

Assembly Bill No. 1897

CHAPTER 728

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

[Approved by Governor September 28, 2014. Filed with
Secretary of State September 28, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1897, 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 all workers supplied by that labor contractor for the payment of wages and the failure to obtain valid workers' compensation coverage. The bill would prohibit a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor. The bill would define a client employer as a business entity that obtains or is provided workers to perform labor 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 within the client employer's usual course of business. The bill would except from the definition of labor contractor specified nonprofit, labor, and motion picture payroll services organizations and 3rd parties engaged in an employee leasing arrangement, as specified. 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. The bill would prohibit its provisions from being interpreted to impose liability in specified circumstances.

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

SECTION 1. Section 2810.3 is added to the Labor Code, to read:

2810.3. (a) As used in this section:

(1) (A) “Client employer” means a business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor.

(B) “Client employer” does not include any of the following:

(i) A business entity with a workforce of less than 25 workers, including those hired directly by the client employer and those obtained from, or provided by, any labor contractor.

(ii) A business entity with five or fewer workers supplied by a labor contractor or labor contractors to the client employer at any given time.

(iii) The state or any political subdivision of the state, including any city, county, city and county, or special district.

(2) “Labor” has the same meaning provided by Section 200.

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

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

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

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

(D) A third party who is a party to an employee leasing arrangement, as defined by Rule 4 of Section V of the California Workers’ Compensation Experience Rating Plan-1995 (Section 2353.1 of Title 10 of the California Code of Regulations), as it read on January 1, 2014, except those arrangements described in subrule d of Rule 4 of Section V, if the employee leasing arrangement contractually obligates the client employer to assume all civil legal responsibility and civil liability under this act.

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

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

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

(b) A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for both of the following:

(1) The payment of wages.

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

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

(d) At least 30 days prior to filing a civil action against a client employer for violations covered by this section, a worker or his or her representative shall notify the client employer of violations under subdivision (b).

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

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

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

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

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

(j) The Labor Commissioner may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (b) and (i) that are under his or her jurisdiction.

(k) The Division of Occupational Safety and Health may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (c) and (i) that are under its jurisdiction.

(l) The Employment Development Department may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (b) and (i) that are under its jurisdiction.

(m) A waiver of this section is contrary to public policy, and is void and unenforceable.

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

(o) This section shall not be interpreted to impose liability on a client employer for the use of an independent contractor other than a labor contractor or to change the definition of independent contractor.

(p) This section shall not be interpreted to impose liability on the following:

(1) A client employer that is not a motor carrier of property based solely on the employer's use of a third-party motor carrier of property with interstate or intrastate operating authority to ship or receive freight.

(2) A client employer that is a motor carrier of property subcontracting with, or otherwise engaging, another motor carrier of property to provide transportation services using its own employees and commercial motor vehicles, as defined in Section 34601 of the Vehicle Code.

(3) A client employer that is a cable operator as defined by Section 5830 of the Public Utilities Code, a direct-to-home satellite service provider, or a telephone corporation as defined by Section 234 of the Public Utilities Code, based upon its contracting with a company to build, install, maintain, or perform repair work utilizing the employees and vehicles of the contractor if the name of the contractor is visible on employee uniforms and vehicles.

(4) A motor club holding a certificate of authority issued pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code when it contracts with third parties to provide motor club services utilizing the employees and vehicles of the third-party contractor if the name of the contractor is visible on the contractor's vehicles.