

With new equal-pay act, will Jennifer Lawrence get paid like Bradley Cooper?



Jennifer Lawrence's smaller share of profits for "American Hustle" helped highlight pay discrepancies. (Columbia Pictures)

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Oscar-winner Jennifer Lawrence was paid 7% of the profit on the 2013 ensemble film "American Hustle," a big payday for the A-list actress. But Bradley Cooper and two other male co-stars each earned 9%.

That's the kind of inequity potentially targeted by California's Fair Pay Act, which is aimed at leveling the compensation field between men and women. The bill, signed by Gov. Jerry Brown this week, applies to businesses statewide but has particular resonance in Hollywood, where women have become increasingly vocal critics of the pay gap.

Indeed, the entertainment industry played a key role in pushing the bill forward. Patricia Arquette raised the issue of pay inequality while accepting the best supporting actress Oscar during this year's Academy Awards — a moment that the Fair Pay Act's author, state Sen. Hannah-Beth Jackson (D-Santa Barbara), said gave the measure momentum.

Arquette said in an interview with The Times on Wednesday that the lower profit participation paid to Lawrence, which was disclosed in the leak of stolen emails from Sony Pictures Entertainment last year, exposed how women are routinely paid less than men in Hollywood.

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"She had been in 'The Hunger Games,' which has grossed so much money," Arquette said. "That's where you start going: This is just because she's a woman."

At the same time, salaries for top talent in Hollywood — not only for actors but writers, directors and executives as well — have long been a matter of negotiation. With passage of the bill, studios and producers will now have to ensure that the art of compensation becomes more of a science — using box office performance, awards haul, physical demands and other empirical measures to justify different pay rates.

"This will ultimately force production companies, studios, TV networks, talent agencies and management firms to look more closely at their practices to make sure that they are providing equal pay," said attorney Bryan Freedman, a veteran Hollywood attorney and a founding partner of Freedman Taitelman.

Failure to do so, added attorney Seth Neulight, could expose studios to litigation.

"I think you'll see studios and their counsel take it more seriously than they have in the past," said Neulight, a partner in the labor and employment practice group of Nixon Peabody. "There is now another tool in the toolbox for female actors to speak out."

California law has prohibited gender-based wage discrimination since 1949. However, that protection only applied to "equal" work, which the courts had interpreted to mean the exact jobs, Jackson said. The new law changes that to consider "similar" work. Under the new law, women working as hotel maids should be paid the same as men working as hotel janitors, since they are doing similar work, she said.

Large companies are now seeking guidance to help them navigate the law, said Todd Scherwin, regional managing partner of Fisher & Phillips, which specializes in labor issues. He fielded an inquiry from one large retail chain that is worried because different people at different store locations make salary decisions.

"The chain is looking at this going, 'We had no idea a manager in this store is making \$30 an hour, and a manager at that store is making only \$20.' That wasn't done on purpose," Scherwin said. "Now that's a bigger issue. 'Holy cow; we need to take a closer look.'"

Hollywood is a highly unionized industry with a mosaic of collective bargaining agreements that govern the studios, networks and production firms. These agreements set minimum wage standards for writers, actors, directors and other crew members. If a production firm or studio does not pay that minimum, then the guild has grounds to demand that a union member be fairly compensated.

The entertainment industry also has other long-standing business practices that could complicate how the law is applied. Studios and TV networks are famous for setting up a collection of legal entities that they use to parcel out work.

But the A-list talent, those on the highest end of the pay scale, may not be covered in the same way. Typically, the actors and writers who are in high demand have set up their own companies, a practice in the industry known as a loan-out corporation. The studio makes a deal with those loan-out corporations, so the actor typically is an employee of his or her own firm.

While the law has been lauded as a strong step toward closing the wage gap, Camille Rich, professor of law and sociology at USC, said it could actually discourage employers from moving to California.

There could be other complications, too. "Frankly, we don't know what variables will matter to the [state] agencies or the courts," said attorney Dan Eaton, who teaches employment law and business ethics at San Diego State University. "This is uncharted territory. It will be some years before employers will be able to tell what things they ought to be looking at."

The law is groundbreaking, legal analysts said, because it shifts the burden of proof to employers, who will have to justify the differences in compensation between male and female workers. It also gives employees expanded grounds for challenging alleged discrimination, prohibiting employers from retaliating against workers who inquire about their own pay and that of others.

The law includes exceptions that still allow for a "wage differential" that could be justified by seniority, merit, education, training, experience and performance. Legal experts say that these exceptions pose a unique challenge for determining the pay of actors, which has long been highly subjective.

"You are talking about 90 years of prejudicial compensation — it has been a chauvinistic system," said film producer Bill Gerber, whose credits include 2013's "Grudge Match."

The new law could prompt an increase in lawsuits over actors' pay, said entertainment industry litigator Miles Feldman, though he cautioned that studios could find ways to explain pay discrepancies "because of the unique nature of the performance being provided."

"There are a lot of ways for employers in the entertainment industry to still maneuver," said Feldman, whose clients include actors. "There could be solid defenses."

Major film and TV studios — Walt Disney Co., 20th Century Fox, Paramount Pictures, Sony Pictures Entertainment, Warner Bros., CBS, Universal Pictures and Lionsgate — either declined to comment or did not respond to requests for comment.

Even with tricky questions now in play, experts believe change is coming to the industry. The leak of Lawrence's "American Hustle" pay, and Arquette's speech — which was seen by 36 million TV viewers — emboldened other actresses to voice their own discontent with the pay gap.

"I think now it's my responsibility to fight in my deals so that I'll be paid the exact same as a guy in the same position as I am," Emily Blunt told The Times last month. "That's what I'm fighting for now, and if they don't want to come up with that, I might not do it. I'm OK walking away. If they're going to be stingy and not be equal, then I'm not so interested anymore."

Still, other actresses feel less comfortable speaking up about money — historically a sensitive topic. "We're not to discuss [it] amongst ourselves, and certainly not to ask our male co-star: 'What are you making?'" Meryl Streep told The Times last month. "Very few women would ask that for the chief reason that it's unattractive."

Times staff writers Rebecca Keegan, Patrick McGreevy, Shan Li, Phil Willon and Samantha Masunaga contributed to this report.