

SENATE THIRD READING
SB 1364 (Durazo and Caballero)
As Amended June 14, 2022
Majority vote

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.

Major Provisions

- 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) 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.
- 5) 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.
- 6) 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.
- 7) Requires a vendor to make basic payroll information available to the vendor's employees for inspection upon request, as specified.
- 8) 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.
- 9) 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.

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

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.

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 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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Ongoing costs of at least tens of millions of dollars annually to UC to cover vendors' cost of compliance and exposure to litigation and penalties as a result of this bill, likely offset to a minor extent by potential penalty revenue.

UC is generally prohibited from contracting for services, but contracted services are allowed to meet exigent circumstances, with vendors required to pay their employees wage and

benefit parity alongside UC employees. However, UC notes its existing policies only cover specified services and contracts valued over \$100,000, whereas this bill applies to all types of contracts valued over \$1,000. Thus, UC expects vendors willing to continue contracting would negotiate a premium to cover the cost of compliance and exposure to litigation and penalties. Additionally, contracts with vendors not currently subject to UC's existing policies would need to be renegotiated for wage and benefit parity. Lastly, to the extent vendors are no longer willing to service UC, especially at UC's medical centers, UC anticipates significant costs to insource temporary or specialty services. (General Fund (GF))

- 2) GF or Trial Court Trust Fund (TCTF) cost pressures of an unknown, but potentially significant, amount to the courts in additional workload, by creating a new cause of action and penalties for violation of this bill's provisions. The estimated workload cost of one hour of court time is \$1,000. If additional 10 cases are filed statewide resulting in 20 hours of court time for each case, costs would be approximately \$200,000. Although courts are not funded on the basis of workload, increased pressure on the TCTF and staff workload may create a need for increased funding for courts from the GF to perform existing duties.

VOTES

SENATE FLOOR: 27-11-2

YES: Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Durazo, Eggman, Gonzalez, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Dodd, Glazer, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

ABS, ABST OR NV: Allen, Hertzberg

ASM JUDICIARY: 8-2-1

YES: Stone, Bloom, Haney, Kalra, Maienschein, Reyes, Robert Rivas, Wilson

NO: Cunningham, Davies

ABS, ABST OR NV: Kiley

ASM LABOR AND EMPLOYMENT: 5-2-0

YES: Kalra, Haney, Jones-Sawyer, Reyes, Ward

NO: Flora, Seyarto

ASM APPROPRIATIONS: 11-5-0

YES: Holden, Bryan, Calderon, Arambula, Mike Fong, Gabriel, Eduardo Garcia, Quirk, Robert Rivas, Akilah Weber, McCarty

NO: Bigelow, Megan Dahle, Davies, Fong, Levine

UPDATED

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