

ASSEMBLY BILL

No. 1243

Introduced by Assembly Member Hueso

February 22, 2013

An act to add Section 2750.8 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1243, as introduced, Hueso. Employment: taxi drivers.

Under existing law, whether a person is an employee or an independent contractor of another is determined under the common law rules applicable for determining an employer-employee relationship, under which the most important factor is the right of the principal to control the manner and means of accomplishing a desired result.

This bill would, in any matter where the classification of a driver of a taxicab is to be determined, as specified, establish a presumption, rebuttable by clear and convincing evidence, as specified, that the driver of a taxicab is an independent contractor rather than an employee of the taxi company. The bill would specify, in order of decreasing significance, the factors used in rebutting the presumption, and would specify the factors that may not be considered as evidence of employer-like control by a taxi company.

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 2750.8 is added to the Labor Code, to
2 read:

1 2750.8. (a) Notwithstanding Section 3357, in any matter where
 2 the classification of a driver of a taxicab is to be determined, if a
 3 licensed taxicab driver operates the taxicab in association with a
 4 taxi company that provides vehicles for lease and lessees or taxicab
 5 owners pay the company for services that may include, but are not
 6 limited to, marketing, fleet insurance, dispatch, cashiering, credit
 7 card processing, mechanical, and other administrative services,
 8 there shall be a presumption, rebuttable by clear and convincing
 9 evidence pursuant to subdivision (b), and affecting the burden of
 10 proof, that the driver is an independent contractor rather than an
 11 employee of the taxi company.

12 (b) Proof of employee status includes proof by clear and
 13 convincing evidence of the following factors, listed in order of
 14 decreasing significance:

15 (1) That the driver has no opportunity for realizing
 16 entrepreneurial profit or loss based on the driver’s knowledge,
 17 skill in the work of driving passengers, exercise of operational
 18 discretion, and self-marketing such as developing personal
 19 customers.

20 (2) That the taxi company directs or controls the manner, means,
 21 and details of transporting a passenger.

22 (3) That the parties do not have a written agreement that
 23 describes the driver as an independent contractor.

24 (4) That the taxi company imposes a monetary penalty, suspends
 25 dispatch services, or takes other direct punitive action against the
 26 driver for not accepting a trip made available by the company.

27 (5) That the company requires the driver to drive particular
 28 hours, shifts, days, or weeks.

29 (6) That the driver is not allowed to independently promote his
 30 or her business through direct communications with potential
 31 passengers either through advertising or telephone, Internet, e-mail,
 32 text, or data communications.

33 (7) That the taxi company does not utilize a computerized
 34 dispatch system or similar technology that is capable of increasing
 35 the driver’s freedom from traditional, employer-like controls.

36 (c) Notwithstanding subdivision (b), the following factors may
 37 not be considered as evidence of employer-like control by the taxi
 38 company:

39 (1) That the taxi drivers are engaged in the same general
 40 business or occupation as the taxi company, or that the drivers are

1 a regular and integrated portion of the taxi company’s business
2 operation, where the drivers drive the passengers and the taxi
3 company provides affiliated services, including, but not limited
4 to, dispatching, towing, repair, maintenance, marketing,
5 technology, fleet insurance, and accounting.

6 (2) That the taxi company takes measures reasonably calculated
7 to encourage the driver to provide those services he or she has
8 agreed to provide when the driver has accepted the offer of a trip
9 or order, or has entered into a taxi stand line, hotel line, airport
10 holding lot line, or similar designated line for taxi transportation.

11 (3) That the taxi company takes measures reasonably calculated
12 to ensure driver compliance with requirements or standards
13 imposed by law, regulation, ordinance, regulatory enforcement,
14 or contract, or principles of good will and courtesy imposed by
15 the company.

16 (4) That the taxi company uses, and allows the drivers access
17 to, technological advancements, including, but not limited to,
18 mobile phone taxi request technology or rear-seat credit card
19 processing technology, thereby increasing the mutual profitability
20 of the enterprise for both the taxi company and the driver.

21 (5) That the driver pays or reimburses the taxi company for the
22 services, vehicles, or other equipment provided by the company,
23 including, but not limited to, the services of dispatching, towing,
24 repair, maintenance, marketing, technology, fleet insurance, and
25 accounting.

26 (6) That the driver accepts dispatch services only from a single
27 taxi company, whether by choice, or pursuant to a contract or law,
28 if all the following requirements are met:

29 (A) The driver is independently licensed as a taxi driver by a
30 municipal, county, or regional authority.

31 (B) The driver may terminate his affiliation with the taxi
32 company, without cause, by notice to the taxi company within 30
33 days or less before the effective date of the termination.

34 (C) After termination of his or her affiliation with the taxi
35 company, the driver may affiliate his license, vehicle, or both with
36 a competitor taxi company.

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