
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 1364 (Durazo) - University of California: vendors

Version: April 21, 2022

Urgency: No

Hearing Date: May 2, 2022

Policy Vote: L., P.E. & R. 3 - 1, JUD. 9 - 2

Mandate: No

Consultant: Robert Ingenito

Bill Summary: SB 1364 would establish mechanisms for monitoring and enforcing compliance with the University of California's (UC) Equal Pay for Equal Work policy, as specified.

Fiscal Impact: UC indicates that it anticipates ongoing costs in the low tens of millions of dollars to implement the bill's requirements (General Fund, see Staff Comments). This amount would be offset to some extent by potential penalty revenue, the magnitude of which is unknown, but likely minor.

Background: UC is one of the State's largest employers, with about 227,000 system-wide faculty and staff. UC indicates that just under half of its in-house labor force is unionized. At times, however, UC seeks outside vendors to perform various services. The people working for these vendors are not necessarily represented by a union and, in the past, did not necessarily receive the same pay and benefits that an in-house UC employee would have received.

In 2019, the UC Regents adopted a new policy generally prohibiting it from contracting out for services and functions that could be performed by UC staff. The new policy still allowed for outside contracting as a last resort, however, but was subject to certain criteria. Among other requirements, any outside contract had to conform to an Equal Pay for Equal Work Standard: the contracted outside workers had to receive equivalent pay and benefits to what a UC employee would have gotten for performing the same tasks. In practice, however, currently there is no existing mechanism for ensuring that outside contractors honor the Equal Pay for Equal Work requirement.

Proposed Law: This bill would, among other things, do the following:

- Prohibit any vendor, as defined, from accepting payment of more than \$1000 from UC for a contract for services (as defined) if the vendor is performing services or supplying the UC with employees who are paid less than the total compensation rate, as defined, specified in the vendor's contract with UC or required by UC policy.
- Require a vendor that supplies 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.

- Require that, in January and July of each year, a vendor must provide basic payroll information to UC and any union representing UC employees, as specified, and require the vendor to provide all employees who agree to perform services for UC with a specified written notice about this requirement.
- Require a vendor to make basic payroll information, as defined, available to the vendor's employees for inspection upon request, as specified.
- Allow 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.
- Allow 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.
- Direct 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:
 - 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.
 - for any vendor that knowingly and intentionally is in violation, 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.
 - for a violation of the previous two bullets, 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.
 - 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.
 - payment by the vendor of the plaintiff's attorney's fees and costs.

Related Legislation:

- ACA 14 (Gonzalez, 2019) would have amended Article IX of the State Constitution by adding the University of California (UC) Equal Employment Opportunity Standards Act. The Act would have required the Regents of the UC to ensure that all contract workers who are paid to perform support services are afforded the same equal employment opportunity standards as university employees performing similar services. The bill failed passage in the Senate.
- SB 574 (Lara, 2017) would have modified contractor requirements, including establishing thresholds for employee compensation, for qualifying as a lowest

responsible bidder or best value awardee for contracts for materials, goods, and services at UC. The bill was vetoed by the Governor.

- SB 959 (Lara, 2016) was nearly identical to SB 574, and was also vetoed by the Governor.
- SB 376 (Lara, 2015) was nearly identical to SB 959, and was also vetoed by the Governor.

Staff Comments: As noted above, UC is generally prohibited from contracting for services, pursuant to Regents Policy 5402 (adopted in November 2019). When UC does contract for services, it does so in accordance with Regents Policy 5402 and Article 5 of the collective bargaining agreement ratified by AFSCME in January 2020. UC notes that both the Regents Policy and Article 5 include exigent circumstances where contracting for services may be necessary. In such cases, vendors are required to pay wage and benefit parity to their employees for work performed at UC locations.

According to UC, this bill would go beyond Article 5 and Regents Policy. For example, Article 5 covers only certain specified services and contracts valued over \$100,000; in 2021 UC reported 408 contracts with a combined value of \$70 million. This bill, however, would not limit the kinds of contracts and includes any contract with a value over \$1,000. UC notes that it is difficult to predict which operations and contracts would be impacted and to what extent.

Currently, UC estimates costs based on (1) a premium for vendors to comply with SB 1364 and (2) expected operational limitations that will arise from vendors shying away from contracts with the UC due to the administrative requirements, risk of litigation, and penalties for vendors.

UC expects that vendors willing to take on the requirements under the bill would negotiate a premium to cover the cost of compliance and exposure to litigation and penalties. Assuming a premium of 25 to 30 percent of contract values, UC expects additional costs of at least \$17.5 to \$21 million annually systemwide based solely on the contracts covered by Article 5.

Any contracts not covered by Article 5 or Regents Policy 5402 would need to be renegotiated for wage and benefit parity and to include a compliance premium, with significant costs. While the overall relevant contract spending is undermined at this time, for fiscal year 2020-21 UC's small business utilization alone exceeded \$1 billion.

Finally, UC anticipates significant costs at its campuses and medical centers to insource temporary or specialty services when UC can no longer find vendors willing to comply with the requirements of the bill. While difficult to determine, UC estimates increased cost to insource temporary or specialty services to be several million dollars annually.

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