

Passing California AB 1897 Means Greater Liability for Employers Who Use Labor Contractors

Article By:

Labor and Employment Practice

The Issue: Today, many employers rely on **labor contractors** or **temporary employment agencies** to sustain their operations. Occasionally, however, labor contractors fail to comply with labor laws and regulations by failing to (1) pay wages; (2) report and/or pay all required contributions and personal income tax withholdings; and (3) secure workers compensation for subcontractors. In such cases, are employers liable to subcontractors for these types of violations of their labor contractors?

The Solution: Historically, for the most part, no. However, California Assembly Bill (“AB”) 1897, a proposed law currently before the Assembly, would impose joint liability on employers for the violations of their labor contractors.

Analysis: On April 24, 2014, AB 1897 was passed by the state Assembly’s Labor and Employment Committee and will soon be considered by the Assembly’s Committee on Appropriations. The bill would greatly expand an employer’s duties by requiring employers to share with their labor contractors all responsibility and liability for the following: the payment of wages, the failure to report and pay all required employer contributions, worker contributions, and personal income tax withholdings, and the failure to obtain valid workers’ compensation coverage. This could have a significant impact on employers who depend on labor contractors for any number of functions, e.g., to fill seasonal or short-term work schedules, cover for employee absences, avoid layoffs, and pre-screen employees.

While the law currently prohibits employers from entering into a contract for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, if the employer knows or should know that the agreement does not include sufficient funds for the contractor to comply with laws or regulations governing the labor or services to be provided, AB 1897 would expand liability for the above mentioned violations to all industries and all individuals who contract for labor or services. This bill would impose seemingly strict liability on any individual or entity that obtains or uses subcontractors from a labor contractor to perform work “within the usual course of business of the individual or entity.” As such, if AB 1897 were to pass, it would particularly burden small businesses, those without dedicated human resource or legal departments, due to their heavy reliance on contract and temporary employees.

The silver lining is that AB 1897 would not prohibit employers from agreeing to any otherwise lawful remedies against labor contractors for indemnification from liability created by acts of the labor contractor. Employers cannot, however, shift to labor contractors any of their responsibilities under the California Occupational Safety and Health Act. Labor contractors will also have the same opportunity to contract with employers for indemnification. Furthermore, the bill will provide that any waiver of its provisions is contrary to public policy and unenforceable. If AB 1897 becomes law, employers should be especially cautious in selecting a labor contractor and determine what level of contractor evaluation may limit their risk for non-compliant contractors. Unwary employers face the danger of liability for a labor contractor's failure to meet these requirements.

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