

## Employers Using the Services of Labor Contractors May Expect a Floodgate of Employment Law Litigation

Industries from agriculture, construction, technology to finance use the services of labor contractors (also known as “temp agencies” or “subcontractors”). Where the employees of the labor contractor asserted violations of labor laws, the employees’ legal recourse was limited to a claim against their direct employer, the labor contractor. For the most part, the companies that used the services of labor contractors were shielded from labor law claims by employees of the labor contractor. The companies using the services of a labor contractor were not considered employers of the temporary employees and therefore historically the labor laws only applied to the employment relationship.

The Governor’s recent signing of AB 1897 has profoundly changed the liabilities of companies using labor contractors. Despite the absence of the employer/employee relationship, companies using labor contractor employees at their jobsites may be sued in civil court for violations of specified labor laws.

Companies, who otherwise do not violate labor laws and provide a safe work environment, may now be sued for labor law violations committed by the labor contractors. The companies and the labor contractors are “jointly liable” for violations of specified labor laws.

The liability extends to labor law violations committed by labor contractors, despite the fact that the companies are not aware of or have any knowledge of the violations on the part of labor contractors. The newly enacted law is essentially a strict liability statute whereupon the companies will be bound by the wrongful acts of labor contractors.

Companies are jointly liable (for known or unknown violations) in the following areas:

- The payment of wages to workers provided by a labor contractor;
- The failure to report and pay all required employer contributions, worker contribution and personal income tax withholdings;
- Failure to secure valid workers' compensation coverage.

AB 1897 becomes law on January 1, 2015 and will be adopted as Labor Code Section 2810.3. Companies will have little opportunity to gear up for this new law and will be required to essentially review documentation from the labor contractors to assure that they are appropriately providing wages to employees. This will include review of payroll records to assure that the labor contractors are appropriately withholding payroll and contributions. Confirmation of workers’ compensation coverage will be required which will not be limited to a statement of coverage by the labor contractor. The companies will be required to obtain actual documentation of coverage from the carrier.

The companies utilizing the services of a labor contractor will be required to open their books to the assigned governmental agency to confirm compliance. Although the documentation will be labor intensive, the companies must make their documentation available for inspection and copying by the assigned government agency.

The National Employment Law Project (NELP) recently reported that 2.8 million U.S. workers are temporary workers, more than double the number in the 1990s. Based upon the number of temporary workers, businesses using their services must now address the effect of AB 1897 and prepare themselves for litigations which invariably will arise.

The new law does not apply to companies with twenty-five (25) employees or less nor to companies who utilize five (5) or less temporary employees. Municipalities and school districts are not affected by the new law nor are exempt employees such as professional, engineers, and lawyers.

Companies using the services of a labor contractor have legal recourse against the labor contractors. That legal recourse is dependent upon a written contract between the labor contractor and the hiring company. In that contract, the labor contractor must agree to *indemnify* the hiring company for wage and hour violations, payroll deductions and contributions, and an agreement to maintain workers compensation coverage. However, the indemnity agreement will not protect the hiring company from litigation by the employee of the labor contractor, as this responsibility is now shared.

Companies should review their written contracts with labor contractors and attempt to conduct due diligence in assuring that the labor contractor for which they conduct business are reputable. Businesses should contact their insurance brokers to determine if this law will affect their ability to obtain coverage and to determine whether their insurance carriers will provide coverage under instances where the business is sued by employees of labor contractors.

The new law may be found in Labor Code Section 2810.3 which provides:

- 1) Defines "client employer" to mean an individual or entity that obtains or is provided workers to perform labor or services within the usual course of business of the individual or entity from a labor contractor.
- 2) Defines "labor contractor" to mean an individual or entity that contracts with a client employer to supply workers to perform labor or services within the usual course of business or otherwise provides workers to perform labor or services within the usual course of business for the client employer.
- 3) Specifies that "worker" does not include an employee who is exempt from the payment of overtime wages under existing exemptions for executive, administrative, and professional employees.
- 4) Provides that a client employer shall share with a labor contractor all civil legal responsibility and civil liability for the following:
  - a) The payment of wages to workers provided by a labor contractor.

- b) The failure to report and pay all required employer contributions, worker contributions, and personal income tax withholdings.
  - c) Failure to secure valid workers' compensation coverage.
- 5) Prohibits a client employer from shifting to a labor contractor any legal duties or responsibilities related to workplace health and safety.

The enactment of Labor Code Section 2810.3 applies across the board to companies that are otherwise in compliance with labor laws and statutes and provide equal and fair treatment to their employees. These companies, should they require assistance of labor contractors for their businesses, will be at the mercy of labor contractors who fail to act responsibly. Unfortunately, many companies will find themselves in litigation because of the actions of others.