

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1897

Introduced by Assembly Member Roger Hernández

February 19, 2014

An act to ~~amend Section 2810 of~~ *add Section 2810.3 to the Labor Code, relating to private employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1897, as amended, Roger Hernández. ~~Employment. Labor contracting: client liability.~~

Existing law regulates the terms and conditions of employment and establishes specified obligations of employers to employees. Existing law prohibits a person or entity from entering into a contract for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, if the person or entity knows or should know that the contract or agreement does not include sufficient funds for the contractor to comply with laws or regulations governing the labor or services to be provided.

This bill would require a client employer, as defined, to share with a labor contractor all legal responsibility and liability for the payment of wages, the failure to report and pay all required employer contributions, worker contributions, and personal income tax withholdings, and the failure to obtain valid workers' compensation coverage. The bill would define a client employer as an individual or entity that receives workers to perform labor or services within the usual course of business of the individual or entity from a labor contractor. The bill would define a labor contractor as an individual or entity that supplies workers, by contract or otherwise, to perform

labor or services within the usual course of business for a client employer. The bill would specify that it does not prohibit client employers and labor contractors from mutually contracting for remedies, including indemnification, for violations of its provisions by the other party. The bill would require a client employer or labor contractor to provide to a requesting agency or department, and make available for copying, information required to verify compliance with applicable state laws. The bill would authorize the Labor Commissioner and the Division of Occupational Safety and Health to adopt necessary regulations and rules to administer and enforce the bill’s provisions. The bill would provide that waiver of its provisions is contrary to public policy, void, and unenforceable.

~~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 among others, 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~~-yes.
 State-mandated local program: no.

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

- 1 SECTION 1. Section 2810.3 is added to the Labor Code, to
- 2 read:
- 3 2810.3. (a) As used in this section:
- 4 (1) “Client employer” means an individual or entity that
- 5 receives workers to perform labor or services within the usual
- 6 course of business of the individual or entity from a labor
- 7 contractor.
- 8 (2) “Labor contractor” means an individual or entity that
- 9 contracts with a client employer to supply workers to perform
- 10 labor or services within the usual course of business or otherwise
- 11 provides workers to perform labor or services within the usual
- 12 course of business for the client employer.
- 13 (3) “Wages” has the same meaning provided by Section 200
- 14 and all sums payable to an employee or the state because of any
- 15 failure to pay wages, as may be required by law.

1 (4) "Worker" does not include an employee who is exempt from
2 the payment of an overtime rate of compensation for executive,
3 administrative, and professional employees pursuant to wage
4 orders by the Industrial Welfare Commission described in Section
5 515.

6 (b) A client employer shall share with a labor contractor all
7 legal responsibility and liability for the following:

8 (1) The payment of wages to workers provided by a labor
9 contractor.

10 (2) The failure to report and pay all required employer
11 contributions, worker contributions, and personal income tax
12 withholdings as required by the Unemployment Insurance Code.

13 (3) Failure to obtain valid workers' compensation coverage as
14 required by law.

15 (c) A client employer shall not shift to the labor contractor any
16 legal duties or liabilities under the provisions of Division 5
17 (commencing with Section 6300) with respect to workers supplied
18 by the labor contractor.

19 (d) The provisions of subdivisions (b) and (c) are in addition
20 to, and shall be supplemental of, any other liability or requirement
21 established by statute or common law.

22 (e) This section does not prohibit a client employer from
23 establishing, exercising, or enforcing by contract any remedies
24 against a labor contractor, including, but not limited to,
25 indemnification for liability created by acts of a labor contractor.

26 (f) This section does not prohibit a labor contractor from
27 establishing, exercising, or enforcing by contract any remedies
28 against a client employer, including, but not limited to,
29 indemnification for liability created by acts of a client employer.

30 (g) Upon request by a state agency or department, a client
31 employer or a labor contractor shall provide to the agency or
32 department any information required to verify compliance with
33 applicable state laws. Upon request, these records shall be made
34 available promptly for inspection, and the state agency or
35 department shall be permitted to copy them.

36 (h) The Labor Commissioner and the Division of Occupational
37 Safety and Health may adopt regulations and rules of practice and
38 procedure necessary to administer and enforce this section.

39 (i) A waiver of this section is contrary to public policy, and is
40 void and unenforceable.

1 SECTION 1. Section 2810 of the Labor Code is amended to read:

2 2810. (a) A person or entity shall not enter into a contract or
3 agreement for labor or services with a construction, farm labor,
4 garment, janitorial, security guard, or warehouse contractor, if the
5 person or entity knows or should know that the contract or
6 agreement does not include funds sufficient to allow the contractor
7 to comply with all applicable local, state, and federal laws or
8 regulations governing the labor or services to be provided.

9 (b) There is a rebuttable presumption affecting the burden of
10 proof that there has been no violation of subdivision (a) if the
11 contract or agreement with a construction, farm labor, garment,
12 janitorial, security guard, or warehouse contractor meets all of the
13 requirements in subdivision (d).

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

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

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

32 (2) A description of the labor or services to be provided and a
33 statement of when those services are to be commenced and
34 completed.

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

38 (4) The workers' compensation insurance policy number and
39 the name, address, and telephone number of the insurance carrier

1 of the construction, farm labor, garment, janitorial, security guard,
2 or warehouse contractor.

3 ~~(5) The vehicle identification number of any vehicle that is~~
4 ~~owned by the construction, farm labor, garment, janitorial, security~~
5 ~~guard, or warehouse contractor and used for transportation in~~
6 ~~connection with any service provided pursuant to the contract or~~
7 ~~agreement, the number of the vehicle liability insurance policy~~
8 ~~that covers the vehicle, and the name, address, and telephone~~
9 ~~number of the insurance carrier.~~

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

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

15 ~~(8) The amount of the commission or other payment made to~~
16 ~~the construction, farm labor, garment, janitorial, security guard,~~
17 ~~or warehouse contractor for services under the contract or~~
18 ~~agreement.~~

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

24 ~~(10) The signatures of all parties, and the date the contract or~~
25 ~~agreement was signed.~~

26 ~~(e) (1) To qualify for the rebuttable presumption set forth in~~
27 ~~subdivision (b), a material change to the terms and conditions of~~
28 ~~a contract or agreement between a person or entity and a~~
29 ~~construction, farm labor, garment, janitorial, security guard, or~~
30 ~~warehouse contractor must be in writing, in a single document,~~
31 ~~and contain all of the provisions listed in subdivision (d) that are~~
32 ~~affected by the change.~~

33 ~~(2) If a provision required to be contained in a contract or~~
34 ~~agreement pursuant to paragraph (7) or (9) of subdivision (d) is~~
35 ~~unknown at the time the contract or agreement is executed, the~~
36 ~~best estimate available at that time is sufficient to satisfy the~~
37 ~~requirements of subdivision (d). If an estimate is used in place of~~
38 ~~actual figures in accordance with this paragraph, the parties to the~~
39 ~~contract or agreement have a continuing duty to ascertain the~~
40 ~~information required pursuant to paragraph (7) or (9) of subdivision~~

1 ~~(d) and to reduce that information to writing in accordance with~~
 2 ~~the requirements of paragraph (1) once that information becomes~~
 3 ~~known.~~

4 ~~(f) A person or entity who enters into a contract or agreement~~
 5 ~~referred to in subdivisions (d) or (e) shall keep a copy of the written~~
 6 ~~contract or agreement for a period of not less than four years~~
 7 ~~following the termination of the contract or agreement. Upon the~~
 8 ~~request of the Labor Commissioner, any person or entity who~~
 9 ~~enters into the contract or agreement shall provide to the Labor~~
 10 ~~Commissioner a copy of the provisions of the contract or~~
 11 ~~agreement, and any other documentation, related to paragraphs~~
 12 ~~(1) to (10), inclusive, of subdivision (d). Documents obtained~~
 13 ~~pursuant to this section are exempt from disclosure under the~~
 14 ~~California Public Records Act (Chapter 3.5 (commencing with~~
 15 ~~Section 6250) of Division 7 of Title 1 of the Government Code).~~

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

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

30 ~~(h) The phrase “construction, farm labor, garment, janitorial,~~
 31 ~~security guard, or warehouse contractor” includes any person, as~~
 32 ~~defined in this code, whether or not licensed, who is acting in the~~
 33 ~~capacity of a construction, farm labor, garment, janitorial, security~~
 34 ~~guard, or warehouse contractor.~~

35 ~~(i) (1) The term “knows” includes the knowledge, arising from~~
 36 ~~familiarity with the normal facts and circumstances of the business~~
 37 ~~activity engaged in, that the contract or agreement does not include~~
 38 ~~funds sufficient to allow the contractor to comply with applicable~~
 39 ~~laws.~~

- 1 ~~(2) The phrase “should know” includes the knowledge of any~~
2 ~~additional facts or information that would make a reasonably~~
3 ~~prudent person undertake to inquire whether, taken together, the~~
4 ~~contract or agreement contains sufficient funds to allow the~~
5 ~~contractor to comply with applicable laws.~~
6 ~~(3) A failure by a person or entity to request or obtain any~~
7 ~~information from the contractor that is required by an applicable~~
8 ~~statute or by the contract or agreement between them, constitutes~~
9 ~~knowledge of that information for purposes of this section.~~
10 ~~(j) For the purposes of this section, “warehouse” means a facility~~
11 ~~the primary operation of which is the storage or distribution of~~
12 ~~general merchandise, refrigerated goods, or other products.~~