
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

Bill No: ACA 14 **Hearing Date:** July 10, 2019
Author: Gonzalez
Version: June 19, 2019
Urgency: No **Fiscal:** Yes
Consultant: Ian Johnson

Subject: University of California: support services: equal employment opportunity standards.

NOTE: This bill has been referred to the Committees on Education and Elections. A "do pass" motion should include referral to the Committee on Elections.

SUMMARY

This measure proposes to amend Article IX of the State Constitution by adding Section 9.5, 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.

BACKGROUND

Existing constitutional law:

- 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.

ANALYSIS

This measure:

- 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) 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.
- 4) 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.
- 5) Provides that nothing precludes the UC from using per diem university employees to complement career or limited term university employees when necessary for staffing levels for temporary or emergency periods.
- 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.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “In recent years, the 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’.”

“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.”

- 2) **Related Study.** According to a 2012 study by the UC Berkeley Labor Center, *Temporary Workers in California are Twice as Likely as Non-Temps to Live in Poverty: Problems with Temporary and Subcontracted Work in California*, almost one-quarter of a million people worked in the temporary help services industry in California in 2010. These workers were slightly younger, more likely to be female, less likely to be white non-Hispanic, and less likely to have a high school diploma or GED than the average non-temp worker. These workers were also more susceptible to workplace illness and injury, earned less than their non-temp counterparts, and were less likely to get benefits. The report notes that lowered wages mean that these workers rely more on the state safety net than their direct-hire counterparts and that these employment arrangements undermine worker protections by allowing employers to avoid certain provisions of worker protection and making it difficult to enforce other protections. The report also notes that these employment relationships create downward pressure on wages.
- 3) **Related audit.** The Joint Legislative Audit Committee has previously investigated specified employment contracts at the UC. The audit, report number 2016-125.1, titled “The University of California Office of the President - It Has Not Adequately Ensured Compliance With Its Employee Displacement and Services Contract Policies,” was completed in August 2017, and found in its review of 31 service contracts at six university locations all of the following:
 - The university’s decentralized approach to contract management has resulted in its inability to report even the most basic contract information in the aggregate without a manual review of all of its contracts. Staff notes that the UC began implementation of its new software in July 2017.
 - The university has not fully followed its policy for justifying its decisions to displace university employees with service contract workers.
 - Two of the reviewed service contracts contained documentation that university employees were displaced.
 - The two university locations administering these contracts did not fully adhere to the displacement guidelines in either contract.
 - The Office of the President has not enforced compliance with the displacement guidelines and weaknesses in the guidelines may undermine their effectiveness.
 - Low-wage service contract workers received hourly wages that were \$3.86 lower than comparable university employees received.
 - The university generally adhered to the Office of the President's contract policy, but it could make improvements, such as ensuring the standard terms and conditions are included in services contracts.

- Some university locations avoided competitive bidding by repeatedly amending contracts and through sole-source exceptions.
- The Office of the President lacks a systemwide database that would allow it to track contracts at all university locations and report basic contract data.
- The Office of the President could not substantiate \$109 million in benefits it claimed as resulting from its systemwide procurement program.

The report recommends that the Legislature revise state law to specify the conditions under which the university may amend contracts without competition and more narrowly define the professional and personal services that the university may exempt from competitive bidding.

- 4) ***UC's Fair Wage/Fair Work plan.*** In July 2015, the UC adopted a Fair Wage/Fair Work Plan. Under the Plan, the UC has established a minimum level of pay for employees to ensure that all UC workers are provided a fair wage with a goal of reaching a minimum wage of \$15 per hour on October 1, 2017. In addition, the UC reports that it is implementing annual compensation audits and interim audits, paid for by the contractor, to monitor wage and working conditions as well as compliance with federal, state, and UC workplace laws and policies for contracted employees working pursuant to contracts entered into or renewed after October 2015. The UC has also established a phone hotline and central online system to report complaints directly to the Office of the President.
- 5) ***Fiscal impact.*** According to the Assembly Appropriations Committee, this bill would create the following costs:
 - a) One-time GF costs to the Secretary of State (SOS) in the hundreds of thousands of dollars for printing and mailing costs to place the measure on the ballot in a statewide election. Actual costs may be higher or lower, depending on the length of required elements and the overall size of the ballot.
 - b) Ongoing GF cost pressures to the UC, possibly in excess of \$150 million, to insource service contracts or to meet the employment standards set forth in this measure. These costs reflect the higher salary and benefit costs of UC employees relative to those hired under service contracts, though specific costs are subject to uncertainty.
- 6) ***Arguments in support.*** 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."

- 7) ***Arguments in opposition.*** The UC 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.”

- 8) ***Prior 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.

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

OPPOSITION

California Association of Public Hospitals and Health Systems

California Chamber of Commerce
California Hospital Association
University of California

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