

Date of Hearing: June 12, 2019

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kara, Chair

ACA 14 (Gonzalez) – As Amended May 28, 2019

SUBJECT: University of California: support services: equal employment opportunity standards

SUMMARY: Requires that the Regents of the University of California (UC) ensure that all contract workers who are paid to perform support services are afforded the same equal employment opportunity standards, including the same wages and value of benefits, as provided to university employees performing similar services. Specifically, **this constitutional amendment:**

- 1) Enacts the UC Equal Employment Opportunity Standards Act to require that the Regents ensure that all contract workers who are paid to perform support services, as defined, for students, faculty, patients, or the general public at any campus, dining hall, medical center, clinic, research facility, laboratory, or other university location, are subject to and afforded the same equal employment opportunity standards, as defined, as university employees performing similar services.
- 2) Defines support services as including but not necessarily limited to, all of the following: cleaning or custodial services; food services; groundskeeping; building maintenance; transportation; security services; billing and coding services; sterile processing; hospital or nursing assistant services; medical imaging or respiratory therapy technician services; and other patient care technical and service bargaining unit work, as defined.
- 3) Defines equal employment opportunity standards as the following:
 - a) The right to be free from discrimination in the workplace.
 - b) Direct employment by the university, except as specified.
 - c) Equal pay for equal work, meaning each contract worker shall receive at least the same wages and benefits, and be subject to the same standards of accountability, as university employees who perform similar services.
- 4) Provides that the Regents, or any campus or other entity of the UC, may contract for labor to perform support services only if authorized to do so by statute, and only for limited exceptions that include, among other things, a bona fide emergency circumstance or unanticipated special event, as specified, a student housing development, as specified, or to provide licensed, clinically trained workers.
- 5) Requires that any contractual arrangement for a person, firm, or other entity to supply the university with contract labor for one of the exceptions specified above shall not cause or facilitate the displacement of university employees, as defined.
- 6) Requires that each proposal and the resulting contractual arrangement, and documentation, as specified, shall be, at all times, available to the public.

- 7) Requires that such documentation shall specify that all persons who perform support services under the contractual arrangement shall be compensated in an amount equivalent to the hourly wage rate and the value of benefits provided to university employees who perform the same or similar work or duties on a full-time basis.
- 8) Provides that, if any contract that is in effect on January 1, 2021, would be impaired by the enforcement of the above provisions, then these provisions shall not apply to that contract until the earliest date upon which, among other things, the immediate contract term expires or the contract may be amended, extended, renewed, or permitted to renew.

EXISTING LAW:

Constitutional Provisions:

- 1) Establishes the UC as a public trust under the administration of the Regents.
- 2) Grants to the Regents all the powers necessary or convenient for the effective administration of this public trust.
- 3) Provides that the Regents are subject only to such legislative control as may be necessary to insure the security of its funds and 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.
- 4) 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.

FISCAL EFFECT: Unknown

COMMENTS: The California Constitution, Article IX, Section 9, grants the Board of Regents extensive authority to effectively administer the UC system. Their governance authority is subject to very narrow legislative oversight. In addition, the Office of the President is charged with managing the fiscal and business operations of the UC and oversees a systemwide contract procurement program to identify cost savings. In fiscal year 2015-16, the procurement program reported spending \$8 billion dollars for contracts on goods and services.

In recent years, UC's contracting out practices have come under scrutiny. In response, the UC developed employee displacement guidelines and established a university "minimum wage" for contract labor (known as the Fair Wage/Fair Work Plan) in 2015. The displacement guidelines require the completion of certain personnel and financial analyses before a university location can enter into a service contract that will displace university employees with contract workers. Specifically, a university location must be able to demonstrate that the service contract is justified by business and financial necessity or that the services are not readily available internally.

In 2017, the California State Auditor released a report concerning the UC's use of service contracts. The audit report reviewed a number of service contracts let by the UC and presented three major findings: 1) the UC does not follow its displacement guidelines, 2) the Office of the

President has not enforced compliance with the guidelines and that weaknesses in the guidelines, such as a lack of clarity, are undermining their effectiveness, and 3) despite the UC's minimum wage standard, low-wage contract workers received hourly wages well below those paid to university employees performing similar work and often have no health benefits.

The audit was also critical of the UC's competitive bidding process that is used to encourage the awarding of low cost or high value contracts. It found that the UC evaded competitive bidding on service contracts by repeatedly amending existing contracts. By amending these contracts and not taking them out to bid, the UC failed to realize potential cost savings and missed opportunities to utilize existing staff to meet their service needs.

Arguments in Support

According to the author, "In recent years, the University of California (UC) has increasingly replaced employees that provide critical support services for the university and its medical centers, with an estimated 7,000 support jobs outsourced by the UC. In response to critiques of UC outsourcing practices, the university established two separate, but interacting, policies that relate to 1) UC outsourcing and employee displacement and 2) minimum wage standards for outsourced workers, known as 'Fair Wage/Fair Work Plan'."

The author further states, "As a result of the outsourcing practices of the UC, the economic disparities faced by outsourced, low-wage workers become especially clear. Despite UC policies that aim to mitigate negative impacts, the UC continues to show disregard for its own policies and institutes policies that have significant deficiencies."

The American Federation of State, County and Municipal Employees, Local 3299, sponsor of the bill, states in support, "ACA 14 (Gonzalez) will protect support service workers from those in control of the University of California. These support service workers clean toilets, cut grass, pick up trash, cook food, and clean bedpans. While Article IX of the California Constitution prevents the Legislature and the Governor from correcting these realities at UC, Article II empowers the voters to do so."

Arguments in Opposition

The University of California states in opposition, "There are a variety of situations where it makes business sense for the University to utilize contract workers for short term assignments that are not needed throughout the year, a practice that would be prohibited under ACA 14. Examples include cleaning of dormitory rooms at the end of the school year, or additional security services needed occasionally for large events such as concerts or commencements."

They continue, "Within the setting of the University's hospitals, the needs for flexible staffing to respond to changes in patient census and condition severity are critically important – often times changing on a daily or even shift-by-shift basis. UC hospitals treat higher percentages of very sick patients –and have longer average lengths of stay compared to other California acute care hospitals. The restrictions established by ACA 14 would prevent UC hospitals from being able to obtain the staff they need on short notice and could force UC hospitals to divert ambulances away from University emergency rooms and trauma centers, cancel and reschedule important medical procedures and transfer patients to facilities outside of the community."

Related Legislation

AB 2361 (Weber) of 2018 would have required a contractor to agree to provide the UC with specified information regarding each active contract for outsourcing in order to qualify as the lowest responsible bidder or the best value awardee, or otherwise to perform any service work for the university and requested that the UC report through a publicly accessible website specified information or lose money from its General Fund appropriation. The bill was vetoed by the Governor.

SB 574 (Lara) of 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 the UC. The bill was vetoed by the Governor.

SB 959 (Lara) of 2016 was nearly identical to SB 574 and was ultimately vetoed by the Governor.

SB 376 (Lara) of 2015 was nearly identical to SB 959. The bill was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

AFSCME Local 3299 (Sponsor)
American Federation of State, County And Municipal Employees
California Federation of Teachers
California Labor Federation
University Council-American Federation of Teachers

Oppose

California Chamber of Commerce
California Hospital Association/California Association of Hospitals And Health Systems
University of California

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