

AMENDED IN SENATE JULY 1, 2014
AMENDED IN ASSEMBLY MAY 28, 2014
AMENDED IN ASSEMBLY MAY 23, 2014
AMENDED IN ASSEMBLY APRIL 10, 2014
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 add Section 2810.3 to the Labor Code, relating to 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 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~~, *the obligation to provide a safe work environment, as specified*, and the failure to obtain valid workers' compensation coverage. The bill would define a client employer as a business entity that obtains or is provided workers to perform labor or services within the usual course of business from a labor contractor, except as specified. The bill would define a labor contractor as an individual or entity that supplies workers, either with or without a contract, to a client employer to perform labor or services within the client employer's usual course of business and would except from this definition specified nonprofit, labor, and motion picture payroll services organizations. The bill would specify that it does not prohibit client employers and labor contractors from mutually contracting for otherwise lawful remedies 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 within its possession, custody, or control required to verify compliance with applicable state laws. The bill would authorize the Labor Commissioner, 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 a business entity, regardless of its
 5 form, that obtains or is provided workers to perform labor or
 6 services within its usual course of business from a labor contractor.
 7 "Client employer" does not include a business entity with a
 8 workforce of less than 25 workers, including those hired directly
 9 by the client employer and those obtained from, or provided by,
 10 any labor ~~contractor~~. *contractor, and five or fewer workers supplied*
 11 *by a labor contractor at any given time.* "Client employer" does

1 not include the state or any political subdivision of the state,
2 including any city, county, city and county, or special district.

3 (2) “Labor contractor” means an individual or entity that
4 supplies, either with or without a contract, a client employer with
5 workers to perform labor or services within the client employer’s
6 usual course of business. “Labor contractor” does not include any
7 of the following:

8 (A) A bona fide nonprofit, community-based organization that
9 provides services to low-wage workers.

10 (B) A bona fide labor organization or apprenticeship program
11 or hiring hall operated pursuant to a collective bargaining
12 agreement.

13 (C) A motion picture payroll services company as defined in
14 subparagraph (A) of paragraph (4) of subdivision (f) of Section
15 679 of the Unemployment Insurance Code.

16 (3) “Wages” has the same meaning provided by Section 200
17 and all sums payable to an employee or the state based upon any
18 failure to pay wages, as provided by law.

19 (4) “Worker” does not include an employee who is exempt from
20 the payment of an overtime rate of compensation for executive,
21 administrative, and professional employees pursuant to wage orders
22 by the Industrial Welfare Commission described in Section 515.

23 (5) “Usual course of business” means the regular and customary
24 work of a business, performed within or upon the premises or
25 worksite of the client employer.

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

28 (1) The payment of wages to workers provided by a labor
29 contractor.

30 ~~(2) The failure to report and pay all required employer~~
31 ~~contributions, worker contributions, and personal income tax~~
32 ~~withholdings as required by the Unemployment Insurance Code~~
33 ~~obligation to provide a safe work environment under the provisions~~
34 ~~of Division 5 (commencing with Section 6300).~~

35 (3) Failure to secure valid workers’ compensation coverage as
36 required by Section 3700.

37 ~~(e) A client employer shall not shift to the labor contractor any~~
38 ~~legal duties or liabilities under the provisions of Division 5~~
39 ~~(commencing with Section 6300) with respect to workers supplied~~
40 ~~by the labor contractor.~~

1 (c) At least 30 days prior to filing a claim against a client
2 employer for violations covered by this section, a worker or his
3 or her representative shall notify the client employer of violations
4 under subdivision (b).

5 (d) Neither the client employer nor the labor contractor may
6 take any adverse action against any worker for providing
7 notification of violations or filing a claim.

8 ~~(d)~~

9 (e) The provisions of ~~subdivisions (b) and (e)~~ subdivision (b)
10 are in addition to, and shall be supplemental of, any other theories
11 of liability or requirement established by statute or common law.

12 ~~(e)~~

13 (f) This section does not prohibit a client employer from
14 establishing, exercising, or enforcing by contract any otherwise
15 lawful remedies against a labor contractor for liability created by
16 acts of a labor contractor.

17 ~~(f)~~

18 (g) This section does not prohibit a labor contractor from
19 establishing, exercising, or enforcing by contract any otherwise
20 lawful remedies against a client employer for liability created by
21 acts of a client employer.

22 ~~(g)~~

23 (h) Upon request by a state enforcement agency or department,
24 a client employer or a labor contractor shall provide to the agency
25 or department any information within its possession, custody, or
26 control required to verify compliance with applicable state laws.
27 Upon request, these records shall be made available promptly for
28 inspection, and the state agency or department shall be permitted
29 to copy them. This subdivision does not require the disclosure of
30 information that is not otherwise required to be disclosed by
31 employers upon request by a state enforcement agency or
32 department.

33 ~~(h)~~

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

38 ~~(i)~~

39 (j) The Division of Occupational Safety and Health may adopt
40 regulations and rules of practice and procedure necessary to

1 administer and enforce the provisions of subdivisions ~~(e)~~ and ~~(g)~~
2 ~~(b)~~ and ~~(h)~~ that are under its jurisdiction.

3 ~~(j)~~

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

8 ~~(k)~~

9 ~~(l)~~ A waiver of this section is contrary to public policy, and is
10 void and unenforceable.

11 ~~(t)~~

12 ~~(m)~~ This section shall not be interpreted to impose individual
13 liability on a homeowner for labor or services received at the home
14 or the owner of a home-based business for labor or services
15 received at the home.

16 ~~(m)~~

17 ~~(n)~~ This section shall not be interpreted to impose liability on
18 a client employer for the use of a bona fide independent contractor
19 or to change the definition of independent contractor.

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