

AMENDED IN ASSEMBLY APRIL 16, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1017

Introduced by Assembly Member Campos

February 26, 2015

An act to amend Section 12990 of the Government Code, relating to discrimination, and making an appropriation therefor: *add Section 432.3 to the Labor Code, relating to employers.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1017, as amended, Campos. ~~Discrimination: equal pay: state contracting. Employers.~~

Existing law imposes various restrictions on employers with respect to applicants for employment. A violation of those restrictions is a misdemeanor.

This bill would prohibit an employer from publishing, listing, or posting an advertisement, as specified, to recruit candidates without including the minimum rate of pay, and from paying wages for less than what were advertised. The bill would also prohibit an employer from seeking salary history information from an applicant for employment and from releasing the salary history of any current or former employee without written authorization from the current or former employee. By imposing new prohibitions on employers, the violation of which would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~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.~~

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

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

- 1 *SECTION 1. Section 432.3 is added to the Labor Code, to read:*
- 2 *432.3. An employer shall not do any of the following:*

1 (a) Orally or in writing, personally or through an agent, publish,
 2 list, or post, publicly or within the organization, or publish, list,
 3 or post with any employment agency, job-listing service, or Internet
 4 Web site, an advertisement to recruit candidates for hire or
 5 independent contractors to fill a position within the organization,
 6 without including the minimum rate of pay whether paid by the
 7 hour, shift, day, week, salary, piece, commission, or other form of
 8 pay, including overtime, with allowances, if any, claimed as part
 9 of the minimum wage, including tip, meal, or lodging allowances.
 10 In addition, an employer shall not pay wages for the position for
 11 less than what were advertised.

12 (b) Orally or in writing, personally or through an agent, seek
 13 salary history information, including, but not limited to,
 14 compensation and benefits, from an applicant for employment for
 15 an interview or as a condition of employment.

16 (c) Release the salary history of any current or former employee
 17 to any prospective employer in response to a request as part of an
 18 interview or hiring process without written authorization from the
 19 current or former employee.

20 SEC. 2. No reimbursement is required by this act pursuant to
 21 Section 6 of Article XIII B of the California Constitution because
 22 the only costs that may be incurred by a local agency or school
 23 district will be incurred because this act creates a new crime or
 24 infraction, eliminates a crime or infraction, or changes the penalty
 25 for a crime or infraction, within the meaning of Section 17556 of
 26 the Government Code, or changes the definition of a crime within
 27 the meaning of Section 6 of Article XIII B of the California
 28 Constitution.

29 SECTION 1. ~~Section 12990 of the Government Code is~~
 30 ~~amended to read:~~

31 ~~12990. (a) Any employer who is, or wishes to become, a~~
 32 ~~contractor with the state for public works or for goods or services~~
 33 ~~is subject to the provisions of this part relating to discrimination~~
 34 ~~in employment and to the nondiscrimination requirements of this~~
 35 ~~section and any rules and regulations that implement it.~~

36 ~~(b) (1) Prior to becoming a contractor or subcontractor with~~
 37 ~~the state, an employer may be required to submit a~~
 38 ~~nondiscrimination program to the department for approval and~~
 39 ~~certification and may be required to submit periodic reports of its~~
 40 ~~compliance with that program.~~

1 ~~(2) Prior to becoming a contractor or subcontractor with the~~
2 ~~state, an employer with 100 or more employees shall submit an~~
3 ~~income equality program to the department for approval and~~
4 ~~certification and shall be required to submit periodic reports of its~~
5 ~~compliance with that program. The income equality program shall~~
6 ~~include the collection of summary data on the compensation paid~~
7 ~~to employees, including data sorted by gender and race, and include~~
8 ~~policies designed to ensure income equality and prevent unlawful~~
9 ~~discrimination.~~

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

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

32 ~~(1) Procedures for the investigation, approval, certification,~~
33 ~~decertification, monitoring, and enforcement of nondiscrimination~~
34 ~~programs.~~

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

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

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

4 ~~(5) Procedures for coordinating the nondiscrimination~~
5 ~~requirements of this section and its implementing rules and~~
6 ~~regulations with the California Plan for Equal Opportunity in~~
7 ~~Apprenticeship, with the provisions and implementing regulations~~
8 ~~of Article 9.5 (commencing with Section 11135) of Chapter 1 of~~
9 ~~Part 1, and with comparable federal laws and regulations~~
10 ~~concerning nondiscrimination, equal employment opportunity,~~
11 ~~and affirmative action by those who contract with the United States.~~

12 ~~(6) The basic principles and standards to guide the department~~
13 ~~in administering and implementing this section.~~

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

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

- 1 ~~(2) (A) The penalty collected pursuant to paragraph (1) shall~~
- 2 ~~be deposited in the Fair Employment Fund, which is hereby created~~
- 3 ~~in the General Fund.~~
- 4 ~~(B) Notwithstanding Section 13340, all money transferred to~~
- 5 ~~the Fair Employment Fund is hereby continuously appropriated~~
- 6 ~~to the department without regard to fiscal years for enforcement~~
- 7 ~~of the Fair Employment and Housing Act and for education of~~
- 8 ~~employers and employees of their rights and responsibilities under~~
- 9 ~~the act.~~
- 10 ~~(C) Money appropriated to the department shall be used to~~
- 11 ~~supplement, not supplant, other funding available to the department~~
- 12 ~~for the purposes specified in subparagraph (B).~~