

Assembly Bill No. 1354

Passed the Assembly September 8, 2015

Chief Clerk of the Assembly

Passed the Senate September 4, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, 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 1354, 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 2015. The bill would require an employer with 100 or more employees in state, as specified, and a contract of 30 days or more, prior to becoming a contractor or subcontractor with the state, to submit a nondiscrimination program to the Department of Fair Employment and Housing and to submit periodic reports no more than annually 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.

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 2015.

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 77 cents for every dollar a man earns. The wage gap is greater for women of color, with African American women being paid an average of 64 cents for every dollar paid to white, non-Hispanic men in 2013 and Latinas being paid just 56 cents for every dollar paid to white, non-Hispanic men.

(2) This wage disparity amounted to a yearly average wage gap of \$10,876 in 2013 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 required 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) Any employer who 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) (i) Prior to becoming a contractor or subcontractor with the state, an employer with 100 or more employees in the state and a contract of 30 days or more shall submit a nondiscrimination program to the department and shall submit periodic reports, no more than annually, of its compliance with that program. An employer with fewer than 100 employees in the state or a contract of less than 30 days may be required to submit a nondiscrimination program and, if so required, shall comply with the requirements for employers with 100 or more employees in the state. The department may require approval and certification of a nondiscrimination program. The department shall define an employee for the purposes of this paragraph.

(ii) 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 of the state minimum wage rate shall be excluded from calculation of the employer's total number of employees for purposes of this subparagraph.

(B) The changes made to this subdivision made by the act adding this subparagraph shall not be construed to negate an exemption to the requirements of this section in existence on January 1, 2016, 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.

(2) A nondiscrimination program shall 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. The workforce analysis shall include the following:

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

(B) 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, ethnicity, and sex.

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

(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, that program may be filed with the department, instead of any nondiscrimination program regularly 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.

Approved _____, 2015

Governor