

AMENDED IN SENATE AUGUST 17, 2016

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
(Coauthors: Assembly Members Bonta and Gonzalez)
(Coauthors: Senators ~~Block~~ *Block*, *Hall*, 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 that amounts to \$50,000 or more *that either is required by federal regulations to submit an EEO-1 report to the United States Equal Employment Opportunity Commission (EEOC) or has 100 or more employees in the state* to submit a nondiscrimination program to the department and to submit periodic reports of its compliance with that program, no more than annually, on a schedule to be determined by the 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 with the state that amounts to less than \$50,000~~ other employers to 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, a description of employment selection procedures, and employee compensation data, as specified. The bill would specify that a contractor or subcontractor may submit ~~a certain~~ *an EEO-1* report subject to review by the ~~United States Equal Employment Opportunity Commission~~ EEOC 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 \$0.79 for every dollar a man earns. The wage

1 gap is greater for women of color, with African American women
2 being paid an average of \$0.60 for every dollar paid to white,
3 non-Hispanic men in 2015 and Latinas being paid just \$0.55 for
4 every dollar paid to white, non-Hispanic men in the same year.

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

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

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

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

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

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

37 12990. (a) An employer that is, or wishes to become, a
38 contractor with the state for public works or for goods or services
39 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) ~~An employer with~~ *Any employer with a contract*
 4 *with the state that amounts to fifty thousand dollars (\$50,000) or*
 5 *more that either is required by federal regulations to submit an*
 6 *EEO-1 report to the United States Equal Employment Opportunity*
 7 *Commission or has 100 or more employees in the state* ~~and a~~
 8 ~~contract with the state that amounts to fifty thousand dollars~~
 9 ~~(\$50,000) or more~~ shall submit a nondiscrimination program to
 10 the department and shall submit periodic reports of its compliance
 11 with the program, no more than annually, on a schedule to be
 12 determined by the department. The department shall make the
 13 programs and reports available to the Commission on the Status
 14 of Women and Girls. ~~The~~

15 (B) ~~The~~ department may also require an employer ~~with fewer~~
 16 ~~than 100 employees in the state or a contract with the state that~~
 17 ~~amounts to less than fifty thousand dollars (\$50,000) that is not~~
 18 ~~described in subparagraph (A) to submit a nondiscrimination~~
 19 program and, if the department so requires, the employer shall
 20 comply with the requirements for employers ~~with 100 or more~~
 21 ~~employees in the state and a contract with the state that amounts~~
 22 ~~to fifty thousand dollars (\$50,000) or more. The described in~~
 23 ~~subparagraph (A).~~

24 (C) ~~The~~ department may require approval and certification of
 25 a nondiscrimination program. ~~The~~

26 (D) ~~The~~ department shall define an employee for the purposes
 27 of this paragraph.

28 ~~(B)~~

29 (E) An employee in the construction industry covered by a valid
 30 collective bargaining agreement that expressly provides for the
 31 wages, hours of work, and working conditions of employees,
 32 premium wage rates for all overtime worked, and regular hourly
 33 pay of not less than 30 percent above the state minimum wage rate
 34 shall be excluded from calculation of the employer’s total number
 35 of employees for purposes of this paragraph.

36 (2) A nondiscrimination program shall include policies and
 37 procedures designed to ensure equal employment opportunities
 38 for all applicants and employees, a description of employment
 39 selection procedures, and employee compensation data, as follows:

1 (A) The total number of workers in a specific job category
2 identified by worker race or national origin, and sex.

3 (B) The total wages required to be reported on Internal Revenue
4 Service form W-2 for all workers in a specific job category
5 identified by worker race or national origin, and sex.

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

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

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

38 (1) Procedures for the investigation, approval, certification,
39 decertification, monitoring, and enforcement of nondiscrimination
40 programs.

- 1 (2) The size of contracts or subcontracts below which any
2 particular provision of this section shall not apply.
- 3 (3) The circumstances, if any, under which a contractor or
4 subcontractor is not subject to this section.
- 5 (4) Criteria for determining the appropriate plant, region,
6 division, or other unit of a contractor's or subcontractor's operation
7 for which a nondiscrimination program is required.
- 8 (5) Procedures for coordinating the nondiscrimination
9 requirements of this section and its implementing rules and
10 regulations with the California Plan for Equal Opportunity in
11 Apprenticeship, with the provisions and implementing regulations
12 of Article 9.5 (commencing with Section 11135) of Chapter 1 of
13 Part 1, and with comparable federal laws and regulations
14 concerning nondiscrimination, equal employment opportunity,
15 and affirmative action by those who contract with the United States.
- 16 (6) The basic principles and standards to guide the department
17 in administering and implementing this section.
- 18 (e) Where a contractor or subcontractor is required to prepare
19 an affirmative action, equal employment, or nondiscrimination
20 program subject to review and approval by a federal compliance
21 agency, including an EEO-1 report that is subject to review by the
22 United States Equal Employment Opportunity Commission, that
23 program may be submitted with the department, instead of any
24 nondiscrimination program otherwise required by this section or
25 its implementing rules and regulations. Such a program shall
26 constitute a prima facie demonstration of compliance with this
27 section. Where the department or a federal compliance agency has
28 required the preparation of an affirmative action, equal
29 employment, or nondiscrimination program subject to review and
30 approval by the department or a federal compliance agency,
31 evidence of such a program shall also constitute prima facie
32 compliance with an ordinance or regulation of any city, city and
33 county, or county that requires an employer to submit such a
34 program to a local awarding agency for its approval prior to
35 becoming a contractor or subcontractor with that agency.
- 36 (f) Where the department determines and certifies that the
37 provisions of this section or its implementing rules and regulations
38 are violated or determines a contractor or subcontractor is engaging
39 in practices made unlawful under this part, the department may
40 recommend appropriate sanctions to the awarding agency. Any

1 such recommendation shall take into account the severity of the
2 violation or violations and any other penalties, sanctions, or
3 remedies previously imposed.

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

O