



AB 1897 – Protecting Workers in the New Subcontracted Economy

SUMMARY

AB 1897 will hold companies accountable for wage theft and other abuses when they use staffing agencies and other labor contractors to supply workers.

BACKGROUND

Across our economy, we are seeing a resurgence in the use of labor contractors and the reemergence of what in the late 1800's was called "the sweating system." Like the sweatshops of old, companies are using third-party labor suppliers to squeeze workers to work harder for less pay while insulating the company in charge from responsibility for what is done to those workers. This structure does more than just drive down wages; it makes accountability almost impossible.

The workers at the bottom of this chain work directly for the contractor and are supplied to companies on an "as needed" basis with no strings attached. In some cases, they are treated as day laborers and gather every morning at the staffing agency to see whether they will be assigned work. Others work full-time for years but are considered temporary.

Subcontracted workers wear hotel uniforms and clean rooms, but are hired by a temporary agency. When they get cheated out of wages, the hotel denies any responsibility. Other workers pack lettuce and onions for years in food processing

plants, but are hired through farm labor contractors. When they speak out about working conditions, the company threatens to cut its ties with the contractor so workers will lose their jobs. When workers look for help, even state enforcement agencies are often uncertain about who the actual employer is and who can be held accountable.

Today's subcontracted workforce bears little resemblance to the "Kelly Girls" who were once the poster child of the temporary industry. Instead, third-party labor suppliers are being used to provide low-cost "perma-temps" to do strenuous and often dangerous work for years on end. One in 20 blue-collar jobs in America are temporary, including one in five manual laborers and one in six auto workers¹.

Subcontracted workers by definition have no guarantee of additional work and so a worker can easily be punished for speaking out. Employers also use the threat of terminating the contract with the staffing agency or contractor if the workers exercise protected labor rights. These types of retaliation are hard to prove and hard to remedy.

A recent report by ProPublica found that in California, temporary workers face a 50% greater risk of getting injured on the job than

¹ <http://www.propublica.org/article/the-expendables-how-the-temps-who-power-corporate-giants-are-getting-crushed>

permanent employees. That disparity was even greater for serious accidents, especially since the growth of labor contractors has been most pronounced in blue-collar industries².

When two recycling workers lost fingers in similar machine accidents in 2009, Soex West Textile Recycling told CalOSHA it could not be held responsible as it had no employees. The workers injured on their property by their equipment were employed by another entity, who also denied any role in supervision or control³. This example underscores the challenge for state agencies in preventing workplace accidents in these subcontracted settings.

Labor contractors are increasingly recruiting immigrant workers⁴. In fact, ProPublica has documented the rise of “temp towns,” which are dominated by staffing agencies that prey on undocumented immigrants. Even the staffing agencies may have layers of subcontractors who charge workers to find work and provide transportation.

Not only does the use of a contractor make it harder to hold the company accountable for the treatment of workers, but it also interferes with the right to organize. Contract laborers work for the labor contractor, so at one site, there can be multiple employers. That results in split bargaining units, multiple elections, and a constantly divided workforce.

Current law is simply insufficient to protect workers’ rights in the shadows of the subcontracted economy. Under existing law, a company can only be held responsible if a worker can prove joint

employer status. This process is costly, slow, and difficult to navigate for most workers. It requires litigation, rather than providing a simple and straightforward rule. It is also easily manipulated by companies that have the labor contractor provide supervision on site to shield them from liability.

WHAT THIS BILL WILL DO

AB 1897 holds companies accountable for serious violations of workers’ rights, committed by their own labor suppliers, to workers on their premises. This simple rule will incentivize the use of responsible contractors, rather than a race to the bottom. It will protect vulnerable temporary workers, as well as businesses that follow the law and don’t profit from cheating workers. It offers workers a clear path to accountability for workplace violations and it offers employers a clear path to compliance.

Recent amendments do the following:

- They limit the bill to client employers with 25 or more employees (to address small business concerns).
- Provide that “client employer” does not include a business entity with five or less workers supplied by a labor contractor at any given time.
- They exclude individual homeowners and home-based businesses from the bill.
- Use the term “business entity” rather than “individuals”.
- They make clear that the bill does not apply to independent contractors or change the definition of independent contractors.
- They further define “usual course of business” to provide clarity that this applies to regular and customary work performed on the premises or worksite of the client employer.

² <http://www.propublica.org/article/temporary-work-lastingharm>

³

<http://www.dir.ca.gov/dosh/citations/Strategic%20Outsourcing%20Inc.%20312913700.pdf>

⁴

<http://thinkprogress.org/immigration/2013/06/28/2228631/temp-immigrants-cheap-labor/#>

- Clarify the employer disclosure requirements to state that the employer only has to disclose information already in their possession to state enforcement agencies, not new information.
- Exclude from the definition of "labor contractors" certain motion picture payroll companies as defined under current law.
- Exclude public employers from the definition of "client employer."
- Require a worker or their representative to notify the client employer at least 30 days prior to filing a claim.
- Ensure there is no liability for delivery drivers.
- Exempt trucking and cable/communications subcontractors from liability since the worksite for trucking and cable companies is, by its nature, away from the employer premises.
- Delete the term "services" from the bill and use the existing Labor Code definition of "labor."

SUPPORT

California Labor Federation (**Co-Sponsor**)
 California Teamsters Public Affairs Council
 (**Co-Sponsor**)
 United Food & Commercial Workers Western
 States Council (**Co-Sponsor**)
 Air Conditioning & Refrigeration Contractors
 Association
 Air Conditioning Sheet Metal Association
 Alameda County Labor Council, AFL-CIO
 American Federation of State, County and
 Municipal Employees
 Asian American Alliance for Justice - Asian
 Law Caucus
 Asian Americans Advancing Justice - Los
 Angeles
 Asian Americans for Community Involvement
 Asian Pacific Islander Justice Coalition of
 Silicon Valley
 California Alliance for Retired Americans

California Conference of Machinists
 California Conference of the Amalgamated
 Transit Union
 California Employment Lawyers Association
 California Faculty Association
 California Immigrant Policy Center
 California Legislative Conference of the
 Plumbing,
 Heating & Piping Industry
 California Nurses Association
 California Professional Firefighters
 California Rural Legal Assistance Foundation
 California School Employees Association
 California State Association of Electrical
 Workers
 California State Council of Service Employees
 California State Pipe Trades Council
 Centro Legal de la Raza
 Chinese Progressive Association
 CLEAN Carwash Campaign
 Community Action Board of Santa Cruz
 County
 Consumer Attorneys of California
 Employee Rights Center
 Engineers & Scientists, IFPTE Local 20
 Equal Rights Advocates
 Garment Workers Center
 Interfaith Council on Economics and Justice
 International Longshore and Warehouse
 Union,
 Coast Division
 International Longshore and Warehouse
 Union,
 Southern California District Council
 Jockeys Guild
 Katherine & George Alexander Community
 Law
 Center
 Koreatown Immigrant Workers Alliance
 Legal Aid Society-Employment Law Center
 Latinos United for a New America
 Los Angeles County Federation of Labor, AFL-
 CIO
 Maintenance Cooperation Trust Fund
 Merced-Mariposa Central Labor Council, AFL-
 CIO

Monterey Bay Central Labor Council, AFL-CIO
Napa Solano Central Labor Council, AFL-CIO
National Association of Social Workers, California
Chapter
National Electrical Contractors Association,
California Chapters
National Employment Law Project
National Lawyers' Guild Labor & Employment
Committee
North Bay Labor Council, AFL-CIO
Northern California Carpenters Regional Council
Northern California District Council ILWU
Professional & Technical Engineers,
IFPTE Local 21
San Mateo Central Labor Council, AFL-CIO
SEIU Local 1000
South Bay Labor Council, AFL-CIO
State Building and Construction Trades Council of
California
Sunrise Floor Systems LLC
Teamsters Joint Council No. 42
Teamsters Joint Council No. 7
Teamsters Local 137
Teamsters Local 150
Teamsters Local 315
Teamsters Local 350
Teamsters Local 386
Teamsters Local 396
Teamsters Local 431
Teamsters Local 517
Teamsters Local 542
Teamsters Local 63
Teamsters Local 63
Teamsters Local 856
Teamsters Local 890
Teamsters Local 986
UNITE HERE
United Auto Workers, Local 5810
United Farm Workers of America
Utility Workers Union of America, Local 132
Warehouse Workers United
Western States Council of Sheet Metal Workers
Working Partnerships USA

STATUS

Assembly Labor Committee 5-2
Assembly Appropriations 12-5
Assembly Floor 51-23
Senate Labor Committee 4-1
Senate Judiciary Committee 5-2
Senate Appropriations 5-0
Senate Floor 22-12
Assembly Concurrence 47-24
Signed by the Governor 9/28/2014