

Introduced by Senator Leno

February 19, 2010

An act to amend Section 2810 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1360, as introduced, Leno. Contractors: agreements.

Existing law prohibits a person or entity from entering into a contract or agreement for labor or services with specified types of contractors if 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.

This bill would make nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2810 of the Labor Code is amended to
2 read:
3 2810. (a) A person or entity may not enter into a contract or
4 agreement for labor or services with a construction, farm labor,
5 garment, janitorial, or security guard contractor, ~~where~~ *if* the person
6 or entity knows or should know that the contract or agreement
7 does not include funds sufficient to allow the contractor to comply
8 with all applicable local, state, and federal laws or regulations
9 governing the labor or services to be provided.

1 (b) There is a rebuttable presumption affecting the burden of
2 proof that there has been no violation of subdivision (a) ~~where if~~
3 the contract or agreement with a construction, farm labor, garment,
4 janitorial, or security guard contractor meets all of the requirements
5 in subdivision (d).

6 (c) Subdivision (a) does not apply to a person or entity who
7 executes a collective bargaining agreement covering the workers
8 employed under the contract or agreement, or to a person who
9 enters into a contract or agreement for labor or services to be
10 performed on his or her home residences, provided that a family
11 member resides in the residence or residences for which the labor
12 or services are to be performed for at least a part of the year.

13 (d) To meet the requirements of subdivision (b), a contract or
14 agreement with a construction, farm labor, garment, janitorial, or
15 security guard contractor for labor or services must be in writing,
16 in a single document, and contain all of the following provisions,
17 in addition to any other provisions that may be required by
18 regulations adopted by the Labor Commissioner from time to time:

19 (1) The name, address, and telephone number of the person or
20 entity and the construction, farm labor, garment, janitorial, or
21 security guard contractor through whom the labor or services are
22 to be provided.

23 (2) A description of the labor or services to be provided and a
24 statement of when those services are to be commenced and
25 completed.

26 (3) The employer identification number for state tax purposes
27 of the construction, farm labor, garment, janitorial, or security
28 guard contractor.

29 (4) The workers' compensation insurance policy number and
30 the name, address, and telephone number of the insurance carrier
31 of the construction, farm labor, garment, janitorial, or security
32 guard contractor.

33 (5) The vehicle identification number of any vehicle that is
34 owned by the construction, farm labor, garment, janitorial, or
35 security guard contractor and used for transportation in connection
36 with any service provided pursuant to the contract or agreement,
37 the number of the vehicle liability insurance policy that covers the
38 vehicle, and the name, address, and telephone number of the
39 insurance carrier.

1 (6) The address of any real property to be used to house workers
2 in connection with the contract or agreement.

3 (7) The total number of workers to be employed under the
4 contract or agreement, the total amount of all wages to be paid,
5 and the date or dates when those wages are to be paid.

6 (8) The amount of the commission or other payment made to
7 the construction, farm labor, garment, janitorial, or security guard
8 contractor for services under the contract or agreement.

9 (9) The total number of persons who will be utilized under the
10 contract or agreement as independent contractors, along with a list
11 of the current local, state, and federal contractor license
12 identification numbers that the independent contractors are required
13 to have under local, state, or federal laws or regulations.

14 (10) The signatures of all parties, and the date the contract or
15 agreement was signed.

16 (e) (1) To qualify for the rebuttable presumption set forth in
17 subdivision (b), a material change to the terms and conditions of
18 a contract or agreement between a person or entity and a
19 construction, farm labor, garment, janitorial, or security guard
20 contractor must be in writing, in a single document, and contain
21 all of the provisions listed in subdivision (d) that are affected by
22 the change.

23 (2) If a provision required to be contained in a contract or
24 agreement pursuant to paragraph (7) or (9) of subdivision (d) is
25 unknown at the time the contract or agreement is executed, the
26 best estimate available at that time is sufficient to satisfy the
27 requirements of subdivision (d). If an estimate is used in place of
28 actual figures in accordance with this paragraph, the parties to the
29 contract or agreement have a continuing duty to ascertain the
30 information required pursuant to paragraph (7) or (9) of subdivision
31 (d) and to reduce that information to writing in accordance with
32 the requirements of paragraph (1) once that information becomes
33 known.

34 (f) A person or entity who enters into a contract or agreement
35 referred to in subdivisions (d) or (e) shall keep a copy of the written
36 contract or agreement for a period of not less than four years
37 following the termination of the contract or agreement.

38 (g) (1) An employee aggrieved by a violation of subdivision
39 (a) may file an action for damages to recover the greater of all of
40 his or her actual damages or two hundred fifty dollars (\$250) per

1 employee per violation for an initial violation and one thousand
2 dollars (\$1,000) per employee for each subsequent violation, and,
3 upon prevailing in an action brought pursuant to this section, may
4 recover costs and reasonable attorney’s fees. An action under this
5 section may not be maintained unless it is pleaded and proved that
6 an employee was injured as a result of a violation of a labor law
7 or regulation in connection with the performance of the contract
8 or agreement.

9 (2) An employee aggrieved by a violation of subdivision (a)
10 may also bring an action for injunctive relief and, upon prevailing,
11 may recover costs and reasonable attorney’s fees.

12 (h) The phrase “construction, farm labor, garment, janitorial,
13 or security guard contractor” includes any person, as defined in
14 this code, whether or not licensed, who is acting in the capacity
15 of a construction, farm labor, garment, janitorial, or security guard
16 contractor.

17 (i) (1) The term “knows” includes the knowledge, arising from
18 familiarity with the normal facts and circumstances of the business
19 activity engaged in, that the contract or agreement does not include
20 funds sufficient to allow the contractor to comply with applicable
21 laws.

22 (2) The phrase “should know” includes the knowledge of any
23 additional facts or information that would make a reasonably
24 prudent person undertake to inquire whether, taken together, the
25 contract or agreement contains sufficient funds to allow the
26 contractor to comply with applicable laws.

27 (3) A failure by a person or entity to request or obtain any
28 information from the contractor that is required by any applicable
29 statute or by the contract or agreement between them, constitutes
30 knowledge of that information for purposes of this section.