

Assembly Bill No. 1890

Passed the Assembly August 25, 2016

Chief Clerk of the Assembly

Passed the Senate August 22, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1890, 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 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 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 an EEO-1 report subject to review by the 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.

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

SECTION 1. This act shall be known, and may be cited, as the Equal Pay for Equal Work Act of 2016.

SEC. 2. (a) The Legislature finds and declares the following:

(1) According to data from the United States Census Bureau, full-time working women, on average, over the last decade, have continued to earn just \$0.79 for every dollar a man earns. The wage gap is greater for women of color, with African American women being paid an average of \$0.60 for every dollar paid to white, non-Hispanic men in 2015 and Latinas being paid just \$0.55 for every dollar paid to white, non-Hispanic men in the same year.

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

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

(4) Equal pay for equal work is a fundamental precept in our nation and in California. Federal law, including the federal Equal Pay Act of 1963 (Public Law 88-38), Title VII of the Civil Rights Act of 1964 (Public Law 88-352), and Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity,

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

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

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

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

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

(b) (1) (A) Any employer with a contract with the state that amounts to fifty thousand dollars (\$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 or has 100 or more employees in the state shall submit a nondiscrimination program to the department and shall submit periodic reports of its compliance with the program, no more than annually, on a schedule to be determined by the department. The department shall make the programs and reports available to the Commission on the Status of Women and Girls.

(B) The department may also require an employer that is not described in subparagraph (A) to submit a nondiscrimination program and, if the department so requires, the employer shall comply with the requirements for employers described in subparagraph (A).

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

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

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

(2) A nondiscrimination program shall 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 follows:

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

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

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

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

agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

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

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

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

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

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

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

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

(e) Where a contractor or subcontractor is required to prepare an affirmative action, equal employment, or nondiscrimination program subject to review and approval by a federal compliance agency, including an EEO-1 report that is subject to review by the United States Equal Employment Opportunity Commission, that program may be submitted with the department, instead of any nondiscrimination program otherwise required by this section or its implementing rules and regulations. Such a program shall constitute a prima facie demonstration of compliance with this section. Where the department or a federal compliance agency has required the preparation of an affirmative action, equal employment, or nondiscrimination program subject to review and

approval by the department or a federal compliance agency, evidence of such a program shall also constitute prima facie compliance with an ordinance or regulation of any city, city and county, or county that requires an employer to submit such a program to a local awarding agency for its approval prior to becoming a contractor or subcontractor with that agency.

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

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

Approved _____, 2016

Governor