

AMENDED IN ASSEMBLY APRIL 10, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1897**

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**Introduced by Assembly Member Roger Hernández**

February 19, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1897, as amended, Roger Hernández. 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 *civil* legal responsibility and *civil* 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~~ *obtains or is provided* 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 *otherwise lawful* 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 *enforcement* 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, *and the Employment Development Department* 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.

Vote: majority. Appropriation: no. Fiscal committee: 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 ~~receives~~
- 5 *obtains or is provided* workers to perform labor or services within
- 6 the usual 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~~ *based*
- 15 *upon* any failure to pay wages, as ~~may be required~~ *provided* by
- 16 law.
- 17 (4) “Worker” does not include an employee who is exempt from
- 18 the payment of an overtime rate of compensation for executive,
- 19 administrative, and professional employees pursuant to wage orders
- 20 by the Industrial Welfare Commission described in Section 515.

1 (b) A client employer shall share with a labor contractor all *civil*  
2 legal responsibility and *civil* liability for the following:

3 (1) The payment of wages to workers provided by a labor  
4 contractor.

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

8 (3) Failure to ~~obtain~~ *secure* valid workers' compensation  
9 coverage as required by ~~law~~ *Section 3700*.

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

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

17 (e) This section does not prohibit a client employer from  
18 establishing, exercising, or enforcing by contract any *otherwise*  
19 *lawful* remedies against a labor contractor, ~~including, but not~~  
20 ~~limited to, for~~ indemnification for liability created by acts of a  
21 labor contractor.

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

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

33 (h) ~~The Labor Commissioner and the Division of Occupational~~  
34 ~~Safety and Health~~ may adopt regulations and rules of practice and  
35 procedure necessary to administer and enforce ~~this section~~ *the*  
36 *provisions of subdivisions (b) and (g) that are under his or her*  
37 *jurisdiction*.

38 (i) *The Division of Occupational Safety and Health may adopt*  
39 *regulations and rules of practice and procedure necessary to*

1 *administer and enforce the provisions of subdivisions (c) and (g)*  
2 *that are under its jurisdiction.*

3 *(j) The Employment Development Department may adopt*  
4 *regulations and rules of practice and procedure necessary to*  
5 *administer and enforce the provisions of subdivisions (b) and (g)*  
6 *that are under its jurisdiction.*

7 *(i)*

8 *(k) A waiver of this section is contrary to public policy, and is*  
9 *void and unenforceable.*

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