

**ASSEMBLY BILL**

**No. 1890**

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**Introduced by Assembly Member Dodd**

February 11, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1890, as introduced, 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 2016. The bill would require an employer with 100 or more employees in the state and a contract with the state of 30 days or more to submit a description of its nondiscrimination program to the department and to submit periodic reports, no more than annually, on a schedule to be determined by the department, 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 2016.  
 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 \$0.77 for every dollar a man earns. The wage  
 7 gap is greater for women of color, with African American women  
 8 being paid an average of \$0.64 for every dollar paid to white,  
 9 non-Hispanic men in 2013 and Latinas being paid just \$0.56 for  
 10 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.  
 15 (3) Disparities in pay for women have numerous negative  
 16 impacts. This pay differential shortchanges women and their  
 17 families by thousands of dollars a year and potentially hundreds  
 18 of thousands of dollars over a lifetime. Nearly 4 in 10 mothers are  
 19 primary breadwinners in their households, and nearly two-thirds  
 20 are significant earners, making pay equity critical to the economic  
 21 security of their families.  
 22 (4) Equal pay for equal work is a fundamental precept in our  
 23 nation and in California. Federal law, including the federal Equal  
 24 Pay Act of 1963 (Public Law 88-38), Title VII of the Civil Rights  
 25 Act of 1964 (Public Law 88-352), and Executive Order 11246 of  
 26 September 24, 1965, entitled Equal Employment Opportunity,

1 specifically prohibits arbitrarily compensating men and women  
2 differently for the same work, as does California’s Equal Pay Act.

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

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

15 SEC. 3. Section 12990 of the Government Code is amended  
16 to read:

17 12990. (a) Any employer who is, or wishes to become, a  
18 contractor with the state for public works or for goods or services  
19 is subject to the provisions of this part relating to discrimination  
20 in employment and to the nondiscrimination requirements of this  
21 section and any rules and regulations that implement it.

22 ~~(b) Prior to becoming a contractor or subcontractor with the~~  
23 ~~state, an employer(1) (A) (i) An employer with 100 or more~~  
24 ~~employees in the state and a contract with the state of 30 days or~~  
25 ~~more shall submit a description of its nondiscrimination program~~  
26 ~~to the department and shall submit periodic reports, no more than~~  
27 ~~annually, on a schedule to be determined by the department, of its~~  
28 ~~compliance with that program. An employer with fewer than 100~~  
29 ~~employees in the state or a contract of less than 30 days may be~~  
30 ~~required to submit a nondiscrimination program to the department~~  
31 ~~for approval and certification and may be required to submit~~  
32 ~~periodic reports of its compliance with that program. and, if so~~  
33 ~~required, shall comply with the requirements for employers with~~  
34 ~~100 or more employees in the state. The department may require~~  
35 ~~approval and certification of a nondiscrimination program. The~~  
36 ~~department shall define an employee for the purposes of this~~  
37 ~~paragraph.~~

38 (ii) An employee in the construction industry covered by a valid  
39 collective bargaining agreement that expressly provides for the  
40 wages, hours of work, and working conditions of employees,

1 *premium wage rates for all overtime worked, and regular hourly*  
2 *pay of not less than 30 percent of the state minimum wage rate*  
3 *shall be excluded from calculation of the employer's total number*  
4 *of employees for purposes of this subparagraph.*

5 *(B) The changes made to this subdivision made by the act adding*  
6 *this subparagraph shall not be construed to negate an exemption*  
7 *to the requirements of this section in existence on January 1, 2017,*  
8 *created by the department through the exercise of its regulatory*  
9 *authority, or to otherwise require the department to reinterpret*  
10 *the validity of an exemption as a result of these changes.*

11 *(2) A nondiscrimination program shall include policies and*  
12 *procedures designed to ensure equal employment opportunities*  
13 *for all applicants and employees, an analysis of employment*  
14 *selection procedures, and a workforce analysis. The workforce*  
15 *analysis shall include the following:*

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

18 *(B) The total wages required to be reported on Internal Revenue*  
19 *Service form W-2 for all workers in a specific job category*  
20 *identified by worker race, ethnicity, and sex.*

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

25 *(c) Every state contract and subcontract for public works or for*  
26 *goods or services shall contain a nondiscrimination clause*  
27 *prohibiting discrimination on the bases enumerated in this part by*  
28 *contractors or subcontractors. The nondiscrimination clause shall*  
29 *contain a provision requiring contractors and subcontractors to*  
30 *give written notice of their obligations under that clause to labor*  
31 *organizations with which they have a collective bargaining or other*  
32 *agreement. These contractual provisions shall be fully and*  
33 *effectively enforced. This subdivision does not apply to a credit*  
34 *card purchase of goods of two thousand five hundred dollars*  
35 *(\$2,500) or less. The total amount of exemption authorized herein*  
36 *shall not exceed seven thousand five hundred dollars (\$7,500) per*  
37 *year for each company from which a state agency is purchasing*  
38 *goods by credit card. It shall be the responsibility of each state*  
39 *agency to monitor the use of this exemption and adhere to these*  
40 *restrictions on these purchases.*

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

7 (1) Procedures for the investigation, approval, certification,  
8 decertification, monitoring, and enforcement of nondiscrimination  
9 programs.

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

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

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

17 (5) Procedures for coordinating the nondiscrimination  
18 requirements of this section and its implementing rules and  
19 regulations with the California Plan for Equal Opportunity in  
20 Apprenticeship, with the provisions and implementing regulations  
21 of Article 9.5 (commencing with Section 11135) of Chapter 1 of  
22 Part 1, and with comparable federal laws and regulations  
23 concerning nondiscrimination, equal employment opportunity,  
24 and affirmative action by those who contract with the United States.

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

27 (e) Where a contractor or subcontractor is required to prepare  
28 an affirmative action, equal employment, or nondiscrimination  
29 program subject to review and approval by a federal compliance  
30 agency, that program may be filed with the department, instead of  
31 any nondiscrimination program regularly required by this section  
32 or its implementing rules and regulations. Such a program shall  
33 constitute a prima facie demonstration of compliance with this  
34 section. Where the department or a federal compliance agency has  
35 required the preparation of an affirmative action, equal  
36 employment, or nondiscrimination program subject to review and  
37 approval by the department or a federal compliance agency,  
38 evidence of such a program shall also constitute prima facie  
39 compliance with an ordinance or regulation of any city, city and  
40 county, or county that requires an employer to submit such a

1 program to a local awarding agency for its approval prior to  
2 becoming a contractor or subcontractor with that agency.  
3 (f) Where the department determines and certifies that the  
4 provisions of this section or its implementing rules and regulations  
5 are violated or determines a contractor or subcontractor is engaging  
6 in practices made unlawful under this part, the department may  
7 recommend appropriate sanctions to the awarding agency. Any  
8 such recommendation shall take into account the severity of the  
9 violation or violations and any other penalties, sanctions, or  
10 remedies previously imposed.

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