

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1727

Introduced by Assembly Member Gonzalez
(Coauthor: Senator Allen)

January 28, 2016

~~An act to amend Section 2750.5 of the Labor Code, relating to employment.~~ *An act to add Chapter 4.8 (commencing with Section 1080) to Part 3 of Division 2 of the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1727, as amended, Gonzalez. ~~Employment relations.~~ *Hosting platforms: independent contractors.*

Existing law relating to employment governs the grant of restraining orders or injunctive relief in labor disputes, as defined.

This bill would establish for eligible groups of independent contractors the right to organize and negotiate with hosting platforms, and would declare the activity of such a group to be a labor dispute for purposes of injunctive relief. The bill would require a hosting platform to meet and negotiate with a group on specified subjects. The bill would define terms for those purposes.

The bill would require that, at the request of the group, a written contract for independent contractor services, entered into on or after the date of the conclusion of negotiations conducted in accordance with the bill, by the hosting platform and a member of that group, incorporate any agreement reached in those negotiations.

The bill would require the State Mediation and Conciliation Service to facilitate negotiations, provide mediation services, and investigate any complaint by a group claiming a violation of the negotiation

requirement. The bill would require the service, if it finds that there is probable cause to believe a violation has occurred, to bring an action in a specified superior court for injunctive and other appropriate equitable relief to remedy the violation.

The bill would prohibit a person from penalizing or retaliating against an independent contractor for taking specified actions within the scope of the bill.

The bill would authorize an independent contractor or a representative of independent contractors claiming a violation under this bill to bring an action in superior court for prescribed remedies, and would provide for treble damages with regard to lost income for a willful violation.

The bill would make its provisions severable.

~~Existing law provides a rebuttable presumption affecting the burden of proof that a worker performing services for which a license is required under the Contractors' State License Law, or performing services for a person who is required to obtain that license, is an employee, rather than an independent contractor, and specifies factors to establish proof of independent contractor status.~~

~~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. Chapter 4.8 (commencing with Section 1080) is
2 added to Part 3 of Division 2 of the Labor Code, to read:

3
4 CHAPTER 4.8. HOSTING PLATFORMS

5
6 1080. As used in this chapter:

7 (a) "Group activity" means to self-organize, to negotiate as a
8 group with one or more hosting platforms, or to engage together
9 in other activities for the purpose of group negotiations or other
10 mutual aid or protection, which activity includes, but is not limited,
11 to the following:

12 (1) Communicating with each other and with hosting platforms,
13 customers, and the public through any medium, including, but not
14 limited to, social media and other electronic modes of
15 communication.

1 (2) *Withholding or restricting the amount of work done through*
2 *a hosting platform at any time and for any duration. This*
3 *paragraph does not apply to an independent contractor who*
4 *performs “supportive services,” as defined in Section 12300.1 of*
5 *the Welfare and Institutions Code.*

6 (3) *Boycotting or critiquing a hosting platform’s business*
7 *practices.*

8 (4) *Reporting to law enforcement authorities or making public*
9 *practices of a hosting platform which an independent contractor*
10 *reasonably believes violate local, state, or federal law and*
11 *adversely affect either workers or clients, or both.*

12 (b) *“Hosting platform” is a facility for connecting people or*
13 *entities seeking to hire people for work with people seeking to*
14 *perform that work, using any medium of facilitation, including,*
15 *but not limited to, a dispatch service, an Internet Web site, or other*
16 *Internet-based site. “Hosting platform” does not include a service*
17 *provider if that entity provides only listings of goods or services*
18 *that are contracted directly between buyers and sellers without*
19 *the involvement of the provider and receives no income related to*
20 *the price of the transaction.*

21 1081. (a) *An independent contractor who is not treated by a*
22 *hosting platform as an employee and who does not employ his or*
23 *her own employees shall have the right to engage in group activity*
24 *with respect to one or more hosting platforms.*

25 (b) *Work by an independent contractor, including the use of*
26 *equipment or goods supplied as part of the work performed by the*
27 *independent contractor, is labor within the meaning of Section*
28 *16703 of the Business and Professions Code and group activity*
29 *by independent contractors shall not be subject to any statutory*
30 *or common law prohibition or limitation on combinations in*
31 *restraint of trade, including, but not limited to, Chapter 2*
32 *(commencing with Section 16700) of Part 2 of Division 7 of the*
33 *Business and Professions Code.*

34 (c) *Group activity is a “labor dispute” within the meaning of*
35 *Section 527.3 of the Code of Civil Procedure and Section 1138.1,*
36 *provided that a court may issue injunctive relief to remedy*
37 *violations of this chapter pursuant to Sections ____ and ____.*

38 (d) (1) *A hosting platform shall meet at reasonable times and*
39 *negotiate in good faith about allowed subjects for negotiation with*
40 *any group of independent contractors constituting at least 10 of*

1 *the independent contractors using the platform on an average of*
2 *at least once per week. As used in this paragraph, “allowed*
3 *subjects for negotiation” are pricing, division of revenue, priority*
4 *for assignments or listings, advertising by independent contractors*
5 *on the hosting platform, insurance, acceptance and termination*
6 *of independent contractor participation on the hosting platform,*
7 *acceptance or refusal of services by independent contractors or*
8 *customers, and responsibility for nonpayment by customers.*

9 (2) *An individual or organization that represents independent*
10 *contractors in negotiations with a hosting platform regarding the*
11 *allowed subjects of negotiation pursuant to this section shall not*
12 *be funded directly or indirectly by a hosting platform.*

13 (3) *Participation in the group shall be evidenced by an*
14 *electronic communication from an independent contractor using*
15 *the same address the independent contractor uses to communicate*
16 *with the hosting platform, or a physical document signed by the*
17 *independent contractor, sent to either the hosting platform or to*
18 *one or more other members of the group accepting participation*
19 *in the group and agreeing to be bound contractually by the*
20 *outcome of any negotiations between the group and the hosting*
21 *platform. An independent contractor shall not be bound by the*
22 *outcome of any negotiations between a group and a hosting*
23 *platform unless the independent contractor has given that*
24 *authorization.*

25 (4) *At the request of the group, a written contract for*
26 *independent contractor services, entered into on or after the date*
27 *of the conclusion of negotiations conducted in accordance with*
28 *paragraph (1), between the hosting platform and a member of that*
29 *group, shall incorporate any agreement reached in those*
30 *negotiations.*

31 (e) *The State Mediation and Conciliation Service shall facilitate*
32 *the performance of the obligation of a hosting platform under*
33 *subdivision (d). The State Mediation and Conciliation Service shall*
34 *provide meeting space for negotiations unless the hosting platform*
35 *and the group make other arrangements that are mutually*
36 *agreeable. The State Mediation and Conciliation Service shall*
37 *provide mediation services at the request of either the hosting*
38 *platform or the group. The State Mediation and Conciliation*
39 *Service shall investigate any complaint by a group claiming a*
40 *violation of subdivision (d), and, if it finds that there is probable*

1 *cause to believe a violation has occurred, bring an action in the*
2 *Superior Court of the State of California for the City and County*
3 *of San Francisco for injunctive and other appropriate equitable*
4 *relief to remedy the violation. The court shall award reasonable*
5 *attorney's fees and costs to the State Mediation and Conciliation*
6 *Service if it prevails in any enforcement action.*

7 *(f) A person shall not terminate, discriminate against, or*
8 *otherwise penalize or retaliate against any independent contractor*
9 *for exercising any rights established in this chapter or for making*
10 *a complaint, participating in any enforcement proceedings under*
11 *this chapter, using any civil remedies to enforce his or her rights,*
12 *or otherwise asserting his or her rights under this chapter or*
13 *demonstrating his or her support for the policies of this chapter.*
14 *A person terminating or taking any other adverse action against*
15 *any independent contractor who has engaged in any of the*
16 *foregoing activities within one year preceding the termination or*
17 *other adverse action shall provide to the independent contractor*
18 *at or before the time of the termination or other adverse action a*
19 *detailed written statement of the reason or reasons for the*
20 *termination or other adverse action, including all the facts*
21 *substantiating the reason or reasons and all facts known to the*
22 *person that contradict the substantiating facts.*

23 *(g) An independent contractor or a representative of one or*
24 *more independent contractors claiming a violation of this chapter*
25 *may bring an action in superior court and shall be entitled to all*
26 *remedies available under the law or in equity appropriate to*
27 *remedy that violation, including, but not limited to, injunctive relief*
28 *or other equitable relief, including reinstatement to participation*
29 *in a hosting platform and compensatory damages. For a willful*
30 *violation of subdivision (d), the amount of damages attributable*
31 *to lost income due to the violation shall be trebled.*

32 *1082. The provisions of this chapter are severable. If any*
33 *provision of this chapter or its application is held invalid, that*
34 *invalidity shall not affect other provisions or applications that can*
35 *be given effect without the invalid provision or application.*

36 ~~SECTION 1. Section 2750.5 of the Labor Code is amended to~~
37 ~~read:~~

38 ~~2750.5.—(a) There is a rebuttable presumption affecting the~~
39 ~~burden of proof that an individual performing services for which~~
40 ~~a license is required pursuant to Chapter 9 (commencing with~~

1 Section 7000) of Division 3 of the Business and Professions Code,
2 or who is performing such services for a person who is required
3 to obtain such a license is an employee rather than an independent
4 contractor. Proof of independent contractor status includes
5 satisfactory proof of these factors:

6 (1) That the individual has the right to control, and discretion
7 as to the manner of, performance of the contract for services in
8 that the result of the work and not the means by which it is
9 accomplished is the primary factor bargained for.

10 (2) That the individual is customarily engaged in an
11 independently established business.

12 (3) That the individual's independent contractor status is bona
13 fide and not a subterfuge to avoid employee status. A bona fide
14 independent contractor status is further evidenced by the presence
15 of cumulative factors such as substantial investment other than
16 personal services in the business, holding out to be in business for
17 oneself, bargaining for a contract to complete a specific project
18 for compensation by project rather than by time, control over the
19 time and place the work is performed, supplying the tools or
20 instrumentalities used in the work other than tools and
21 instrumentalities normally and customarily provided by employees,
22 hiring employees, performing work that is not ordinarily in the
23 course of the principal's work, performing work that requires a
24 particular skill, holding a license pursuant to the Business and
25 Professions Code, the intent by the parties that the work
26 relationship is of an independent contractor status, or that the
27 relationship is not severable or terminable at will by the principal
28 but gives rise to an action for breach of contract.

29 (b) In addition to the factors contained in paragraphs (1), (2),
30 and (3) of subdivision (a), a person performing any function or
31 activity for which a license is required pursuant to Chapter 9
32 (commencing with Section 7000) of Division 3 of the Business
33 and Professions Code shall hold a valid contractors' license as a
34 condition of having independent contractor status.

35 (c) For purposes of workers' compensation law, this presumption
36 is a supplement to the existing statutory definitions of employee
37 and independent contractor, and is not intended to lessen the
38 coverage of employees under Division 4 and Division 5.

O