

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 27 (Durazo)
Version: March 13, 2023
Hearing Date: March 28, 2023
Fiscal: No
Urgency: No
TSG

SUBJECT

University of California: vendors

DIGEST

This bill establishes mechanisms for monitoring and enforcing compliance with the University of California's (UC) Equal Pay for Equal Work policy which requires covered vendors who supply services to the UC to provide at least equal pay and benefits to their employees when compared with what UC employees would receive for performing the same work.

EXECUTIVE SUMMARY

In 2019, the Regents of the University of California (UC) adopted a new policy generally prohibiting UC from contracting out for services that could be performed by UC staff. The new policy still allows for some outside contracting, but only as a last resort and only subject to certain criteria. Of particular relevance to this bill, any outside contract has to conform to an Equal Pay for Equal Work Standard: the contracted outside workers must receive at least equivalent pay and benefits to what a UC employee gets for performing the same tasks. In practice, however, there is no ongoing mechanism for ensuring that outside contractors honor the Equal Pay for Equal Work requirement. This bill is designed to prevent subterfuge of UC's Equal Pay for Equal Work policy by requiring any employer contracting with the UC for more than \$1,000 worth of services to notify its workers of the wages and benefits they are entitled to receive under the policy and by requiring the contracting employer to provide payroll information to the UC and its employee unions every six months. In addition, the bill exposes contracting employers to liability for specified civil penalties payable to the employee as well as reasonable attorney's fees and costs if the contractor violates the policy.

The bill is sponsored by the American Federation of State, County, and Municipal Employees Local 3299. Support comes from organized labor, who appreciate the way the bill prevents outside contractors from undermining the wages and benefits of unionized employees. Opposition comes from a vendor to UC who believes it may be inadvertently covered by the bill. The bill passed out of the Senate Labor, Public

Employment and Retirement Committee by a vote of 4-0. If the bill passes out of this Committee, it will be re-referred to the Senate Rules Committee.

PROPOSED CHANGES TO THE LAW

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. (Cal. Const., art. XIV, § 9.)
- 2) Limits legislative control over the UC to only 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. (Cal. Const., art. XIV, § 9.)
- 3) Prohibits 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. (Lab. Code § 2810.)
- 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. (Lab. Code § 2810.5.)

- 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. (Lab. Code § 226.)
- 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. (Lab. Code § 1197.1.)

This bill:

- 1) Defines the following terms, for purposes of this bill, as follows:
 - 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 employee’s full name, job title, mobile telephone number, email address, and home address; the work location; and, for each pay period during the preceding six-month period, the hourly rate of pay, the hourly value of employer-paid benefits provided to the employee, the employee’s hours of work, and the employee’s hours of work performing services for the university;
 - b) “hourly value of employer-provided benefits” means the employer’s actual cost for the employee’s retirement, health, dental, vision, life and disability benefits, calculated as an hourly dollar amount. This does not include any paid time off or payroll expenses required by law;
 - c) “services” means work customarily performed by bargaining unit employees of the university;
 - d) “total compensation rate” means the employee’s hourly rate of pay plus the hourly value of employer-provided benefits or the equivalent compensation; and
 - e) “vendor” includes any person or entity that contracts with the UC to perform services or to supply the UC with employees to perform services, but does not include a contractor in the construction industry, as defined, that has entered into a valid collective bargaining agreement.
- 2) 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 or required by university policy, whichever is higher, and the employee’s hourly rate of pay and hourly rate of employer-provided benefits. These notices must be provided at the time each employee is initially assigned to perform services, each January thereafter, and within seven days of any change to the employee’s hourly rate.

- 3) Requires that, in January and July of each year, a vendor must provide basic payroll information to the UC and any joint labor-management committee and requires the vendor to provide all employees who agree to perform services for the UC with a specified written notice about this requirement.
- 4) Requires a vendor to make basic payroll information for an individual employee who performs services for the university available for inspection by that individual employee or that individual employee's authorized representative upon request.
- 5) Specifies that if an auditor, vendor, UC, or any other person conducts or receives an audit, verification, notice, report or finding regarding compliance with UC's vendor compensation policy, that information shall be provided to the UC and to the members of any joint labor-management committee.
- 6) Makes it unlawful for a vendor to accept payment of more than \$1000 from the UC pursuant to a contract for services if the vendor is paying its employees less than the total compensation rate specified in the contract or required by university policy, whichever is higher.
- 7) Allows any vendor employee or UC employee to confront a vendor with written notice of a violation 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.
- 8) Allows an aggrieved employee or any university employee to bring a civil action against a vendor to enforce the provisions of the bill.
- 9) Directs the courts to order payment of all of the following to a plaintiff if the 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 or university policy, whichever is higher, 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 (3) or (4) 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; and
 - c) reasonable attorney's fees and costs.
- 8) Provides that the remedies under this bill are in addition to any other remedies provided by law, with specified exceptions.
- 9) States that it does not preclude or alter the UC's ability to contract for services as permitted under existing policies or collective bargaining agreements.

- 10) States that it does not preclude the UC from hiring in emergency circumstances or to meet other staffing needs.
- 11) Contains a severability clause.

COMMENTS

1. Background on contracted labor at the UC and the Equal Pay for Equal Work standard

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, in the past, did not necessarily receive the same pay and benefits as an in-house UC employee would.

Under pressure to reduce its reliance on outsourced labor, 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 represented by AFSCME Local 3299 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. Under that standard:

[t]he labor conditions of contract workers shall be protected by ensuring they receive wages and benefits equivalent to what the University provides to its employees, and providing those who have performed services to the University on a long-term and continuous basis the opportunity to become University employees.

This bill creates mechanisms for monitoring whether vendors are honoring the Equal Pay for Equal Work standard in practice. It also establishes penalties to be imposed on vendors- after an opportunity to cure - if it is revealed that they are not honoring the standard.

¹ *UC Employee Headcount*. Regents of the University of California, <https://www.universityofcalifornia.edu/about-us/information-center/uc-employee-headcount> (as of Mar. 22, 2023).

² *Union-Represented Employees*. Regents of the University of California, <https://ucnet.universityofcalifornia.edu/labor/index.html> (as of Mar. 22, 2023).

³ *Regents Policy 5402: Policy Generally Prohibiting Contracting for Services* (approved Nov. 14, 2019; amended Jan. 23, 2020) Regents of the University of California, <https://regents.universityofcalifornia.edu/governance/policies/5402.html> (as of Mar. 22, 2023).

2. The solution proposed by the bill

The bill establishes two mechanisms for ensuring that vendors not only agree to abide by the Equal Pay for Equal Work in order to obtain a contract with UC, but that they actually comply with it in practice.

First, the bill requires vendors to tell any employee they assigning to perform services for the UC how much the vendor's contract with the UC requires the vendor to compensate their workers or how much UC policy requires vendors to compensate their workers, whichever is higher. To ensure that workers get the message, the vendor is supposed to provide this information again each January and within seven days of any change in the worker's hourly rate of compensation. In this way, the workers will be armed with the information they need to quickly verify whether or not the vendor is actually complying with the Equal Pay for Equal Work standard. If the vendor is not, the worker will be able to seek compensation accordingly. (*See Comment 3, below, for a discussion of the legal remedies offered by the bill.*)

Second, the bill obligates vendors twice a year to send "basic payroll information" to the UC and members of any joint labor-management committee or similar meeting body that the UC and the unions representing its employees have established. This basic payroll information includes details about each worker's rate of pay and compensation for the last six months, as well as the number of hours that the worker has logged overall, and while assigned to perform services for the UC during that same period. The resulting data permits the UC and the unions representing UC employees to audit the vendor's payroll and detect any violations of the Equal Pay for Equal Work standard. If they discover any such violations, they can alert the impacted worker (since the basic payroll information includes contact information for the vendor's workers as well) and either the impacted worker can seek compensation for the violation or a UC employee can seek compensation on the worker's behalf. (*See Comment 3, below, for a discussion of the legal remedies offered by the bill.*) The ability of UC workers to seek redress on behalf of the contracted employee helps mitigate against scenarios in which contracted workers may feel too intimidated to pursue the compensation to which they are entitled. In other words, it enables UC staff to protect their own interest in securing equal pay for contract workers by demanding that pay on the contract workers' behalf.

3. Right to cure and remedies

In addition to creating the compliance monitoring regime described in Comment 2, above, the bill also establishes an enforcement mechanism in the event that vendors fall below the Equal Pay for Equal Work standard, either inadvertently or in an attempt to skirt the law.

Under that enforcement mechanism, any employee of a vendor or of the UC could initiate a claim. To start, the employee would have to notify the vendor of the alleged

violation and give the vendor 30 days in which to cure it. Within those 30 days, the vendor has an opportunity to provide documentation that the vendor has or will make all of its workers who are performing services for the UC whole and that each of those workers received notification about the compensation to which they are entitled under the Equal Pay for Equal Work standard.

If the vendor fails to cure the violation in time, the employee that initiated the claim can proceed to file a civil action against the vendor in superior court. If the employee prevails in that action, the employee is entitled to an award of attorney's fees and costs. What else the employee may obtain from the case depends on the violation alleged. If the violation involved under-compensation, then the vendor must make the affected worker whole and pay the affected worker statutory penalties in an amount determined by the gravity and extent of the violation. If the violation at issue involves failure to provide the notices to workers or failure to share the basic payroll information with the UC and the UC employee unions as required under the bill, then a more modest set of penalties applies, capped at a maximum of \$4,000 per employee.

These are stiff remedies. As the inclusion of a right to cure underscores, however, their purpose is not so much to punish violations as to discourage vendors from violating the Equal Pay for Equal Work standard in the first place and to encourage those vendors to fix any inadvertent lapse promptly.

4. Divergence from prior bill on the same topic

In its intent and in most of its substantive details, this bill is nearly identical to SB 1364 (Durazo, 2022). The primary difference is that the potential consequences that a vendor faces if it is found to have violated the policy have been reduced somewhat. Under this bill, a vendor found in violation faces the consequences outlined in Comment 3, above: full compensation of the workers for the underpayments, scaled penalties for each violation, and payment of the prevailing party's attorney's fees and costs. Under SB 1364, a vendor faced two additional consequences if a court found the vendor in violation. First, SB 1364 gave the court the discretion to impose an additional penalty equal to 10 percent of the value of the vendor's contract with UC. Second, SB 1364 required the court to disqualify the vendor from contracting with the UC again for at least five years. In response to concerns that SB 1364's punishment for violations was so strong that it would scare off vendors, the additional civil penalty and mandatory disqualification have been dropped from this bill.

5. Relevance of the current audit

In testimony on this bill before the Senate Labor, Public Employment and Retirement Committee, UC highlighted that it is currently undertaking an audit of the employment practices of all of its vendors covered by the Equal Pay for Equal Work policy. This is the audit to which the Governor referred when he vetoed SB 1364 (Durazo, 2022), the

predecessor to this bill. In his veto message, the Governor indicated his preference to see the results of this audit before determining whether the sort of monitoring and enforcement regime established by SB 27 is necessary.

UC emphasizes that this audit is not only meant to uncover any instances in which a vendor has not complied with the policy, but also to ensure that any worker who has not been paid what is due to them under the policy is promptly made whole.

The results of the audit are expected by mid-April.

The performance of this audit is, by all accounts, a significant and welcome undertaking. Even assuming that the audit is an effective way to discover and rectify current abuses, however, it is not the same as an enduring method for monitoring and enforcing compliance with the Equal Pay for Equal Work Policy. To provide the same sort of permanent, built-in mechanisms for ensuring policy compliance that this bill establishes, the UC would presumably have to guarantee additional future audits at regularly scheduled intervals.

6. Are additional vendors to the UC inadvertently swept in?

During testimony before the Senate Labor, Public Employment and Retirement Committee, the UC expressed concern that, while the Equal Pay for Equal Work policy only applies to employees in the bargaining unit represented by AFSCME Local 3299, the language of this bill can be interpreted as applying to all UC vendors.

The logic behind that interpretation goes something like the following. The bill defines “services” to mean “work customarily performed by bargaining unit employees of the university, including, *but not limited to...*” a list of different tasks. That definition clearly encompasses services that are subject to the Equal Pay for Equal Work Policy, but is clearly not limited to just those services. Since other services are implicated as well, the bill can be read to require all vendors providing services to the UC to carry out all the requirements of the bill regardless of whether they are currently covered by the Equal Pay for Equal Work Policy or not. The same concern can be heard in the letter of opposition to the bill submitted by Fidelity Investments. Fidelity worries that though the services it provides to UC are not currently covered by the UC’s policy, they would nonetheless be subject to SB 27.

The author does not intend for the bill to cover services – like those provided by Fidelity -- that are not currently subject to the UC policy. At the same time, the open-ended nature of the definition of services in the bill is deliberate; the author would like the bill’s process for monitoring and enforcing equal compensation policies to extend to other bargaining units if, in the future, the university policy covers those additional bargaining units as well.

The parties are in dialog regarding this matter and the author's office is awaiting proposed amendments from the University of California to review.

7. Arguments in support of the bill

According to the author:

The University of California has a policy called "Equal Pay for Equal Work" that requires service contract vendors to pay vendor employees' wages and benefits equivalent to what UC pays directly hired service workers. However, since vendor employees are not employed directly by UC, and there is no legal requirement to inform these workers by the University, or any state agency how vendor wages and benefits compare to what UC policy requires, there is no effective way for workers to know about or recover earned but unpaid wages. SB 27 establishes the "Recovery of Earned but Unpaid Wages Act" by creating an enforcement mechanism by requiring UC vendors to supply payroll information to UC and the joint labor-management committee to ensure compliance with UC's Equal Pay for Equal Work policy. SB 27 is consistent with UC's audit standards, requiring that any audit or other notice or finding about wage benefit parity compliance also go to the joint labor-UC management committee. Vendors must also provide written notice to their employees about the required compensation rates. Vendors will have the opportunity to cure discrepancies. However, refusal to comply allows vendor employees to pursue their earned but unpaid wages and compensation in court.

As the sponsor of the bill, the American Federation of State, County, and Municipal Employees 3299 writes:

[...] SB 27 would allow vendor company employees to enforce the UC policy of Equal Pay for Equal Work by requiring their employer to supply 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 of the relevant compensation rates. A vendor would have an opportunity to correct and cure any violation under the bill. A failure to cure will give impacted employees the right to recover their earned but unpaid wage amounts. We request the Legislature provide for this remedy and recovery [...].

In support, the California Labor Federation writes:

The enforcement mechanisms in this bill are important to ensure that the UC's Equal Pay for Equal Work policy is followed. Contracted workers are not covered by any collective bargaining agreement, making it difficult to track wages and benefits. As one of California's largest employers, the University of California has a duty to lead by example and enforce fair business practices. SB 27 will ensure that all workers are compensated fairly and equitably for work performed for UC regardless of status.

8. Arguments in opposition to the bill

In opposition to the bill unless it is amended, Fidelity Investments writes:

Fidelity must respectfully oppose SB 27 unless it is amended to clarify that Fidelity is not subject to the bill's provisions. It is our understanding that the author and sponsor of SB 27 do not intend for the bill to apply to Fidelity's contract with UC since the contract is not covered under Regents Policy 5402 or the AFSCME collective bargaining agreement. However, the current text of the bill would apply to Fidelity as the definition of "services" is very broad.

SUPPORT

American Federation of State, County, and Municipal Employees, Local 3299 -
University of California (sponsor)
American Federation of State, County, and Municipal Employees, AFL-CIO
California Labor Federation

OPPOSITION

Fidelity Investments

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1364 (Durazo, 2022) was nearly identical to this bill, though it included additional penalties for violations. In his message vetoing SB 1364, Governor Newsom wrote: "I appreciate the intent of this bill, which is to ensure Regents Policy 5402 and the ratified agreement with American Federation of State, Municipal Employees Local 3299 are appropriately enforced. It is my Administration's understanding that the UC has been

updating vendor contracts to include wage and benefit parity language and implementing campus and system level audit functions to monitor compliance and enforce these policies. The University is expected to complete a comprehensive report of audit findings in the first quarter of next year. I urge the UC to make the audit findings publicly available and present those findings during an open session of a regularly scheduled UC Regents meeting. Additionally, this bill includes provisions related to sharing information with contracted workers regarding wage and benefit parity. These are important transparency aims for workers and I further urge the UC to identify and implement additional mechanisms that meet these goals. While I support the enforcement of Regents Policy 5402 and the terms of Article 5, as UC is still implementing their audit mechanisms of the policies, this bill is premature. However, my Administration will closely monitor UC's steps to enforce their own policies and determine if a statutory change is required."

ACA 14 (Gonzalez, 2019) would have amended Article IX of the State Constitution by adding the University of California (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, 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. In his message vetoing the bill, Governor Brown wrote: "Good intentions [...] aren't always enough. The mechanism to create this social change locks in cumbersome and overly costly contracting rules that provide little flexibility, regardless of circumstance. This will not serve the university or the state well."

SB 959 (Lara, Ch. 2016) was nearly identical to SB 574. In his message vetoing the bill, Governor Brown wrote: "[I]t would be prudent to await the recommendations from the State Auditor before embarking on the path prescribed by this bill."

SB 376 (Lara, 2015) was nearly identical to SB 959. In his message vetoing the bill, Governor Brown wrote: "The effort to provide increased compensation to those who work for UC - either directly or on a contract basis - is well-intentioned, but I'm not prepared to embrace the provisions of this bill."

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 0)
