

AMENDED IN ASSEMBLY AUGUST 19, 2016

AMENDED IN SENATE APRIL 20, 2016

**SENATE BILL**

**No. 1063**

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**Introduced by Senator Hall**

**(Coauthors: Senators Glazer, Hueso, and Mitchell)**

(Coauthors: Assembly Members Brown, Campos, Gipson,  
Roger Hernández, McCarty, and Ridley-Thomas)

February 16, 2016

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An act to amend Sections 1197.5 and 1199.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1063, as amended, Hall. Conditions of employment: wage differential: race or ethnicity.

Existing law prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, unless the employer demonstrates that specific, reasonably applied factors account for the entire wage differential. Existing law authorizes an employee paid lesser wages in violation of this prohibition to file a complaint with the Division of Labor Standards Enforcement, and authorizes the employee, the division, or the Department of Industrial Relations to commence a civil action for the wages the employee was deprived of because of the violation, interest on those wages, and liquidated damages. Under existing law, an employer or other person who violates or causes a violation of that prohibition, or who reduces the wages of any employee in order to comply with that prohibition, is guilty of a misdemeanor.

This bill would ~~expand that prohibition to~~ also prohibit an employer from paying any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work, as specified above. By expanding the scope of a crime, this bill would impose a state-mandated local program.

*This bill would incorporate additional changes in Section 1197.5 of the Labor Code proposed by AB 1676 that would become operative only if AB 1676 and this bill are both chaptered and become effective on or before January 1, 2017, and this bill is chaptered last.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1197.5 of the Labor Code is amended to  
2 read:  
3 1197.5. (a) An employer shall not pay any of its employees  
4 at wage rates less than the rates paid to employees of the opposite  
5 sex for substantially similar work, when viewed as a composite of  
6 skill, effort, and responsibility, and performed under similar  
7 working conditions, except where the employer demonstrates:  
8 (1) The wage differential is based upon one or more of the  
9 following factors:  
10 (A) A seniority system.  
11 (B) A merit system.  
12 (C) A system that measures earnings by quantity or quality of  
13 production.  
14 (D) A bona fide factor other than sex, such as education,  
15 training, or experience. This factor shall apply only if the employer  
16 demonstrates that the factor is not based on or derived from a  
17 sex-based differential in compensation, is job related with respect  
18 to the position in question, and is consistent with a business  
19 necessity. For purposes of this subparagraph, “business necessity”  
20 means an overriding legitimate business purpose such that the  
21 factor relied upon effectively fulfills the business purpose it is

1 supposed to serve. This defense shall not apply if the employee  
2 demonstrates that an alternative business practice exists that would  
3 serve the same business purpose without producing the wage  
4 differential.

5 (2) Each factor relied upon is applied reasonably.

6 (3) The one or more factors relied upon account for the entire  
7 wage differential.

8 (b) An employer shall not pay any of its employees at wage  
9 rates less than the rates paid to employees of another race or  
10 ethnicity for substantially similar work, when viewed as a  
11 composite of skill, effort, and responsibility, and performed under  
12 similar working conditions, except where the employer  
13 demonstrates:

14 (1) The wage differential is based upon one or more of the  
15 following factors:

16 (A) A seniority system.

17 (B) A merit system.

18 (C) A system that measures earnings by quantity or quality of  
19 production.

20 (D) A bona fide factor other than race or ethnicity, such as  
21 education, training, or experience. This factor shall apply only if  
22 the employer demonstrates that the factor is not based on or derived  
23 from a race- or ethnicity-based differential in compensation, is job  
24 related with respect to the position in question, and is consistent  
25 with a business necessity. For purposes of this subparagraph,  
26 “business necessity” means an overriding legitimate business  
27 purpose such that the factor relied upon effectively fulfills the  
28 business purpose it is supposed to serve. This defense shall not  
29 apply if the employee demonstrates that an alternative business  
30 practice exists that would serve the same business purpose without  
31 producing the wage differential.

32 (2) Each factor relied upon is applied reasonably.

33 (3) The one or more factors relied upon account for the entire  
34 wage differential.

35 (c) Any employer who violates subdivision (a) or (b) is liable  
36 to the employee affected in the amount of the wages, and interest  
37 thereon, of which the employee is deprived by reason of the  
38 violation, and an additional equal amount as liquidated damages.

39 (d) The Division of Labor Standards Enforcement shall  
40 administer and enforce this section. If the division finds that an

1 employer has violated this section, it may supervise the payment  
2 of wages and interest found to be due and unpaid to employees  
3 under subdivision (a) or (b). Acceptance of payment in full made  
4 by an employer and approved by the division shall constitute a  
5 waiver on the part of the employee of the employee's cause of  
6 action under subdivision (h).

7 (e) Every employer shall maintain records of the wages and  
8 wage rates, job classifications, and other terms and conditions of  
9 employment of the persons employed by the employer. All of the  
10 records shall be kept on file for a period of three years.

11 (f) Any employee may file a complaint with the division that  
12 the wages paid are less than the wages to which the employee is  
13 entitled under subdivision (a) or (b) or that the employer is in  
14 violation of subdivision (k). The complaint shall be investigated  
15 as provided in subdivision (b) of Section 98.7. The division shall  
16 keep confidential the name of any employee who submits to the  
17 division a complaint regarding an alleged violation of subdivision  
18 (a), (b), or (k) until the division establishes the validity of the  
19 complaint, unless the division must abridge confidentiality to  
20 investigate the complaint. The name of the complaining employee  
21 shall remain confidential if the complaint is withdrawn before the  
22 confidentiality is abridged by the division. The division shall take  
23 all proceedings necessary to enforce the payment of any sums  
24 found to be due and unpaid to these employees.

25 (g) The department or division may commence and prosecute,  
26 unless otherwise requested by the employee or affected group of  
27 employees, a civil action on behalf of the employee and on behalf  
28 of a similarly affected group of employees to recover unpaid wages  
29 and liquidated damages under subdivision (a) or (b), and in addition  
30 shall be entitled to recover costs of suit. The consent of any  
31 employee to the bringing of any action shall constitute a waiver  
32 on the part of the employee of the employee's cause of action  
33 under subdivision (h) unless the action is dismissed without  
34 prejudice by the department or the division, except that the  
35 employee may intervene in the suit or may initiate independent  
36 action if the suit has not been determined within 180 days from  
37 the date of the filing of the complaint.

38 (h) An employee receiving less than the wage to which the  
39 employee is entitled under this section may recover in a civil action  
40 the balance of the wages, including interest thereon, and an equal

1 amount as liquidated damages, together with the costs of the suit  
2 and reasonable attorney’s fees, notwithstanding any agreement to  
3 work for a lesser wage.

4 (i) A civil action to recover wages under subdivision (a) or (b)  
5 may be commenced no later than two years after the cause of action  
6 occurs, except that a cause of action arising out of a willful  
7 violation may be commenced no later than three years after the  
8 cause of action occurs.

9 (j) If an employee recovers amounts due the employee under  
10 subdivision (c), and also files a complaint or brings an action under  
11 subdivision (d) of Section 206 of Title 29 of the United States  
12 Code which results in an additional recovery under federal law for  
13 the same violation, the employee shall return to the employer the  
14 amounts recovered under subdivision (c), or the amounts recovered  
15 under federal law, whichever is less.

16 (k) (1) An employer shall not discharge, or in any manner  
17 discriminate or retaliate against, any employee by reason of any  
18 action taken by the employee to invoke or assist in any manner  
19 the enforcement of this section. An employer shall not prohibit an  
20 employee from disclosing the employee’s own wages, discussing  
21 the wages of others, inquiring about another employee’s wages,  
22 or aiding or encouraging any other employee to exercise his or her  
23 rights under this section. Nothing in this section creates an  
24 obligation to disclose wages.

25 (2) Any employee who has been discharged, discriminated or  
26 retaliated against, in the terms and conditions of his or her  
27 employment because the employee engaged in any conduct  
28 delineated in this section may recover in a civil action reinstatement  
29 and reimbursement for lost wages and work benefits caused by  
30 the acts of the employer, including interest thereon, as well as  
31 appropriate equitable relief.

32 (3) A civil action brought under this subdivision may be  
33 commenced no later than one year after the cause of action occurs.

34 *SEC. 1.5. Section 1197.5 of the Labor Code is amended to*  
35 *read:*

36 1197.5. (a) An employer shall not pay any of its employees  
37 at wage rates less than the rates paid to employees of the opposite  
38 sex for substantially similar work, when viewed as a composite of  
39 skill, effort, and responsibility, and performed under similar  
40 working conditions, except where the employer demonstrates:

1 (1) The wage differential is based upon one or more of the  
2 following factors:

3 (A) A seniority system.

4 (B) A merit system.

5 (C) A system that measures earnings by quantity or quality of  
6 production.

7 (D) A bona fide factor other than sex, such as education,  
8 training, or experience. This factor shall apply only if the employer  
9 demonstrates that the factor is not based on or derived from a  
10 sex-based differential in compensation, is job related with respect  
11 to the position in question, and is consistent with a business  
12 necessity. For purposes of this subparagraph, “business necessity”  
13 means an overriding legitimate business purpose such that the  
14 factor relied upon effectively fulfills the business purpose it is  
15 supposed to serve. This defense shall not apply if the employee  
16 demonstrates that an alternative business practice exists that would  
17 serve the same business purpose without producing the wage  
18 differential.

19 (2) Each factor relied upon is applied reasonably.

20 (3) The one or more factors relied upon account for the entire  
21 wage differential. *Prior salary shall not, by itself, justify any*  
22 *disparity in compensation.*

23 (b) *An employer shall not pay any of its employees at wage rates*  
24 *less than the rates paid to employees of another race or ethnicity*  
25 *for substantially similar work, when viewed as a composite of skill,*  
26 *effort, and responsibility, and performed under similar working*  
27 *conditions, except where the employer demonstrates:*

28 (1) *The wage differential is based upon one or more of the*  
29 *following factors:*

30 (A) *A seniority system.*

31 (B) *A merit system.*

32 (C) *A system that measures earnings by quantity or quality of*  
33 *production.*

34 (D) *A bona fide factor other than race or ethnicity, such as*  
35 *education, training, or experience. This factor shall apply only if*  
36 *the employer demonstrates that the factor is not based on or*  
37 *derived from a race- or ethnicity-based differential in*  
38 *compensation, is job related with respect to the position in*  
39 *question, and is consistent with a business necessity. For purposes*  
40 *of this subparagraph, “business necessity” means an overriding*

1 *legitimate business purpose such that the factor relied upon*  
2 *effectively fulfills the business purpose it is supposed to serve. This*  
3 *defense shall not apply if the employee demonstrates that an*  
4 *alternative business practice exists that would serve the same*  
5 *business purpose without producing the wage differential.*

6 (2) *Each factor relied upon is applied reasonably.*

7 (3) *The one or more factors relied upon account for the entire*  
8 *wage differential. Prior salary shall not, by itself, justify any*  
9 *disparity in compensation.*

10 ~~(b)~~

11 (c) *Any employer who violates subdivision (a) or (b) is liable*  
12 *to the employee affected in the amount of the wages, and interest*  
13 *thereon, of which the employee is deprived by reason of the*  
14 *violation, and an additional equal amount as liquidated damages.*

15 ~~(e)~~

16 (d) *The Division of Labor Standards Enforcement shall*  
17 *administer and enforce this section. If the division finds that an*  
18 *employer has violated this section, it may supervise the payment*  
19 *of wages and interest found to be due and unpaid to employees*  
20 *under subdivision ~~(a)~~: (a) or (b). Acceptance of payment in full*  
21 *made by an employer and approved by the division shall constitute*  
22 *a waiver on the part of the employee of the employee's cause of*  
23 *action under subdivision ~~(g)~~: (h).*

24 ~~(d)~~

25 (e) *Every employer shall maintain records of the wages and*  
26 *wage rates, job classifications, and other terms and conditions of*  
27 *employment of the persons employed by the employer. All of the*  
28 *records shall be kept on file for a period of three years.*

29 ~~(e)~~

30 (f) *Any employee may file a complaint with the division that*  
31 *the wages paid are less than the wages to which the employee is*  
32 *entitled under subdivision (a) or (b) or that the employer is in*  
33 *violation of subdivision ~~(j)~~: (k). The complaint shall be investigated*  
34 *as provided in subdivision (b) of Section 98.7. The division shall*  
35 *keep confidential the name of any employee who submits to the*  
36 *division a complaint regarding an alleged violation of subdivision*  
37 *~~(a) or (j)~~ (a), (b), or (k) until the division establishes the validity*  
38 *of the complaint, unless the division must abridge confidentiality*  
39 *to investigate the complaint. The name of the complaining*  
40 *employee shall remain confidential if the complaint is withdrawn*

1 before the confidentiality is abridged by the division. The division  
2 shall take all proceedings necessary to enforce the payment of any  
3 sums found to be due and unpaid to these employees.

4 ~~(f)~~

5 (g) The department or division may commence and prosecute,  
6 unless otherwise requested by the employee or affected group of  
7 employees, a civil action on behalf of the employee and on behalf  
8 of a similarly affected group of employees to recover unpaid wages  
9 and liquidated damages under subdivision ~~(a)~~, (a) or (b), and in  
10 addition shall be entitled to recover costs of suit. The consent of  
11 any employee to the bringing of any action shall constitute a waiver  
12 on the part of the employee of the employee's cause of action  
13 under subdivision ~~(g)~~ (h) unless the action is dismissed without  
14 prejudice by the department or the division, except that the  
15 employee may intervene in the suit or may initiate independent  
16 action if the suit has not been determined within 180 days from  
17 the date of the filing of the complaint.

18 ~~(g) Any~~

19 (h) An employee receiving less than the wage to which the  
20 employee is entitled under this section may recover in a civil action  
21 the balance of the wages, including interest thereon, and an equal  
22 amount as liquidated damages, together with the costs of the suit  
23 and reasonable attorney's fees, notwithstanding any agreement to  
24 work for a lesser wage.

25 ~~(h)~~

26 (i) A civil action to recover wages under subdivision (a) or (b)  
27 may be commenced no later than two years after the cause of action  
28 occurs, except that a cause of action arising out of a willful  
29 violation may be commenced no later than three years after the  
30 cause of action occurs.

31 ~~(i)~~

32 (j) If an employee recovers amounts due the employee under  
33 subdivision ~~(b)~~, (c), and also files a complaint or brings an action  
34 under subdivision (d) of Section 206 of Title 29 of the United  
35 States Code which results in an additional recovery under federal  
36 law for the same violation, the employee shall return to the  
37 employer the amounts recovered under subdivision ~~(b)~~, (c), or the  
38 amounts recovered under federal law, whichever is less.

39 ~~(j)~~

1 (k) (1) An employer shall not discharge, or in any manner  
2 discriminate or retaliate against, any employee by reason of any  
3 action taken by the employee to invoke or assist in any manner  
4 the enforcement of this section. An employer shall not prohibit an  
5 employee from disclosing the employee's own wages, discussing  
6 the wages of others, inquiring about another employee's wages,  
7 or aiding or encouraging any other employee to exercise his or her  
8 rights under this section. Nothing in this section creates an  
9 obligation to disclose wages.

10 (2) Any employee who has been discharged, discriminated or  
11 retaliated against, in the terms and conditions of his or her  
12 employment because the employee engaged in any conduct  
13 delineated in this section may recover in a civil action reinstatement  
14 and reimbursement for lost wages and work benefits caused by  
15 the acts of the employer, including interest thereon, as well as  
16 appropriate equitable relief.

17 (3) A civil action brought under this subdivision may be  
18 commenced no later than one year after the cause of action occurs.

19 SEC. 2. Section 1199.5 of the Labor Code is amended to read:

20 1199.5. Every employer or other person acting either  
21 individually or as an officer, agent, or employee of another person  
22 is guilty of a misdemeanor and is punishable by a fine of not more  
23 than ten thousand dollars (\$10,000), or by imprisonment for not  
24 more than six months, or by both, who willfully does any of the  
25 following:

26 (a) Pays or causes to be paid any employee a wage less than the  
27 rate paid to an employee of another sex, race, or ethnicity, as  
28 required by Section 1197.5.

29 (b) Reduces the wages of any employee in order to comply with  
30 Section 1197.5.

31 No person shall be imprisoned pursuant to this section except  
32 for an offense committed after the conviction of the person for a  
33 prior offense pursuant to this section.

34 SEC. 3. *Section 1.5 of this bill incorporates amendments to*  
35 *Section 1197.5 of the Labor Code proposed by both this bill and*  
36 *Assembly Bill 1676. It shall only become operative if (1) both bills*  
37 *are enacted and become effective on or before January 1, 2017,*  
38 *(2) each bill amends Section 1197.5 of the Labor Code, and (3)*  
39 *this bill is enacted after Assembly Bill 1676, in which case Section*  
40 *1 of this bill shall not become operative.*

1     ~~SEC. 3.~~

2     *SEC. 4.* No reimbursement is required by this act pursuant to  
3 Section 6 of Article XIII B of the California Constitution because  
4 the only costs that may be incurred by a local agency or school  
5 district will be incurred because this act creates a new crime or  
6 infraction, eliminates a crime or infraction, or changes the penalty  
7 for a crime or infraction, within the meaning of Section 17556 of  
8 the Government Code, or changes the definition of a crime within  
9 the meaning of Section 6 of Article XIII B of the California  
10 Constitution.

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