



Office of the Mayor

CONSENT CALENDAR
June 25, 2024

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín (Author), Councilmember Hahn (Co-Sponsor),
Councilmember Bartlett (Co-Sponsor)

Subject: Support for ACA 14 – The Basic Labor Standards at the University of California Act

RECOMMENDATION

Adopt a Resolution in support of ACA 14 (Ortega) – The Basic Labor Standards at the University of California Act. Send copies of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Liz Ortega.

BACKGROUND

Berkeley is home to the flagship campus of the University of California system, which was established in 1868. In 1879, the California Constitution was amended to constitute the University of California as a public trust, under Article IX, Section 9. In recent years, this section of the State Constitution has been interpreted by the courts to exclude employees of the UC system from various labor laws. As a result, hundreds of thousands of employees are exempt from California's basic labor standards, including rights to equal pay, minimum wage, and overtime pay.

ACA 14, introduced by Assemblymember Liz Ortega, would place a ballot measure to amend Article IX of the California Constitution to enshrine basic labor standards for UC employees. The Berkeley City Council has historically been supportive of improving labor standards at the University of California, in recognition of the importance of the work these employees do to maintain a world class university in Berkeley. One example of this was the approval of Resolution No. 67,454-N.S. in 2016 to support equal pay for UC contract employees.

Every California worker should have the same basic state labor standards, including equal pay standards, payment of a minimum wage, overtime pay, timely payment of wages, payment of a prevailing wage, and restrictions on outsourcing of jobs. The outdated, nearly 150-year-old exclusion of basic state labor standards for Californians who work or perform work for the University of California can be changed only by amending Article IX by a vote of the People of California.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of ACA 14
- 3: ACA 14 Fact Sheet

RESOLUTION NO. ##,###-N.S.

IN SUPPORT OF ACA 14 – THE BASIC LABOR STANDARDS AT THE UNIVERSITY
OF CALIFORNIA ACT

WHEREAS, California did not have basic state labor standards in place when Section 9 of Article IX of the California Constitution (hereafter “Article IX”) was amended in 1879 to constitute the University of California as a public trust; and

WHEREAS, in 2021, a federal district court ruled that UC was not subject to the California Equal Pay Act, stating that UC “is immune from suit for violations of California Labor Code § 1197.5”; and

WHEREAS, in 2021, the Fourth District Court of Appeals ruled that UC was not subject to California’s minimum wage law, upholding arguments that UC is “exempt from statutes and regulations that govern wages and benefits of public employees”; and

WHEREAS, in 2000, the First District Court of Appeals ruled that UC was not subject to California’s overtime pay law, stating that the “Regents are nonetheless exempt from its mandate by virtue of their constitutional status”; and

WHEREAS, every California worker should have the same basic state labor standards, including equal pay standards, payment of a minimum wage, overtime pay, timely payment of wages, payment of a prevailing wage, and restrictions on outsourcing of jobs; and

WHEREAS, the outdated, nearly 150-year-old exclusion of basic state labor standards for Californians who work or perform work for the University of California can be changed only by amending Article IX by a vote of the People of California.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports and endorses ACA 14, the Basic Labor Standards at the University of California Act proposed by the California State Legislature.

BE IT FURTHER RESOLVED that the Berkeley City Council urges the citizens of Berkeley to support the amendment to the California Constitution as proposed in the Basic Labor Standards at the University of California Act during the upcoming election.

BE IT FURTHER RESOLVED that copies of this resolution be sent to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Liz Ortega.



LIZ ORTEGA
Assemblymember, District 20



ACA 14 FACT SHEET

ACA 14 - Basic Labor Standards at the University of California Act

SUMMARY

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.

Basic state labor standards such as equal pay for women, the minimum wage, overtime pay, meal and rest breaks, sick leave, prevailing wages, and restrictions on outsourcing of jobs should cover all Californians.

BACKGROUND

ACA 14 gives each legislator's constituents an opportunity to amend Article IX, Section 9 of the State Constitution.

An affirmative vote by the public will cover hundreds of thousands of Californians performing work at the University of California with basic labor standards adopted by the Legislature.

Californians who are currently not covered by basic labor standards include underpaid service and maintenance workers who clean toilets, bedpans, pick up trash, cook food, perform clerical functions, maintain buildings, and perform jobs subject to outsourcing with unequal wages and inadequate

benefits.

Despite the Supreme Court holding that state legislation "may be made applicable to the University when the legislation regulates matters of statewide concern," and despite the fact that the Legislature has adopted such laws, the University of California has repeatedly prevailed in excluding hundreds of thousands of Californians who perform work for the University of California from basic state labor standards that apply to other California employers.

In 2021, a federal district court ruled that UC was not subject to the California's Equal Pay Act:

"Defendant argues Plaintiff cannot state an Equal Pay Act claim under California law because Defendant is immune from suit for violations of California Labor Code § 1197.5."

In 2021, the Fourth District Court of Appeals ruled that UC was not subject to California's minimum wage law:

"The Regents demurred to the complaint, arguing the first cause of action for failure to pay minimum wage for all hours worked was barred as a matter of law because the Regents are exempt from statutes and regulations that govern wages and benefits of public employees."

In 2000, the First District Court of Appeals ruled that UC was not subject to California's overtime pay law by citing that UC was not subject to California's prevailing wage law:



LIZ ORTEGA
Assemblymember, District 20



ACA 14 FACT SHEET

“Regardless of whether Kim was directly employed by the state within the meaning of the above regulation, the Regents are nonetheless exempt from its mandate by virtue of their constitutional status.”

PROBLEM

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 a 150-year old, outdated provision of the State Constitution.

SOLUTION

Californians can amend Article IX, Section 9 of the State Constitution to ensure basic labor standards apply to UC.

SUPPORT

AFSCME 3299 (co-sponsor)
California Labor Federation (co-sponsor)

FOR MORE INFORMATION

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Assembly Constitutional Amendment

No. 14

Introduced by Assembly Member Ortega

September 13, 2023

Assembly Constitutional Amendment No. 14—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding subdivision (h) to Section 9 of Article IX thereof, relating to the University of California.

LEGISLATIVE COUNSEL'S DIGEST

ACA 14, as introduced, Ortega. University of California: basic state labor standards.

The California Constitution provides that the University of California constitutes a public trust, and requires the university to be administered by the Regents of the University of California, a corporation in the form of a board, with full powers of organization and government, subject to legislative control only for specified purposes. These provisions grant the regents all the powers necessary or convenient for the effective administration of its trust.

This measure would require employees of the Regents of the University of California to have the right to, and be covered by, certain basic state labor standards, as provided. The measure would require individuals who perform certain work for the regents to have the right to the payment of a prevailing wage. The measure would authorize the Legislature to enact laws that further these rights, establish, define, or specify the basic state labor standards applicable to the regents, or establish other health, safety, and labor protections for individuals performing work for the regents.

ACA 14

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Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 WHEREAS, California did not have basic state labor standards
2 in place when Section 9 of Article IX of the California Constitution
3 (hereafter “Article IX”) was amended in 1879 to constitute the
4 University of California as a public trust; and
5 WHEREAS, Despite the California Supreme Court previously
6 holding in *San Francisco Labor Council v. Regents of the*
7 *University of California* (1980) (26 Cal.3d 785, 789-790) that “it
8 is well settled that general police power regulations governing
9 private persons and corporations may be applied to the university”
10 and that state legislation “may be made applicable to the University
11 when the legislation regulates matters of statewide concern,” and
12 despite the fact that the Legislature has adopted such laws, the
13 University of California has continually taken the position that
14 Article IX excludes hundreds of thousands of Californians who
15 work or perform work for the University of California from basic
16 state labor standards that apply to all other California employers;
17 and
18 WHEREAS, Some intermediate California courts have held that
19 Article IX excludes Californians who work or perform work for
20 the University of California from some basic state labor standards
21 that apply to all other California employers; and
22 WHEREAS, Every California worker should have the same
23 basic state labor standards, including equal pay standards, payment
24 of a minimum wage, overtime pay, timely payment of wages,
25 payment of a prevailing wage, and restrictions on outsourcing of
26 jobs; and
27 WHEREAS, The outdated nearly 150-year-old exclusion of
28 basic state labor standards for Californians who work or perform
29 work for the University of California can be changed only by
30 amending Article IX by a vote of the People of California; now,
31 therefore, be it
32 *Resolved by the Assembly, the Senate concurring*, That the
33 Legislature of the State of California at its 2023–24 Regular
34 Session commencing on the fifth day of December 2022, two-thirds
35 of the membership of each house concurring, hereby proposes to
36 the people of the State of California, that the Constitution of the
37 State be amended as follows:

1 First—This measure shall be known, and may be cited, as the
2 Basic Labor Standards at the University of California Act.

3 Second—That subdivision (h) is added to Section 9 of Article
4 IX thereto, to read:

5 (h) (1) Notwithstanding subdivision (a) and unless otherwise
6 provided by a state law, employees of the Regents of the University
7 of California shall have the right to, and shall be covered by, the
8 following basic state labor standards as they apply to employees
9 of the state on or after January 1, 2025:

10 (A) Equal pay standards, including those established pursuant
11 to the California Equal Pay Act and California Fair Pay Act of
12 2015.

13 (B) The payment of a minimum wage.

14 (C) The timely payment of wages.

15 (D) The payment of overtime and standards governing the hours
16 of work.

17 (E) Occupational safety and health standards.

18 (F) Meal and rest breaks.

19 (G) Paid leave, including paid sick leave.

20 (H) Standards against displacement and contracting out of work
21 as provided for in state laws governing the nonemergency use of
22 personal service contracts by the state.

23 (2) Notwithstanding subdivision (a) and unless otherwise
24 provided by a state law, individuals who perform work for the
25 Regents of the University of California shall have the right to the
26 payment of a prevailing wage for work paid for, in whole or in
27 part, out of University of California funds, if that work would be
28 considered public works under prevailing wage laws applicable
29 to the state on or after January 1, 2025.

30 (3) Notwithstanding subdivision (a), the Legislature may enact
31 laws to further the rights established by this subdivision, to
32 establish, define, or specify basic state labor standards applicable
33 to the Regents of the University of California, or to establish other
34 health, safety, and labor protections for individuals performing
35 work for the Regents of the University of California.

36 (4) This subdivision shall not apply to a contract entered into
37 before January 1, 2025, if compliance with this subdivision would
38 impair the obligations of that contract.

ACA 14

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- 1 (5) This subdivision shall not preclude the state labor standards
- 2 and protections identified in this subdivision from being superseded
- 3 by more favorable terms in a collective bargaining agreement.

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