

AMENDED IN ASSEMBLY MAY 31, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1890

Introduced by Assembly Member Dodd
(Coauthor: Assembly Member Gonzalez)

February 11, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1890, 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 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

1 September 24, 1965, entitled Equal Employment Opportunity,
2 specifically prohibits arbitrarily compensating men and women
3 differently for the same work, as does California's Equal Pay Act.

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

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

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

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

23 (b) (1) (A) (i) An employer with 100 or more employees in
24 the state and a contract with the state of 30 days or more shall
25 submit a description of its nondiscrimination program to the
26 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 and, if so required,
31 shall comply with the requirements for employers with 100 or
32 more employees in the state. The department may require approval
33 and certification of a nondiscrimination program. The department
34 shall define an employee for the purposes of this paragraph.

35 (ii) An employee in the construction industry covered by a valid
36 collective bargaining agreement that expressly provides for the
37 wages, hours of work, and working conditions of employees,
38 premium wage rates for all overtime worked, and regular hourly
39 pay of not less than 30 percent of the state minimum wage rate

1 shall be excluded from calculation of the employer’s total number
2 of employees for purposes of this subparagraph.

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

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

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

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

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

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

39 (d) The department shall periodically develop rules and
40 regulations for the application and implementation of this section,

1 and submit them to the council for consideration and adoption in
2 accordance with the provisions of Chapter 3.5 (commencing with
3 Section 11340) of Part 1. Those rules and regulations shall describe
4 and include, but not be limited to, all of the following:

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

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

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

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

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

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

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

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

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