

# **CALIFORNIA BILL CREATES EXPANDED EMPLOYER LIABILITY FOR CONTRACTED WORKERS**

**By Chris Micheli**

Despite valiant efforts by the California business community, of which the CLDA was an active participant, AB 1897 by Assemblyman Roger Hernández (D-West Covina) was signed into law by Governor Jerry Brown on September 28. The bill creates new liability for businesses that engage in labor contracting. AB 1897 adds Section 2810.3 to the California Labor Code.

AB 1897 requires 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 secure valid workers' compensation coverage. The bill also prohibits a client employer from shifting to the labor contractor any legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor.

AB 1897 defines 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. A client employer does not include certain "small businesses" (those with fewer than 25 employees), or the State of California or any local government jurisdictions.

AB 1897 defines 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 exempts from the definition of labor contractor certain nonprofit, labor, and motion picture payroll services organizations, as well as third parties engaged in an employee leasing arrangement.

AB 1897 specifies that the bill does not prohibit client employers and labor contractors from mutually contracting for any otherwise lawful remedies for violations of its provisions by the other party.

Although AB 1897 requires a worker or his/her representative to notify the client employer of any violations of this law at least 30 days prior to filing a civil action, there is no right to cure under the bill. Neither a client employer nor a labor contractor may take any adverse action against any worker who provides notification of violations or filing a claim or civil action.

AB 1897 provides that waiver of its provisions is contrary to public policy, void, and unenforceable. The bill specifies that this new section of the Labor Code shall not be interpreted to impose individual liability on homeowners or on client employers for the use of independent contractors. According to the new language, the bill also not intended to change the definition of independent contractor.

Finally, AB 1897 prohibits its provisions from being interpreted to impose liability in specified circumstances. Specifically, the bill exempts the following from its provisions: certain motor carriers of property (Section 2810.3(p)(1) provides "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"); motor carriers of property subcontracting (Section 2810.3(p)(2) provides "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"); cable operators, satellite providers, and telephone corporations; and, certain motor clubs.

The provisions of AB 1897 take effect on January 1, 2015.

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