

AMENDED IN SENATE SEPTEMBER 2, 2015

AMENDED IN SENATE AUGUST 31, 2015

AMENDED IN SENATE JULY 7, 2015

AMENDED IN ASSEMBLY JUNE 1, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1354

Introduced by Assembly Member Dodd

(Coauthors: Assembly Members Bonilla, Bonta, Chávez, Cooper, Eggman, Cristina Garcia, Gonzalez, and Lopez)

(Coauthors: Senators Allen, Block, Galgiani, Hall, Hancock, Leyva, Mitchell, and Wolk)

February 27, 2015

An act to amend Section 12990 of the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 1354, as amended, Dodd. 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 enact the Equal Pay for Equal Work Act of 2015. The bill would require an employer with 100 or more employees *in state, as specified*, and a contract of 30 days or more, prior to becoming a contractor or subcontractor with the state, to submit a nondiscrimination program to the Department of Fair Employment and Housing and to submit periodic reports no more than annually of its compliance with that program. The bill would authorize the department to require approval and certification of the program. The bill would permit the department to require an employer with fewer than 100 employees *in state* or a contract of less than 30 days to submit a nondiscrimination report. The bill would require the department to define an employee for these purposes. The bill would require the nondiscrimination program to include policies and procedures designed to ensure equal employment opportunities for all applicants and employees, an analysis of employment selection procedures, and a workforce analysis, as specified. The bill would specify that its provisions are not to be construed to negate certain exemptions established by regulation that predate its enactment or to require the department to reevaluate the validity of these exemptions, as specified. The bill would make a statement of legislative findings.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

1 SECTION 1. This act shall be known, and may be cited, as the
 2 Equal Pay for Equal Work Act of 2015.
 3 SEC. 2. (a) The Legislature finds and declares the following:
 4 (1) According to data from the United States Census Bureau,
 5 full-time working women, on average, over the last decade, have
 6 continued to earn just 77 cents for every dollar a man earns. The
 7 wage gap is greater for women of color, with African American
 8 women being paid an average of 64 cents for every dollar paid to
 9 white, non-Hispanic men in 2013 and Latinas being paid just 56
 10 cents for every dollar paid to white, non-Hispanic men.
 11 (2) This wage disparity amounted to a yearly average wage gap
 12 of \$10,876 in 2013 between full-time working men and full-time
 13 working women. In total, the disparity represents more than \$490
 14 billion in lost wages for working women every year.

1 (3) Disparities in pay for women have numerous negative
2 impacts. This pay differential shortchanges women and their
3 families by thousands of dollars a year and potentially hundreds
4 of thousands of dollars over a lifetime. Nearly 4 in 10 mothers are
5 primary breadwinners in their households, and nearly two-thirds
6 are significant earners, making pay equity critical to the economic
7 security of their families.

8 (4) Equal pay for equal work is a fundamental precept in our
9 nation and in California. Federal law, including the federal Equal
10 Pay Act of 1963 (Public Law 88-38), Title VII of the Civil Rights
11 Act of 1964 (Public Law 88-352), and Executive Order 11246 of
12 September 24, 1965, entitled Equal Employment Opportunity,
13 specifically prohibits arbitrarily compensating men and women
14 differently for the same work, as does California’s Equal Pay Act.

15 (5) On August 6, 2014, the United States Department of Labor’s
16 Office of Federal Contract Compliance Programs issued a notice
17 of proposed rulemaking to required covered federal contractors
18 and subcontractors with more than 100 employees to submit an
19 annual equal pay report on employee compensation. In California,
20 state contractors receiving public money are obligated to comply
21 with equal pay laws and should provide the state with aggregate
22 wage data to advance pay equity.

23 (b) It is the intent of the Legislature in enacting this act to
24 promote pay equity and nondiscrimination in setting pay and
25 making hiring or promotional decisions, and to obtain better data
26 on pay equity to more wholly address the problem.

27 SEC. 3. Section 12990 of the Government Code is amended
28 to read:

29 12990. (a) Any employer who is, or wishes to become, a
30 contractor with the state for public works or for goods or services
31 is subject to the provisions of this part relating to discrimination
32 in employment and to the nondiscrimination requirements of this
33 section and any rules and regulations that implement it.

34 (b) (1) (A) (i) Prior to becoming a contractor or subcontractor
35 with the state, an employer with 100 or more employees *in the*
36 *state* and a contract of 30 days or more shall submit a
37 nondiscrimination program to the department and shall submit
38 periodic reports, no more than annually, of its compliance with
39 that program. An employer with fewer than 100 employees *in the*
40 *state* or a contract of less than 30 days may be required to submit

1 a nondiscrimination program and, if so required, shall comply with
2 the requirements for employers with 100 or more ~~employees.~~
3 *employees in the state.* The department may require approval and
4 certification of a nondiscrimination program. The department shall
5 define an employee for the purposes of this paragraph.

6 *(ii) An employee in the construction industry covered by a valid*
7 *collective bargaining agreement that expressly provides for the*
8 *wages, hours of work, and working conditions of employees,*
9 *premium wage rates for all overtime worked, and regular hourly*
10 *pay of not less than 30 percent of the state minimum wage rate*
11 *shall be excluded from calculation of the employer's total number*
12 *of employees for purposes of this subparagraph.*

13 (B) The changes made to this subdivision made by the act adding
14 this subparagraph shall not be construed to negate an exemption
15 to the requirements of this section in existence on January 1, 2016,
16 created by the department through the exercise of its regulatory
17 authority, or to otherwise require the department to reinterpret the
18 validity of an exemption as a result of these changes.

19 (2) A nondiscrimination program shall include policies and
20 procedures designed to ensure equal employment opportunities
21 for all applicants and employees, an analysis of employment
22 selection procedures, and a workforce analysis. The workforce
23 analysis shall include the following:

24 (A) The total number of workers with a specific job category
25 identified by worker race, ethnicity, and sex.

26 (B) Total wages required to be reported on Internal Revenue
27 Service Form W-2 for all workers in a specific job category
28 identified by worker race, ethnicity, and sex.

29 (C) The total hours worked on an annual basis for all workers
30 in a specific job category identified by worker race, ethnicity, and
31 sex. Exempt employees shall be presumed to work 40 hours a week
32 for purposes of this reporting requirement.

33 (c) Every state contract and subcontract for public works or for
34 goods or services shall contain a nondiscrimination clause
35 prohibiting discrimination on the bases enumerated in this part by
36 contractors or subcontractors. The nondiscrimination clause shall
37 contain a provision requiring contractors and subcontractors to
38 give written notice of their obligations under that clause to labor
39 organizations with which they have a collective bargaining or other
40 agreement. These contractual provisions shall be fully and

1 effectively enforced. This subdivision does not apply to a credit
2 card purchase of goods of two thousand five hundred dollars
3 (\$2,500) or less. The total amount of exemption authorized herein
4 shall not exceed seven thousand five hundred dollars (\$7,500) per
5 year for each company from which a state agency is purchasing
6 goods by credit card. It shall be the responsibility of each state
7 agency to monitor the use of this exemption and adhere to these
8 restrictions on these purchases.

9 (d) The department shall periodically develop rules and
10 regulations for the application and implementation of this section,
11 and submit them to the council for consideration and adoption in
12 accordance with the provisions of Chapter 3.5 (commencing with
13 Section 11340) of Part 1. Those rules and regulations shall describe
14 and include, but not be limited to, all of the following:

15 (1) Procedures for the investigation, approval, certification,
16 decertification, monitoring, and enforcement of nondiscrimination
17 programs.

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

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

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

25 (5) Procedures for coordinating the nondiscrimination
26 requirements of this section and its implementing rules and
27 regulations with the California Plan for Equal Opportunity in
28 Apprenticeship, with the provisions and implementing regulations
29 of Article 9.5 (commencing with Section 11135) of Chapter 1 of
30 Part 1, and with comparable federal laws and regulations
31 concerning nondiscrimination, equal employment opportunity,
32 and affirmative action by those who contract with the United States.

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

35 (e) Where a contractor or subcontractor is required to prepare
36 an affirmative action, equal employment, or nondiscrimination
37 program subject to review and approval by a federal compliance
38 agency, that program may be filed with the department, instead of
39 any nondiscrimination program regularly required by this section
40 or its implementing rules and regulations. Such a program shall

1 constitute a prima facie demonstration of compliance with this
2 section. Where the department or a federal compliance agency has
3 required the preparation of an affirmative action, equal
4 employment, or nondiscrimination program subject to review and
5 approval by the department or a federal compliance agency,
6 evidence of such a program shall also constitute prima facie
7 compliance with an ordinance or regulation of any city, city and
8 county, or county that requires an employer to submit such a
9 program to a local awarding agency for its approval prior to
10 becoming a contractor or subcontractor with that agency.

11 (f) Where the department determines and certifies that the
12 provisions of this section or its implementing rules and regulations
13 are violated or determines a contractor or subcontractor is engaging
14 in practices made unlawful under this part, the department may
15 recommend appropriate sanctions to the awarding agency. Any
16 such recommendation shall take into account the severity of the
17 violation or violations and any other penalties, sanctions, or
18 remedies previously imposed.