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# Liability Issues When Working With Labor Contractors (AB 1897) — Fact Sheet

By Jennifer Barrera, Executive Vice President, CalChamber

In 2015, a new law became effective that increased liability on employers who contract for labor. The law, AB 1897, enacted Labor Code section 2810.3. Some amendments to this code section also passed, effective January 1, 2016.

The purpose of the law is to hold companies accountable for wage-and-hour and other violations when they use staffing agencies or other labor contractors to supply workers.

## To Whom Does This Law Apply?

Any "client employer," which is defined as a business entity with 25 or more workers that obtains or is provided at least six (6) workers to perform labor within the usual course of business from one labor contractor or various labor contractors.

## This law could apply to employers who use staffing agencies or other labor contractors to supply workers ...

The following business entities are excluded from the definition of "client employer" or from the liability imposed under the provisions of this bill, under the following conditions and contracts:

- A business entity with fewer than 25 workers (including those hired directly and those obtained from or provided by any labor contractor);
- A business entity that has five (5) or fewer workers from a labor contractor or various labor contractors at any given time;
- A motor carrier of property that contracts with or engages another motor carrier of property to provide transportation services;
- An employer that utilizes a third-party motor carrier of property with interstate or intrastate operating authority to ship or receive freight;
- An employer that uses a third-party, household-goods carrier permitted by the Public Utilities Commission to move household goods;
- A permitted household-goods carrier that contracts with or engages another household- goods carrier to move household goods;
- Cable operators, telephone corporations and direct-to-home satellite providers that contract with a company to build, install, maintain or perform repair work as long as the name of the contractor is visible on employee uniforms and vehicles;

- A motor club that contracts with third parties to provide motor club services if the name of the contractor is visible on the contractor's vehicles; or
- The state or any political subdivision of the state.

The following entities are specifically excluded from the definition of "labor contractor" and, therefore, the provisions of the bill will not be triggered if these entities provide the labor to the client employer:

- A bona fide non-profit community based organization that provides services to workers;
- A bona fide labor organization or apprenticeship program or hiring hall operated pursuant to a collective bargaining agreement;
- A motion picture payroll services company; or
- A third party who is a party to an employee leasing arrangement if the employee leasing arrangement contractually obligates the client employer to assume all civil legal responsibility and civil liability under the law.

A worker does not include an employee who is properly classified as exempt from the payment of overtime pursuant to the administrative, executive or professional exemption in California's Wage Orders. If the contract is for employees that fall within any of these exemptions, the provisions of the law will not apply.

## Not all labor contractors are covered by the law ...

### What Does The Law Do?

Imposes all civil legal responsibility and liability on the client employer for any wage-and-hour violations committed by the labor contractor for the labor contractor's employees it supplied pursuant to the contract with the client employer.

Additionally, it imposes civil liability and legal responsibility on the client employer for the labor contractor's failure to secure valid workers' compensation coverage for the labor contractor's employees working pursuant to the contract with the client employer.

Effective January 1, 2016, a client employer can also be held liable for violating specified whistleblower protections in the Labor Code (Labor Code sections 98.6, 1102.5 and 6310).

For example, a client employer can be held legally responsible when a labor contractor, such as a staffing agency, retaliates against workers for engaging in protected conduct, such as complaining of a violation of state or federal law, complaining about workplace safety, or complaining that they are not being paid according to the state's wage and hour laws.

Basically, if the labor contractor fails to pay its employees properly, fails to provide workers' compensation coverage for those employees, or retaliates against employees for "blowing the whistle" on violations of the law, the client employer will now be legally responsible.

Liability applies only if the contract was for work performed within the "usual course of business" of the client employer, meaning the work was regular and customary for the client employer and on the client employer's premises.

A client employer can contract for indemnification from the labor contractor for the labor contractor's failure to pay wages or secure workers' compensation coverage. There is, however, one exception: client employers cannot shift any legal duties or liabilities under workplace safety laws to the labor contractor.

Additionally, the law requires a client employer or labor contractor to provide to any state enforcement agency or department any information within its possession, custody or control to confirm compliance with applicable state laws.

## How Does The Law Work?

A worker who believes he/she has not been properly paid or has suffered an injury and there is no workers' compensation policy may pursue an administrative claim or civil action against the client employer, labor contractor or both.

If the worker pursues a civil action, the worker or representative must provide notice to the client employer of the alleged violation(s) 30 days before filing the civil action. A civil action is not just limited to a single-plaintiff action, but can include a class action or representative action under Labor Code Section 2699 et. seq. If the worker pursues an administrative claim, no prior notice to the client employer is required.

## Workers can pursue civil or administrative actions ...

To prevail in an administrative or civil action against the client employer for the labor contractor's alleged violations, the worker will need to prove:

- That he/she was not properly compensated or provided with workers' compensation coverage;
- That these violations occurred while the worker was working pursuant to a contract for labor between the client employer and labor contractor; and
- The contract was for work within the "usual course of business" of the client employer, as defined.

## Best Practices

Any entity that falls within the definition of "client employer" may want to contact legal counsel to determine what efforts may be made to limit the exposure of liability for a contractor's wage-and-hour violations or failure to secure workers' compensation coverage.

Additionally, employers may wish to consider the following tips:

- Review all existing contracts for labor or services to determine what contracts may fall within the scope of "usual course of business." For those contracts that qualify, contact those contractors to obtain assurances of their labor and employment compliance.
- Consider including legal protections for wage-and-hour violations, workers' compensation coverage and claims involving retaliation for protected conduct. Include duty-to-defend and/or indemnification provisions in new and existing contracts.
- Limit your reliance on and use of contracted labor or services and determine where internal efficiencies can be made with regard to workload or to hiring additional employees.

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