

ASSEMBLY BILL

No. 1239

Introduced by Assembly Member Holden

February 22, 2013

An act to amend Section 6108 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1239, as introduced, Holden. Public contracts: certification: labor conditions: sweatshops.

Existing law requires specified contracts entered into by state agencies to require contractors to certify that no apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced by various unauthorized and exploitive labor conditions, such as sweatshops, as prescribed.

This bill would make nonsubstantive changes to those 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 6108 of the Public Contract Code is
2 amended to read:
3 6108. (a) (1) ~~Every~~*Each* contract entered into by ~~any~~ *a* state
4 agency for the procurement or laundering of apparel, garments, or
5 corresponding accessories, or the procurement of equipment,
6 materials, or supplies, other than procurement related to a public
7 works contract, shall require that a contractor certify that no

1 apparel, garments, corresponding accessories, equipment, materials,
2 or supplies furnished to the state pursuant to the contract have been
3 laundered or produced in whole or in part by sweatshop labor,
4 forced labor, convict labor, indentured labor under penal sanction,
5 abusive forms of child labor, or exploitation of children in
6 sweatshop labor, or with the benefit of sweatshop labor, forced
7 labor, convict labor, indentured labor under penal sanction, abusive
8 forms of child labor, or exploitation of children in sweatshop labor.
9 The contractor shall agree to comply with this provision of the
10 contract.

11 (2) The contract shall specify that the contractor is required to
12 cooperate fully in providing reasonable access to the contractor's
13 records, documents, agents, employees, or premises if reasonably
14 required by authorized officials of the contracting agency, the
15 Department of Industrial Relations, or the Department of Justice
16 determine the contractor's compliance with the requirements under
17 paragraph (1).

18 (b) (1) Any contractor contracting with the state who knew or
19 should have known that the apparel, garments, corresponding
20 accessories, equipment, materials, or supplies furnished to the state
21 were laundered or produced in violation of the conditions specified
22 in subdivision (a) when entering into a contract pursuant to
23 subdivision (a), may, subject to subdivision (c), have any or all of
24 the following sanctions imposed:

25 (A) The contract under which the prohibited apparel, garments,
26 or corresponding accessories, equipment, materials, or supplies
27 were laundered or provided may be voided at the option of the
28 state agency to which the equipment, materials, or supplies were
29 provided.

30 (B) The contractor may be assessed a penalty that shall be the
31 greater of one thousand dollars (\$1,000) or an amount equaling
32 20 percent of the value of the apparel, garments, corresponding
33 accessories, equipment, materials, or supplies that the state agency
34 demonstrates were produced in violation of the conditions specified
35 in paragraph (1) of subdivision (a) and that were supplied to the
36 state agency under the contract.

37 (C) The contractor may be removed from the bidder's list for a
38 period not to exceed 360 days.

39 (2) Any moneys collected pursuant to this subdivision shall be
40 deposited into the General Fund.

1 (c) (1) When imposing the sanctions described in subdivision
2 (b), the contracting agency shall notify the contractor of the right
3 to a hearing, if requested, within 15 days of the date of the notice.
4 The hearing shall be before an administrative law judge of the
5 Office of Administrative Hearings in accordance with the
6 procedures specified in Chapter 5 (commencing with Section
7 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
8 The administrative law judge shall take into consideration any
9 measures the contractor has taken to ensure compliance with this
10 section, and may waive any or all of the sanctions if it is determined
11 that the contractor has acted in good faith.

12 (2) The agency shall be assessed the cost of the administrative
13 hearing, unless the agency has prevailed in the hearing, in which
14 case the contractor shall be assessed the cost of the hearing.

15 (d) (1) Any state agency that investigates a complaint against
16 a contractor for violation of this section may limit its investigation
17 to evaluating the information provided by the person or entity
18 submitting the complaint and the information provided by the
19 contractor.

20 (2) Whenever a contracting officer of the contracting agency
21 has reason to believe that the contractor failed to comply with
22 paragraph (1) of subdivision (a), the agency shall refer the matter
23 for investigation to the head of the agency and, as the head of the
24 agency determines appropriate, to either the Director of Industrial
25 Relations or the Department of Justice.

26 (e) (1) For purposes of this section, “forced labor” shall have
27 the same meaning as in Section 1307 of Title 19 of the United
28 States Code.

29 (2) “Abusive forms of child labor” means any of the following:

30 (A) All forms of slavery or practices similar to slavery, such as
31 the sale and trafficking of children, debt bondage, and serfdom
32 and forced or compulsory labor, including forced or compulsory
33 recruitment of children for use in armed conflict.

34 (B) The use, procuring, or offering of a child for prostitution,
35 for the production of pornography, or for pornographic
36 performances.

37 (C) The use, procuring, or offering of a child for illicit activities,
38 in particular for the production and trafficking of illicit drugs.

39 (D) All work or service exacted from or performed by any
40 person under the age of 18 years either under the menace of any

1 penalty for its nonperformance and for which the worker does not
2 offer oneself voluntarily, or under a contract, the enforcement of
3 which can be accomplished by process or penalties.

4 (E) All work or service exacted from or performed by a child
5 in violation of all applicable laws of the country of manufacture
6 governing the minimum age of employment, compulsory education,
7 and occupational health and safety.

8 (3) “Exploitation of children in sweatshop labor” means all
9 work or service exacted from or performed by any person under
10 the age of 18 years in violation of more than one law of the country
11 of manufacture governing wage and benefits, occupational health
12 and safety, nondiscrimination, and freedom of association.

13 (4) “Sweatshop labor” means all work or service exacted from
14 or performed by any person in violation of more than one law of
15 the country of manufacture governing wages, employee benefits,
16 occupational health, occupational safety, nondiscrimination, or
17 freedom of association.

18 (5) “Apparel, garments, or corresponding accessories” includes,
19 but is not limited to, uniforms.

20 (6) Notwithstanding any other provision of this section, “forced
21 labor” and “convict labor” ~~do~~ shall not include work or services
22 performed by an inmate or a person employed by the Prison
23 Industry Authority.

24 (7) “State agency” means any state agency in this state.

25 (f) (1) On or before February 1, 2004, the Department of
26 Industrial Relations shall establish a contractor responsibility
27 program, including a Sweatfree Code of Conduct, to be signed by
28 all bidders on state contracts and subcontracts. Any state agency
29 responsible for procurement shall ensure that the Sweatfree Code
30 of Conduct is available for public review at least 30 calendar days
31 between the dates of receipt and the final award of the contract.
32 The Sweatfree Code of Conduct shall list the requirements that
33 contractors are required to meet, as set forth in subdivision (g).

34 (2) Upon implementation in the manner described in paragraph
35 (4), every contract entered into by any state agency for the
36 procurement or laundering of apparel, garments, or corresponding
37 accessories, or for the procurement of equipment or supplies, shall
38 require that the contractor certify in accordance with the Sweatfree
39 Code of Conduct that no apparel, garments, or corresponding
40 accessories, or equipment, materials, or supplies, furnished to the

1 state pursuant to the contract have been laundered or produced, in
2 whole or in part, by sweatshop labor.

3 (3) The appropriate procurement agency, in consultation with
4 the Director of Industrial Relations, shall employ a phased and
5 targeted approach to implementing the Sweatfree Code of Conduct.
6 Sweatfree Code of Conduct procurement policies involving apparel,
7 garments, and corresponding accessories may be permitted a
8 phasein period of up to one year for purposes of feasibility and
9 providing sufficient notice to contractors and the general public.
10 The appropriate procurement agency, in consultation with the
11 Director of Industrial Relations, shall target other procurement
12 categories based on the magnitude of verified sweatshop conditions
13 and the feasibility of implementation, and may set phasein goals
14 and timetables of up to three years to achieve compliance with the
15 principles of the Sweatfree Code of Conduct.

16 (4) In order to facilitate compliance with the Sweatfree Code
17 of Conduct, the Department of Industrial Relations shall explore
18 mechanisms employed by other governmental entities, including,
19 but not limited to, New Jersey Executive Order 20, of 2002, to
20 ensure that businesses that contract with this state are in compliance
21 with this section and any regulations or requirements promulgated
22 in conformance with this section, as amended by Section 2 of
23 Chapter 711 of the Statutes of 2003. The mechanisms explored
24 may include, but not be limited to, authorization to contract with
25 a competent nonprofit organization that is neither funded nor
26 controlled, in whole or in part, by a corporation that is engaged in
27 the procurement or laundering of apparel, garments, or
28 corresponding accessories, or the procurement of equipment,
29 materials, or supplies. The Department of Industrial Relations, in
30 complying with this paragraph, shall also consider any feasible
31 and cost-effective monitoring measures that will encourage
32 compliance with the Sweatfree Code of Conduct.

33 (5) To ensure public access and confidence, the Department of
34 Industrial Relations shall ensure public awareness and access to
35 proposed contracts by postings on the Internet and through
36 communication to advocates for garment workers, unions, and
37 other interested parties. The appropriate agencies shall establish
38 a mechanism for soliciting and reviewing any information
39 indicating violations of the Sweatfree Code of Conduct by
40 prospective or current bidders, contractors, or subcontractors. The

1 agencies shall make their findings public when they reject
2 allegations against bidding or contracting parties.

3 (6) Contractors shall ensure that their subcontractors comply in
4 writing with the Sweatfree Code of Conduct, under penalty of
5 perjury. Contractors shall attach a copy of the Sweatfree Code of
6 Conduct to the certification required by subdivision (a).

7 (g) ~~No~~A state agency ~~may~~ *shall not* enter into a contract with
8 any contractor unless the contractor meets the following
9 requirements:

10 (1) Contractors and subcontractors in California shall comply
11 with all appropriate state laws concerning wages, workplace safety,
12 rights to association and assembly, and nondiscrimination standards
13 as well as appropriate federal laws. Contractors based in other
14 states in the United States shall comply with all appropriate laws
15 of their states and appropriate federal laws. For contractors whose
16 locations for manufacture or assembly are outside the United States,
17 those contractors shall ensure that their subcontractors comply
18 with the appropriate laws of countries where the facilities are
19 located.

20 (2) Contractors and subcontractors shall maintain a policy of
21 not terminating any employee except for just cause, and employees
22 shall have access to a mediator or to a mediation process to resolve
23 certain workplace disputes that are not regulated by the National
24 Labor Relations Board.

25 (3) Contractors and subcontractors shall ensure that workers
26 are paid, at a minimum, wages and benefits in compliance with
27 applicable local, state, and national laws of the jurisdiction in which
28 the labor, on behalf of the contractor or subcontractor, is performed.
29 Whenever a state agency expends funds for the procurement or
30 laundering of apparel, garments, or corresponding accessories, or
31 the procurement of equipment, materials, or supplies, other than
32 procurement related to a public works contract, the applicable
33 labor standards established by the local jurisdiction through the
34 exercise of either local police powers or local spending powers in
35 which the labor, in compliance with the contract or purchase order
36 for which the expenditure is made, is performed shall apply with
37 regard to the contract or purchase order for which the expenditure
38 is made, unless the applicable local standards are in conflict with,
39 or are explicitly preempted by, state law. A state agency may not
40 require, as a condition for the receipt of state funds or assistance,

1 that a local jurisdiction refrain from applying the labor standards
2 that are otherwise applicable to that local jurisdiction. The
3 Department of Industrial Relations may, without incurring
4 additional expenses, access information from any nonprofit
5 organization, including, but not limited to, the World Bank, that
6 gathers and disseminates data with respect to wages paid
7 throughout the world, to allow the Department of Industrial
8 Relations to determine whether contractors and subcontractors are
9 compensating their employees at a level that enables those
10 employees to live above the applicable poverty level.

11 (4) All contractors and subcontractors shall comply with the
12 overtime laws and regulations of the country in which their
13 employees are working.

14 (5) All overtime hours shall be worked voluntarily. Workers
15 shall be compensated for overtime at either (A) the rate of
16 compensation for regular hours of work, or (B) as legally required
17 in the country of manufacture, whichever is greater.

18 (6) ~~No~~A person ~~may~~ shall not be employed who is younger
19 than the legal age for children to work in the country in which the
20 facility is located. In no case may children under the age of 15
21 years be employed in the manufacturing process. Where the age
22 for completing compulsory education is higher than the standard
23 for the minimum age of employment, the age for completing
24 education shall apply to this section.

25 (7) There may be no form of forced labor of any kind, including
26 slave labor, prison labor, indentured labor, or bonded labor,
27 including forced overtime hours.

28 (8) The work environment shall be safe and healthy and, at a
29 minimum, be in compliance with relevant local, state, and national
30 laws. If residential facilities are provided to workers, those facilities
31 shall be safe and healthy as well.

32 (9) There may be no discrimination in hiring, salary, benefits,
33 performance evaluation, discipline, promotion, retirement, or
34 dismissal on the basis of age, sex, pregnancy, maternity leave
35 status, marital status, race, nationality, country of origin, ethnic
36 origin, disability, sexual orientation, gender identity, religion, or
37 political opinion.

38 (10) ~~No~~A worker ~~may~~ shall not be subjected to any physical,
39 sexual, psychological, or verbal harassment or abuse, including
40 corporal punishment, under any circumstances, including, but not

1 limited to, retaliation for exercising his or her right to free speech
2 and assembly.

3 (11) ~~No~~A worker ~~may~~ shall not be forced to use contraceptives
4 or take pregnancy tests. ~~No~~A worker ~~may~~ shall not be exposed to
5 chemicals, including glues and solvents, that endanger reproductive
6 health.

7 (12) Contractors and bidders shall list the names and addresses
8 of each subcontractor to be utilized in the performance of the
9 contract, and list each manufacturing or other facility or operation
10 of the contractor or subcontractor for performance of the contract.
11 The list, which shall be maintained and updated to show any
12 changes in subcontractors during the term of the contract, shall
13 provide company names, owners or officers, addresses, telephone
14 numbers, e-mail addresses, and the nature of the business
15 association.

16 (h) Any person who certifies as true any material matter pursuant
17 to this section that he or she knows to be false is guilty of a
18 misdemeanor.

19 (i) The provisions of this section, as amended by Section 2 of
20 Chapter 711 of the Statutes of 2003, shall be in addition to any
21 other provisions that authorize the prosecution and enforcement
22 of local labor laws and may not be interpreted to prohibit a local
23 prosecutor from bringing a criminal or civil action against an
24 individual or business that violates the provisions of this section.

25 (j) (1) The certification requirements set forth in subdivisions
26 (a) and (f) ~~do~~ shall not apply to a credit card purchase of goods of
27 two thousand five hundred dollars (\$2,500) or less.

28 (2) The total amount of exemption authorized herein shall not
29 exceed seven thousand five hundred dollars (\$7,500) per year for
30 each company from which a state agency is purchasing goods by
31 credit card. It shall be the responsibility of each state agency to
32 monitor the use of this exemption and adhere to these restrictions
33 on these purchases.

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