CALIFORNIA ENACTS LAW TO PROTECT TEMP WORKERS

In late 2014 California enacted Labor Code section 2810.3 (AB 1897), which extends liability to employers for a subcontractor's failure to pay wages or failure to provide Workers' Compensation coverage to contract workers. So, if your company hires temporary help through a temp agency, and that agency fails to pay the workers properly, your company could be on the hook for the unpaid wages (even if you paid the agency in full for the services provided!). Prior to the enactment of Labor Code section 2810.3, contract workers who did not receive pay from their placement agency had to show the contracting/client ("employer") was a "joint employer" in order to recoup the unpaid wages from the contracting/client employer.

While the new law imposes significant risk of liability on employers, several items in the text of the new law lessen its potential impact:

1. The law only applies to employers with 25 or more employees (including the contracted workers).

2. The law does not apply if the employer uses less than 5 contract workers at any given time.

3. Exempt contract workers are not covered by the law (assuming they are properly classified as "exempt").

4. Certain types of employers are specifically excluded from the law:
    a. Motor carriers of property that contract with or engage another motor carrier to provide transportation services;
    b. Employers that utilize a third-party motor carrier of property with interstate or intrastate operating authority to ship or receive freight;
    c. Cable operators, telephone corporations, and direct-to-home satellite providers that contract with a company to build, install, maintain, or perform repair work as long as the name of the contractor is visible on employee uniforms and vehicles;
    d. Motor clubs that contract with third parties to provide motor club services if the name of the contractor is visible on the contractor's vehicles; and
    e. The state or any political subdivision of the state.

5. Certain types of "labor contractors" (the agencies or organizations providing the workers) are also specifically excluded by the law:
    a. Bona-fide non-profit community-based organizations that provide services to workers;

b. Bona-fide labor organizations or apprenticeship programs operated pursuant to a collective bargaining agreement;

c. Motion picture payroll services companies; and

d. Third Parties who are party to an employee leasing arrangement if the employee leasing arrangement contractually obligated the client employer to assume all civil responsibility and liability under the law.

6. Independent Contractors (if properly categorized as such) are not covered by the new law.

In addition, "Labor Contractors" are defined by the law as individuals or entities that supply workers to perform labor "**within the client employer's usual course of business**". This definition is crucial – contractor/client employers who contract for services unrelated to their usual business will not be penalized by the new law (for those services). For example, a restaurant that contracts with an electrical company for electrician services would not face potential liability under the new law for the electricians' unpaid wages, or the electrical company's lack of Workers' Compensation insurance for those electricians.

Prudent employers concerned about the impact of this law on their business will: 1) review the status of any contracted worker supplied by another entity, particularly independent contractors and exempt workers to ensure they are properly classified; 2) thoroughly investigate staffing or temp agencies to make sure they are reliable and comply with wage-and-hour and Workers' Compensation laws; and 3) include a strong indemnification provision in agreements with staffing or temp agencies to protect against any loss stemming from claims made by the staffing or temp agencies' employees.

If you would like more information about Labor Code section 2810.3 or "joint employers" under California law please contact us.

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