase the amount of litigation...to the expense and jeopardy of the employer," said Tyra.

Benjamin M. Ebbink, of counsel at the Sacramento office of Fisher Phillips LLP, agreed.

"This might be a trawling expedition for plaintiff lawyers who are looking for disparities in pay at big companies" to form the basis for lawsuits, he said.

Gonzalez Fletcher bristled at the suggestion that the bill would result in increased litigation against employers. She pointed to a provision in the bill that states wage disparities in the data are not, in and of themselves, violations of the Equal Pay Act.

“This data is just raw data . It’s not, on its face, legal or illegal,” Gonzalez Fletcher said. “If (companies) are worried about being sued, they should be more worried about whether they’re breaking the law.”

[Mariko Yoshihara](#), legislative counsel and policy director for the California Employment Lawyers Association, agreed with Gonzalez Fletcher.

The purpose of the bill is “to require employers to take a hard look at their payroll data and ensure that there are bonafide factors that can explain any wage differentials,” she said. “A plaintiff’s attorney cannot simply look at the data provided to the state and file a lawsuit.”

Yoshihara adds that an employee should have a conversation with his or her employer if there is an apparent wage disparity in the data. If action is not taken by the employer to address the issue, she said, then the employee should pursue litigation.

But at least one member of the California Employment Lawyers Association has said he will proactively use the database to pursue wage disparity cases.

“By posting this on the Secretary of State’s website, the government is basically giving us (plaintiff lawyers) the data we need to go in there and hammer companies,” said Galen T. Shimoda, attorney owner at [Shimoda Law Corp.](#)

Although the wage data cannot form the sole basis of a lawsuit, he believes the database will help set him “on the right track.” And while the purpose of the bill is not to spark litigation against large companies, Shimoda believes the government understands that litigation is a part of the corrective force needed to address wage disparity.

“With AB 1209 providing true statistics, it’s almost like the government is saying, ‘Here’s the basis, litigators — go for it, start filing,’” he said.