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July 15, 2016

TESLAW Tidbits:
A Little Taste of TESLAW
Issue No. 19

Dear TESLAW Members,

First, a big thank you to our wonderful speakers and to everyone who made it out to the TESLAW Ethics and Entertainment CLEs in Fort Worth during the State Bar of Texas Annual Meeting.

I hope you all have the upcoming Entertainment Law Institute (ELI) marked on your calendars, which will be held in Austin on November 3-4, 2016. The ever-ambitious program is shaping up to offer 13.5 credit hours, including 1.75 hours of ethics. More information on speakers and topics will be added to our [website](#), in the near future.

I'm truly honored to be serving as the section's chair for 2016-2017 and want to thank the outgoing chair, Sally Helppie, and all the previous section chairs for the wonderful foundation that has been laid. I look forward to working with my fellow officers, council members, and section members to continue our existing programs and to find additional ways to raise the profile of the 600+ Texas entertainment and sports lawyers in our ranks.

To that end, we want to hear from you! If you have a suggested contribution to *TESLAW Tidbits*, a proposed Journal article, or if you would like to become involved in a TESLAW committee, please reach out to our [council](#). We also have a pressing need for someone who is willing to take over improving and maintaining the TESLAW website, which could be an incredible resource for our members and the public. Enjoy the rest of your summer and see you in Austin in November!

Very truly yours,
Amy E. Mitchell, Chair
Entertainment and Sports Law Section

Events Calendar

July 14-21, 2016

[Asian Film Festival of Dallas](#)
[Angelika Film Center, Dallas, TX](#)

July 25-31, 2016

[San Antonio Film Festival](#)
[Tobin Center for the Performing Arts](#), San Antonio, TX

July 21-25, 2016

[Q-Fest](#)
Houston, TX

Wednesday, July 27, 2016

12:00 p.m. – 1:00 p.m. (1 hr. CLE credit)

[A Fair Playing Field: How Can Employment and Anti-Discrimination Laws Reduce Gender Bias in Sports and Entertainment?](#)

Hosted by the Dallas Bar Association Sports and Entertainment Law Section

September 30-October 2, 2016; October 7 – October 9, 2016

[Austin City Limits Festival](#)
Austin, TX

November 3-4, 2016

[Entertainment Law Institute](#)

Sheraton Austin Hotel at Austin, TX

Spotlight on Jalene M. Mack

Jalene M. Mack is an award-winning entertainment attorney who received her Juris Doctorate from Thurgood Marshall School of Law at Texas Southern University in 1993. Based in Houston, Mack has managed her own practice, [The Law Office of Jalene M. Mack](#), for almost 20 years. Mack serves clients in areas of entertainment law including film, television, theater, music, publishing, and trademark/copyright registration.



When she isn't lawyering, Mack spends time with her family, engages in public speaking, and [acts](#) in feature films as well as theatrical productions. She recently starred in her first self-written/produced play, *Off Hollywood: The Play*. Additionally, since 2011, she has directed the nonprofit [Mack Performing Arts Collective](#) (MPAC). MPAC procures Hollywood celebrities to teach free or low-cost workshops to children and young artists in the areas of acting, film and video production, stand-up comedy, and playwriting. MPAC also hosts panel discussions on the business aspects of television and film led by industry experts.

Active in her community, Mack serves on several boards, including the Houston Community College's Commercial Music Department. She is also a member of the Houston Lawyers Association, The National Bar Association, the Black Entertainment & Sports Lawyers Association, and the Community Music Center of Houston.

Find out more about MPAC at: www.mpac-arts.org. More information about Mack can be found at her [website](#) and [IMDb](#).

Can the California Fair Pay Act Close the Hollywood Pay Gap?

By Melissa G. Thrailkill

At the 2015 Oscars, Patricia Arquette, accepting the award for Best Actress for her role as a single mother in the film *Boyhood*, demanded action in the fight for gender equality and equal pay for women in America. [\[1\]](#) Using her star power and the advantage of captive live and television audiences, Arquette added her voice to the dialogue surrounding the pay gap between men and women. [\[2\]](#) Her speech did something more, though. It also prompted California State Senator Hannah Beth Jackson to seize the moment and introduce her legislation aimed at attacking gender discrimination in the workplace. [\[3\]](#)

Senator Jackson introduced the California Fair Pay Act ("CFPA") one day after Arquette's speech and by October 2015, with bipartisan support, California Governor Jerry Brown signed the nation's toughest equal pay law. [\[4\]](#) The legislation does several important things that federal laws and other state laws fail to do by re-defining "equal work," inserting protections for employees wishing to investigate how their wages stack up against similarly situated employees of a different gender, and providing an alternative route to litigation if a disparity exists. [\[5\]](#)

First, the Fair Pay Act amended California's then current equal pay law by doing away with the "equal pay for equal work" terminology and, instead, specifying that employers in the state must pay employees the same for doing "substantially similar work." [\[6\]](#) Under this definition, where the male and female employees' work requires similar skills and responsibilities and is completed under similar working conditions, the employer must pay them equally, regardless of title or geographic location of the employee. [\[7\]](#) Next, the bill also adds a brand new affirmative defense, placing the burden on employers to prove that the disparity in pay is justified based on a seniority system, merit system, a system that measures earnings by quantity or quality of production, or a bona fide factor other than sex, such as education, training, or experience. [\[8\]](#) The law strengthens the "bona fide factor other than sex" factor by requiring the employers to show that the disparity in pay is business necessity. [\[9\]](#) Third, the law adds a new cause of action for when employers retaliate against those employees seeking to exercise their rights under the law. [\[10\]](#) Finally, the law grants authority to the California Division of Labor Standards Enforcement to investigate claims on behalf of employees and seek resolution without litigation, or, unless waived by the employee, bring a civil suit on behalf of a claimant. [\[11\]](#)

The California law goes above and beyond federal equal pay laws by requiring the employer to prove that the disparity in pay between female and male employees is justified under the terms of the law, as well as by finally providing protection to an employee seeking more information about her pay and how it may compare to others. Even though Hollywood helped propel the legislation into the spotlight and provided Senator Jackson with momentum to push it through the California legislature with bipartisan support, it is unclear how the law will play out in the entertainment industry, where deals are made in a much more non-traditional manner and depend on a lot of factors. [12] While it may be easier to address among executives in the business suits, as well as writers and crew, for example, it is not as easy to assess among the various contracts with different actors, agents, and producers. But, the law does give actors the authority to investigate salaries, which are generally kept mum. Additionally, it gives agents and others negotiating deals on behalf of an actor a tool to ask questions on behalf of their clients, as well as to ask for more pay per project for their clients. [13]

While the CFPA has only been in effect since January 2016, attorneys, managers, agents and others involved in representing those in the entertainment industry should remember this law and its purpose when negotiating contracts on behalf of clients. The point of the law is to close the gap in pay between men and women throughout the state of California, including the entertainment industry, and it will require all in the entertainment business to reassess how all of those on a project are compensated for similar work. With the law behind them, agents, actors, and others have the backing needed to question business as usual. Only time will tell the impacts, positive and negative, the law will have on the entertainment industry and whether or not that industry can respond to attempts to improve and encourage equality within it.

Editor's Note: This topic of gender discrimination in entertainment and the California Fair Pay Act and Hollywood's role in that legislation is discussed in more detail and with more analysis and background in the TESLAW Spring Journal, available [here](#).

Melissa G. Thrailkill is a Dallas-based solo attorney. She obtained her J.D. from the University of California, Berkeley School of Law and focuses her office on "community lawyering." To that end, she provides comprehensive legal services in the areas of family law, entertainment law, probate, appeals, and civil litigation. She can be reached [here](#).

[1] See Brent Lang, "[Patricia Arquette's Comments Draw Praise, Unleash Controversy](#)," *Variety*, Feb. 23, 2015 (last visited March 3, 2016).

[2] Kevin Roose, "[Hacked Documents Reveal a Hollywood Studio's Stunning Gender and Race Gap](#)," *Fusion*, Dec. 1, 2014 (last visited on March 12, 2016).

[3] Press Release, "[California Women's Caucus Announces Action on Equal Pay](#)," Feb. 24, 2015 (last visited March 26, 2016).

[4] See Bourree Lam, "[The U.S.'s 'Strictest' Fair Pay Law is About to Go into Effect](#)," *The Atlantic*, Dec. 31, 2015 (last visited Feb. 22, 2016).

[5] See, e.g., CA Labor Code, Div. 2, Part 4 § 1197.5

[6] See Senate Bill 358, Chapter 546, § 2(a); CA Labor Code, Div. 2, Part 4 § 1197.5(a).

[7] *Id.*

[8] See S. 358, Chapter 546 § 2(a)(1)(A)-(D); CA Labor Code, Div. 2, Part 4 § 1197.5(a)(1).

[9] S. 358, Chapter 546 § 2(a)(1)(D) (emphasis added); CA Labor Code, Div. 2, Part 4 § 1197.5(a)(1)(D).

[10] S. 358, Chapter 546 § 2(j)(2); CA Labor Code, Div. 2, Part 4 § 1197.5(j)(2)

[11] See S. 358, Chapter 546 § 2(b)-(c); CA Labor Code, Div. 2, Part 4 § 1197.5(b)-(c), (g).

[12] See A. Kaufman, James, M., & Miller, D., "[With New Equal-Pay Act, Will Jennifer Lawrence Get Paid Like Bradley Cooper?](#)" Oct. 8, 2015, *L.A. Times* (last visited March 28, 2016).

[13] See I. De Pater, Judge, T., & Scott, B., *Age Gender, and Compensation: A Study of Hollywood Movie Stars*; see also Nelson Granados, "[How Hollywood will benefit from California's New Fair Pay Act](#)," *Forbes*, Oct. 6, 2015 (last visited March 5, 2016).

Practice Document

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Send questions, comments, and submissions for TESLAW Tidbits to [Victoria Helling](#), Editor in Chief.

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