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**SENATE COMMITTEE ON  
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**  
Senator Steven Glazer, Chair  
2023 - 2024 Regular

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<b>Bill No:</b>	ACA 6	<b>Hearing Date:</b>	9/11/23
<b>Author:</b>	Haney		
<b>Version:</b>	8/31/23		
<b>Urgency:</b>		<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Scott Matsumoto		

**Subject:** University of California: basic state labor standards

**DIGEST**

This measure, subject to voter approval, requires the University of California (UC) to conform to the same labor, employment, and occupational health and safety standards as other public agencies, including standards against displacement and contracting out of work as provided for in state laws governing the nonemergency use of personal service contracts, as specified.

**ANALYSIS**

Existing law:

- 1) Establishes the UC as a public trust under the administration of the corporation in the form of a board “The Regents of the [UC]” (Regents) and grants the Regents powers necessary or convenient for the effective administration of the UC and subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services. Provides that the Regents be comprised of seven ex officio members, as specified, 18 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, and permits a student representative if appointed by the Regents. Provides that the UC shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs.
- 2) Provides that a person or entity shall not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.
- 3) Prohibits an employer from paying employees a wage less than the wages paid to employees of the opposite sex for substantially similar work when viewed as a composite of skill, effort, and responsibility, and performed under similar working

conditions, except where the employer demonstrates a seniority system, merit system, quality or quantity of productions, or a bona fide factor other than gender.

- 4) Provides the minimum wage for employees fixed by the Industrial Wage Commission (IWC) is the minimum wage to be paid to employees, and the payment of less than the minimum wage is unlawful. Any employer who pays an employee a wage less than the minimum fixed by the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties.
- 5) Requires an entity awarding any contract for public work, or otherwise undertaking any public work, shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the contract from the Director of Industrial Relations.
- 6) Provides that eight hours of labor constitutes a day's work and requires an employer to compensate an employee at the rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday, 40 hours in any one workweek, and the first eight hours worked on the seventh day of work in any one workweek.
- 7) Provides that an employee shall be entitled to one unpaid 30-minute meal period on shifts over 5 hours and a second unpaid 30-minute meal period on shifts over 10 hours. The employee may waive a meal period in accordance with Section 11 of Industrial Welfare Commission Wage Order Number 4 or Wage Order Number 5. On-duty meal periods may be provided in accordance with IWC Wage Order Number 4 or Wage Order Number 5.
- 8) Provides that an employee shall be entitled to a rest period based on the total hours worked daily at the rate of 10 minutes net rest time per 4 hours or major fraction thereof, as provided by IWC Wage Order Number 4 and Wage Order Number 5.
- 9) Provides that an employee not covered by a cooperative bargaining agreement shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to use and accrual limitations.
- 10) Prohibits public agencies from contracting for services if approval of the contract is based solely on savings resulting from lower pay rates or benefits or the contract causes displacement of civil service employees.
- 11) Provides that every constitutional amendment, bond measure, or other legislative measure submitted to the people by the Legislature shall appear on the ballot of the first statewide election occurring at least 131 days after the adoption of the proposal by the Legislature.
- 12) Provides that a proposed amendment or revision to the California Constitution, if approved by a majority of votes cast thereon, takes effect on the fifth day after the Secretary of State files the statement of the vote for the election at which the

measure is voted on, but the measure may provide that it becomes operative after its effective date.

This measure:

- 1) Provides, if approved by voters and notwithstanding existing law, that employees of the UC Regents shall have the right to, and shall be covered by, the following basic state labor standards as they apply to employees of the state on or after January 1, 2025:
  - a) Equal pay standards, including those established pursuant to the California Equal Pay Act and California Fair Pay Act of 2015.
  - b) The payment of a minimum wage.
  - c) The timely payment of wages.
  - d) The payment of overtime and standards governing the hours of work.
  - e) Occupational safety and health standards.
  - f) Meal and rest breaks.
  - g) Paid leave, including paid sick leave.
  - h) Standards against displacement and contracting out of work as provided for in state laws governing the nonemergency use of personal service contracts by the state.
- 2) Requires, notwithstanding existing law, that individuals who perform work for the UC Regents to have the right to the payment of a prevailing wage for work paid for, in whole or in part, out of UC funds, if that work would be considered public works under prevailing wage laws applicable to the state on or after January 1, 2025.
- 3) Provides that, notwithstanding specific provisions of the California Constitution, the Legislature may enact laws to further the rights established by this subdivision, to establish, define, or specify basic state labor standards applicable to the UC Regents, or to establish other health, safety, and labor protections for individuals performing work for the UC Regents.
- 4) Specifies that the provisions in this measure shall not apply to a contract entered into before January 1, 2025, if compliance would impair the obligations of that contract, as specified.

### **BACKGROUND**

Legislative Authority over the University of California. In 1868, the Legislature passed and Governor Henry H. Haight signed the Organic Act, which laid the foundation for and created the University of California. In 1879, California voters adopted the modern-day California Constitution (sometimes referred as the “second constitution”). Among the

provisions, the California Constitution enshrined the Organic Act, the UC as a “public trust,” and the UC being “subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and the proper investment and security of its funds...”

In 1917, the Legislature passed SCA 20 (Breed), Resolution Chapter 51, Statutes of 1917. According to the argument in support of the measure, the California Constitution provided that the form of organization and government of the UC be as prescribed by the Organic Act. Many of the details of the Organic Act became “outgrown or have become obsolete” and the amendment would “do away with this inflexibility and permit the molding of the detail of the organization of the university to meet its needs as they arise.” One of the changes to the California Constitution modified the legislative control provisions to read that the UC is “subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments and security of its funds.” Appearing as Proposition 8 at the November 5, 1918 election, it was approved by voters 62.8% to 37.2%.

While there have been other modifications to the provisions related to legislative control over the UC (competitive bidding procedures were later added), it has largely remained the same. However, the concept that the UC Regents have autonomy over the UC has remained relatively consistent since 1868.

Employed at the University of California. As of 2022, the UC employed 73,012 academic employees and 143,188 non-academic employees with both full-time and part-time status. As a result, there are 216,200 workers employed by the UC who are potentially exempt from various state labor laws due to the UC’s constitutional exemption.

Recent Court Actions. Courts have held the Regents are exempt from statutes regulating the wages and benefits of workers, as they are internal affairs of the UC that do not come within any of the exceptions to the Regents’ constitutional immunity. According to a news article/update from the Society for Human Resource Management, in June of 2019, “a former UC employee sued the UC Regents, arguing that the university failed to pay her the required minimum wage for all hours she worked, arguing that the time keeping procedures of rounding hours and automatically deducting 30 minute meal breaks resulted in her not receiving the minimum wage for all hours she actually worked.”

In April 2021, a California Court of Appeal affirmed a lower court judgment holding that the Regents of the UC could not be held liable for time keeping procedures that allegedly deprived a UC employee of the wages to which she was entitled. “The Court of Appeal noted that the California Constitution established the Regents as a ‘public trust,’ and the Legislature may regulate the Regents’ conduct in only limited circumstances. Furthermore, the Court of Appeal noted that courts have consistently held the Regents are exempt from statutes regulating the wages and benefits of employees and other workers, including those pertaining to prevailing wages and overtime pay on the ground those matters are internal affairs of the [UC] that do not come within any of the areas the Legislature may regulate.”

Contracting Out - UC Regents Policy 5402. In 2019, UC Regents adopted Regents Policy 5402, which generally prohibits the UC from contracting out for services and functions that UC staff could perform just as well except under “exigent and limited circumstances.” This policy established standards for contracts for cleaning, custodial, janitorial or housekeeping services; food services; laundry services; groundskeeping; building maintenance; transportation and parking services; security services; billing and coding services; sterile processing; hospital or nursing assistant services; and medical imaging or other medical technician services. This policy also noted that the UC will utilize its employees to perform covered services that have been customarily performed by UC employees to the greatest extent possible before resorting to the use of private contractors to provide such services.

In terms of contracting out services, Regents Policy 5402 provides that contracting for covered services is only permitted where contracting out is required by law, federal requirements, contract or grant requirements, court decisions or orders, or under the following limited, exigent circumstances that comply with the California’s requirements in existing law:

- 1) The services are needed to address an emergency. An emergency may include, but is not limited to, the need to prevent the stoppage of UC operations or to ensure the continuous operations of the UC’s medical centers.
- 2) The employees capable of providing the required services are not available at the UC location in sufficient quantity or do not possess the necessary level of expertise, or the services cannot be performed satisfactorily by UC employees, or the services are of a specialized or technical nature and the expertise, knowledge, ability and/or equipment required is not available internally.
- 3) The services are incidental to a contract for the purchase or lease of real or personal property. This includes services that are to be provided on property that the UC has leased to or from a third party or through public private partnerships.
- 4) The services are of such an urgent, temporary, or occasional nature that the delay resulting from their performance by UC employees hired under the UC’s regular or ordinary hiring process, or the inefficiencies or difficulties in utilizing UC employees, would frustrate the UC’s goals giving rise to the need for the services.
- 5) The contractor will provide equipment, materials, facilities, or support services that could not be provided feasibly in the location where the services are to be performed. All services at remote facilities, which are those not within a 10-mile radius of a UC campus, medical center, or UC Laboratory, fall within this exception.
- 6) The services are performed by registry personnel in clinical operations to address short-term staffing needs, including circumstances where the UC’s reasonable recruitment efforts to hire employees are unable to satisfy ongoing staffing needs.

Policy 5402 also mandates any outside contracts adhere to an “Equal Pay for Equal Work” standard. ACA 6 requires individuals who perform work for the UC Regents to have the right to specified basic state labor standards as they apply to work performed for the state or pursuant to state contracts.

### COMMENTS

- 1) According to the author: 150 years ago, women couldn't vote. That's when a section was added to the State Constitution that made the UC exempt from basic labor standards, exempt from minimum wage orders, and exempt from equal pay for women. The courts have ruled that this remains the case. Californians will change this.

Neither the Governor nor the Legislature have the executive or legislative authority to ensure basic labor standards apply to or are enforced at UC due to an outdated provision of the State Constitution. Article IX, Section 9 of the State Constitution was adopted nearly 150 years ago, before basic labor standards were in place. As a result, courts have held that Article IX, Section 9 excludes hundreds of thousands of Californians performing work for the University of California from labor standards adopted by the state legislature for virtually all other Californians since then.

- 2) Implementation date. One of the provisions of ACA 6 specifies that the provisions in this measure shall not apply to a contract entered into before January 1, 2025 if compliance would impair the obligations of that contract. The author intends to have this measure on the March 5, 2024 statewide presidential primary election. If approved by voters, this measure would take effect on the fifth day after the Secretary of State files the statement of the vote for the election at which the measure is voted on. It should be noted that the measure may also provide that it becomes operative after its effective date. The latest the statement of the vote could be filed would be near the middle of April 2024. This creates a gap between the measure taking effect and the end of the 2024 calendar year (i.e before January 1, 2025). It is possible that a contract could be entered into between the UC and labor unions within that gap and the provisions of that contract would not need to apply the provisions in ACA 6 in cases where compliance would impair the obligations of that contract.
- 3) Argument in Support. In a letter supporting ACA 6, the California Professional Firefighters stated, in part, the following:

*The constitutional autonomy granted to the UC system by the California Constitution has long meant that it is the only employer in the state that is not subject to basic labor standards such as minimum wage, overtime pay, equal pay, sick leave, and much more. There have been numerous cases in which the courts have found that UC was not required to comply with these basic protections that should be extended to all workers.*

*It is a core tenet of the labor movement that all workers deserve fair, safe, and adequately compensated employment, and for hundreds of thousands of Californians to be forced to bargain for these standards that should be a bare minimum at all workplaces. ACA 6 will allow the voters to take action to*

*modernize this outdated provision of the Constitution and ensure that some of the lowest-paid workers of the UC system have the basic labor protections that they deserve.*

- 4) Argument in Opposition. In a letter opposing ACA 6, the University of California stated, in part, the following:

*ACA 6 singles out UC by applying public sector employment laws not just for its rank-and-file workers, but also for its students, researchers, faculty, and clinicians. The State's public employment framework was not designed with academic and clinical enterprises in mind. The state framework, for example, does not contemplate such things as faculty sabbaticals, or the need to book lab time at odd hours – practices and work that are fundamental to the academic enterprise. Academic and clinical employees are not the same as career state employees and layering such a framework over University employees engaged in instruction, patient care and cutting-edge research means they will no longer be treated as academics and practitioners with a unique cycle of academic, clinical and research environments necessary to serve California and advance knowledge.*

*[...]*

*Further, ACA 6 is not necessary to ensure appropriate protections are in place for employees. For UC's represented employees, UC already meets or exceeds most of the labor standards required by California law, including those covered by this legislation either through bargaining agreements currently in place or existing state statutes. Moreover, our faculty, staff and students enjoy significant labor protections and can organize under the Higher Education Employer-Employee Relations Act (HEERA, Government Code Section 3560, et. seq.). HEERA provides for the "harmonious and cooperative labor relations between [UC] and their employees" and it has provided significant benefits for UC's employees, as evidenced by the fact that UC's graduate students are among the highest paid in the country. The University already negotiates in good faith with our represented employees and on legislation impacting UC's labor, health and safety standards. Recent contracts with the Teamsters, California Nurses Association, Federated University Police Officers Association, and the Service Employees International Union have been settled quietly and without acrimony. Moreover, UC continues to negotiate openly on a wide range of labor related bills, including those sponsored by AFSCME 3299, SEIU and Teamsters. The University is proud to report that numbers of represented employees have increased steadily in recent years, with nearly 50 percent of our 275,000 employees now covered by collective bargaining agreements. Labor negotiations should be handled at the bargaining table or even through bills in the legislature. They should not be handled at the ballot box.*

- 5) Double Referral. Prior to being considered by this committee, ACA 6 was heard and adopted by the Senate Committee on Labor, Public Employment and Retirement with a vote of 5-0.

#### **RELATED/PRIOR LEGISLATION**

SB 27 (Durazo) of 2023, among other provisions, prohibits a vendor from accepting payment from the UC if the vendor is performing services or supplying the UC 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 UC or as required by university policy, as specified.

SB 1334 (Bradford), Chapter 845, Statutes of 2022, extended meal and rest period rights and remedies available to employees who provide direct patient care or support in general acute care hospitals, clinics, or public health settings who are directly employed by specified employers, including the UC.

SB 1364 (Durazo) of 2022 would have required a vendor that contracts with the UC to perform services to provide their employees with the higher of the total compensation rate specified in the vendor's contract with the university or as required by university policy. SB 1364 would have also required a vendor, twice yearly, to provide basic payroll information, as defined, to the UC and members of any meeting body established with the exclusive representative of university employees who perform the same or similar services. SB 1364 was vetoed by Governor Newsom. In his veto message, Governor Newsom stated:

*I appreciate the intent of this bill, which is to ensure Regents Policy 5402 and the ratified agreement with American Federation of State, Municipal Employees Local 3299 are appropriately enforced. It is my Administration's understanding that the UC has been updating vendor contracts to include wage and benefit parity language and implementing campus and system level audit functions to monitor compliance and enforce these policies. The University is expected to complete a comprehensive report of audit findings in the first quarter of next year.*

*I urge the UC to make the audit findings publicly available and present those findings during an open session of a regularly scheduled UC Regents meeting. Additionally, this bill includes provisions related to sharing information with contracted workers regarding wage and benefit parity. These are important transparency aims for workers and I further urge the UC to identify and implement additional mechanisms that meet these goals.*

*While I support the enforcement of Regents Policy 5402 and the terms of Article 5, as UC is still implementing their audit mechanisms of the policies, this bill is premature. However, my Administration will closely monitor UC's steps to enforce their own policies and determine if a statutory change is required.*

*For these reasons, I cannot sign this bill.*

SCA 5 (Glazer) of 2022 would have required the Regents to add an additional student member to the Board of Regents to serve for at least one year and be a voting member with the same participation rights as other Regents. SCA 5 was held under submission in the Assembly Committee on Appropriations.

ACA 10 (Valladares) of 2021 would have prohibited the UC Regents from increasing the total amount of tuition and mandatory system wide fees charged to students of the



university above those in effect as of June 15, 2021, until the 2027–28 academic year. ACA 10 died in the Assembly.

ACA 14 (Gonzalez) of 2019 would have required the Regents of the UC to ensure that all contract workers who are paid to perform support services for the UC to be afforded the same equal employment opportunity standards as university employees performing similar services. ACA 14 died on the Senate’s Inactive File.

**PRIOR ACTION**

Senate Labor, Public Employment and Retirement:	5 - 0
Assembly Floor:	67 - 7
Assembly Appropriations Committee:	11 - 3
Assembly Labor and Employment Committee:	6 - 0

**POSITIONS**

**Sponsor:** AFSCME Local 3299  
 California Labor Federation  
 Tony Thurmond, State Superintendent of Public Instruction

**Support:** Alameda County Democratic Party  
 Alliance of Californians for Community Empowerment Action  
 American Federation of State, County, and Municipal Employees, AFL-CIO  
 California Conference of Machinists  
 California Conference of the Amalgamated Transit Union  
 California Employment Lawyers Association  
 California Faculty Association  
 California Nurses Association/National Nurses United  
 California Professional Firefighters  
 California Teachers Association  
 Central Coast Labor Council, AFL-CIO  
 Chispa  
 Contra Costa Labor Council, AFL-CIO  
 Council of University of California Faculty Associations  
 Courage California  
 Engineers and Scientists of CA, IFPTE Local 20, AFL-CIO  
 Federated University Police Officers’ Association  
 Garment Worker Center  
 Healthy California Now  
 Inlandboatmen’s Union of the Pacific Southern California Region, Marine  
 Division  
 Los Angeles Alliance for a New Economy  
 North Valley Labor Federation  
 Northern California District Council – ILWU  
 Sacramento Central Labor Council, AFL-CIO  
 San Mateo Labor Council  
 SEIU California

South Bay Labor Council  
 State Building and Construction Trades Council of California, AFL-CIO  
 Teamsters  
 UAW Local 2865  
 UAW Local 5810  
 UDW/AFSCME Local 3930  
 Union of American Physicians and Dentists, AFSCME Local 206  
 UNITE HERE, AFL-CIO  
 United Food and Commercial Workers Western States Council  
 United Nurses Associations of California/Union of Health Care Professionals  
 University Council-AFT  
 University of California Student Association  
 UPTC-CWA 9119  
 Utility Workers Union of America

**Oppose:** American Cargoservice Inc.  
 Anaheim Chamber of Commerce  
 Appvise Inc.  
 Aptos Chamber of Commerce  
 Assist Consulting Catalysts for Social Transformation, LLC  
 Bay Area Council  
 Berkeley Chamber of Commerce  
 Blackstone Talent Group LLC  
 Bogard Construction, Inc.  
 California Association of Public Hospitals and Health Systems  
 California Chamber of Commerce  
 California Hospital Association  
 Central City Association  
 Central Coast Construction Company  
 Data Principles Consulting, Inc.  
 Davis Chamber of Commerce  
 D&S Communications Inc.  
 Edios Media  
 Editecetera  
 Greater Irvine Chamber  
 Greater Riverside Chambers of Commerce  
 Health Data Movers  
 Honsha.ORG  
 Kelly Services  
 Los Angeles Area Chamber of Commerce  
 Los Angeles Business Council  
 Los Angeles County Business Federation  
 Newport Beach Chamber of Commerce  
 Orange County Business Council  
 Orange County Hispanic Chamber of Commerce  
 Orbees Inc.  
 Rahul Investments LLC  
 Rolling Orange, Inc.  
 San Diego Regional Chamber of Commerce  
 Santa Ana Chamber of Commerce

Santa Cruz County Chamber of Commerce  
Santa Monica Chamber of Commerce  
SC2 Strategic Communications, LLC  
Shirley Hollywood and Associates, Inc.  
South Orange County Economic Coalition  
Tri-County Chamber Alliance  
University of California  
University of California Academic Health Centers  
University of California Academic Senate  
University of California Chancellors  
University of California Directors of Disabled Student Support Services  
Valley Industry & Commerce Association  
Wight Vineyard Management, Inc.  
25 Individuals

**-- END --**