

Date of Hearing: June 22, 2022

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kalra, Chair

SB 1364 (Durazo) – As Amended June 14, 2022

SENATE VOTE: 27-11

SUBJECT: University of California: vendors

SUMMARY: Requires a vendor that contracts with the University of California (UC) to perform services, to provide their employees with the higher of the total compensation rate specified in the vendor’s contract with the university or as required by university policy. Also requires a vendor, twice yearly, to provide basic payroll information, as defined, to the UC and members of any meeting body established with the exclusive representative of university employees who perform the same or similar services. Specifically, **this bill:**

- 1) Defines “vendor” as a 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. “Vendor” also means any person acting either individually or as an officer, agent, or employee of a vendor.
 - a) Specifies that “vendor” does not include a contractor in the construction industry, as defined, that has entered into a valid collective bargaining agreement with its employees.
- 2) Defines “contractor in the construction industry” as an employer that provides work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work, as specified.
- 3) Defines “basic payroll information,” for each vendor-supplied employee who performed services for the university at any time during the preceding six-month period, as the following information:
 - a) The employee’s full name, job title, mobile telephone number, email address, and home address.
 - b) Work location.
 - c) The employee’s hourly rate of pay for each pay period during the preceding six-month period.
 - d) The hourly value of employer-paid benefits provided to the employee, if any, for each pay period during the preceding six-month period.
 - e) The employee’s hours of work for each pay period during the six-month period.

- f) The employee's hours of work performing services for the university for each pay period during the six-month period.
- 4) Defines "contract" to include 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 services or supply the university with employees to perform services in exchange for payment.
- 5) Defines "employee" to include 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.
- 6) Defines "employer" as any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.
- 7) Defines "hourly value of employer-provided benefits" as the employer's actual cost for the employee's retirement, health, dental, vision, life and disability benefits, if any, calculated as an hourly dollar amount. It does not include any paid time off or any payroll expenses required by law. For any employee who does not receive employer-provided benefits, the hourly value is zero dollars (\$0).
- 8) Defines "services" as work customarily performed by bargaining unit employees of the university, including, but not limited to, the following services: cleaning, custodial, janitorial, or housekeeping services; food services; laundry services; grounds keeping, nonskilled crafts building maintenance; transportation and parking services; security services; billing and coding services; sterile processing; hospital and nursing assistant services; respiratory therapy; and medical imaging services.
- 9) Defines "subcontractor" as 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.
- 10) Defines "total compensation rate" as the employee's hourly rate of pay plus the hourly value of employer-provided benefits, or the equivalent compensation.
- 11) 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 as required by UC policy.
- 12) 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. This notice 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.
- 13) Requires, in January and July of each year, a vendor to 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.

- 14) Requires a vendor to make basic payroll information available to the vendor's employees for inspection upon request, as specified.
- 15) 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 13) and 14), above.
- 16) Permits any vendor employee or UC employee to provide a vendor with written notice of a violation of the provisions 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.
- 17) Authorizes a vendor employee or university employee to bring a civil action for violation of the sections of this bill against a vendor in the superior court of any county in which the UC operates.
- 18) 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 13) or 14) 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 13) or 14), 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.
- 19) 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.
- 2) Limits legislative control over the UC to only such legislative control as may be necessary to ensure 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.
- 3) Prohibits UC from 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.
- 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.
- 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.

- 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.

FISCAL EFFECT: According to the Senate Appropriations Committee, “UC indicates that it anticipates ongoing costs in the low tens of millions of dollars to implement the bill’s requirements (General Fund). This amount would be offset to some extent by potential penalty revenue, the magnitude of which is unknown, but likely minor.”

COMMENTS: The UC is one of California’s largest employers, with around 227,000 faculty and staff system-wide.¹ According to the UC, just under half of its in-house labor force is unionized.² 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 don’t necessarily receive the same pay and benefits as an in-house UC employee would. In 2019, the Regents of the UC adopted Regents’ Policy 5402.³ In general, Policy 5402 prohibited the UC from contracting out for services and functions that University staff could perform just as well. Recognizing that there might be “exigent and limited circumstances” when the UC needed to use an outside contract as “a solution of last resort,” Policy 5402 allowed such outside contracts, but only under specified conditions. Of particular relevance to this bill, Policy 5402 mandated that any outside contracts adhere to an “Equal Pay for Equal Work” standard. 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.

According to the author, “[This bill] 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. The bill would require a vendor to supply a written notice to their employees about the relevant compensation rates and would allow a contracting vendor company an opportunity to cure any discrepancies before facing any consequence. However, refusal to comply would result in employees having the right to pursue recovery of lost wages in court, and the disqualification of a violating company from doing business with UC for a five-year period.”

Arguments in Support

The American Federation of State, County, and Municipal Employees (AFSCME), Local 399 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.

[This bill] 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

¹ University of California Webpage. *UC Employee Headcount*.

² University of California: UCnet Webpage. *Union-Represented Employees*.

³ Regents Policy 5402: Policy Generally Prohibiting Contracting for Services (Approved Nov. 14, 2019; Amended Jan. 23, 2020) Regents of the University of California.

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. 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.”

Arguments in Opposition

The UC, in opposition, states, “The UC strives to be a model employer. We value and protect our employees, and as part of the UC’s public mission, aim to unlock doors of economic opportunity and to serve as an antidote to poverty. UC Regents Policy requires contracts to be used only sparingly and as an option of last resort to address temporary or exigent circumstances, but not to displace University employees. The UC also strongly supports - and already adheres to - wage and benefit parity. [This bill] would place significant financial and legal risks, and unrealistic administrative burdens, on vendors who contract with UC in the name of wage and benefit parity. The bill also creates a mandate for courts to impose penalties on California businesses that are not commensurate with violations of the bill and mandates blacklisting vendors for at least five years, even for minor or technical violations.”

Prior Legislation

ACA 14 (Gonzalez) of 2019 would have amended Article IX of the State Constitution by adding the 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. This bill died on the Senate inactive file.

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. This bill was vetoed by Governor Brown.

SB 959 (Lara) of 2016 was nearly identical to SB 574. This bill was vetoed by Governor Brown.

REGISTERED SUPPORT / OPPOSITION:

Support

AFSCME
AFSCME Local 3299
California Employment Lawyers Association
California Immigrant Policy Center
California Labor Federation
California League of United Latin American Citizens
California State Council of Service Employees International Union
California Teachers Association
California Teamsters Public Affairs Council
Courage California

Engineers & Scientists of California, Local 20, IFPTE
North Valley Labor Federation
United Food and Commercial Workers, Western States Council
United Nurses Associations of California/Union of Health Care Professionals
Warehouse Worker Resource Center

Oppose

Bay Area Council
California Association of Public Hospitals & Health Systems
California Hospital Association/California Association of Hospitals and Health Systems
Central City Association of Los Angeles
Tri County Chamber Alliance
University of California
Valley Industry and Commerce Association

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