



TRUSAIC

SAN DIEGO'S EQUAL PAY ORDINANCE

On July 31, 2017, the San Diego City Council unanimously approved the Equal Pay Ordinance (EPO), becoming the largest city in the nation to pass its own equal pay legislation. The San Diego EPO comes directly after San Francisco passed its own version of an EPO on July 19, 2017. The EPO is codified in San Diego's Municipal Code. See San Diego Municipal Code, Ch.2, Art. 2, Div. 48 (10-2017). The purpose of the EPO is to use the City's purchasing power to ensure compliance with California's Equal Pay Act and Fair Pay Act, as codified in California Labor Code Section 1197.5. The EPO is enforced by Contract Compliance Unit, a division of the City's Purchasing & Contracting Department.

MARCH 2021

What Does the EPO Require?

The EPO has three major requirements:

1. Notice and posting

Each covered contractor must post a notice to employees in a conspicuous place to inform them of their right to equal pay regardless of race, gender, or ethnicity for those performing substantially similar work.

2. Retention of records

The records retention requirement is the most time intensive of the three, and creates the greatest potential for violations. Covered contractors must create written records documenting wage paid, wage rates, and job classifications for each employee. “Wages” are broadly defined. These can include items ranging from salary/hourly rates paid, travel, use of a company car, and fringe benefits. These records are subject to audit by the City and must be “contemporaneous” (i.e. not created in an ad-hoc fashion at a later date), such as in response to an audit request. In fact, a contractor’s failure to create and maintain compensation creates the rebuttable presumption of an EPO violation. The City has not given an indication of how often it will audit contractor records.

3. Certification of Compliance with California’s Equal Pay Act and Fair Pay Act

As a condition of doing business with the City, covered contractors must sign a certification of compliance with the California Equal Pay Act and Fair Pay Act, as defined in California Labor Code Section 1197.5, arguably creating a contractual remedy for the City in response to an EPO violation.



Which Businesses Does the EPO Apply to?

The EPO applies to all contractors with city contracts awarded, entered into, or extended after January 1, 2018. This includes sub-contracts for work on behalf of the City. Certain exceptions apply, such as for small contractors (defined as employing 12 or fewer full-time equivalent employees for at least 20 weeks), contracts for intellectual property licensing, and public works contracts (building or repairing public property such as streets or utilities) totaling less than \$500,000. There is also a catch-all exception for situations where the EPO would be inconsistent or violate federal or state law.

What are the Penalties for Violations?

If the City determines that a contractor or sub-contractor has violated the EPO, the City issues a Notice to Cure giving it 30 days to remedy the violation. If the violation is not remedied, the City can cancel, terminate, or suspend a contract in whole or in part, in addition to imposing any penalties drafted into the contract.

Do I Need to Sign a Certification of Compliance with California's Equal Pay Act?

As a condition of doing business with the City, covered contractors must sign a certification of compliance with the California Equal Pay Act and Fair Pay Act, arguably creating a contractual remedy for the City in response to an EPO violation. If the City determines that a contractor or sub-contractor has violated the EPO, the city issues a Notice to Cure giving it 30 days to remedy the violation. If the violation is not remedied, the City can cancel, terminate, or suspend a contract in whole or in part, in addition to imposing any penalties drafted into the contract.



IT IS A HUMAN RIGHT TO ACHIEVE PAY EQUITY.

ROBERT SHEEN

What Should I Do?

Contractors working with the City of San Diego should become familiar with the ordinance to make sure they are not at financial risk and losing their city contract. Contractors working for other cities across the U.S. should be on the alert for similar ordinances being discussed in the cities in which they are working. Contractors also may want to consider reviewing how workers are paid and if they meet equal pay standards of the federal and state governments. Third-party experts, such as Trusaic, are available to provide assistance in undertaking pay equity audits to identify any potential issues that should be addressed as barriers to achieving equal pay in your organization. Contractors also should review their record keeping procedures to be sure they comply with federal, state and local requirements, irrespective of the government organizations for which they are working.