

SB 464 (SMALLWOOD-CUEVAS) – OPPOSE/COST DRIVER



COST DRIVER

April 14, 2025

TO: Members, Senate Labor, Public Employment and Retirement Committee

SUBJECT: **SB 464 (SMALLWOOD-CUEVAS) EMPLOYER PAY DATA
OPPOSE/COST DRIVER – AS AMENDED APRIL 10, 2025**

The California Chamber of Commerce and the organizations listed below respectfully **OPPOSE SB 464 (Smallwood-Cuevas)** as a **COST DRIVER**. **SB 464** would encourage new, costly litigation against employers based on the publication of broad, unreliable data collected by the state. Increased financial pressures from that litigation will negatively impact California's business community and consumers.

Attorneys Confirm They Will Use Public Pay Data to “Hammer Companies” by Filing Lawsuits, Which Caused Amendments to SB 1162 in 2022 and Caused Governor Brown to Veto a Similar Bill:

In 2022, the Legislature rejected publishing employer pay data reports online when an identical provision was removed from SB 1162 (Limon) in the Assembly Appropriations Committee. And, similar to what is proposed in **SB 464**, AB 1209 (Gonzalez) from 2017 would have required the publication of data from employers on mean wage differentials between male and female employees. In an [article](#) that year by Scott Rodd titled “Employer attorney concerned about lawsuits as wage data bill passes Legislature,” published in the *Sacramento Business Journal* on September 13, 2017, a member of the plaintiff's bar stated:

“By posting this on the Secretary of State’s website, the government is basically giving us (plaintiff lawyers) the data we need to go in there and hammer companies,” said Galen T. Shimoda, attorney owner at Shimoda Law Corp.

Although the wage data cannot form the sole basis of a lawsuit, he believes the database will help set him “on the right track.” And while the purpose of the bill is not to spark litigation against large companies, Shimoda believes the government understands that litigation is a part of the corrective force needed to address wage disparity.

“With AB 1209 providing true statistics, it’s almost like the government is saying, ‘Here’s the basis, litigators — go for it, start filing,’” he said.

SB 464 would similarly open businesses up to litigation based on data that does not accurately reflect whether or not pay disparities exist. Once the data is made public, a plaintiff's attorney would simply have to review the companies with “perceived” pay disparities and send a settlement demand or threaten litigation.

Governor Brown vetoed AB 1209 due to this exact concern:

“While transparency is often the first step to addressing an identified problem, it is unclear that the bill as written, given its ambiguous wording, will provide data that will meaningfully contribute to efforts to close the gender wage gap. Indeed, I am worried that this ambiguity could be exploited to encourage more litigation than pay equity.”

SB 973, the original bill mandating pay data reports be submitted to the Civil Rights Department (CRD), intentionally did not include a publication provision and such a provision in SB 1162 was rejected just two years ago.¹ The CRD publishes data in aggregate form, rather than data associated with specific companies. Undoing this agreement will discourage growth in California and expose employers to costs associated with defending against meritless litigation.

¹ A prior version of SB 973, SB 1284 (Jackson) in 2018, that would have publicized these reports was amended to make the reports confidential. All subsequent versions of that bill specified that the reports are to be kept confidential.

SB 464 Seeks to Publicly Criticize Companies Based on Broad Data That the EEOC and National Academies Have Acknowledged Does Not Accurately Compare Pay Between Similarly Situated Workers:

Government Code Section 12999 requires all California employers with 100 or more employees to report pay data by sex, race, ethnicity, and job category to CRD and to file a separate report regarding employees hired through labor contractors. 2021 was the first year the original report was required and 2023 was the first year for the contractor reports. CRD is permitted to use those reports to publish aggregate data regarding the workforce as a whole. SB 973, the bill that created the original reporting requirements, specified that those reports are confidential and not subject to Public Records Act requests.

The reports were modeled after the proposed federal EEO-1 form. Employers must categorize employees within ten job categories and identify the number of employees that fall within the twelve specified pay bands. The job categories are exceptionally broad. For example, a multitude of various job titles would fall under the broad category of “professionals”.

In responding to concerns about the usefulness of the reports, the EEOC explicitly stated that these reports are not useful for identifying disparities in pay between two similarly situated workers:

The EEOC does not intend or expect that this data will identify specific, similarly situated comparators or that it will establish pay discrimination as a legal matter. Therefore, it is not critical that each EEO-1 pay band include only the same or similar occupations.²

These reports ultimately show broad swaths of data by job category, not according to whether the jobs are “substantially similar” for purposes of comparison under the Equal Pay Act or the Fair Employment and Housing Act.

In 2020, the EEOC tasked the National Academies with examining the reports and providing recommendations. California’s CRD participated in that report as an outside expert. The 2022 report raised similar conclusions about how the reports do not reflect information suitable to detecting pay differences among similarly-situated employees. Regarding the topic of sharing data, the report does not recommend publicizing these reports. Instead, it recommends methods such as sharing anonymized peer comparisons:

One role of a designated statistical unit would be to advise on the sharing of EEO-1 pay data with employers, in a way that informs employer self-assessment while appropriately addressing confidentiality concerns. Sharing anonymized data with employers is one method EEOC could use to carry out its mandate to provide compliance assistance to the regulated community. Sending anonymized peer comparisons to survey respondents as a way of thanking them for their cooperation, and publishing benchmarks online could help firms achieve greater diversity without putting both the federal government and the firms through costly and lengthy litigation. However, employer groups advised the panel that employers would need more detailed information (such as education and job experience) for the data to be useful, which stresses the importance of Recommendation 3-11. Of course, data sharing would need to include appropriate protections for privacy.

SB 464 seeks to publicize all of this data identifiable by individual companies under the pretense that it would reveal gender and race-based pay disparities. As explained above, this data was never designed to show such disparities. Publicizing the data to target certain employers is a manipulation of what both the EEOC and National Academies have acknowledged is not a reliable measure of pay disparities between similarly situated employees.

² [FR-2016-07-14.pdf \(thefederalregister.org\)](https://www.federalregister.gov/documents/2016/07/14/2016-14141-equal-pay-act)

Even if it did show such comparisons, as Labor Code Section 1197.5 recognizes, there are numerous, lawful, bona fide factors as to why wage disparities may exist between employees performing substantially similar work, such as: (1) different educational or training backgrounds amongst employees; (2) different career experience; (3) varying levels of seniority or longevity with the employer; (4) objective, merit-based system of the employer; (5) a compensation system that measures earning by quantity or quality of production; (6) geographical differences that impact the cost of living and job market; and, (7) shift differentials.

CalChamber supported the expansion of the Equal Pay Act in 2015 and signed California's Equal Pay Pledge in 2023. We are committed to efforts to improving pay equity, but unfortunately do not believe **SB 464** is the solution. By publishing broad categories of data based on job classifications and titles, **SB 464** seeks to set up employers for public criticism and litigation with incomplete, uncontextualized reports and create a false impression of wage discrimination where none may exist.

Requested Amendments Regarding Additional Data

We appreciate the recognition that information regarding an employee's sexual orientation should only be included in pay data reports if the employee voluntarily provides that information. As a result, we request that the bill include language specifying that the employer is not required to affirmatively ask about an employee's sexual orientation.

For these reasons, we respectfully **OPPOSE** your **SB 464** as a **COST DRIVER**.

Sincerely,



Ashley Hoffman
Senior Policy Advocate
California Chamber of Commerce

Acclamation Insurance Management Services (AIMS)
Agricultural Council of California
Allied Managed Care (AMC)
Anaheim Chamber of Commerce
Brea Chamber of Commerce
California Alliance of Family-Owned Businesses (CAFOB)
California Apartment Association
California Association of Sheet Metal and Air Conditioning Contractors National Association
California Chamber of Commerce
California Credit Union League
California Farm Bureau
California Hotel and Lodging Association
California League of Food Producers
California Retailers Association
California State Council of the Society for Human Resource Management
California Trucking Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Civil Justice Association of California, Kyla Christoffersen Powell
Coalition of Small and Disabled Veteran Businesses
Colusa County Chamber of Commerce
Corona Chamber of Commerce
Elk Grove Chamber of Commerce
Flasher Barricade Association (FBA)
Gateway Chambers Alliance

Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
La Cañada Flintridge Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Mission Viejo Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation of Independent Business
Newport Beach Chamber of Commerce
Norwalk Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Paso Robles and Templeton Chamber of Commerce
Rancho Cucamonga Chamber of Commerce
Rancho Mirage Chamber of Commerce
Roseville Area Chamber of Commerce
San Manuel Band of Mission Indians
Santa Clarita Valley Chamber of Commerce
Simi Valley Chamber of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Valley Industry & Commerce Association
West Ventura County Business Alliance
Western Electrical Contractors Association (WECA)
Western Growers Association

cc: Legislative Affairs, Office of the Governor
Kenyamarié Mahone, Office of Senator Smallwood-Cuevas
Consultant, Senate Labor, Public Employment and Retirement Committee
Cory Botts, Senate Republican Caucus

AH:am