

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 1364 (Durazo) – As Amended April 21, 2022

SENATE VOTE: 27-11

SUBJECT: UNIVERSITY OF CALIFORNIA: VENDORS

KEY ISSUE: IN ORDER TO FULFILL THE INTENT OF THE UNIVERSITY OF CALIFORNIA’S EQUAL PAY FOR EQUAL WORK STANDARD, SHOULD EMPLOYERS WHO CONTRACT WITH THE UC BE REQUIRED TO NOTIFY ITS WORKERS OF WAGES AND BENEFITS THEY ARE ENTITLED TO RECEIVE UNDER THE EQUAL PAY POLICY, REGULARLY PROVIDE PAYROLL INFORMATION TO THE UC, AND BE EXPOSED TO CIVIL PENALTIES, ATTORNEY’S FEES, AND A FIVE YEAR BAN FROM UC CONTRACTS IF FOUND TO BE IN VIOLATION OF THE EQUAL PAY POLICY?

SYNOPSIS

As of October 2021, the University of California, one of the largest employers in the state, employs over 230,000 people. Of those employees, the UC estimates that over 90,000 of them are represented by a union. In addition to their direct-hires, the University also contracts with vendors to provide labor and services. In 2019, the Regents of the University of California approved Policy 5402. This policy, discussed in further detail in the Comments of this analysis, states among other provisions, the University’s intent to ensure all contract workers receive the pay and benefits to which direct-hire UC employees are entitled. There are not, however, any enforcement mechanisms within the Policy itself. This bill would provide some enforcement mechanisms. The bill would require vendors to regularly report specified employee payroll information to the University and unions, and to provide notice to employees of the requisite reporting. The bill would authorize a schedule of civil penalties against vendors who violate the terms of their contract or fail to comply with reporting or notice requirements.

This bill is sponsored by the American Federation of State, County, and Municipal Employees, Local 3299- University of California. It is supported by a coalition of labor organizations. It is opposed by the University of California. Upon passage out of this Committee, the bill would be heard next in the Assembly Committee on Labor and Employment.

SUMMARY: Requires vendors who contract with the University of California to comply with various notice and reporting requirements, and authorizes a private right of action for employees of the vendor or employees of the University of California to seek civil penalties for violations of the University’s Equal Pay for Equal Work policy. Specifically, **this bill:**

- 1) Defines the following terms, for purposes of this bill:
 - a) “Basic payroll information” means, for each vendor-supplied employee who performed services for the university at any time during the preceding six-month period, the employee’s full name, job title, mobile telephone number, email, and home address; the work location; the employee’s hours of work for each pay period during the six-month

- period; and the employee's hours of work performing services for the university for each pay period during the six-month period;
- b) "Hourly value of employer-provided benefits" means the employer's actual cost for the employee's retirement, health, dental, vision, life and disability benefits, calculated as an hourly dollar amount. This does not include any paid time off or payroll expenses required by law;
 - c) "Services" means work customarily performed by bargaining unit employees of the university;
 - d) "Total compensation rate" means the employee's hourly rate of pay plus the hourly value of employer-provided benefits; and
 - e) "Vendor" includes any person or entity that contracts with the UC to perform services or to supply the UC with employees to perform services.
- 2) Prohibits any vendor from accepting payment of more than \$1000 from the UC for a contract for services if the vendor is performing services or supplying the UC with employees who are paid less than the total compensation rate specified in the vendor's contract with the UC or required by UC policy.
 - 3) Requires a vendor that supplies the UC with employees to perform services to provide those employees with written notice of the total compensation rate specified in the vendor's contract, and the employee's hourly rate of pay, as specified. These notices must be provided at the time each employee is assigned to perform services and thereafter, each January, and within seven days of a change to the employee's hourly rate.
 - 4) Requires that, in January and July of each year, a vendor must provide basic payroll to the UC and any union representing UC employees, as specified, and requires the vendor to provide all employees who agree to perform services for the UC with a specified written notice about this requirement.
 - 5) Requires a vendor to make basic payroll information available to the vendor's employees for inspection upon request, as specified.
 - 6) Specifies that the following may constitute evidence of a vendor's intent to deceive or defraud the UC or its employees:
 - a) Violation of the requirement to provide employees with a written notice containing specified employment information;
 - b) Failure to submit to an audit or to supply an independent audit of its payroll records upon request; or
 - c) Violation of requirements under 3) and 4), above.
 - 7) Allows any vendor employee or UC employee to confront a vendor with written notice of a violation of this bill and provides the vendor with the opportunity to correct and cure the violation within 30 days before the employee may file a lawsuit based on the violation.

- 8) Allows an employee or university employee to bring a civil action for violation of the above sections of this bill against a vendor in the superior court of any county in which the UC operates.
- 9) Directs the courts to order all of the following if a plaintiff prevails in an action to enforce the rights and duties set forth in the bill:
 - a) For any vendor that pays an employee less than the compensation rate fixed by contract, as specified, payment of penalties of \$100 per employee per pay period for an initial violation and \$250 per employee per pay period for any subsequent violations;
 - b) For any vendor that knowingly and intentionally violates 3) or 4) above, payment of a civil penalty of \$50 dollars per employee per pay period for an initial violation or \$100 per employee per pay period for any subsequent violations, with a cap of \$4000 per employee;
 - c) For a violation of 3) or 4), above, payment of a civil penalty, to be deposited in the General Fund, of up to 10 percent of the amount paid by the UC to the vendor the same year or years;
 - d) Disqualification of the vendor from submitting any bid to the UC or executing, renewing, or extending any contact with or otherwise receiving payment from the UC for a minimum of five years; and
 - e) Payment by the vendor of the plaintiff's attorney's fees and costs.
- 10) Provides that the remedies under this bill are in addition to any other remedies provided by law, except as specified.

EXISTING LAW:

- 1) Establishes the UC as a public trust under the administration of the corporation known as "The Regents of the University of California" and grants the Regents all the powers necessary or convenient for the effective administration of this public trust. (California Constitution, Article XIV, Section 9.)
- 2) Limits legislative control over the UC to only such legislative control as may be necessary to insure the security of its funds, to ensure compliance with the terms of the endowments of the university, and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services. (California Constitution, Article XIV, Section 9.)
- 3) Prohibits entering into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, with the actual or constructive knowledge that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided. (Labor Code Section 2810.)

- 4) Requires that, at the time of hiring, an employer must provide to each employee a written notice containing the following information:
 - a) The rate or rates of pay and basis thereof, including any rates for overtime, as applicable;
 - b) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
 - c) The regular payday designated by the employer;
 - d) The name of the employer;
 - e) The physical address of the employer's main office or principal place of business, and a mailing address, if different;
 - f) The telephone number of the employer;
 - g) The name, address, and telephone number of the employer's workers' compensation insurance carrier;
 - h) Specified information about an employee's right to paid sick leave; and
 - i) Any other information the Labor Commissioner deems material and necessary. (Labor Code Section 2810.5.)
- 5) Requires all employers to provide their employees with an accurate, itemized statement showing gross wages earned, total hours worked by the employee, all deductions, net wages earned, the period for which the employee is paid, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, the name of the employee and only the last four digits of their social security number or an employee identification number other than a social security number and the name and address of the legal entity that is the employer. (Labor Code Section 226.)
- 6) Specifies penalties for failure to pay at least minimum wage and sets forth procedures for filing a claim against an employer for alleged failure to comply with minimum wage law. (Labor Code Section 1197.1.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: The University of California is one of the largest employers in the state and, as of October 2021, employs over 230,000 people. (*UC employee headcount*, University of California at <https://www.universityofcalifornia.edu/about-us/information-center/uc-employee-headcount>, accessed June 7, 2022.) Of those employees, the UC estimates that over 90,000 are represented by a union. (*Union-Represented Employees*, University of California at <https://ucnet.universityofcalifornia.edu/labor/index.html> accessed June 7, 2022.) In addition to their direct-hires, the University also contracts with vendors to provide labor and services. In 2019, the Regents of the University of California approved Policy 5402: Equal Pay for Equal Work. This policy, discussed in further detail below, states among other provisions, the University's intent to ensure all contract workers receive the full pay and benefits to which direct-hire UC employees are entitled. There are not, however, any enforcement mechanisms within the Policy itself. This bill would provide those enforcement mechanisms in the form of

reporting requirements by vendors to the UC, as well as potential civil penalties against vendors who fail to comply with the reporting requirements or pay their workers less than the rate agreed upon in their contract with the UC or the UC's policy. In support of the bill, the author writes:

Thousands of impacted service workers do not work for UC nor are they covered by a collective bargaining agreement.

And since no law requires the private employers to tell these workers, the University, or any state agency how wages and benefits being paid compared to what the UC Equal Pay for Equal Work requires, there is no effective or legal way for workers to enforce the UC policy or a path for workers to recover their lost wages.

It is important to highlight that the bill will not negatively impact any strides UC is making towards any 3rd party vendor compliance. Nor does create any legal exposure for UC.

The bill merely provides an opportunity for any worker to resolve a situation where UC was given misinformation by the vendor, where the vendor made an honest mistake, or where there was a clear violation of the UC's Equal Pay for Equal Work policy.

SB 1364 creates a fair enforcement mechanism of requiring a vendor to supply to UC and any joint labor-management committee the basic payroll information necessary to know if a vendor is abiding by UC policy.

Policy 5402: Equal Pay for Equal Work. As previously stated, the Regents of the University of California approved Policy 5402, also known as Equal Pay for Equal Work, in 2019. Relevant to this bill, the Policy states:

The labor conditions of contract workers shall be protected by ensuring they receive wages and benefits equivalent to what the University provides to its employees, and providing those who have performed services to the University on a long-term and continuous basis the opportunity to become University employees.

[...]

Since its founding, the University's public mission has always been to unlock the doors of economic opportunity, uplift the human condition, and serve as an antidote to poverty. This begins from within.

UC's employment and contracting practices for all individuals working on its campuses, medical centers, and laboratories must model what it demands of other employers. In particular, this means the University must remain vigilant in ensuring its use of contract workers does not contribute to the rise of poverty-level jobs, thereby exacerbating growing economic inequality and reliance on taxpayer-funded "safety-net" services. Contracting out should be used sparingly and treated as an option of last resort to address temporary needs, not as a means to replace employees with lower-wage contractors.

As a public trust and one of the largest employers in California, the University is committed to protecting and valuing the lives of those it serves, educates, and employs.

Policy 5402 was adopted in the wake of the failure of Assembly Constitutional Amendment 14 (2019), which would have required the Regents to ensure all contract workers were provided pay and benefits equal to those of university employees performing similar services. While the UC has expressed commitment to upholding the terms of Policy 5402, there remains no enforcement mechanisms within the policy or in statute to ensure that the UC complies with the language of its own policy.

This bill proposes a number of mechanisms to allow the UC to track vendor compliance with the Equal Pay policy, including authorizing a right of action for employees against vendors who pay less than the contracted rate or the Equal Pay policy.

In addition to compliance with the Equal Pay policy, the bill would require each vendor, in January and July of each year, to provide payroll information to the UC for workers who are assigned to provide services for the university. The basic payroll information to be disclosed is, among other details: the employee's full name, job title, mobile telephone number, email address, and home address; work location; and their hourly rate of pay and hours of work performing services for each pay period in the preceding six-months. As acknowledged in the previous house, these mandated disclosures could reasonably raise concerns regarding workers' privacy. To address that concern, the bill further requires vendors to provide each employee with a notice that their payroll information will be shared with the University and unions, what payroll information includes, and notably, information about the purpose of sharing the information:

[T]o ensure that the University of California and the organizations that represent University of California employees can contact you if they discover [the employee] has been paid less than required by contract or university policy and so that the University of California can provide you with a timely offer of employment as soon as [the worker] becomes eligible.

Because vendors are unlikely to inform their employees of the UC's Equal Pay policy if it reflects a higher pay rate than what they have received, sharing this payroll information is arguably a necessary step for the University to be able to ensure that the third party vendors with whom they contract comply with Policy 5402.

The bill would authorize an employee to bring a claim in court for a violation of its provisions. However, a worker would first need to give the vendor notice of the perceived violation, and the vendor would have a mandatory 30 days to cure the error. Then, and only then, the worker would be permitted to pursue their claim against the vendor. If the worker were successful in their claim, the court would award civil penalties dependent on the type and extent of the violation.

In the event an employer were found to have paid an employee below the agreed upon rate or the Equal Pay policy, whichever is higher, this bill would authorize either the employee, or a university employee to bring a claim in court. If a claim were successful, the vendor would be ordered to pay the employee civil penalties based on the extent of the violation, as well as wages sufficient to make the employee whole.

If the vendor were found to have failed to provide either the basic payroll information to the University, or the requisite notice to the employee, the court would be authorized to issue a penalty equal to 10% of the total value of the vendor's contract with the UC in addition to civil penalties based on the pervasiveness of the violation. This penalty would be directed to be deposited in the General Fund.

Third, the bill would grant the court discretion to order a vendor to pay the University the amount of the difference between the amount paid by the University to the vendor and the amount the vendor paid to its employees. That is to say, if the University makes a payment of \$10,000 to the vendor under the terms of the contract, but the vendor only paid its employees \$5,000, the court would have discretion to order the vendor to pay the university the remaining \$5,000.

Every successful claimant, regardless of the violation, would be authorized to recover attorney's fees and costs. Finally, regardless of the form, a vendor found to have violated any of the provisions of the bill would be disqualified from contracting with the UC for a minimum of five years.

While seemingly mundane, the schedule of penalties detailed by the bill is important to highlight. First, it should be noted that each vendor has a right to cure any alleged violation, demonstrating the author's goal of encouraging compliance with the Equal Pay for Equal Work standard, rather than simply instituting punitive measures. In the event of a clerical or administrative error, vendors would have time to rectify any potential mistakes. Further, because the University has the ability to negotiate contracts at their outset and vendors are notified of the University's expectation that contracted workers are paid on par with university employees, vendors who abide by the terms of their contract could feasibly never be confronted with the implications of this bill. However, in the event that a vendor fails to comply with the terms of their contract and does not pay their employees at the rate expected by the UC and required under the terms of Policy 5402, these penalties would serve as an important tool to hold vendors accountable and dissuade any other violations.

The University has opposed this bill, arguing that its provisions would implement a burdensome financial risk that would effectively result in a "*de facto* prohibition on contracting, with no exceptions." Further they believe the bill would "eliminate UC's operational flexibility to responsibly meet the needs of patients, students, and campus communities."

It is unclear, however, how the provisions of this bill are any more a "*de facto*" prohibition on contracting than their own Policy 5420. Theoretically, the intent of the Equal Pay for Equal Work policy was, in fact, to filter out vendors who may have paid wages to workers that were *not* equivalent to what the University provides its employees, leaving only those that pay their employees in accordance with the University's Equal Pay for Equal Work policy. Nothing in the provisions of this bill prevents the University from contracting with vendors who abide by, and can demonstrate compliance with, the terms of Policy 5420. Additionally, it is arguable that the administrative requirements are neither "open-ended" nor insurmountable. The bill clearly outlines the information that would be required from the vendors, all of which should be regularly maintained and easily accessible. Presumably, the language that triggers concerns regarding "open-ended" administrative requirement is the requirement that employees are notified of their compensation rate each January, at the time they receive a new assignment, or within seven days of a change to their hourly rate. Each of these timeframes indicates a potential significant shift in the amount of pay an employee will receive, and therefore it seems reasonable that the change be flagged to the employee.

The University has highlighted, however, that the notice and reporting requirements proposed by this bill may be a burden that small businesses are unable to accommodate as easily as larger companies.

In light of UC's objections, as well as opposition related to small businesses, the author may wish to consider an alternative to the notice and reporting requirements that both ensures the transparency necessary to achieve the bill's underlying goal, as well as avoids inequitably burdening small businesses. One way to achieve this balance could be to mandate the UC complete annual audits of their vendors' payrolls and report the findings to the Legislature and employee organizations. This would minimize the burden on vendors, allow vendors who may otherwise scramble to pull together the necessary information on short notice to plan ahead, while also allowing the UC to ensure that vendors honor Equal Pay for Equal Work.

Regardless of alternative approaches to tackle—and bring greater transparency—to the important issue of pay disparity, the bill in print appears to establish a tool for the University to encourage vendors to comply with Equal Pay for Equal Work, and support the institution in their stated mission to unlock the doors of economic opportunity, uplift the human condition, and serve as an antidote to poverty.

ARGUMENTS IN SUPPORT: This bill is sponsored by AFSCME-Local 3299. It is supported by AFSCME, the California Teachers Association, Engineers & Scientists of California Local 20, the United Nurses Association of California, and the California Labor Federation. The sponsor states:

The University of California has in place a policy that requires companies that enter into service contracts with the University of California (UC) to pay company employees wages and benefits equal to what UC pays its own service workers – Equal Pay for Equal Work.

UC has acknowledged in writing its inability to effectively enforce that policy: "*The University is not the employer of these individuals and does not have this information;*"

SB 1364 would allow company employees to enforce the UC policy of Equal Pay for Equal Work by requiring a vendor to supply to UC and any joint labor-management committee the basic payroll information necessary to know if a vendor is abiding by UC policy. The bill would also require a vendor to supply a written notice to their employees about the relevant compensation rates and the UC policy.

AFSCME writes in further support:

As one of California's largest employers, the University of California has a duty to lead by example and enforce fair business practices. Senate Bill 1364 will ensure that all workers are compensated fairly for duties performed regardless of status.

In the fight to close the wage gap, legislation like this will play a significant role in creating equity amongst the workforces.

ARGUMENTS IN OPPOSITION: The University of California opposes this bill. They argue mainly that the notice and payroll reporting requirements would be insurmountable, and create unmanageable legal risks for vendors causing the UC to lose their ability to engage in third party contracts. Specifically they write:

The financial risk, coupled with the open-ended administrative requirements, will be insurmountable for vendors. SB 1364 is a *de facto* prohibition on contracting, with no exceptions. This will eliminate UC's operational flexibility to responsibly meet the needs of

patients, students, and campus communities. For example, in the healthcare setting, UC's medical centers are able to nimbly meet changes to patient census, while adhering to the principles in Regents Policy 5402 and Article 5, only through the sparing use of contracts that meet one of the agreed-upon exceptions in those directives.

SB 1364 will also significantly impact small businesses in California, which face market challenges and disadvantages compared to larger enterprises. This measure will only limit the University's ability to utilize small businesses, as currently required by Public Contract Code 10500.5 which directs UC to "facilitate the participation of small businesses, particularly small disadvantaged or minority business enterprises, women business enterprises, and disabled veteran business enterprises, in business contracting." The UC supports many California businesses through a robust small business program; this support will almost certainly dry up under SB 1364.

REGISTERED SUPPORT / OPPOSITION:**Support**

American Federation of State, County, and Municipal Employees, Local 3299 – University of California (Sponsor)

American Federation of State, County, and Municipal Employees

California Teachers Association

Engineers & Scientists of California, Local 20, IFPTE, AFL-CIO

United Nurses Associations of California/Union of Health Care Professionals

Opposition

University of California

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