

WHAT IS THE CALIFORNIA FAIR PAY ACT?

The California Fair Pay Act is a law that requires your employer to pay you the same as a co-worker of a different sex, race, or ethnicity as you who does work that is “substantially similar” to yours—that is, work that is *very* similar to yours.

HOW DO I KNOW IF I AM DOING WORK THAT IS SUBSTANTIALLY SIMILAR TO THAT OF A CO-WORKER?

The analysis depends on the specific situation, but generally, work is substantially similar when it requires that you and your coworker use similar skills, amounts of effort, and have similar levels of responsibility. The skill, effort, and responsibility don’t have to be identical, but when you look at the big picture of your jobs, there do have to be substantial similarities between them all.

MY COWORKER IS MAKING MORE THAN ME. DOES IT MATTER THAT S/HE HAS A DEGREE AND A FEW MORE YEARS OF EXPERIENCE?

Higher levels of education and experience, if related to the job in question, could be a valid reason for your employer to pay someone who does similar work as you more. Education and experience are part of the “skill” that we look at when deciding if two jobs are similar. If your coworker has a degree and more experience related to the job, they might have substantially more “skill” than you and your employer might be justified in paying them more.

MY COWORKER IS MAKING MORE THAN ME, BUT S/HE HAS BEEN AT MY JOB LONGER AND HAS A MORE SENIOR TITLE. IS THIS LEGAL?

It might be. Your employer may be justified in paying someone who performs substantially similar work as you more if the pay is based on seniority. So, if people at your workplace are paid more for being with the employer longer, your employer might be justified in paying your coworker more than you even though you perform the same work. However, the mere fact that your co-worker has a more senior title does not, by itself, justify a higher rate of pay.

MY COWORKER AND I ARE PAID ON COMMISSION, WHICH RESULTS IN ME GETTING PAID LESS THAN MY COWORKER. IS THIS ALLOWED?

Your employer may be justified in paying you less if the employer uses a commission-based pay system or another such system that bases your pay on how well you perform. If your coworker is paid more because s/he makes more sales, your employer might not be acting unlawfully. If, however, your coworker is paid more because s/he is paid a higher commission rate than you for the same work (e.g., s/he is paid \$20/sale and you are only paid \$15/sale), you may be able to take action under the Fair Pay Act.

I MAKE LESS THAN SOMEONE WHO HAS MY SAME JOB AT A DIFFERENT LOCATION. DOES THE FPA PROTECT ME?

Yes! The Fair Pay Act applies even if you work at a different location as long as you both work for the same employer and perform substantially similar work. This means that, for example, someone who works at a department store in Oakland could compare their pay to someone who works for the same department store in Sacramento.

CAN MY BOSS PAY ME LESS BECAUSE I WORK A DIFFERENT SHIFT?

Possibly. In addition to performing substantially similar work, the work has to be performed under similar working conditions. This means that you and your coworker have to work with a similar volume of customers, sell similar products, etc. If you work the night shift and do not have the same duties as your coworker who works the day shift, your employer might be justified in paying you differently.

AM I ALLOWED TO TALK TO MY COWORKERS ABOUT THEIR PAY?

Yes. It is illegal for your employer to tell you that you cannot talk to your coworkers about pay. Additionally, if you do talk about pay (either with your coworkers or with your employer), it is illegal for your employer to retaliate against you. This means that they cannot fire or demote you, cut your pay, or take any other negative action against you because you talked about pay.

I KNOW THAT I AM BEING PAID LESS THAN A COWORKER WHO DOES THE SAME JOB AS ME. WHAT CAN I DO?

You could first try talking to your boss/HR about the pay difference.

If you have a union, talk to your union rep and consider filing a grievance.

If your company has an internal complaint process, you could try filing a written complaint with your company.

However, doing so does not extend the deadline by which you would have to file a legal action.

If none of the above work, or if you prefer not to take these internal steps, you can file a formal written complaint with California Labor Commissioner or file a lawsuit in court.

WHAT ARE SOME THINGS (INFORMATION, DOCUMENTS, ETC.) THAT I WILL NEED BEFORE I FILE?

Gather information about your pay, your coworker's pay, and as much information as possible about your coworker's job duties, education and work experience. Keep notes of any conversations or meetings you have with your supervisor, HR or anyone else, as well as any complaints you filed with your company and any documentation related to your pay. If you think your employer has retaliated against you, keep written notes of every action that has happened.

IS THERE A DEADLINE TO MAKE A COMPLAINT?

Yes, the "statute of limitations" (deadline) to file a complaint with the Labor Commissioner (<https://www.dir.ca.gov/dlse>) or a lawsuit in court is **two years** after the last violation.

Every paycheck is considered a violation, so it is important for you to **file as soon as possible** after you have learned that a coworker is making more than you for performing substantially similar work. If you have been retaliated against, the deadline to file is **one year** after the retaliation.

WHAT TYPES OF RELIEF CAN I GET IF I FILE A FAIR PAY ACT CLAIM?

If you file and succeed on your claim, you could receive "backpay"—the wages you would have earned if your employer had not violated the law. If you have been fired because you asked about pay, you could also potentially get reinstated (get your job back). You might also be able to make your employer change its policies about pay so that others do not suffer from the same unlawful conduct as you did.

MORE QUESTIONS?

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