



Written by [Bob Adelman](#) on October 8, 2015

## California's "Equal Pay" Law Will Discourage Businesses, Encourage Lawyers

When California Governor Jerry Brown signed into law the state's new "equal pay" mandate on October 6, [he said](#) it was designed to shrink further the pay gap between men and women: "The inequities that have plagued our state and have burdened women forever are slowly being resolved with this kind of bill.... [It's] a very important milestone.



It's important to law-school graduates looking for a favorable place to start their litigation practices, and important to moving companies helping business owners and their employees move out of state.

The law changes the definition of "equal" to "almost equal" or "similarly equal." Under current law (the new law becomes effective January 1, 2016), courts have interpreted "equal" to mean that male and female workers must hold the same jobs in order to be paid the same. But under the new law, "equal" now includes "substantially similar work," even if their titles are different or they work at different locations.

For example, a female housekeeper who cleans hotel rooms may, under the new law, challenge her employer if she learns that a male janitor working in the same hotel cleaning the lobby and banquet halls is being paid more than she is.

And her employer, under the new law, must "prove a negative" — namely, that the reason(s) she is being paid less is because of seniority or merit, that the reasons are job-related and reasonable, and that it is not due to sex discrimination.

This is going to be great for lawyers, according to Al Latham, himself a labor lawyer and an occasional guest lecturer at the University of Southern California: "It is going to lead to lots more litigation, which further weakens the business climate in California." Another labor lawyer, Geoff DeBoskey, agreed on both counts: more work for lawyers and more business for U-Haul companies as companies exit the state's increasingly anti-business climate. He said that employers will "move operations and grow elsewhere. If an employer is going to build a new call center, they are just not going to build that in California."

The new law will also negatively impact Hollywood, which in general supported the new legislation. Salaries for top actors and actresses have for years been a matter of negotiation between the talent and the studios. Starting in January, however, studios must start using box-office performance, number of awards garnered, physical demands, and other measures to justify different salaries. This is all good news for the lawyers as well, as studios will now likely be exposed to lawsuits from actors/actresses complaining that they're being discriminated against. And those studios will also have to prove a negative — that they're not discriminating on the basis of sex.



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The new law is “crazy”, according to Richard Epstein, a senior fellow at the Hoover Institution at Stanford University. Pay scales are, in general, already factoring in the differences thanks to skill levels, years of experience, part-time versus full-time, and other measures. The results of the new law, he said, “are likely to distort labor markets further and give firms a strong incentive to expand their businesses elsewhere.”

Aside from the expected influx of eager new lawyers looking to milk the opportunity, the new law will likely cement into place California’s position at the bottom among the country’s worst states in which to do business. For the last eleven years, *Chief Executive* magazine has published that list, and for the last eleven years California has been at the very bottom. Because of high taxes and an anti-business mentality, California has been successful at one thing: its inability to replace workers leaving for more favorable climes. Said one CEO, “California is the highest-taxed state in the nation [with the] highest gas tax — 60-plus cents per gallon which, combined with CARB [California Air Resources Board] regulations — make delivery within the state extremely costly. Added to this is the disdain for any and all manufacturing ... [as well as the state’s huge] pension debt.”

Said another, “California is a deeply troubled state with a problematic infrastructure and social issues. Businesses in the state are so highly regulated that most cannot afford to do business, and elected officials do not have any business experience [or] understanding.”

Said still another, “Google server farms tend to be built in lower-tax states like Nevada, Arizona and Iowa. Were it not for its climate and excellent university system, it is a wonder that more California companies don’t leave.”

Come January the new “equal pay” law will serve nicely as additional incentive for more of those companies to do just that.

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