



New Laws Impact Employee Compensation

California public employers should be aware of changes to the Brown Act and California Fair Pay Act that will affect their compensation practices beginning in 2017. Senate Bill 1436 (“SB 1436”) amends the Brown Act to require legislative bodies to provide an oral summary in open session prior to taking action on local agency executive compensation. Assembly Bill 1676 (“AB 1676”) and Senate Bill 1063 (“SB 1063”) amend the Fair Pay Act to further protect against pay inequality among all employees, regardless of sex, race or ethnicity.

SB 1436: Oral Report on Action Affecting Local Agency Executive Compensation

In recent years, the California Legislature enacted several new requirements to increase transparency in high ranking employee—or “local agency executive”—compensation. The latest such effort, SB 1436, amends the Brown Act to require a legislative body to orally report a summary prior to taking final action on local agency executive compensation. The report must be made in open session and at the same meeting in which the action will be taken.

Importantly, SB 1436 does not affect other legal requirements concerning local agency executive compensation, including Assembly Bill 1344, which prohibits a legislative body from calling a special meeting regarding local agency executive compensation. It also does not impact the ability of the legislative body to discuss local agency executive compensation in closed session, provided that the oral report and final action are made in open session.

In practical terms, SB 1436 likely restricts legislative bodies from including local agency executive compensation on their “consent” calendars. Instead, the best practice going forward will be for public agencies to ensure such matters are acted upon as a separate agenda item at a regular meeting, and for the legislative body to provide an oral summary in open session before acting on the recommendation.

California Fair Pay Act: Same Pay for Same Work

The Fair Pay Act has been the law in California since 2016. In summary, it prohibits an employer from paying its employees less than members of the opposite sex for substantially similar work performed under similar working conditions. Although described as the “most aggressive law in the nation” to ensure equal pay, the Fair Pay Act nevertheless permitted employers to rely on prior salary in determining wages. This led to concerns that female employees were being penalized due to their prior salaries, which would continue to perpetuate the historic pay disparity between male and female employees.

Beginning in 2017, AB 1676 amends the Fair Pay Act to prohibit an employer from justifying pay disparity based solely upon prior salary. SB 1063 further amends the Fair Pay Act to extend its protections to an individual's race and ethnicity.

In practical terms, these new requirements likely will have only minimal impact on current public employer practices in California. Public employers may, for instance, still inquire regarding prior salary, so long as that is not the sole factor when determining salary. Other laws have also long prohibited public employers from paying their employees differently based on race or ethnicity. At a minimum, public employers should ensure that their current policies, regulations and collective bargaining agreements are consistent with these new requirements.

If you have any questions regarding these new requirements, please contact one of our six offices.

F3 NewsFlash® prepared by Joshua A. Stevens, Jordan I. Bilbeisi,
Katy L. McCully and John W. Norlin.

Josh is a Partner in the F3 Oakland office.
Jordan is a Senior Associate in the F3 San Diego office.
Katy is an Associate in the F3 Fresno office.
John is Special Counsel in the F3 San Diego office.

This F3 NewsFlash® is a summary only and not legal advice. We recommend that you consult with legal counsel to determine how this legal development may apply to your specific facts and circumstances. Information on a free NewsFlash subscription can be found at www.f3law.com.

© 2017 Fagen Friedman & Fulfroost LLP

All rights reserved, except that the Managing Partner of Fagen Friedman & Fulfroost LLP hereby grants permission to any client of Fagen Friedman & Fulfroost LLP to use, reproduce and distribute this NewsFlash intact and solely for the internal, noncommercial purposes of such client.