

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1017**

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**Introduced by Assembly Member Campos**

February 26, 2015

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~~An act relating to employment.~~ *An act to amend Section 12990 of the Government Code, relating to discrimination, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1017, as amended, Campos. ~~Wages: gender pay equity. Discrimination: equal pay: state contracting.~~

*Existing law subjects an employer who is, or wishes to become, a contractor with the state for public works, or for goods or services, to various nondiscrimination requirements. Existing law authorizes requiring an employer to submit a nondiscrimination program to the Department of Fair Employment and Housing for approval and certification, prior to becoming a contractor or subcontractor with the state, as well as requiring the provision of periodic reports of contractor or subcontractor compliance with that program.*

*This bill would require an employer with 100 or more employees, prior to becoming a contractor or subcontractor with the state, to submit an income equality program to the Department of Fair Employment and Housing for approval and certification and to submit periodic reports of its compliance with that program. The bill would require the income equality program to include the collection of summary data on the compensation paid to employees, including, but not limited to, data sorted by gender and race, and policies designed to ensure income equality and prevent unlawful discrimination.*

*Existing law authorizes the Department of Fair Employment and Housing, where the department determines and certifies that specified provisions relating to nondiscrimination are violated or determines a contractor or subcontractor is engaging in certain unlawful practices, to recommend appropriate sanctions to the awarding agency.*

*This bill would require the contractor or subcontractor to be subject to a civil penalty of not less than \$10,000 if the department makes the determination and certification described above. This bill would require the penalty to be deposited in the Fair Employment Fund, which the bill would create, and would continuously appropriate the money in the fund to the department to be used for specified purposes. By creating a continuously appropriated fund, this bill would make an appropriation.*

~~Existing law generally prohibits an employer from paying an employee at wage rates less than the rates paid to employees of the opposite sex in the same establishment. Existing law further imposes penalties on an employer who violates this provision, subjecting the employer to civil action and specifying liquidated damages that may be paid to an employee who is paid unfairly.~~

~~This bill would state the intent of the Legislature that would require pay equity for women in the workplace.~~

~~Vote: majority  $\frac{2}{3}$ . Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 12990 of the Government Code is  
2     amended to read:

3     12990. (a) Any employer who is, or wishes to become, a  
4     contractor with the state for public works or for goods or services  
5     is subject to the provisions of this part relating to discrimination  
6     in employment and to the nondiscrimination requirements of this  
7     section and any rules and regulations that implement it.

8     (b) (1) Prior to becoming a contractor or subcontractor with  
9     the state, an employer may be required to submit a  
10    nondiscrimination program to the department for approval and  
11    certification and may be required to submit periodic reports of its  
12    compliance with that program.

13    (2) Prior to becoming a contractor or subcontractor with the  
14    state, an employer with 100 or more employees shall submit an  
15    income equality program to the department for approval and

1 *certification and shall be required to submit periodic reports of*  
2 *its compliance with that program. The income equality program*  
3 *shall include the collection of summary data on the compensation*  
4 *paid to employees, including data sorted by gender and race, and*  
5 *include policies designed to ensure income equality and prevent*  
6 *unlawful discrimination.*

7 (c) Every state contract and subcontract for public works or for  
8 goods or services shall contain a nondiscrimination clause  
9 prohibiting discrimination on the bases enumerated in this part by  
10 contractors or subcontractors. The nondiscrimination clause shall  
11 contain a provision requiring contractors and subcontractors to  
12 give written notice of their obligations under that clause to labor  
13 organizations with which they have a collective bargaining or other  
14 agreement. These contractual provisions shall be fully and  
15 effectively enforced. This subdivision does not apply to a credit  
16 card purchase of goods of two thousand five hundred dollars  
17 (\$2,500) or less. The total amount of exemption authorized herein  
18 shall not exceed seven thousand five hundred dollars (\$7,500) per  
19 year for each company from which a state agency is purchasing  
20 goods by credit card. It shall be the responsibility of each state  
21 agency to monitor the use of this exemption and adhere to these  
22 restrictions on these purchases.

23 (d) The department shall periodically develop rules and  
24 regulations for the application and implementation of this section,  
25 and submit them to the council for consideration and adoption in  
26 accordance with the provisions of Chapter 3.5 (commencing with  
27 Section 11340) of Part 1. Those rules and regulations shall describe  
28 and include, but not be limited to, all of the following:

29 (1) Procedures for the investigation, approval, certification,  
30 decertification, monitoring, and enforcement of nondiscrimination  
31 programs.

32 (2) The size of contracts or subcontracts below which any  
33 particular provision of this section shall not apply.

34 (3) The circumstances, if any, under which a contractor or  
35 subcontractor is not subject to this section.

36 (4) Criteria for determining the appropriate plant, region,  
37 division, or other unit of a contractor's or subcontractor's operation  
38 for which a nondiscrimination program is required.

39 (5) Procedures for coordinating the nondiscrimination  
40 requirements of this section and its implementing rules and

1 regulations with the California Plan for Equal Opportunity in  
2 Apprenticeship, with the provisions and implementing regulations  
3 of Article 9.5 (commencing with Section 11135) of Chapter 1 of  
4 Part 1, and with comparable federal laws and regulations  
5 concerning nondiscrimination, equal employment opportunity,  
6 and affirmative action by those who contract with the United States.

7 (6) The basic principles and standards to guide the department  
8 in administering and implementing this section.

9 (e) Where a contractor or subcontractor is required to prepare  
10 an affirmative action, equal employment, or nondiscrimination  
11 program subject to review and approval by a federal compliance  
12 agency, that program may be filed with the department, instead of  
13 any nondiscrimination program regularly required by this section  
14 or its implementing rules and regulations. Such a program shall  
15 constitute a prima facie demonstration of compliance with this  
16 section. Where the department or a federal compliance agency has  
17 required the preparation of an affirmative action, equal  
18 employment, or nondiscrimination program subject to review and  
19 approval by the department or a federal compliance agency,  
20 evidence of such a program shall also constitute prima facie  
21 compliance with an ordinance or regulation of any city, city and  
22 county, or county that requires an employer to submit such a  
23 program to a local awarding agency for its approval prior to  
24 becoming a contractor or subcontractor with that agency.

25 (f) (1) Where the department determines and certifies that the  
26 provisions of this section or its implementing rules and regulations  
27 are violated or determines a contractor or subcontractor is engaging  
28 in practices made unlawful under this part, the *contractor or*  
29 *subcontractor shall be subject to a civil penalty of not less than*  
30 *ten thousand dollars (\$10,000). The department may recommend*  
31 *additional* appropriate sanctions to the awarding agency. Any such  
32 recommendation shall take into account the severity of the violation  
33 or violations and any other penalties, sanctions, or remedies  
34 previously imposed.

35 (2) (A) *The penalty collected pursuant to paragraph (1) shall*  
36 *be deposited in the Fair Employment Fund, which is hereby created*  
37 *in the General Fund.*

38 (B) *Notwithstanding Section 13340, all money transferred to*  
39 *the Fair Employment Fund is hereby continuously appropriated*  
40 *to the department without regard to fiscal years for enforcement*

1 *of the Fair Employment and Housing Act and for education of*  
2 *employers and employees of their rights and responsibilities under*  
3 *the act.*

4 *(C) Money appropriated to the department shall be used to*  
5 *supplement, not supplant, other funding available to the department*  
6 *for the purposes specified in subparagraph (B).*

7 ~~SECTION 1. It is the intent of the Legislature to enact~~  
8 ~~legislation that would require pay equity for women in the~~  
9 ~~workplace.~~