More Employer Liability When Contracting for Labor

AB 1897 is a sweeping new law that will increase liability on employers who contract for labor. The purpose of the law, which goes into effect January 1, 2015, is to hold companies accountable for wage-and-hour violations when using staffing agencies or other labor contractors to supply workers.

To Whom Does This Law Apply?
Any “client employer,” which is defined as a business entity with 25 or more employees that obtains or is provided at least six (6) workers to perform labor within the usual course of business from one labor contractor or various labor contractors.

In other words, this law could apply to employers who use staffing agencies or other labor contractors to supply workers.

Not ‘Client Employer’
The following business entities are excluded from the definition of “client employer” or from the liability imposed under the provisions of this bill, under the following conditions and contracts:
• Business entity with fewer than 25 employees;
• Business entity that has five (5) or fewer employees from a labor contractor or various labor contractors at any given time;
• Motor carrier of property that contracts with or engages another motor carrier of property to provide transportation services;
• Employer that utilizes a third-party motor carrier of property with interstate or intrastate operating authority to ship or

See More Employer Liability: Page 4

California Newspapers Endorse Propositions 1, 2

With the General Election just around the corner, newspapers up and down the state have published editorials urging a “yes” vote on California Chamber of Commerce-supported Propositions 1 and 2.

To date, close to 30 newspapers have endorsed both the Proposition 1 water bond and Proposition 2, which stabilizes the state budget process and increases the rainy day reserve fund.

Proposition 1
Proposition 1, a $7.5 billion water bond with significant funding for needed water storage projects, is the result of a historic bipartisan agreement.

California is in a severe, multi-year drought and has an aging water infrastructure. Proposition 1 creates a comprehensive state water plan that ensures a reliable water supply for farms and businesses during severe drought, protecting both the economy and the environment.

Proposition 1 provides monies to clean contaminated groundwater which serves as a critical buffer against drought by providing additional water in years when there is not enough rainfall or snow. Proposition 1 also expands water recycling and efficiency improvements, making the best use of the state’s existing supplies. In addition, the measure provides funding for clean drinking water in communities where water is contaminated.

Proposition 1 invests in new water storage by increasing the amount of water that can be stored during wet years for the dry years that will continue to challenge California.

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Next Steps for Climate Change Law: Page 3
**Labor Law Corner**

**Reasons to Run Consumer Background Check After Making Job Offer**

Can we run a consumer background check on an applicant before making a job offer? We would like to screen out applicants before making a job offer. No specific law precludes an employer from conducting a consumer background check before making a job offer (this is distinguished from a criminal background check). However, many employers wait to conduct consumer background checks until post-offer/pre-employment.

**Privacy Concerns**

There are privacy concerns that should always be kept in mind when conducting a background check, regardless of the time. One is the additional layer of privacy offered to Californians by the right of privacy guaranteed to them in the California Constitution.

Not all states have a separate right of privacy, but California zealously protects its residents’ privacy. It is considered an invasion of that privacy to dig into someone’s background, but the offer of employment, even if conditional, is considered a reason to do that search.

Additionally, if an employer conducts a pre-offer background check and uncovers certain private information, then makes an adverse decision accordingly, it can be considered a discriminatory action.

An applicant’s age, race, religion, etc. can be discovered during such a check, and a claim of discrimination can be made if an adverse decision was made because of such protections.

**Federal Guidelines**

The U.S. Equal Employment Opportunity Commission has issued guidelines on this topic (see [www.eeoc.gov/eeoc/publications/background_checks_employers.cfm](http://www.eeoc.gov/eeoc/publications/background_checks_employers.cfm)). These types of background checks do not present an issue if the employer does not use the information in a way that discriminates on the basis of protected classes such as race.

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**Statement of Ownership, Management and Circulation**

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Next Steps for Climate Change Law in State

When Governor Edmund G. Brown Jr. spoke to the United Nations Climate Summit last month, he made a strong pitch for state and local government activism to fight climate change. The Governor also promised to set an ambitious goal for carbon reduction for 2030 that “will also require heightened political will.”

The Governor’s timing is perfect because California’s climate change law is about to make a real impact on Californians. Politicians, regulators and special interests have spent the past eight years claiming credit, pointing fingers, writing regulations, filing lawsuits, fighting a ballot measure and spending money taxed from just a few companies.

Cost Shift to Motorists

But beginning January 1, the costs of controlling greenhouse gas emissions finally pass directly to motorists—as the California Air Resources Board (ARB) intended.

It’s not a secret that pricing is a key strategy to reduce carbon demand. “It may not be popular to say, but that’s necessary. Higher prices discourage demand,” former Senate leader Darrell Steinberg (D-Sacramento) said.

Once this new cost is layered onto gasoline and diesel prices (estimated at 13 cents to 20 cents a gallon), it will be the first step in what will be higher prices for a wide range of carbon-intensive products, not to mention a major shift in how the state’s economy is structured.

Regulation Post 2020

The main event will be how California chooses to regulate carbon emissions after 2020.

The ARB has launched new rulemaking that would chart a path ostensibly to reduce greenhouse gas emissions by 80% below 1990 levels by 2050. This goal is in line with scientific guidance to achieve stabilization of atmospheric greenhouse gas concentrations—if achieved globally.

For now, it appears that the ARB is aiming toward an interim target of 35% to 50% below 1990 levels, which it claims is achievable under existing policy goals.

Leading Way

So California will very likely continue to set the bar for carbon regulation—but so far no other state or the federal government has approached it. Indeed, few nations around the globe have been as committed to greenhouse gas reductions as California.

Guest Commentary

By Loren Kaye

Leadership isn’t just being ahead of the pack—it’s getting the rest of the pack to follow. Other states and the federal government need more than just California’s good intentions and elaborate regulations to move into its orbit.

As the executive officer of the ARB said, “What’s good for California, and what others will ultimately look to, is success. The ultimate test of success is going to be: Did it work?”

Next-Generation Framework

California represents less than 1% of global greenhouse gas emissions. Any solution that does not involve a global consensus will cause California to suffer very high costs without any benefits.

With this in mind, noted environmental economists Todd Schatzki and Robert Stavins have outlined a possible next-generation climate change framework. This approach would balance the goals of global leadership and broader participation in reducing greenhouse gas emissions with the health of the state’s economy.

The key element of this policy would be to carefully assess the environmental and economic performance of existing greenhouse gas reduction policies to determine how they have affected the California economy, whether any should be modified or eliminated, or whether new policies should be developed.

Flexibility

In light of the international negotiations on climate change, we should preserve flexibility by avoiding firm emission targets that go too far into the future. Increasing these targets should be conditional on reciprocal actions by other states or nations.

For an individual state like California, more stringent greenhouse gas reduction policies—without reciprocal actions by other states and nations—would lead to greater risks of economic activity fleeing California for other states and countries.

California’s current regulatory scheme relies on a suite of control measures to reduce greenhouse gas emissions, including a market-based cap-and-trade program along with specific mandates, such as a requirement to reduce the amount of carbon in motor fuels, quotas for electricity generated from renewable sources and increased automotive fuel efficiency, among others.

The interaction between the mandatory measures and market-based incentives “can produce perverse policy outcomes,” according to Schatzki and Stavins.

Analysis Needed

Preparations for a next-generation policy should examine the economic efficiency and environmental effectiveness of these command-and-control measures, especially as they may have improved or undermined efficiencies achieved by cap and trade.

This analysis would inform a policy whose goal should be to increase the likelihood of broader international action while protecting the economic well-being of the state. This approach would minimize further erosion of California’s competitiveness and help inform other states that are choosing carbon reduction strategies of their own.

Loren Kaye is president of the California Foundation for Commerce and Education, a nonprofit think tank affiliated with the California Chamber of Commerce. This commentary first appeared in The Sacramento Bee.
More Employer Liability When Contracting for Labor

Additionally, it imposes civil liability and legal responsibility on the client employer for the labor contractor’s failure to secure valid workers’ compensation coverage for the labor contractor’s employees working pursuant to the contract with the client employer.

Best Practices

Any entity that falls within the definition of “client employer” may want to contact legal counsel to determine what efforts may be made to limit the exposure of liability for a contractor’s wage-and-hour violations or failure to secure workers’ compensation coverage.

Additionally, employers may wish to consider the following tips:

• Review all existing contracts for labor or services to determine what contracts may fall within the scope of “usual course of business.” For those contracts that qualify, contact those contractors to obtain assurances of their labor and employment compliance.

• Consider including legal protections for wage-and-hour violations and workers’ compensation coverage, including duty to defend and/or indemnification provisions, in new and existing contracts.

• Limit reliance on and use of contracted labor or services and determine internally where efficiencies can be made with regard to workload or hiring of additional employees.

CalChamber Policy Advocate Jennifer Barrera urges employers to review the CalChamber fact sheet on AB 1897, which increases liability for employers that contract for labor. View video at www.youtube.com/calchamber.

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receive freight;

• 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;

• Motor club that contracts with third parties to provide motor club services if the name of the contractor is visible on the contractor’s vehicles; or

• The state or any political subdivision of the state.

Not ‘Labor Contractor’

The following entities are specifically excluded from the definition of “labor contractor” and, therefore, the provisions of the bill will not be triggered if they are the ones providing the labor to the client employer:

• A bona fide nonprofit community-based organization that provides services to workers;

• A bona fide labor organization or apprenticeship program or hiring hall operated pursuant to a collective bargaining agreement;

• A motion picture payroll services company; or

• A third party who is a party to an employee leasing arrangement if the employee leasing arrangement contractually obligates the client employer to assume all civil legal responsibility and civil liability under the law.

Exempt Employees

A worker does not include an employee who is properly classified as exempt from the payment of overtime pursuant to the administrative, executive or professional exemption in the Industrial Welfare Commission Wage Orders and, therefore, if the contract is for employees that fall within any of these exemptions, the provisions of the law will not apply.

What Does the Law Do?

Imposes all civil legal responsibility and liability on the client employer for any wage-and-hour violations committed by the labor contractor for the labor contractor’s employees it supplied pursuant to the contract with the client employer.

An employee who believes he/she has not been properly paid or has suffered an injury and there is no workers’ compensation policy, may pursue an administrative claim or civil action against the client employer, labor contractor or both.

If the employee pursues a civil action, the employee or representative must provide notice to the client employer of the alleged violation(s) 30 days before filing the civil action. A civil action is not just limited to a single-plaintiff action, but can include a class action or representative action under Labor Code Section 2699 et seq.

If the employee pursues an administrative claim, no prior notice to the client employer is required.

To prevail in an administrative or civil action against the client employer for the labor contractor’s alleged violations, the employee will need to prove:

• That he/she was not properly compensated or provided with workers’ compensation coverage;

• That these violations occurred while the employee was working pursuant to a contract for labor between the client employer and labor contractor; and

• The contract was for work within the “usual course of business” of the client employer, meaning the work was regular and customary for the client employer and performed within or upon the premises of the worksite of the client employer.
Report Highlights Japanese Businesses’ Contributions to Southern Cal Economy

Southern California is one of the leading global hubs for Japanese companies, according to a recent survey by the Japan External Trade Organization (JETRO) Los Angeles and the Japan Business Association of Southern California (JBA). The “2014 Survey of Japanese Companies in Southern California,” the 11th of its type, went to 673 of the 1,000 Japanese companies in Southern California; 70% responded.

Based in Southern California

Japanese companies’ investment in the regional economy comes through incorporating in the United States, not by acquisitions or capital participation, the survey reported.

Los Angeles County was home for approximately 70% of the companies surveyed, followed by Orange County and San Diego County. Home for many well-established Japanese companies is the City of Torrance, location for 192 companies. The City of Los Angeles has the second highest number with 96 companies, followed by 54 in Irvine and 36 in Gardena.

Nearly half the companies surveyed plan to expand existing facilities/branches or add a new facility/branch in Southern California over the next year or two.

The survey also revealed improved revenues for Japanese companies in the region. Compared to the previous survey in 2012, the number of companies reporting increased sales from the previous year and increased profits was several percentage points higher. The percentage of companies expecting an upswing in operating profit in the next couple of years also has increased.

Industry Distribution

More than half of the Japanese businesses come from the manufacturing (29.9%) and services (27.1%) industries, while wholesale/retail accounts for 15.5%, trading 12.8% and transportation, 7.9%.

Ready access to the Los Angeles and Long Beach ports, as well as the Los Angeles International Airport are significant factors leading to the concentration of these industries in Southern California, which serves as both a major logistics hub in the U.S. and a major trade gateway to Asia.

Job Creation

Japanese firms have more than 57,000 employees in California, nearly 97% of whom are hired locally. The average salary for employees in Japanese firms is $84,000, which totals nearly $8 billion in annual payroll. Nearly 90% of Japanese companies provide health care insurance for their employees, the survey found.

Challenges

The sustainability of California’s economic recovery remains a significant concern for Japanese investors, according to the JETRO/JBA survey. The economic slowdown was cited as a business challenge by 75.9% of those responding to the survey, far more than other concerns—labor cost increases (47.4%), the exchange rate (45%), energy/material prices (20.4%) and tougher regulations (20.4%).

Since 1983, JBA and JETRO have conducted surveys to obtain an accurate assessment of Japanese companies in Southern California. The results of these surveys have been utilized to foster better understanding of Japanese companies in the region and facilitate their business activities.

Staff Contact: Susanne Stirling

CalChamber Sponsored Seminars

More information: calchamber.com/events.

Labor Law


International Trade

Hong Kong-Guangdong-Macao Joint Business Conference. Hong Kong, Guangdong province and Macao. November 6, San Francisco. (415) 835-9326.


California Newspapers Endorse Propositions 1, 2

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The measure will help protect California’s rivers, lakes and streams from pollution and contamination and provides for the restoration of fish and wildlife resources.

Excerpts on Proposition 1

Following are excerpts from some of the newspaper editorials supporting Proposition 1:

- "Los Angeles Times," “Prop. 1 Bonds a First Step in Addressing State’s Water Needs”: “It is a clever compromise, and makes the bond a package deserving of voter support.” October 8, 2014.
- "The Sacramento Bee," “Prop. 1 Will Address State’s Water Needs”: “Severe drought has exacerbated weaknesses in California’s water system, highlighting problems that a $7.5 billion water bond would begin to address and giving voters ample reason to approve Proposition 1 on Nov. 4.” October 4, 2014.
- "Ventura County Star," “Yes on Prop. 1 for Dependable, Clean Water”: “Proposition 1 on the November ballot is an important step to deal with one of the biggest challenges facing California—protecting our supply of dependable, clean water.” October 4, 2014.
- "The Orange County Register," “Yes on Prop. 1, California Water Bond”: “[... there is much to commend in Prop. 1’s] key funding areas. None more important than the $2.7 billion that would go to new water storage, including dams and projects that replenish groundwater.” October 3, 2014.
- "Bay Area News Group," “Prop. 1 Water Bond Deserves Californians’ Support”: “One of the easiest decisions for California voters in this bone-dry year should be to pass Proposition 1, the $7.5 billion water bond on November’s ballot.” October 3, 2014.
- "Merced Sun-Star," “Proposition 1 is a Crucial Investment in California’s Future”: “This is an investment we must make, and make now. This bond is our best hope for having sufficient water in our long-term future.” October 3, 2014.
- "San Francisco Chronicle," “Chronicle Recommends Passage of State Prop. 1”: “Nothing focuses the mind like a crisis and the state’s three-year drought now has Californians focused on our perennial problem—high demand for water and inefficient use of what we do have. Proposition 1, a $7.5 billion bond on the Nov. 4 ballot will take a first step toward more realistic state water policy. It deserves your vote.” October 2, 2014.
- "Monterey Herald," “Vote yes on Proposition 1”: “Voters around the state are being asked to pass a $7.5 billion bond measure for a whole menu of water projects—from new infrastructure including new dams to new conservation measures that would expand recycling. We encourage a yes vote.” September 23, 2014.
- "U-T San Diego," “For California’s future, vote yes on Proposition 1”: “Proposition 1 will not solve California’s water problems forever more. But its rejection would threaten a pillar of California’s future.” September 13, 2014.

Proposition 2

Proposition 2 amends the State Constitution to strengthen the requirement for a budget reserve and to pay down budget-related debt. Proposition 2 increases the size of the state’s “rainy day” reserve from $8.8 billion to $11 billion, and requires minimum annual contributions into that reserve of $800 million—and even more if capital gains revenues to the treasury are strong. The measure also requires that extra revenues be devoted in part to reducing budget debt, repaying funds borrowed from local school districts, or used for investment in new infrastructure or reducing long-term pension liabilities.

Placed on the ballot with bipartisan support, Proposition 2 forces the state to save money and requires politicians to live within their means and protect against unnecessary tax increases. In good times, money will be placed in a constitutionally protected reserve and used to pay down debt. In bad times, the rainy day fund can be used to protect schools, public safety and other vital services.

Proposition 2 prevents the state from spending more than it can afford. Only three years ago, California faced a $26 billion budget deficit that required the Legislature to make painful cuts and voters to approve temporary tax increases. Proposition 2 will ensure that California does not repeat this cycle of boom-and-bust budgeting.

Without a strong rainy day fund and continued fiscal restraint, the state will face future deficits and could be forced to cut funding for schools, public safety and other critical services. That is why every Democrat and Republican in the Legislature voted to support Proposition 2.

Excerpts on Proposition 2

Following are excerpts from some of the newspaper editorials supporting Proposition 2:

- "The Sacramento Bee, The Modesto Bee, The Fresno Bee," “Proposition 2 Clearly is Worthy of Support”: “California’s tax structure relies heavily on high earners. Their income can fluctuate dramatically from year to year, which means the state will be flush some years and broke other years. Proposition 2 would help sand down those spikes. Voters should embrace the change.” October 9, 2014.
- "San Francisco Chronicle," “Vote ‘Yes’ on Proposition Two”: “All of California’s services in public investments will benefit when the state has a healthier fiscal future, and Prop. 2 is one more step in that direction.” October 3, 2014.
- "Los Angeles Times," “Yes on Proposition 2”: “Proposition 2 would help keep Sacramento from falling into the familiar trap of overspending in flush times while ignoring its debts and other long-term needs. The Times urges a yes vote.” October 2, 2014.
- "U-T San Diego," “Prop. 2: Vote Yes for State Rainy-Day Fund”: “Since California relies on volatile capital-gains taxes for a good chunk of its revenue, the state government needs to budget carefully, setting aside money in boom years for use in bust years. For many years, however, state legislators and governors have been unable to meet this challenge. Proposition 2 on the Nov. 4 ballot would address this sorry history.” September 18, 2014.

More Information

For more information on Propositions 1 and 2, including the full list of newspaper endorsements, visit www.yesonProposals2.com.
Small Business Advocate of Year Award

Redondo Beach Chamber Chair Fights for Business at All Levels

Taking action on issues that matter to him has been second nature to Redondo Beach business leader Michael Jackson for decades.

Jackson, a 2014 recipient of the California Chamber of Commerce Small Business Advocate of the Year Award, traces his interest in advocacy to his college days, when he was interning at the California State Capitol while working toward his master’s degree in public administration at California State University, Chico.

Advocacy “was just part of the way my life evolved,” says Jackson, current chair of the Redondo Beach Chamber of Commerce and Visitors Bureau and vice president of business development at The Dardanelle Group Inc., a transportation consulting company based in Redondo Beach.

Advocacy at All Levels

Before his current positions, Jackson spent 27 years in government relations posts with TRW Inc. and Boeing, with responsibilities that included representing each company's legislative and political interests with state, federal and local elected officials.

That aerospace industry experience has proven helpful in keeping the chamber “on top of critical issues that face our community,” according to Dinah Lary, Jackson’s predecessor as chair of the Redondo Beach Chamber Board.

“He eagerly shares his vast knowledge and experience of the legislative and political process with each project he works on,” Lary wrote in recommending Jackson for the CalChamber award.

“I think as a chamber member one of the most important things you can do is represent the interests of small business before government agencies at all levels,” Jackson says. “If we don’t do it, we won’t have the opportunity to communicate the true effects of punitive, anti-business legislation and regulation.”

Jackson has lobbied both state and federal offices in support of the federal Surface Transportation Act to secure additional transportation funding for California, specifically for Southern California.

He also has worked to secure federal funding for the ports of Los Angeles and Long Beach.

Local Efforts

Advocacy on local issues is equally important to Jackson, who describes a key responsibility for a chamber of commerce:

“First and foremost is representing the community itself,” Jackson says. “Many people don’t want to get involved in politics. But as a leader in the business community, I think it’s really important that we get involved, making sure we elect pro-business city councilmen and that we advocate pro-business policies that affect our local community.”

Jackson created a “local issues” committee and serves on the Redondo Beach Chamber’s Government Relations Council. He also heads the chamber’s Political Action Committee and is leading the chamber through a community issues polling process.

As chairman of the city Harbor Commission, Jackson played a key role in the revitalization of the Redondo Beach waterfront, and continues to advocate on behalf of waterfront business owners to make significant changes to the city’s aging pier and harbor facilities.

Waterfront business owners have committed to significant renovations over the next three years, and the city also is investing in public facilities.

Business Challenge

 Asked about the challenges facing California business, Jackson starts with what he deems the biggest of these:

“Being taken for granted.”

Citing the Democratic control of the Legislature, Jackson states, “We have to stand up and represent the fact that we are not partisan. We are pro-jobs and jobs are good. It’s a bipartisan product of what we have to do. The public sector cannot employ everyone; the private sector is who pays the taxes.”

Getting Involved

For business people interested in getting involved in advocacy, Jackson has this advice:

“I think the biggest thing is don’t assume that everyone else is doing it,” Jackson says. “Never ask me, ‘Why should I get involved in the chamber of commerce?’ or ‘What am I going to get out of it’?

“You get out of it what you put into it. It’s the intangible stuff that you really can see the benefits from. And after a while, you’ve got a dozen things you’re doing on behalf of the business community. That really is so fulfilling and it’s a lot of fun.”

Consumer Background Check After Job Offer

From Page 2

gender, national origin, disability, and in some states, sexual orientation.

Best Practice

If the background check identifies issues of concern to you, consider discussing the issues with the candidate as there are some background checks that come back with incorrect information. In today’s world of identity theft, it’s a best practice to give an applicant a chance to explain any problem, whether “pre” or “post” offer.

However you practice, it is important to be consistent in your policies. Random background screening is inadvisable, and can easily lead to a claim of discrimination. When developing your policies, it is best to consult with legal counsel.

The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, or legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.
CalChamber Keeps You Posted: Mandatory Updates in 2015

Your business could incur significant fines for not posting the most current California and federal employment notices. In 2015, we know of mandatory changes to the DFEH Discrimination and Harassment notice, plus a required posting for California's new paid sick leave law.

Simplify your compliance with CalChamber's all-in-one 2015 California and Federal Employment Notices poster. Available in English or Spanish, it contains the required state and federal employment notices every California employer must post.

As in years past, there's a strong likelihood of additional mandatory changes during 2015. So don't forget to add Poster Protect® to your preorder.

Note: New paid sick leave law for California contains a mandatory posting requirement that will be prepared and released by the California Labor Commissioner. When the notice is released, 2015 all-in-one poster buyers will receive the posting at no cost from CalChamber.

PREORDER at calchamber.com/2015poster or call (800) 331-8877.