
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2021 - 2022 Regular

Bill No: SB 1364 **Hearing Date:** April 4, 2022
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Urgency: No **Fiscal:** Yes
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SUBJECT: University of California: vendors

KEY ISSUE

Should the Legislature require vendors to provide their employees with the total compensation rate specified by the vendor's contract, as well as make other specified payroll information available to employees upon request?

Should the Legislature require that vendors, as defined, provide specified payroll information to UC and any organization that is the exclusive representative of UC employees which perform similar services?

Should the Legislature prohibit vendors, as defined, from contracting with the University of California if they are supplying employees for services at a lower compensation rate than is specified by UC policy on wages and benefits?

ANALYSIS

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.
 - a) Provides that the Regents are comprised of seven ex officio members, as specified, 18 appointive members appointed by the Governor and approved by the Senate, a majority of the membership concurring, and permits a student representative if appointed by the Regents.
 - b) Establishes that the UC Regents are subject only to 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.

(CA Constitution, Article XIV, Sec. 9)

- 2) A person or entity shall not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, where the person or entity knows or should know 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 §2810)

- 3) 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.
 - i) Any other information the Labor Commissioner deems material and necessary.

(Labor Code §2810.5)

- 4) 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 his or her 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 §226)
- 5) Specifies penalties for failure to pay at least minimum wage and procedures around filing a claim against an employer for alleged failure to comply with minimum wage law. (Labor Code §1197.1)

This bill:

- 1) Prohibits any vendor from accepting payment of more than \$1000 from the University of California for a contract for services if the vendor is performing services or supplying the University with employees who are paid less than the total compensation rate specified in the vendor's contract with the University or required by University policy.
- 2) Requires a vendor that supplies the University 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.
- 3) Requires that in January and July of each year, a vendor must provide basic payroll to the University and **any organization with exclusive representation** of university employees, as specified. The vendor must also provide all employees who agree to perform services for the University with written notice of this requirement, including the following:

“Basic payroll information pertaining to all employees who accept an assignment or continue performing services for the University of California will be shared with the University of California to ensure that you are paid no 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 you become eligible.”

A vendor must also make basic payroll information available to an employee for inspection upon request, as specified.

- 4) Establishes that the following may constitute evidence of a vendor’s intent to deceive or defraud the University or its employees:
 - A) Violation of the requirement to provide employees with a written notice containing employment information, specified in Labor Code Section 2810.5.
 - B) Failure to submit to an audit or to supply an independent audit of its payroll records upon request.
 - C) Violation of requirements under 2) and 3) above.
- 5) Allows any employee or university employee to provide a vendor with written notice of a violation of the above sections of this bill and provide the vendor with the opportunity to correct and cure the violation. If the vendor fails to provide documentation that it has or will make whole to all of the allegedly aggrieved employees within 30 days, the employee who filed the written complaint may file suit.
 - A) 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 university operates.
 - B) Requires that if a claimant prevails in an action under this section, the court must order all of the following:
 - a) For any vendor that pays an employee less than the compensation rate fixed by contract, as specified, \$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 violated 2) or 3) above, 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 2) or 3) above must pay a civil penalty of up to 10% of the amount paid by the university to the vendor the same year or years. Any penalty of this kind must be deposited into the General Fund.
 - d) The disqualification of the vendor, for a minimum of five years for submitting any bid to the university or executing, renewing, or extending any contact with or otherwise receiving payment from the University.
 - e) The payment of attorney’s fees and costs.

- 6) Provides that the remedies under this bill are in addition to any other remedies provided by law. The civil penalties under this bill are in addition to any other penalties provided by law, except that an employee cannot also receive civil penalties provided for in Section 226 or 1197.1.
- 7) **Defines the following terms:**
- A) “Agreement” means “Contract”.
 - B) “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 following information:
 - a) Employee’s full name, job title, mobile telephone number, email, and home address.
 - b) Work location.
 - c) Employee’s hours of work for each pay period during the six-month period.
 - d) The employee’s hours of work performing services for the university for each pay period during the six-month period.
 - C) “Contract” includes any written instrument, purchase order, change order, order, requisition, service agreement, or other written or electronic document, however titled, reflecting an agreement that the vendor will perform either the vendor, a subcontractor, or the university as an independent contractor.
 - D) “Employee” includes any contract worker, or individual employed by any vendor, or otherwise supplied to the university by any vendor, to perform services for the university. “Employee” also includes an individual treated by either the vendor, a subcontractor, or the university as an independent contractor.
 - E) “Employer” means any person who directly or indirectly employs or exercises control over the wages, hours, or working conditions of any person.
 - F) “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.
 - G) “Services” means work customarily performed by bargaining unit employees of the university, including but not limited to:
 - a) Cleaning, custodial, janitorial, or housekeeping services.
 - b) Food services
 - c) Laundry services
 - d) Grounds keeping, nonskilled crafts building maintenance
 - e) Transportation and parking services
 - f) Security services
 - g) Billing and coding services
 - h) Sterile processing
 - i) Hospital and nursing assistant services
 - j) Respiratory therapy
 - k) Medical imaging services

- H) “Subcontractor” means any person, employer, supplier of labor, staffing agency, temporary services employer, or other entity that performs services for the university or supplies employees to perform services, pursuant to a contract with a vendor.
- I) “Total compensation rate” means the employee’s hourly rate of pay plus the hourly value of employer-provided benefits.
- J) “University” means the University of California.
- K) “Vendor” means contractor and includes any person, employer, supplier of labor, staffing agency, temporary services employer, labor broker, management services provider or other entity that contracts with the university to perform services or to supply the university with its own employees or those of a subcontractor to perform services. Also means any person acting either individually or as an officer, agent, or employee of a vendor.

COMMENTS

1. Need for this bill?

A) Background

Central to SB 1364 is a discussion of the UC Regents Policy 5402: Policy Generally Prohibiting Contracting for Services. This policy was seen as an update to the UC Fair Wage/Fair Work Plan, which guaranteed employees that work at least 20 hours a week would be paid \$15 per hour. Regents Policy 5402, approved on November 14, 2019, announced “a general prohibition on contracting out for services and functions that can be performed by University staff”. The policy allowed for limited outside contracting, as a last resort, with the following stipulations:

- a) Prioritization of the use of existing staff
- b) Compliance with minimum certain workforce standards
- c) Equal Pay for Equal Work, the promise that contracted worker would receive **equal pay and benefits to equivalent UC employees.**

Two months before the UC Board of Regents approved Policy 5402, Assembly Constitutional Amendment 14 narrowly failed passage on the Senate Floor. ACA 14 would have added the UC Equal Employment Opportunity Standards Act to Article IX, requiring the Regents of 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 Constitutional Amendment was developed partially in response to a 2016 Joint Legislative Audit Committee Report entitled “**The University of California Office of the President: It Has Not Adequately Ensured Compliance With Its Employee Displacement and Services Contract Policies**”. The report makes a recommendation that:

“The Office of the President should revise contracting policies to address situations in which university locations are contemplating entering into services contracts instead of hiring university employees to perform an activity. In these situations, the Office of the President

should require university locations to perform an analysis that is similar to the one it requires when current university employees are displaced.”

B) SB 1364 and UC Contracts

SB 1364 is an effort to enforce compliance with the Equal Pay for Equal Work component of Regents Policy 5402. As noted above, the bill would require vendors who contract with UC to supply a written notice to their employees about relevant contractual compensation rates and supply basic payroll information to the UC and any labor organization that represents equivalent UC employees. Any employee or university employee may bring a civil action against a vendor for a violation of the Equal Pay for Equal Work policy. The bill also establishes penalties attached to a violation of these requirements and disqualifies any vendor found to be in violation from contracting with UC for a minimum of 5 years.

Supporters argue that SB 1364 follows existing policy recommendations from JLAC to update rules governing UC contracting and ensure compliance. These new reporting requirements and penalties could be necessary. However, as noted in UC’s Annual Report to AFSCME on University Contracts:

“COVID-19 presented the University with significant challenges in meeting our mission areas of teaching, research, patient care, and community service. Our health and medical centers were faced with a once in a lifetime pandemic that required the skills of our highly trained and valued workforce, adaptability, new ways of working, including new policies and procedures, and the ability to ramp up and ramp down as the conditions of the pandemic changed from month to month.”

UC should, of course, be adhering to their own written policies concerning wages and benefits. Given the pandemonium caused by COVID-19, combined with UC’s administration of health care facilities, some compliance lags are perhaps understandable. It may require more than 2 years before UC’s contracting practices reflect the 5402 policy changes, given the additional hurdle of a virulent pandemic. The reporting requirements under SB 1364 also present potential privacy concerns for workers of vendors outside of the UC, though this group of workers should decrease as full compliance with 5402 is realized.

2. Proponent Arguments

The California Employment Lawyers Association writes in support:

“Currently, 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 those contract employees wages and benefits equal to what UC pays its own service workers – Equal Pay for Equal Work.

SB 1364 will help ensure compliance with the Equal Pay for Equal Work policy by requiring vendors to supply a written notice to their employees about the relevant compensation rates and to also supply basic payroll information to the UC. Any employee or university employee may bring a civil action against a vendor for a violation of the Equal Pay for Equal Work policy.

A vendor would have an opportunity to correct and cure any violation under the bill. A failure to cure will give company employees the right to recover wages owed. Violation of the law would disqualify a vendor for a minimum of five years from contracting with UC for service work.”

3. Opponent Arguments:

None received.

4. Prior Legislation:

ACA-14 (Gonzalez 2019) Failed Passage on the Senate Floor: would have amended Article IX of the State Constitution by adding the University of California (UC) Equal Employment Opportunity Standards Act, requiring 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.

5. Double Referral

Should SB 1364 be passed out of the Senate Labor, Public Employment and Retirement Committee, the bill will be sent to the Senate Judiciary Committee for hearing.

SUPPORT

AFSCME (sponsor)
 AFSCME Council 36
 AFSCME Council 57
 AFSCME Council 1902 Metropolitan Water District
 AFSCME Local 206 Union of American Physicians and Dentists
 AFSCME Local 1001 Metropolitan Water District
 AFSCME Local 3299 University of California
 AFSCME Local 4911 United EMS Workers
 AFSCME/UNAC-UHCP United Nurses Associations of California- Union of Health Care Professionals
 Alameda Labor Council AFL-CIO
 AYPAL: Building API Community Power
 California Employment Lawyers Association
 California Immigrant Policy Center
 California Labor Federation, AFL-CIO
 California League of United Latin American Citizens
 California Teachers Association
 Central Labor Council Contra Costa County, AFL-CIO
 Central Labor Council Fresno, Madera, Tulare, Kings Counties, AFL-CIO
 Garment Worker Center
 Five Counties Central Labor Council
 Laane A New Economy For All
 Los Angeles County Federation of Labor, AFL-CIO
 Monterey Bay Central Labor Council, AFL-CIO

Sacramento Central Labor Council, AFL-CIO

South Bay Labor Council, AFL-CIO

UFCW 324

Union of American Physicians and Dentists, Affiliated with AFSCME, AFL-CIO

Unite Here, AFL-CIO

United Farm Workers

United Food and Commercial Workers, Western States Council

Warehouse Worker Resource Center

OPPOSITION

None on file.

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