

ASSEMBLY BILL

No. 2557

Introduced by Assembly Members Santiago and Bloom

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2557, as introduced, Santiago. State contracts: nondiscrimination clause.

Existing law, the California Fair Employment and Housing Act (FEHA), prohibits an employer or labor organization, among others, from discriminating against a person in specified contexts on the basis of the person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. FEHA makes an employer who is, or wishes to become, a contractor with the state for public works or for goods or services subject to the provisions of FEHA relating to discrimination, and requires every state contract and subcontract for public works or for goods or services to contain a nondiscrimination clause prohibiting discrimination on the bases enumerated in FEHA by contractors or subcontractors.

This bill would specify that those provisions apply to subcontractors, and would require each state agency with an active contract or subcontract that contains the nondiscrimination clause to negotiate amendments to the nondiscrimination clause as necessary to ensure that the wording of the clause is consistent with the current statutory nondiscrimination provisions.

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

3 12990. (a) Any employer who is, or wishes to become, a
4 contractor *or subcontractor* with the state for public works or for
5 goods or services is subject to the provisions of this part relating
6 to discrimination in employment and to the nondiscrimination
7 requirements of this section and any rules and regulations that
8 implement it.

9 (b) Prior to becoming a contractor or subcontractor with the
10 state, an employer may be required to submit a nondiscrimination
11 program to the department for approval and certification and may
12 be required to submit periodic reports of its compliance with that
13 program.

14 (c) (1) Every state contract and subcontract for public works
15 or for goods or services shall contain a nondiscrimination clause
16 prohibiting discrimination on the bases enumerated in this part by
17 contractors or subcontractors. The nondiscrimination clause shall
18 contain a provision requiring contractors and subcontractors to
19 give written notice of their obligations under that clause to labor
20 organizations with which they have a collective bargaining or other
21 agreement. These contractual provisions shall be fully and
22 effectively enforced. This subdivision does not apply to a credit
23 card purchase of goods of two thousand five hundred dollars
24 (\$2,500) or less. The total amount of exemption authorized herein
25 shall not exceed seven thousand five hundred dollars (\$7,500) per
26 year for each company from which a state agency is purchasing
27 goods by credit card. It shall be the responsibility of each state
28 agency to monitor the use of this exemption and adhere to these
29 restrictions on these purchases.

30 (2) (A) *Each state agency with an active contract or subcontract*
31 *that contains a nondiscrimination clause pursuant to this*
32 *subdivision shall negotiate amendments to the nondiscrimination*
33 *clause or necessary to ensure that the wording of the clause is*
34 *consistent with the current statutory nondiscrimination provisions*
35 *of this part.*

1 (B) *This paragraph applies to all active contracts or*
2 *subcontracts, regardless of the date the contract or subcontract*
3 *was entered into.*

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

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

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

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

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

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

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

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

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

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