

ASSEMBLY BILL

No. 693

Introduced by Assembly Member Roger Hernández

February 21, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 693, as introduced, Roger Hernández. Employment.

Existing law prohibits a person or entity from entering into a contract or agreement for labor or services with specified types of contractors, including warehouse 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 shall not enter into a contract or
4 agreement for labor or services with a construction, farm labor,
5 garment, janitorial, security guard, or warehouse contractor, ~~where~~
6 *if* the person or entity knows or should know that the contract or
7 agreement does not include funds sufficient to allow the contractor

1 to comply with all applicable local, state, and federal laws or
2 regulations governing the labor or services to be provided.

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

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

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

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

26 (2) A description of the labor or services to be provided and a
27 statement of when those services are to be commenced and
28 completed.

29 (3) The employer identification number for state tax purposes
30 of the construction, farm labor, garment, janitorial, security guard,
31 or warehouse contractor.

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

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

1 that covers the vehicle, and the name, address, and telephone
2 number of the insurance carrier.

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

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

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

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

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

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

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

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

1 request of the Labor Commissioner, any person or entity who
2 enters into the contract or agreement shall provide to the Labor
3 Commissioner a copy of the provisions of the contract or
4 agreement, and any other documentation, related to paragraphs
5 (1) to (10), inclusive, of subdivision (d). Documents obtained
6 pursuant to this section are exempt from disclosure under the
7 California Public Records Act (Chapter 3.5 (commencing with
8 Section 6250) of Division 7 of Title 1 of the Government Code).

9 (g) (1) An employee aggrieved by a violation of subdivision
10 (a) may file an action for damages to recover the greater of all of
11 his or her actual damages or two hundred fifty dollars (\$250) per
12 employee per violation for an initial violation and one thousand
13 dollars (\$1,000) per employee for each subsequent violation, and,
14 upon prevailing in an action brought pursuant to this section, may
15 recover costs and reasonable attorney's fees. An action under this
16 section shall not be maintained unless it is pleaded and proved that
17 an employee was injured as a result of a violation of a labor law
18 or regulation in connection with the performance of the contract
19 or agreement.

20 (2) An employee aggrieved by a violation of subdivision (a)
21 may also bring an action for injunctive relief and, upon prevailing,
22 may recover costs and reasonable attorney's fees.

23 (h) The phrase "construction, farm labor, garment, janitorial,
24 security guard, or warehouse contractor" includes any person, as
25 defined in this code, whether or not licensed, who is acting in the
26 capacity of a construction, farm labor, garment, janitorial, security
27 guard, or warehouse contractor.

28 (i) (1) The term "knows" includes the knowledge, arising from
29 familiarity with the normal facts and circumstances of the business
30 activity engaged in, that the contract or agreement does not include
31 funds sufficient to allow the contractor to comply with applicable
32 laws.

33 (2) The phrase "should know" includes the knowledge of any
34 additional facts or information that would make a reasonably
35 prudent person undertake to inquire whether, taken together, the
36 contract or agreement contains sufficient funds to allow the
37 contractor to comply with applicable laws.

38 (3) A failure by a person or entity to request or obtain any
39 information from the contractor that is required by ~~any~~ *an*
40 applicable statute or by the contract or agreement between them,

1 constitutes knowledge of that information for purposes of this
2 section.

3 (j) For the purposes of this section, “warehouse” means a facility
4 the primary operation of which is the storage or distribution of
5 general merchandise, refrigerated goods, or other products.

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