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**SB-1364 University of California: vendors.** (2021-2022)

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CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

**SENATE BILL**

**NO. 1364**

**Introduced by Senators Durazo and Caballero**  
**(Principal coauthors: Assembly Members Kalra and Luz Rivas)**  
**(Coauthors: Senators Cortese, Leyva, Pan, and Stern)**  
**(Coauthors: Assembly Members Bryan and Jones-Sawyer)**

**February 18, 2022**

An act to add Part 4.7 (commencing with Section 1475) to Division 2 of the Labor Code, relating to employment.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1364, Durazo. University of California: vendors.

Existing provisions of the California Constitution provide that the University of California constitutes a public trust and require the university to be administered by the Regents of the University of California (regents), a corporation in the form of a board, with full powers of organization and government, subject to legislative control only for specified purposes, including any competitive bidding procedures as may be applicable to the university by statute for specified purposes, including the purchasing of materials, goods, and services. Existing law requires the regents, except as provided, to let all contracts involving an expenditure of \$100,000 or more annually for goods and materials or services, excepting personal or professional services, to the lowest responsible bidder meeting certain specifications, or to reject all bids. Existing policy of the regents establishes a general prohibition on contracting out for services and functions that can be performed by university staff, with certain exceptions, establishes employment standards for contract employees, and provides for the conversion of contract employees to university employment under prescribed circumstances.

This bill would make it unlawful for any vendor, as defined, to accept payment above a specified threshold from the university pursuant to a contract for prescribed services if the vendor is performing services or supplying the university with employees to perform services who are paid less than the higher of the total compensation rate specified in the vendor's contract with the university or as required by university policy. The bill would require a vendor to provide those employees with prescribed written notice relating to compensation. The bill would require a vendor, twice yearly, to provide basic payroll information, as defined, to the university and members of any joint labor-management committee or similar meeting body established with the exclusive representative of university employees who perform the same or similar services. The bill would also require a vendor to provide specified additional written notice, including specific text, relating to the release of basic payroll information, to all employees who agree to perform services for the university or continue doing so. The bill would also require basic payroll information for an individual employee who performs services for the university, on request, to be made available for inspection by that individual employee or that individual employee's designated representative or to be furnished to that individual employee or that individual employee's authorized representative.

This bill would authorize an employee or university employee to provide a vendor with written notice of a violation of the bill and the opportunity to correct and cure the violation and thereafter file suit only if the vendor fails to provide prescribed documentation. The bill would establish remedies, including civil penalties and restitution, for prevailing claimants and would provide for the disqualification of the vendor, for a minimum of 5 years, from submitting any bid to the university, or executing, renewing, or extending any contract with or otherwise receiving payment from the university in exchange for services. The bill would make its provisions severable.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Part 4.7 (commencing with Section 1475) is added to Division 2 of the Labor Code, to read:

### **PART 4.7. UNIVERSITY OF CALIFORNIA VENDORS**

**1475.** As used in this article:

(a) "Agreement" means "contract."

(b) "Basic payroll information" means, for each vendor-supplied employee who performed services for the university at any time during the preceding six-month period, the following information:

(1) The employee's full name, job title, mobile telephone number, email address, and home address.

(2) Work location.

(3) The employee's hourly rate of pay for each pay period during the preceding six-month period.

(4) The hourly value of employer-paid benefits provided to the employee, if any, for each pay period during the preceding six-month period.

(5) The employee's hours of work for each pay period during the six-month period.

(6) The employee's hours of work performing services for the university for each pay period during the six-month period.

(c) "Contract" includes any written instrument, purchase order, change order, order, requisition, service agreement, or other written or electronic document, however titled, reflecting an agreement that the vendor will perform services or supply the university with employees to perform services in exchange for payment.

(d) "Employee" includes any contract worker, or individual employed by any vendor, or otherwise supplied to the university by any vendor, to perform services for the university. "Employee" also includes an individual treated by either the vendor, a subcontractor, or the university as an independent contractor.

(e) "Employer" means any person, as defined in Section 18, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(f) "Hourly value of employer-provided benefits" means the employer's actual cost for the employee's retirement, health, dental, vision, life and disability benefits, if any, calculated as an hourly dollar amount. It does not include any paid time off or any payroll expenses required by law. For any employee who does not receive employer-provided benefits, the hourly value is zero dollars (\$0).

(g) "Services" means work customarily performed by bargaining unit employees of the university, including, but not limited to, the following services: cleaning, custodial, janitorial, or housekeeping services; food services; laundry services; grounds keeping, nonskilled crafts building maintenance; transportation and parking services; security services; billing and coding services; sterile processing; hospital and nursing assistant services; respiratory therapy; and medical imaging services.

(h) "Subcontractor" means any person, employer, supplier of labor, staffing agency, temporary services employer, or other entity that performs services for the university or supplies employees to perform services, pursuant to a contract with a vendor.

(i) "Total compensation rate" means the employee's hourly rate of pay plus the hourly value of employer-provided benefits, or the equivalent compensation.

(j) "University" means the University of California.

(k) "Vendor" means contractor and includes any person, employer, supplier of labor, staffing agency, temporary services employer, labor broker, management services provider or other entity that contracts with the university to perform services or to supply the university with its own employees or those of a subcontractor to perform services. "Vendor" also means any person acting either individually or as an officer, agent, or employee of a vendor. "Vendor" does not include a contractor in the construction industry that has entered into a valid collective bargaining agreement. For purposes of this subdivision, "contractor in the construction industry" means an employer that provides work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work as described by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and other similar or related occupations or trades.

**1476.** (a) It shall be unlawful for any vendor to accept payment of more than one thousand dollars (\$1,000) from the university pursuant to a contract for services if the vendor is performing services or supplying the university with employees to perform services who are paid less than the total compensation rate specified in the vendor's contract with the university or required by university policy, whichever is higher.

(b) The following may constitute evidence of a vendor's intent to deceive or defraud the university or employees supplied to the university to perform services:

(1) A vendor's failure to comply with Section 2810.5.

(2) A vendor's failure to comply with subdivision (c) or (d).

(3) A vendor's failure to submit to an audit or to supply an independent audit of its payroll records at the university's request.

(c) A vendor that supplies the university with employees to perform services, shall provide those employees with written notice of the total compensation rate specified in the vendor's contract or required by university policy, whichever is higher, and the employee's hourly rate of pay and hourly value of employer-provided benefits. The vendor shall provide employees with these notices at the time each employee is assigned to perform services for the university and thereafter, each January, and within seven days of a change to the employee's hourly rate.

(d) (1) In January and July of each year, the vendor shall provide basic payroll information to the university and members of any joint labor-management committee or similar meeting body established with the exclusive representative of university employees who perform the same or similar services. The vendor shall provide all employees who agree to perform services for the university or continue doing so with written notice of this requirement and the written notice shall also include the following text:

"Basic payroll information pertaining to all employees who accept an assignment or continue performing services for the University of California will be shared with the University of California and the organizations that represent University of California employees. The information that will be shared includes your full name, work location, mobile telephone number, email address, and home address. The purpose of sharing this information is to ensure that the University of California and the organizations that represent University of California employees can contact you if they discover you have been paid less than required by contract or university policy and so that the University of California can provide you with a timely offer of employment as soon as you become eligible."

(2) Basic payroll information for an individual employee who performs services for the university shall also, upon request, be made available for inspection by that individual employee or that individual employee's designated representative or be furnished to that individual employee or that individual employee's authorized representative.

(e) Any employee or university employee may provide a vendor with written notice of a violation of this section and provide the vendor with the opportunity to correct and cure the violation and thereafter file suit only if the vendor fails to provide documentation, within 30 days, demonstrating that all of the employees the vendor supplied to the university to perform services have been or will be made whole, that each has been provided with the notices required by this section, and that each is receiving a total compensation rate no less than the rate specified in the vendor's contract or in university policy, whichever is higher.

(f) Any employee or university employee may bring a civil action for violation of this section against a vendor in the superior court of any county in which the university operates.

(g) If a claimant prevails in an action brought under this section, the court shall order the following:

(1) Any vendor that supplies the university with any employee who is paid a total compensation rate less than the minimum fixed by contract or university policy to pay a civil penalty and restitution, as follows:

(A) For any initial violation of subdivision (a), one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages.

(B) For each subsequent violation of subdivision (a), two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages.

(C) For each knowing and intentional failure by a vendor to comply with subdivision (c) or (d), fifty dollars (\$50) per employee for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) per employee. This amount shall be in addition to an amount sufficient to recover underpaid wages.

(D) Wages and civil penalties recovered pursuant to this subdivision shall be paid to the affected employee.

(E) In the court's discretion, any or all other amounts paid by the university to the vendor on or after January 1, 2023, that exceed the compensation provided to underpaid employees. These amounts shall be returned to the university.

(2) A vendor that violates subdivision (c) or (d) to pay a civil penalty of up to 10 percent of the amount paid by the university to the vendor during the same year or years, for deposit into the General Fund.

(3) The disqualification of the vendor, for a minimum of five years, from submitting any bid to the university, or executing, renewing, or extending any contract with or otherwise receiving payment from the university in exchange for services.

(4) Attorney's fees and costs.

(h) The remedies provided for in this section are in addition to any other remedies provided by law. The civil penalties provided for in this section are in addition to any other penalties provided by law except that an employee shall not also receive civil penalties provided for in Section 226 or 1197.1.

**1477.** The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.