

Operationalizing the Fair Pay Act: How California’s Pay Equity Task Force Transformed Law Into Action

A Case Study of Collective Impact

Background

The California Fair Pay Act—SB 358 (Jackson), Chapter 546, Statutes of 2015—was signed into law in October 2015. The law is historic in that it provides some of the strongest protections for gender pay equity in the country. The Fair Pay Act requires that women and men who perform substantially similar work be paid equally. It further mandates that any legitimate basis for a difference in pay account for the entire differential and also prohibits retaliation of workers who want to discuss or inquire about pay while at work.

The California Commission on the Status of Women and Girls, a nonpartisan state agency of 17 legislative and non-legislative members, subsequently created the California Pay Equity Task Force in 2016. The commission recognized the strength of the new law depended on creating a vehicle for implementation that is both strategic and inclusive in regard to organizational perspectives. The commission’s Workplace and Employment Subcommittee identified and nominated 19 task force members from various sectors, including policy makers, legislators, enforcement agency representatives, human resources professionals, legal experts, labor representatives, business advocates, and academics.¹

As envisioned by the commission and the bill’s author, Senator Hannah-Beth Jackson, who represents Senate District 19, the task force’s goal is to promote proactive compliance with the Fair Pay Act. As stated in its formative documents, the task force serves as a forum “for diverse interests to engage in a dialogue that will operationalize the law, encourage compliance, and facilitate an informed understanding of the importance of gender equity in the workplace.” The task force will achieve these ends by developing common-sense guidelines for employers and employees on how to utilize the new pay equity law. The ultimate goal of the task force is that its guidance will be widely disseminated and maximized, and therefore help “shift the outdated thinking about women’s work to really underscore how women are the true engines of our economy.”²

Review of Policy Implementation Research

For this study, I analyzed more than 25 research publications on theories explaining how laws are both constructed and implemented.³ Much of the research on the process of policy implementation focuses on the external and internal forces that shape this process.⁴ Very little research evaluates the steps between construction and implementation, such as interpretation, analysis, and refinement of the law.

I also examined research on collaborative policy-driven efforts to specifically address gender discrimination. The research on collaborative initiatives on gender discrimination is sparse and focuses on evaluating efforts by the judicial system to address gender bias.⁵ Some research addresses the effectiveness of pay equity laws to reduce gender pay discrimination but does not evaluate the process to guide implementation of those laws.⁶

My review found that emerging research on cross-sector coordination for social change best describes the work of California's Pay Equity Task Force. Specifically, the theory of collective impact describes a process of bringing together a group of important actors from different sectors with a common agenda for solving a specific social problem using a structured form of collaboration.⁷ Collective impact initiatives are relationship-based, strategic, and disciplined. Studies of successful collective impact efforts, largely from the educational attainment context, identify five essential elements: (1) a common agenda or understanding of the problem, (2) a shared system of measuring success, (3) mutually reinforcing activities among participants, 4) continuous communication, and (5) a supporting or "backbone" organization.⁸

Applying collective impact theory to an initiative such as California's Pay Equity Task Force is novel because the purpose of the task force is to take a vehicle for change—the Fair Pay Act—and develop guidance for its implementation. Put another way, the task force was convened to specifically address the interpretive phase of policy implementation. This is a new and innovative application of cross-sector collaboration for social change.

Methodology

This case study utilized a number of primary and secondary sources. As a primary source of information, I attended the task force meetings starting in the summer of 2016. Observing the meetings gave me a sense of the dynamics and the processes utilized by the group. To get a more representative and personal account of the work of the task force, I interviewed all task force members, some liaisons to the task force, and staff assigned to the task force by the commission. With the assistance of California State Library researcher Tonya D. Lindsey, Ph.D., I developed a set of questions focused on the participants' experience with the task force from the way it was structured to the processes used to develop the guidance. I also reviewed all the formative documents of the task force, such as its mission statement, goals, and proposed deliverables' document. Further, I conducted a literature review to understand the state of the research on collaborative models for legal construction and compliance.

Findings

This case study is the first to apply collective impact theory to a cross-sector initiative tasked with interpreting a new law and policy. The task force incorporated, to varying degrees, the five elements necessary for a successful collective impact initiative. Still, this paper cannot fully examine the success of the task force in fostering social change as the written employee/employer guidance is under review and has not yet been disseminated.

Diversity of Membership

A fundamental component of any collective impact initiative is the diversity of its participants. This diversity may be in the participants' experiences, perspectives, or organizational affiliations. In determining the composition of the task force, the chairs of the commission's Workplace and Employment Subcommittee, along with its policy director, and counsel to the state Department of Industrial Relations (DIR), were particularly mindful of having a blend of professional experience and backgrounds, even those seemingly at odds with one another. The bill's author, Senator Jackson, had established inclusion at the outset by incorporating the perspectives of employer and employee advocates in crafting the legislation.

A liaison to the task force described the formation of the task force as "gathering every type of opinion that you'd want on an issue—like a 360 perspective—and putting them all in one room." Task force members overwhelmingly reported this multilayered consideration of diversity is critical in developing valuable and accessible guidance.

As described by a task force member and state agency representative, the diversity of perspectives enriched “both the process and the outcome [of the task force] in the sense that nobody has everything in their own mind.” Another task force member, a compensation expert, echoed this sentiment, remarking that having a “diverse set of thought leaders in the same space . . . helps me put myself in other people’s shoes to reflect on what challenges they may have in terms of driving their own progress in their own particular area of work.” Some task force members, while agreeing the task force includes a diversity of perspectives, said it could have been more racially diverse and should have included an advocate for low-wage workers.

Common Agenda

Overall, task force participants have a common understanding of the problem and a shared vision of how to solve it. Regardless of organizational affiliation, participants share the concern that the Fair Pay Act alone, without expert guidance and interpretation, will not be an effective tool for reducing gender pay discrimination. They know that developing user-friendly, nonpartisan guidance is key to helping those impacted by the law understand and actually utilize it. As one participant, an enforcement attorney, put it, the task force is concerned with outcomes “as practical and useful and as close to what the law intended to do.” The employer guidance, for example, could provide tools to evaluate workplace pay practices and thereby ensure employees are paid the same for similar work, regardless of gender.

Many task force members reflected that effective utilization of the pay equity law can lead to culture change at work. From the perspective of a business consultant, culture change means “pay equity is planted in the consciousness of corporate America.” Overall, members share a vision that interpretive tools can encourage meaningful implementation of the law and change how employers and employees interact.

The task force’s process of developing guidance can best be described as collaborative and consensus-driven. One task force member, a business advocate, said the level of commitment associated with being on the task force necessitated a collaborative approach:

The dedication and time that has been committed to by all these different stakeholders not only requires but forces you to sit there and engage and listen to the different perspectives.

While participants share the goal of encouraging meaningful compliance with and utilization of the pay equity law, at times they had different thoughts on how to write

the guidance. Differences regarding the content and scope of the guidance were resolved by discussing, debating, and arriving at consensus. The co-chairs of the task force, both commission members, encouraged participants to listen to and respect all perspectives. Sometimes agreements were reached relatively quickly; other times it took multiple meetings to reach a workable solution.

The use of collaborative decision-making was most evident in meetings of the full task force rather than in subject matter subcommittees, composed of just two members and sometimes a staff person. Even when members had strong opinions on an aspect of the guidance, they voiced their positions in a respectful manner. Those who disagreed would respond thoughtfully as well. There seemed to be an appreciation that more input would only improve the guidance. One member described the group's interactions and discussions this way:

There seemed to be a very distinct commitment to collaboration. There was no grandstanding. Nobody's ego got in the way. Even where people disagreed, they were able to acknowledge each other's point of view and not insist upon their own way . . . Everyone has been forthright and frank and have not held back but have been respectful of the process.

Shared Measurement of Success

There was some variation in the way participants judged the success of the task force. While members agree their goal is meaningful compliance with the Fair Pay Act, their organizational perspective provided a certain framing of that concept. For some employee advocates, the task force's success is measured by how well the guidance is disseminated to and understood by workers and workers' advocates. One advocate explains that effective guidance helps workers "understand how to exercise and protect their rights." For some employer representatives, effective guidance means employers are proactively reviewing their pay practices and making the changes necessary to ensure gender pay equity. One task force member, an in-house attorney, said successful guidance means she can go to an employer and say, "Here are actual, tangible steps you can take and a menu of options of things you can look at to try to close the [pay] gap." A common characteristic of these metrics of success is they are qualitative rather than quantitative.

Mutually Reinforcing Activities

The task force's structure encouraged coordination of assignments among members. In addition to meeting as a full entity, members met in two-person subcommittees specific to different aspects of the guidance. For example, one subcommittee was tasked with measuring the pay gap, and another discussed defining key terms of the pay equity law. Each subcommittee had assigned deliverables with deadlines. One member, a labor advocate, said meeting in subcommittees made it "easier to focus and divvy up the work and hold each other more accountable." Subcommittee members took their draft written products to the full task force for feedback and refinement.

There were a few challenges in working as subcommittees. Some subcommittee members expressed confusion over their subject matter jurisdiction as it related to that of other subcommittees. They came across some overlap in the work they were doing and were concerned about duplication of efforts. In some cases, staff assigned to different subcommittees were able to identify and correct the overlap, but this process took time and was not consistent across all subcommittees. Future statewide initiatives that incorporate a subcommittee structure may want to look at ways to better define the work of these groups or consider establishing practices to identify and correct overlap more quickly.

Some task force members were assigned to give presentations on their areas of expertise in task force meetings. This gave presenters a chance to take ownership of an element of the guidance, and in turn, gave the other members a chance to discuss their findings. These presentations reinforced the overall goal of the task force—to create meaningful guidance using a diversity of perspectives.

Continuous Communication and Staff Support

The configuration of the task force and the existence of a staff support structure enabled frequent communication among members. Staff support consisted of the commission's executive director, policy director, fiscal and operations director, and communications adviser. In addition, a researcher from the state library was on loan to the commission to help the task force in its research, analysis, and strategic planning. In terms of structure, the task force convened as a group in nine daylong meetings to date and frequently in separate subcommittees. The subcommittee members received guidance on their assignments by participating in planning phone calls with the policy director. The scope of their assignments was reinforced and clarified by the staff person assigned to them. The assigned staff person also reported back to the policy director on progress made in the meetings and identified any challenges the participants were facing.

Members expressed great appreciation for the assistance they received from staff. Some of the staff reported, however, that providing this assistance was at times overwhelming. Their task force work was in addition to their work supporting a number of other commission initiatives. A number of staff felt supporting the task force was, at times, a full-time job and that the policy director position should have been dedicated exclusively to managing the task force. In convening future state task forces, it is worth considering whether there is capacity for full-time staff support.

Communication also occurred between each full task force meeting. The policy director and the task force co-chairs participated in calls between meetings to share feedback and set the agenda for subsequent meetings. One task force participant describes the co-chairs' calls as "critical to making sure that everything [went] well at the time of [each] meeting so that everyone felt engaged and that it was worthwhile to go to that meeting."

Conclusion

California's Pay Equity Task Force demonstrates a new application of the theory of collective impact. The task force is structured and engages in processes that embody the five elements of a successful collective impact initiative. Through the development of written guidance, this initiative is encouraging thoughtful implementation of the Fair Pay Act—a historic antidiscrimination law. The work of the task force represents a collaborative and consensus-driven model to bring about culture change in the workplace. As new laws are passed, the Legislature can look to the work of the California Pay Equity Task Force as a template for effective policy implementation. Policy makers can configure their implementation model around some of the best practices of the task force, such as the early establishment of a shared vision among participants, utilization of a subcommittee process, and the assignment of staff liaisons.

Appendix

Founding Task Force Members

Commissioner Julie A. Su, Co-chair
California Labor Commissioner
California Labor Commissioner's Office

Assembly Member Cristina Garcia,
Member
California State Legislature

Senator Hannah-Beth Jackson, Member
California State Legislator

Kevin Kish, Member
Director, California Department of
Fair Employment and Housing

Assembly Member Marie Waldron,
Member
California State Legislator

Daniel C.Y. Kuang, Ph.D., Member
Vice President
Legal & Audit Support Services
Biddle Consulting Group

Jennifer Barrera, Member
Policy Advocate
California Chamber of Commerce

Victoria Pynchon, Member
Co-founder
She Negotiates

Peter Pawlick, Member
Senior Director
Global Compensation at Gap Inc.

Tamekia N. Robinson, Member
Vice President
Organizing/Representation
SEIU Local 1000

Jennifer Reisch, Member
Legal Director
Equal Rights Advocates

Leslie Simon, Member
Business Representative
International Alliance of Theatrical Stage
Employees Local 871

Kimberlee Shauman, Ph.D., Member
Professor of Sociology
University of California at Davis

Jeanna Steele, Member
Head of Litigation & Assistant General
Counsel
Sunrun Inc.

Bryn Sullivan, Member
Chief of Staff
Assemblymember Monique Limon

Commissioner Lauri Damrell, Co-chair
Partner
Orrick, Herrington, and Sutcliffe, LLP

Rhoma Young, Member
Human Resources Consultant
Rhoma Young & Associates

Liaisons and Diversity Officer

Kelly Jenkins-Pultz, Non-voting Liaison
Regional Administrator, U.S. Department of Labor
Women's Bureau Region 9

Doris Ng, Legal Enforcement Liaison
Staff Counsel
Labor Commissioner's Office

Phoebe P. Liu, Legal Enforcement Liaison
Senior Staff Counsel IV, California Department
of Fair Employment and Housing

Tamara McDonald, Diversity Officer
Leadership Specialist
Labor Commissioner's Office

Commission Staff

Nancy Kirshner-Rodriguez,* Executive Director
Bethany Renfree,* Policy Director
Stephanie Tseu, Policy Director as of March 2017
Emily Van Atta, Fiscal and Operations Director
Stephanie Flores,* Communications and Outreach Adviser

* No longer with the commission.

ENDNOTES

- ¹ See the appendix for a complete list of task force members, liaisons, and commission staff at the time of the formation of the task force.
- ² SB 358 author Senator Hannah-Beth Jackson’s message to members of California’s Pay Equity Task Force, 2016.
- ³ For example, one theory on how laws are constructed is known as policy transfer. According to this theory, laws and policies of governmental entities often serve as a model for other governmental entities. Specifically, policy transfer is defined as process or set of processes in which knowledge about institutions or policies at one governmental entity are used in the development of institutions or policies by another governmental entity. Also known as policy emulation, this theory has been most studied in the context of the transfer of social policy between nations and not on a state or local government level. Studies on policy transfer seek to explain the scope of policy transfer, the motivations of governments to engage in the process, and the circumstances necessary for it to be successful. See Mark Evans, “Policy Transfer in Critical Perspective,” *Policy Studies*, vol. 30, no. 3, June 2009, p. 243. While this theory is not an exact fit to describe the work of the California Pay Equity Task Force in formulating guidance for implementing a new law, it could be helpful later in determining how best to disseminate the guidance.
- ⁴ Examples of external forces that affect implementation are pressure from stakeholders or the degree of integration of the implementing agency within the community. For example, an organization loosely tied to its community may formally adopt a new policy so as to conform to external stakeholders’ expectations and pressure, but in practice follow it only symbolically. This process is known as decoupling. Researchers have identified the practice of decoupling primarily in the law enforcement context. See Chang-Ryung Han and H. Nelen, “Decoupling Policy and Practice in the Fight Against Wildlife Smuggling,” *British Journal of Criminology*, vol. 57, 2017, p. 132–151. Conversely, an organization highly integrated in its community is more likely to embrace a new policy in its daily practice. In this case, the process of policy implementation is seen as instrumental and the desired outcomes are measurably higher. In addition, factors *within* an organization determine how “instrumental” the policy implementation will be. One such factor is the degree to which a new policy aligns with the practices and philosophy of that organization as it relates to amenability to change. See two law enforcement studies by Ryken Grattet and V. Jenness, “Transforming Symbolic Law Into Organizational Action: Hate Crime Policy and Law Enforcement Practice,” *Social Forces*, vol. 87, no. 1, September 2008, p. 501–527, and “Law-In-Between: Effects of Organizational Perviousness on the Policing of Hate Crime,” *Social Problems*, vol. 52, no. 3, 2005, p. 337–359.
- ⁵ Jeanette F. Swent, “Gender Bias at the Heart of Justice: An Empirical Study of State Task Forces,” *Southern California Review of Law and Women’s Studies*, vol. 6, no. 1, Fall 1996; and Barbara Allen Babcock, “Report on the Ninth Circuit Gender Bias Task Force: Introduction: Gender Bias in the Courts and Civic and Legal Education,” *Stanford Law Review*, vol. 45, July 1993, p. 2,143.
- ⁶ Susan E. Gardner and C. Daniel, “Implementing Comparable Worth/Pay Equity: Experience of Cutting-Edge States,” *Public Personnel Management*, vol. 27, no. 4, Winter 1998.
- ⁷ John Kania and M. Kramer, “Collective Impact,” *Stanford Social Innovation Review*, Winter 2011, https://ssir.org/articles/entry/collective_impact; and Patience A. Crowder, “Impact

Transaction: Lawyering for the Public Good Through Collective Impact Agreements,”
Indiana Law Review, vol. 49, 2016, p. 621.

⁸ Kara Bixby, “Collective Impact: How Backbone Organizations Influence Change Without Formal Authority,” 2014, <http://web.augsburg.edu/sabo/CollectiveImpactBixby.pdf>.

Megan Lane at the California Senate Office of Research (SOR) prepared this report at the request of Senator Hannah-Beth Jackson, February 2018. SOR is a nonpartisan office charged with serving the research needs of the California State Senate and assisting Senate members and committees with the development of effective public policy. The office was established by the Senate Rules Committee in 1969. For more information, please visit <http://sor.senate.ca.gov> or call (916) 651-1500.

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