Ogletree Deakins

Governor Brown Signs Bill Making Companies Liable for Employment Violations of Independent Labor Contractor Companies

Robert A. Jones | September 29, 2014

This weekend, California Governor Jerry Brown signed Assembly Bill 1897. This bill creates new Labor Code section 2810.3, which applies to all but a very limited number of companies with 25 or more employees (i.e., the "client employer") that obtain or are provided workers to perform work within their "usual course of business" from companies that provide workers (i.e., "labor contractors"). The new law makes such companies liable for

- payment of wages to the contractor's employees;
- the contractor's failure to secure valid workers' compensation coverage; and
- compliance with all occupational health and safety requirements.

This new statutory liability on the part of companies legally contracting for labor services is not, in any manner, related to any required finding of joint or co-employment or any control over the workers' working conditions, manner of payment, scheduling, or working environment. Companies are liable under the new law even if they can show that they were unaware that any violations existed or were occurring.

The statute defines a company's "usual course of business" to mean "the regular and customary work of a business, performed within or upon the premises or worksite of the client employer." It also defines "workers" to exclude employees who are exempt from overtime as executive, administrative, or professional employees under California law.

There are a few exemptions from the definition of a covered "client employer." These are companies with less than 25 workers; ones with 5 or fewer workers supplied by labor contractors at any given time; the state or any political subdivision of the state; homeowners (including home-based businesses) for labor or services received at their homes; and motor carriers of property providing transportation services. There are also limited exemptions from the definition of covered "labor contractors" that include non-profit, community-based organizations that provide services of workers; unions, hiring halls, or apprenticeship programs; motion picture payroll services companies; third parties subject to bona fide employee leasing arrangements; motor club services; and cable operators, satellite service provides, and telephone corporations.

The new law, which will become effective on January 1, 2015, contains additional provisions related to its enforcement by the Labor Commissioner, the state Division of Occupational Safety and Health (Cal/OSHA), and the Employment Development Department, including the authority of each to adopt necessary regulations and rules for its administration and enforcement.

This bill was co-sponsored by the California Labor Federation, the International Brotherhood of Teamsters, and the United Food and Commercial Workers International Union and was supported by the Service Employees International Union and the California Rural Legal Assistance Foundation. The California Chamber of Commerce listed the bill on its list of 2014 "job killer" bills.

There can be no question that all companies utilizing the services of "labor contractors" as defined by this law will need to engage in significantly increased oversight of how their contractors comply with their legal requirements with respect to the contractors' employees. How this required increased oversight will impact the courts and regulatory findings of joint and co-employment going forward remains to be seen. However, based on the current legal grounds for finding such, it clearly appears that maintaining true

separation between your employees and your independent labor contractor's employees will become even more difficult in the future.

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September 29, 2014 | TAGS: Administrative Employee, apprenticeship programs, Assembly Bill 1897, Cal/OSHA, California Chamber of Commerce, California Governor Jerry Brown, California Labor Federation, California law, client employer, co-employment, community-based organizations, control over the workers' manner of payment, control over the workers' scheduling, control over the workers' working conditions, control over the workers' working environment, Division of Occupational Safety and Health, Employment Development Department, executive employee, hiring halls, joint employment, Labor Code section 2810.3, Labor Commissioner, labor contractors, legally contracting for labor services, motion picture payroll services companies, non-profit, occupational health and safety requirements, overtime, payment of wages to the contractor's employees, professional employee, regular and customary work of a business, Service Employees International Union, state or any political subdivision of the state, the California Rural Legal Assistance Foundation, the International Brotherhood of Teamsters, the United Food and Commercial Workers International Union, third parties subject to bona fide employee leasing arrangements, transportation services, unions, usual course of business, valid workers' compensation coverage.

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