

ASSEMBLY BILL

No. 621

Introduced by Assembly Member Roger Hernández

February 24, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 621, as introduced, Roger Hernández. Drayage truck operators.

Existing law governs the relationship between an employer and an employee with regard to hiring, promotion, discipline, wages and hours, working conditions, and administrative and judicial remedies. Existing law sets forth guidelines for determining whether a person who performs work for another pursuant to a contract is an employee or an independent contractor. Existing law authorizes the Labor Commissioner to investigate employee complaints and to conduct a hearing in any action to recover wages, penalties, and other demands for compensation.

This bill would, notwithstanding any law, relieve a motor carrier performing drayage services of liability for statutory or civil penalties associated with misclassification of commercial drivers as independent contractors if the motor carrier enters into a consent decree with the Labor Commissioner prior to January 1, 2017, whereby the motor carrier agrees to convert all of its commercial drivers to employees, and the consent decree contains prescribed components, including, but not limited to, an agreement by the motor carrier to pay all wages, benefits, and taxes owed, if any.

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

3 2750.8. (a) Notwithstanding any law, a motor carrier
4 performing drayage services at one or more ports in this state shall
5 be relieved of liability for statutory or civil penalties associated
6 with misclassification of commercial drivers as independent
7 contractors if the motor carrier enters into a consent decree with
8 the Labor Commissioner whereby the motor carrier agrees to
9 convert all of its commercial drivers to employees.

10 (b) A consent decree entered into pursuant to subdivision (a)
11 shall contain all of the following:

12 (1) An agreement by the motor carrier to pay all wages, benefits,
13 and taxes owed, if any, to or in relation to all of its converted
14 commercial drivers covering the period of time from the first date
15 of misclassification to the date the consent decree is entered into,
16 but not exceeding the applicable statute of limitations.

17 (2) An agreement by the motor carrier to maintain any converted
18 commercial driver positions as employee positions.

19 (3) An agreement by the motor carrier that any future
20 commercial drivers hired to perform the same or similar duties as
21 those employees converted pursuant to subdivision (a) shall be
22 presumed to have employee status and that the motor carrier shall
23 have the burden to prove by clear and convincing evidence that
24 they are not employees in any administrative or judicial proceeding
25 in which their employment status is an issue.

26 (4) Any other provisions the Labor Commissioner deems
27 necessary to carry out the intent of this section or to enforce the
28 provisions of the consent decree.

29 (c) As used in this section, the following terms have the
30 following meanings:

31 (1) "Commercial driver" means a person who holds a valid
32 commercial driver's license hired or contracted with to provide
33 port drayage services.

34 (2) "Motor carrier" means a registered owner, lessee, licensee,
35 or bailee of a commercial motor vehicle as set forth in Section
36 34500 of the Vehicle Code, who operates or directs the operation
37 of any such vehicle on a for-hire or not-for-hire basis to perform
38 port drayage services.

1 (3) “Port” means any sea or river port in this state.

2 (d) This section shall not apply to a motor carrier that has a
3 pending civil lawsuit against it in state or federal court alleging
4 misclassification of commercial drivers where the lawsuit was
5 filed prior to January 1, 2015.

6 (e) This section shall apply only to consent decrees entered into
7 by the Labor Commissioner prior to January 1, 2017.

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