

Assembly Bill No. 1311

CHAPTER 61

An act to amend Section 201.3 of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 22, 2016. Filed with
Secretary of State July 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1311, Cooper. Temporary services employees: wages.

Existing law generally requires that an employee of a temporary services employer, as defined, be paid weekly. Existing law provides that a violation of these provisions is punishable as a misdemeanor.

This bill would, with certain exceptions, make the weekly pay requirement applicable to a security guard employed by a private patrol operator who is a temporary services employer, as provided.

By expanding the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 201.3 of the Labor Code is amended to read:

201.3. (a) For purposes of this section, the following definitions apply:

(1) "Temporary services employer" means an employing unit that contracts with clients or customers to supply workers to perform services for the clients or customers and that performs all of the following functions:

(A) Negotiates with clients and customers for matters such as the time and place where the services are to be provided, the type of work, the working conditions, and the quality and price of the services.

(B) Determines assignments or reassignments of workers, even if workers retain the right to refuse specific assignments.

(C) Retains the authority to assign or reassign a worker to another client or customer when the worker is determined unacceptable by a specific client or customer.

(D) Assigns or reassigns workers to perform services for clients or customers.

(E) Sets the rate of pay of workers, whether or not through negotiation.

(F) Pays workers from its own account or accounts.

(G) Retains the right to hire and terminate workers.

(2) “Temporary services employer” does not include any of the following:

(A) A bona fide nonprofit organization that provides temporary service employees to clients.

(B) A farm labor contractor, as defined in subdivision (b) of Section 1682.

(C) A garment manufacturing employer, which, for purposes of this section, has the same meaning as “contractor,” as defined in subdivision (d) of Section 2671.

(3) “Employing unit” has the same meaning as defined in Section 135 of the Unemployment Insurance Code.

(4) “Client” and “customer” means the person with whom a temporary services employer has a contractual relationship to provide the services of one or more individuals employed by the temporary services employer.

(b) (1) (A) Except as provided in paragraphs (2) to (5), inclusive, if an employee of a temporary services employer is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week. A temporary services employer shall be deemed to have timely paid wages upon completion of an assignment if wages are paid in compliance with this subdivision.

(B) Except as provided in paragraphs (2) to (5), inclusive, if an employee of a temporary services employer in the security services industry is a security guard who is registered pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, is employed by a private patrol operator licensed pursuant to that chapter, and is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any workweek, as defined under Section 500, shall be due and payable not later than the regular payday of the following workweek.

(2) If an employee of a temporary services employer is assigned to work for a client on a day-to-day basis, that employee’s wages are due and payable at the end of each day, regardless of when the assignment ends, if each of the following occurs:

(A) The employee reports to or assembles at the office of the temporary services employer or other location.

(B) The employee is dispatched to a client’s worksite each day and returns to or reports to the office of the temporary services employer or other location upon completion of the assignment.

(C) The employee's work is not executive, administrative, or professional, as defined in the wage orders of the Industrial Welfare Commission, and is not clerical.

(3) If an employee of a temporary services employer is assigned to work for a client engaged in a trade dispute, that employee's wages are due and payable at the end of each day, regardless of when the assignment ends.

(4) If an employee of a temporary services employer is assigned to work for a client and is discharged by the temporary services employer or leasing employer, wages are due and payable as provided in Section 201.

(5) If an employee of a temporary services employer is assigned to work for a client and quits his or her employment with the temporary services employer, wages are due and payable as provided in Section 202.

(6) If an employee of a temporary services employer is assigned to work for a client for over 90 consecutive calendar days, this section shall not apply unless the temporary services employer pays the employee weekly in compliance with paragraph (1) of subdivision (b).

(c) A temporary services employer who violates this section shall be subject to the civil penalties provided for in Section 203, and to any other penalties available at law.

(d) Nothing in this section shall be interpreted to limit any rights or remedies otherwise available under state or federal law.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent confusion over pay periods for temporary employees who provide important security services that protect persons and property in this state at the earliest possible time, it is necessary that this act take effect immediately.