New Law Makes It Easier to Pursue Claims Against Employers that Use Contracted or Leased Employees

MSK Alert by Anthony Amendola
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The California Legislature recently passed AB 1897, effective January 1, 2015, which adds Section 2810.3 to the Labor Code. This new law makes "client employers" jointly liable with "labor contractors" for the payment of wages and the failure to obtain valid workers' compensation coverage.

A "client employer" is defined as any business entity "that obtains or is provided workers to perform labor within its usual course of business from a labor contractor." The definition exempts small business entities with fewer than twenty-five (25) workers (counting both regular employees and leased workers) or with five (5) or fewer leased workers at a given time.

A "labor contractor" is broadly defined as any entity that supplies workers to perform labor, either with or without a contract. However, this definition does exclude some entities, including labor organizations, apprenticeship programs and hiring halls that supply labor pursuant to a collective bargaining agreement and motion picture industry payroll services companies.

AB 1897 makes the client employer jointly liable with the labor contractor for:

1. The payment of wages; and
2. The failure to secure valid workers' compensation coverage.

As the new law defines "wages" to include "all sums payable to an employee or the state based upon any failure to pay wages," it appears that all Labor Code penalties associated with the failure to pay wages are included.

The application of AB 1897 is limited to those workers supplied by a labor contractor who perform work "within the client employer's usual course of business," which is defined as the "regular and customary work of a business, performed within or upon the premises or work site of the client employer." Thus, contracted labor that is engaged to perform manufacturing work at a manufacturing company would be included. However workers contracted to perform work that is not the client's "regular and customary" work, such as installing a new computer system, would likely be excluded from the scope of AB 1897.

Under the new law, a worker claiming to be aggrieved (or his or her representative) must notify the client employer of alleged violations at least 30 days prior to filing a civil action against the client employer. Moreover, neither the client employer nor the labor contractor may take any adverse action against any worker for providing such notification of an alleged violation or for filing a claim or civil action.

While AB 1897 extends liability to client employers, it also explicitly allows for the client employer and labor contractor to negotiate indemnification provisions in their contracts, pursuant to which the client employer may recoup losses incurred from the labor contractor. However, client employer liability may not be waived by the employee, nor assigned to the labor contractor. Moreover, a client employer shall not shift to the labor contractor any legal duties or liabilities arising under California's occupational safety and health laws with respect to workers supplied by the labor contractor.