



recent california law clarifies loan-out companies are lawful

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Many artists in the motion picture industry choose to provide their services through personal services corporations or similar entities generally known as "loan-out" companies. When a recipient of the talent's services (e.g., a producer or other industry employer) engages talent in this manner, the "loan-out" company serves as the artist's "general" (on-going) employer and "lends" the artist's services to the service recipient in connection with a particular project. In these circumstances, the producer pays the loan-out company a gross amount, without withholdings, and the loan-out company, in turn, pays the talent and assumes full responsibility for reporting the artist's earnings and withholding and remitting payroll taxes.

Recent California legislation reiterates that the use of loan-out companies is lawful and seeks to "eliminate ambiguities" regarding the party bearing responsibility for the employer share of payroll taxes under such arrangements. SB422[1], which amends Section 679 of the Unemployment Insurance Code[2], clarifies that:

- loan-out companies are the "employers" of their talent for the purpose of remitting employer payroll taxes[3]; and
- neither the loan-out company nor its talent are considered employees of any motion picture payroll services company *for tax purposes*. [4]

The law also provides a statutory definition for "loan-out company"[5] and will require, starting in 2026, motion picture payroll services companies to file quarterly reports with the Director of Employment Development specifying payments made to loan-out companies.[6]

Importantly, SB422 does *not* modify any other laws regarding loan-out companies or their employees.[7] Therefore, most loaned talent is likely to still be considered a joint-employee of both the artist's loan-out company and the

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practice areas

employment litigation & counseling
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service recipient for other purposes.

[1] 2023 California Senate Bill No. 422, California 2023-2024 Regular Session.

[2] Cal. Unemp. Ins. Code § 679.

[3] 2023 California Senate Bill No. 422, California 2023-2024 Regular Session, § 2 (amending Cal. Unemp. Ins. Code § 679(a)).

[4] *Id.*

[5] *Id.* (amending Cal. Unemp. Ins. Code § 679(f)) ("*Loan-out company' means a corporation, or limited liability company that is classified as a corporation for federal income tax purposes, the principal activity of which is the performance of personal services for a motion picture production company or allied motion picture services company, provided that those services are substantially performed by an employee of the corporation who owns, on any day during the taxable year, more than 10 percent of the outstanding stock of the corporation.*")

[6] 2023 California Senate Bill No. 422, California 2023-2024 Regular Session, § 3.

[7] 2023 California Senate Bill No. 422, California 2023-2024 Regular Session, § 1.