

AMENDED IN SENATE JUNE 21, 2016

AMENDED IN ASSEMBLY MAY 31, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1890

Introduced by Assembly Member Dodd

~~(Coauthor: Assembly Member Bonta and~~
Gonzalez)

(Coauthors: Senators Block and Wolk)

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. *Existing law authorizes a contractor or subcontractor to file an affirmative action, equal employment, or nondiscrimination program subject to review and approval by a federal compliance agency with the department in lieu of that nondiscrimination 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 that amounts to \$50,000~~ or more to submit a ~~description of its nondiscrimination program to the department and to submit periodic reports,~~ *reports of its compliance with that program*, no more than annually, on a schedule to be determined by the ~~department, of its compliance with that program.~~ *department. The bill would require the department to make these programs and reports available to the Commission on the Status of Women and Girls.* 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 with the state that amounts to less than 30 days~~ *\$50,000 to submit a nondiscrimination report.* *comply with those program and report submission requirements.* 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 a description of employment selection procedures, and a workforce analysis,~~ *employee compensation data*, as specified. *The bill would specify that a contractor or subcontractor may submit a certain report subject to review by the United States Equal Employment Opportunity Commission with the department in lieu of the nondiscrimination program.* 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~~ *\$0.79* for every dollar a man earns.
- 7 The wage gap is greater for women of color, with African

1 American women being paid an average of ~~\$0.64~~ *\$0.60* for every
2 dollar paid to white, non-Hispanic men in ~~2013~~ *2015* and Latinas
3 being paid just ~~\$0.56~~ *\$0.55* for every dollar paid to white,
4 non-Hispanic ~~men~~. *men in the same year.*

5 (2) This wage disparity amounted to a yearly average wage gap
6 of ~~\$10,876~~ *\$10,762* in ~~2013~~ *2015* between full-time working men
7 and full-time working women. In total, the disparity represents
8 more than \$490 billion in lost wages for working women every
9 year.

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

17 (4) Equal pay for equal work is a fundamental precept in our
18 nation and in California. Federal law, including the federal Equal
19 Pay Act of 1963 (Public Law 88-38), Title VII of the Civil Rights
20 Act of 1964 (Public Law 88-352), and Executive Order 11246 of
21 September 24, 1965, entitled Equal Employment Opportunity,
22 specifically prohibits arbitrarily compensating men and women
23 differently for the same work, as does California's Equal Pay Act.

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

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

36 SEC. 3. Section 12990 of the Government Code is amended
37 to read:

38 12990. (a) An employer that is, or wishes to become, a
39 contractor with the state for public works or for goods or services
40 is subject to the provisions of this part relating to discrimination

1 in employment and to the nondiscrimination requirements of this
 2 section and any rules and regulations that implement it.

3 (b) (1) (A) ~~(i)~~—An employer with 100 or more employees in
 4 the state and a contract with the state of 30 days or more *that*
 5 *amounts to fifty thousand dollars (\$50,000) or more* shall submit
 6 ~~a description of its~~ nondiscrimination program to the department
 7 and shall submit periodic ~~reports,~~ *reports of its compliance with*
 8 *the program,* no more than annually, on a schedule to be
 9 determined by the ~~department, of its compliance with that program.~~
 10 ~~An~~ *department. The department shall make the programs and*
 11 *reports available to the Commission on the Status of Women and*
 12 *Girls. The department may also require an employer with fewer*
 13 *than 100 employees in the state or a contract of less than 30 days*
 14 ~~may be required~~ *with the state that amounts to less than fifty*
 15 *thousand dollars (\$50,000) to submit a nondiscrimination program*
 16 ~~and, if so required,~~ *the department so requires, the employer shall*
 17 *comply with the requirements for employers with 100 or more*
 18 *employees in the state. state and a contract with the state that*
 19 *amounts to fifty thousand dollars (\$50,000) or more.* The
 20 department may require approval and certification of a
 21 nondiscrimination program. The department shall define an
 22 employee for the purposes of this paragraph.

23 (ii)
 24 (B) An employee in the construction industry covered by a valid
 25 collective bargaining agreement that expressly provides for the
 26 wages, hours of work, and working conditions of employees,
 27 premium wage rates for all overtime worked, and regular hourly
 28 pay of not less than 30 percent ~~of above~~ the state minimum wage
 29 rate shall be excluded from calculation of the employer’s total
 30 number of employees for purposes of this ~~subparagraph.~~
 31 *paragraph.*

32 (B) ~~The changes made to this subdivision made by the act adding~~
 33 ~~this subparagraph shall not be construed to negate an exemption~~
 34 ~~to the requirements of this section in existence on January 1, 2017,~~
 35 ~~created by the department through the exercise of its regulatory~~
 36 ~~authority, or to otherwise require the department to reinterpret the~~
 37 ~~validity of an exemption as a result of these changes.~~

38 (2) A nondiscrimination program shall include policies and
 39 procedures designed to ensure equal employment opportunities
 40 for all applicants and employees, ~~an analysis a description of~~

1 employment selection procedures, and a workforce analysis. The
2 workforce analysis shall include the following: *employee*
3 *compensation data, as follows:*

4 (A) The total number of workers ~~with in~~ a specific job category
5 identified by worker ~~race, ethnicity,~~ *race or national origin*, and
6 sex.

7 (B) The total wages required to be reported on Internal Revenue
8 Service form W-2 for all workers in a specific job category
9 identified by worker ~~race, ethnicity,~~ *race or national origin*, and
10 sex.

11 (C) The total hours worked on an annual basis for all workers
12 in a specific job category identified by worker ~~race, ethnicity,~~ *race*
13 *or national origin*, and sex. ~~Exempt employees shall be presumed~~
14 ~~to work 40 hours a week for purposes of this reporting requirement.~~
15 *For purposes of this subdivision, if an employer does not track*
16 *exempt employees' hours worked, full-time exempt employees shall*
17 *be presumed to work 40 hours a week and part-time exempt*
18 *employees shall be presumed to work 20 hours a week, unless the*
19 *employer utilizes a different standard number of hours a week for*
20 *exempt employees, in which case the employer shall report total*
21 *hours worked on an annual basis by those employees based on*
22 *that standard number.*

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, *including an EEO-1 report that is subject to review by the*
29 *United States Equal Employment Opportunity Commission*, that
30 program may be ~~filed~~ *submitted* with the department, instead of
31 any nondiscrimination program ~~regularly~~ *otherwise* required by
32 this section or its implementing rules and regulations. Such a
33 program shall constitute a prima facie demonstration of compliance
34 with this section. Where the department or a federal compliance
35 agency has 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.

11 (g) *The changes to this section made by the act adding this*
12 *subdivision shall not be construed to negate an exemption to the*
13 *requirements of this section in existence on January 1, 2017,*
14 *created by the department through the exercise of its regulatory*
15 *authority, or to otherwise require the department to reinterpret*
16 *the validity of an exemption as a result of these changes.*