
UNFINISHED BUSINESS

Bill No: SB 1364
Author: Durazo (D) and Caballero (D), et al.
Amended: 6/14/22
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 3-1, 4/4/22
AYES: Cortese, Durazo, Newman
NOES: Ochoa Bogh
NO VOTE RECORDED: Laird

SENATE JUDICIARY COMMITTEE: 9-2, 4/19/22
AYES: Umberg, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Stern,
Wieckowski, Wiener
NOES: Borgeas, Jones

SENATE APPROPRIATIONS COMMITTEE: 5-1, 5/19/22
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Jones
NO VOTE RECORDED: Bates

SENATE FLOOR: 27-11, 5/25/22
AYES: 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
NOES: Bates, Borgeas, Dahle, Dodd, Glazer, Grove, Jones, Melendez, Nielsen,
Ochoa Bogh, Wilk
NO VOTE RECORDED: Allen, Hertzberg

ASSEMBLY FLOOR: 55-16, 8/24/22 - See last page for vote

SUBJECT: University of California: vendors

SOURCE: AFSCME Local 3299

DIGEST: This bill requires 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. This bill requires that vendors, as defined, provide specified payroll information to University of California (UC) and any organization that is the exclusive representative of UC employees which perform similar services. This bill also prohibits vendors, as defined, from contracting with the UC if they are supplying employees for services at a lower compensation rate than is specified by UC policy on wages and benefits.

Assembly Amendments make the following changes:

- 1) Clarify that "vendor", as defined by the bill, does not include a contractor in the construction industry that has entered into a valid collective bargaining agreement.
 - a) For the purposes of SB 1364, "Contractor in the Construction Industry" is defined to mean an employer that provides work associated with construction, including any work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work as described by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and other similar or related occupations or trades.
- 2) Clarify that the provisions of SB 1364 are severable and if any provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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) Provides that 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 specified information about overtime, pay rates, minimum wage and certain information about the employer. (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 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 required by UC 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 UC 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 UC 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 and the organizations that represent University of California employees. The information that will be shared includes your full name, work location, mobile telephone number, email address, and home address. The purpose of sharing this information is to ensure that the University of California and the organizations that represent University of California employees can contact you if they discover you have been paid 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 UC 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:
 - i) 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.
 - ii) 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.
 - iii) 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.
 - iv) 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.
 - v) 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) "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:
 - i) Employee's full name, job title, mobile telephone number, email, and home address.

- ii) Work location.
 - iii) Employee's hours of work for each pay period during the six-month period.
 - iv) The employee's hours of work performing services for the university for each pay period during the six-month period.
- b) "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.
 - c) "Total compensation rate" means the employee's hourly rate of pay plus the hourly value of employer-provided benefits.
 - d) "University" means the University of California.
 - e) "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.

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:

- 1) Prioritization of the use of existing staff.
- 2) Compliance with minimum certain workforce standards.
- 3) 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, ACA 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.

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, this bill requires 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. This 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 five 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 two 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

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.

SUPPORT: (Verified 8/24/22)

AFSCME Local 3299 (source)

AFSCME Council 1902 Metropolitan Water District
AFSCME Council 36
AFSCME Council 57
AFSCME Local 1001 Metropolitan Water District
AFSCME Local 206 Union of American Physicians and Dentists
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 State Council of Service Employees International Union
California Teachers Association
California Teamsters Public Affairs Council
Central Labor Council Contra Costa County, AFL-CIO
Central Labor Council Fresno, Madera, Tulare, Kings Counties, AFL-CIO
Chinese for Affirmative Action
Courage California
Engineers & Scientists of California, Local 20, IFPTE, AFL-CIO
Five Counties Central Labor Council
Garment Worker Center
Los Angeles Alliance for a New Economy
Los Angeles County Federation of Labor, AFL-CIO
Monterey Bay Central Labor Council, AFL-CIO
North Valley Labor Federation
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
United Nurses Associations of California/union of Health Care Professionals
Warehouse Worker Resource Center

OPPOSITION: (Verified 8/25/22)

Air Filter Control
American Herbal Pharmacopoeia
Bay Area Council
BizFed LA
California Asian Chamber of Commerce
California Association of Public Hospitals
California Chamber of Commerce
California Hospital Association
CBORD Group
Central City Association, LA
Chinese Chamber of Commerce
Coalition for Public Higher Education
Coastwide Environmental
Essential Steps
Falafel of Santa Cruz
Fidelity Investments
Healthcare Staffing Professionals
IG Harvesting
Iveta Gourmet
LA Area Chamber
Rolling Orange
RPMC
SF Chamber
Shasta Vision
Sign Language Interpreters
Tel-Us Call Center, Inc.
Tri-County Chamber Alliance
University of California
Western Regional Minority Supplier Development Council

ARGUMENTS IN SUPPORT: 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.

ARGUMENTS IN OPPOSITION: The University of California writes in opposition:

The bill is unnecessary because UC already requires WBP under Regents Policy 5402 Article 5ii and iii of our collective bargaining agreement (CBA) with AFSCME 3299. UC's policy drives economic mobility, and the union can enforce these policies through their CBA while UC verifies vendor compliance through annual audits.

Additionally, SB 1364 will hurt small businesses and impede UC's ability to meet the needs of our hospitals and campuses. The bill places significant financial and legal risks, and unrealistic administrative requirements, on vendors who contract with UC; the bill includes mandatory court-ordered penalties, even for minor or technical violations.

UC's vendors note that these risks are insurmountable, making SB 1364 a *de facto* ban on contracting. Occasional contracts for covered services are essential for UC to responsibly meet the needs of patients, students, and campuses. This bill drives away vendors needed to cover daily operations, from cleaning rooms and food service to nurses and medical technicians. As a result, health care delivery and patient outcomes may suffer.

ASSEMBLY FLOOR: 55-16, 8/24/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooley, Cooper, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Choi, Cunningham, Megan Dahle, Davies, Fong, Gallagher, Kiley,
Mathis, Mayes, Nguyen, Patterson, Seyarto, Smith, Valladares, Voepel,
Waldron

NO VOTE RECORDED: Alvarez, Bigelow, Chen, Daly, Flora, Gray, Irwin,
Lackey, Petrie-Norris

Prepared by: Jake Ferrera / L., P.E. & R. / (916) 651-1556
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****** END ******