

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2754 (Rendon)
Version: May 20, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Employment contracts and agreements: sufficient funds: liability

DIGEST

This bill extends the prohibition on contracting for labor or services with specified types of contractors, if the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable local, state, and federal laws or regulations governing the labor or services to be provided, and provides that a customer that uses or engages a port drayage motor carrier shares joint and severable liability with the motor carrier for misclassifications of the motor carrier's workers.

EXECUTIVE SUMMARY

Wage theft and worker misclassification are significant issues in California that harm the state's workers every day. To help address these issues, the Legislature has enacted a law that prohibits a person or entity from entering into a contract for labor services with specified types of contractors when that person knows or should know that the contract does not provide enough funds to allow the contractor to comply with labor law. This bill extends this prohibition to apply to port drayage motor carriers. The Legislature also enacted a law that requires the Department of Labor Standard Enforcement (DLSE) to post a list of port drayage motor carriers with an unsatisfied final court judgment, tax assessment, or tax lien, and makes these listed motor carriers jointly and severally liable for labor law violations. This bill specifies that a customer that engages or uses a port drayage motor carrier shall be jointly and severally liable with the motor carrier for misclassification of the motor carrier's workers, except as specified. AB 2754 is sponsored by the California Teamsters Public Affairs Council, and is supported by the California Labor Federation and the City of Los Angeles. It is opposed by the California Chamber of Commerce and a number of business associations. AB 2754 previously passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4 to 1.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Prohibits a person or entity from entering into a contract or agreement for labor or services with specified types of contractors, including garment, janitorial, and warehouse contractors, if the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable local, state, and federal laws or regulations governing the labor or services to be provided. (Lab. Code §2810(a).)
- 2) Creates a rebuttable presumption affecting the burden of proof that there has been no violation of the prohibition in (1), above, if the contract meets the specified conditions in (3), below. (Lab. Code § 2810(b).)
- 3) Provides that to qualify for the rebuttable presumption, a contract or agreement must be in writing, in a single document, and contain specified provisions, including, but not limited to:
 - a) the name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, security guard, or warehouse contractor through whom the labor or services are to be provided;
 - b) a description of the labor or services to be provided and a statement of when those services are to be commenced and completed;
 - c) the workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier, as specified;
 - d) the total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations. (Lab. Code § 2810(d).)
- 4) Excludes from (1), above, a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement, or a person who enters into a contract or agreement for labor or services to be performed on that person's home residences, as specified. (Lab. Code § 2810(c).)
- 5) Provides that an employee aggrieved by a violation of (1), above, may file an action for damages to recover the greater of all of the employee's actual damages or \$250 per employee per violation for an initial violation and \$1000 per employee for each subsequent violation, as specified. The employee may also bring an action for injunctive relief, and may recover costs and reasonable attorney's fees upon prevailing. (Lab. Code §2810(g).)

- 6) Provides that a client employer, as defined, shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for the payment of wages and the failure to secure valid workers' compensation coverage as required. (Lab. Code § 2810.3(b).)
- 7) Defines, for purposes of Labor Code §2810.4, "port drayage motor carrier" as an individual or entity that hires or engages commercial drivers in the port drayage industry. Defines the term to also mean a registered owner, lessee, licensee, or Bailee of a commercial motor vehicle, as specified, that operates or directs the operation of a commercial motor vehicle by a commercial driver on a for-hire or not-for-hire basis to perform port drayage services in the port drayage industry. It also means an entity or individual who succeeds in the interest and operation of a predecessor port drayage motor carrier, as specified. (Lab. Code § 2810.4(a)(5).)
- 8) Defines, for purposes of Labor Code §2810.4, "customer" as a business entity, regardless of its form, that engages or uses a port drayage motor carrier to perform port drayage services on the customer's behalf, whether the customer directly engages or uses a port drayage motor carrier or indirectly engages or uses a port drayage motor carrier through the use of an agent, including, but not limited to, a freight forwarder, motor transportation broker, ocean carrier, or other motor carrier. Excludes a business entity with a workforce of fewer than 25 workers, as specified. (Lab. Code §2810.4(a)(2).)
- 9) Directs the DLSE to post on its internet webpage the names, addresses, and essential information for a port drayage motor carrier with an unsatisfied final court judgment, tax assessment, or tax lien that may be released to the public under federal and state disclosure laws, including any order, decision, or award obtained by a public or private person or entity finding that a port drayage motor carrier has engaged in illegal conduct, as specified. (Lab. Code § 2810.4(b).)
- 10) Directs DLSE to post on its internet webpage a list consisting of the names, addresses, and essential information for a prior offender with a subsequent judgment, ruling, citation, order, decision, or award finding that the port drayage motor carrier has violated a labor or employment law or regulation, even if all periods for appeals have not expired. (Lab. Code §2810.4(b).)
- 11) Subjects a customer that engages or uses a port drayage motor carrier that is on the DLSE list to joint and several liability with the motor carrier or the motor carrier's successor for all civil legal responsibility and civil liability owed to a port drayage driver for services obtained after the date the motor carrier appeared on the list, as specified. Specifies that this includes sharing with the motor carrier the full amount of unpaid wages, unreimbursed expenses,

damages and penalties, including applicable interest, which are found due for all of the following:

- a) minimum, regular, or premium wages that are unpaid by the motor carrier;
 - b) unlawful deductions from wages;
 - c) out-of-pocket expenses incurred by the commercial driver; and
 - d) civil penalties for failure to secure workers' compensation coverage. (Lab. Code § 2810.4(b)(3).)
- 12) Provides that a customer's joint and several liability is to be determined by either of the following:
- a) the Labor Commissioner in an administrative proceeding or pursuant to their citation authority;
 - b) a court in a civil action brought by the Labor Commissioner, a commercial driver, or their representative after providing the customer with at least 30 business days notice prior to filing the action, as provided. (Lab. Code § 2810.4(c).)
- 13) Provides a series of exemptions for customers from the joint and several liability, including where the carrier's employees are covered by a collective bargaining agreement, as specified. (Lab. Code § 2810.4(d).)
- 14) Requires a port drayage motor carrier that provides port drayage services to a customer to furnish written notice to the customer of any unsatisfied final judgments against the motor carrier, as specified, and the text of this section. (Lab. Code §§ 2810.4(e), (f).)
- 15) Prohibits adverse action against a commercial driver for providing notification of violations or filing a claim or civil action pertaining to unpaid wages, unreimbursed expenses, or the recovery of damages and penalties. (Lab. Code § 2810.4(h).)

This bill:

- 1) Includes port drayage motor carriers in the list of services in which a person or entity is prohibited from entering into a contract or agreement for labor or services if the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.
- 2) Adds port drayage motor carriers to the rebuttable presumption affecting the burden of proof that there has been no violation of this prohibition, as described in (2), above.

- a) Adds to the requirements for the rebuttable presumption described in (2), above, that the written contract include the total number of persons who will be utilized under the contract or agreement as independent contractors, and both of the following:
 - i. a list of the current local, state, and federal contractor license identification numbers or motor carrier authority or registration that the independent contractors are required to have under local, state, or federal laws or regulations;
 - ii. a copy of any agreement executed by an independent contractor identified pursuant to these provisions.
- 3) Specifies that the prohibition in (1), above, does not apply if:
 - a) a person or entity executes a collective bargaining agreement covering the workers employed under the contract or agreement;
 - b) a person enters into a contract or agreement for labor or services to be performed on that person's home residences, if a family member resides for at least a part of a year in the residence for which the labor or services are to be performed;
 - c) a contract with a port drayage motor carrier involving 30 days or fewer of cumulative labor or services within a one year period
- 4) For purposes of these provisions, defines "port drayage motor carrier" as an individual or entity that hires or engages commercial drivers in the port drayage industry. It also means a registered owner, lessee, licensee, or bailee of a commercial motor vehicle, as specified, that operates or directs the operation of a commercial motor vehicle by a commercial driver on a for-hire or not-for-hire basis to perform port drayage services in the port drayage industry. It also means an entity or individual who succeeds in the interest and operation of a predecessor port drayage motor carrier, as specified.
- 5) Requires that, on and after January 1, 2025, a customer that engages or uses a port drayage motor carrier as part of its business to share with the motor carrier or the motor carrier's successor all civil legal responsibility and civil liability owed to a port drayage driver or the state arising out of the motor carrier's misclassification of the driver as an independent contractor, regardless of whether or not the port drayage motor carrier is on the DLSE maintained list of port drayage motor carriers that have engaged in illegal conduct, as specified.
- 6) Provides that the customer shall have no liability pursuant to (5), above, under either of the following circumstances:
 - a) the motor carrier utilizes its own employee drivers to perform services for the customer;

- b) the motor carrier utilizes bona fide independent contractors to perform services for the customer where each independent contractor possesses their own operating authority and has a business relationship with the motor carrier that meets the California legal standard for being determined an independent contractor.

COMMENTS

1. Author's statement

According to the author:

Although some trucking companies have changed their ways and are complying with AB 5 by classifying their drivers as employees, many trucking companies, both at ports and across the state, continue to misclassify their drivers. Cargo owners continue to benefit from this misclassification, often without having to shoulder any of the responsibility. Protecting these workers by providing them with deserved benefits and just wages aligns with the equity goals of our state.

2. Wage theft and worker misclassification are major issues in California

Over the years, California has enacted a variety of laws aimed at protecting employees in the state and ensuring they can be made whole when they are wronged by their employer. These laws are designed to ensure that workers receive fair treatment and pay and are afforded dignity and respect. These laws help ensure that California's can meet their basic needs and protect their right to just compensation for their labor. However, wage theft, in which an employer does not pay a worker the amount the worker is due, or does not pay the worker for all of their working hours, continues to be a major issue in the state. In fact, it is the largest form of theft in the nation.¹ Reports state that workers lost at least 338 million dollars to wage theft in 2021.²

Wage theft and labor violations also can occur through misclassification of workers, in which an employer incorrectly classifies an employee as an independent contractor. When an employer classifies an employee as an independent contractor, they can deny that employee the wage and hour, overtime, and other protections that classification as an employee provides. In addition, it allows employers to unlawfully charge employees for the tools required for their job, and deny them vital benefits. One study found that 90 percent of businesses inspected by the state were out of compliance with worker

¹ Brady Meixell & Ross Eisenbrey, Wage theft is a much bigger problem than other forms of theft – but workers remain mostly unprotected, Economic Policy Institute (Sept. 18, 2014), available at <https://www.epi.org/publication/wage-theft-bigger-problem-forms-theft-workers/>.

² Alejandro Lazo et al, When employers steal wages from workers, CalMatters (Jul. 25, 2022), available at <https://calmatters.org/explainers/when-employers-steal-wages-from-workers/?series=unpaid-wages-california-workers>.

classification laws.³ California has worked consistently over the years to clarify when an employer has misclassified a worker and to combat misclassification. In 2019, the Legislature enacted AB 5 (Gonzalez, Ch. 296, Stats. 2019) to codify the California Supreme Court's three-part test in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (*Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal 5th 903) for determining when a worker should be classified as an employee and not an independent contractor.

These labor violations cause serious harm. When an employer violates labor law, it places law-abiding employers at a disadvantage, and if violations are not enforced, it incentivizes a race to the bottom as employers try to compete with their competitors in the market. Moreover, those employees wronged by violations, or who have their wages stolen, lose thousands of dollars every year, hurting their pocketbooks and livelihoods. In 2020, hundreds of truckers in the Los Angeles and Long Beach ports won \$30 million for wage theft and misclassification on claims that the workers were effectively paid less than the minimum wage.⁴ Another report found that drivers hired as independent contractors reported 18% lower income than employee drivers, and that independent contractors were 2.5 times less likely to have health insurance and three times less likely to have retirement benefits than employee drivers.⁵ Thus, when employers steal workers' wages or misclassify their workers, workers suffer significant harms.

3. California's legislative efforts to combat wage theft and misclassification

The California Legislature has attempted to address the harms of wage theft and worker misclassification, including in the trucking industry, through a variety of laws over the years. In 2003, the Legislature passed SB 179 (Alcaron, Ch. 908, Stats. 2003) to address the issue in which entities contracting for labor services enter into contracts in which they know the contractor cannot comply with the minimum wage and other labor laws for the services and price provided for in the contract. Because the contractor relationship gives the entity contracting for labor services some cover for any labor violations that do occur, while still relying on under-paid labor, many employers pressured labor contractors to take too low of contracts than would allow the contractor to pay workers a minimum wage and comply with other labor laws. SB 179 attempted to prohibit this work-around for employers. It codified Labor Code Section 2810 into law, which prohibited a person or entity from entering into a contract for labor or

³ Policy Brief: *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, National Employment Law Project, 3 (Oct. 2020).

⁴ Margot Roosevelt, "Port truckers win \$30 million in wage theft settlements," Los Angeles Times (Oct. 13, 2021), available at <https://www.latimes.com/business/story/2021-10-13/la-fi-port-trucker-xpo-settlements>.

⁵ Rebecca Smith et al, *The Big Rig Overhaul: Restoring middle-class jobs at America's ports through labor law enforcement*, National Employment Law Project (Feb. 2014), available at <https://www.nelp.org/insights-research/big-rig-overhaul-restoring-middle-class-jobs-at-americas-ports-thru-labor-law-enforcement/>.

services in specific industries, like farm labor or the garment industry, where the person or entity knows or should know that the contract does not provide sufficient funds to comply with labor laws for the workers hired by the contractor for the contract. (Lab. Code § 2810.) Labor Code Section 2810 also includes an exception for contracts where the person or entity entering into the contract executes a collective bargaining agreement covering workers under the contract, or the contract or agreement is for labor or services on the person's home residences where at least one family member resides in the residence for at least a part of the year. (Lab. Code § 2810(c).)

In 2014, the Legislature enacted AB 1897 (Hernández, Ch. 728, Stats. 2014), which further attempted to address the issue of ensuring compliance with labor laws in the subcontracting for labor services. AB 1897 aimed to ensure that contracting entities would not rely on labor contractors to skirt the state's labor laws by extending joint and severable liability to contracting entities for all of the labor law obligations owed to workers on the project by the labor contractor. Joint and severable liability means that the contracting entity, or client employer, may be liable for the full amount of any award of damages by a court, so that a prevailing plaintiff may collect the awarded damages from one or both parties. This helps avoid an injured worker from being unable to collect their damages from a "judgement proof" contractor that lacks the assets to cover the judgement.

Lastly, in 2018, the Legislature passed SB 1402 (Lara, Ch. 702, Stats. 2018) to address labor issues specific to port drayage motor carriers in the port drayage industry. Port drayage motor carriers are entities or individuals that hire commercial drivers to transport goods or shipping containers from a port to inland locations. About 33,500 drayage trucks service California's seaports and railyards every year, including the ports of Los Angeles and Long Beach, two of the largest ports in the nation.⁶ SB 1402 created a new enforcement mechanism for labor law violations in the port drayage industry by requiring DLSE to list the names and other information of port drayage motor carriers that have unsatisfied legal judgements, assessments, or other awards against them based on labor law violations like wage theft or worker misclassification. SB 1402 provided joint and severable liability to entities that work with listed port drayage motor carriers. Another bill, SB 338 (Gonzalez, Ch. 333, Stats. 2021), strengthened SB 1402's provisions, by including "prior offenders" on the list and requiring companies to show they have remedied violations in order to be removed from the list.

4. AB 2754 extends labor protections to port drayage motor carrier drivers

AB 2754 builds upon these laws to provide additional protections for port drayage motor carrier drivers. AB 2754 proposes its changes to address continued

⁶ Eunice Roh, "Overview of California Ports," Legislative Analyst's Office (Aug. 23, 2022), <https://lao.ca.gov/Publications/Report/4618>.

misclassification and labor law violations by port drayage motor carriers. According to the author, “[c]argo owners continue to benefit from this misclassification, often without having to shoulder any of the responsibility.” Specifically, AB 2754 amends the Labor Code to make Labor Code Section 2810 applicable to port drayage motor carriers. Thus, port drayage motor carriers are prohibited from entering into contracts with labor contractors for which the motor carrier knows or should know the contract is insufficient to cover the driver’s wages and other rights covered by labor law. AB 2754 also makes a number of changes to the rebuttable presumption that this requirement has been met, specifically requiring that the written contract for the worker’s services include the total number of persons who will be utilized under the contract as independent contractors, and a copy of any agreement executed by the independent contractors hired. AB 2754 specifies that Labor Code Section 2810’s prohibition does not apply to a contract with a port drayage motor carrier involving 30 days or fewer of cumulative labor or services in a one year period.

Additionally, it provides customers that engage or use port drayage motor carriers as part of their business with joint and severable liability with the motor carriers for all civil legal responsibility and civil liability for the motor carrier’s misclassification of the driver as an independent contractor. Where SB 1403 provided port drayage motor carriers with joint and severable liability for a variety of labor law and health code violations when the motor carrier is placed on the list of violators by DLSE, AB 2754 would provide customers of port drayage motor carriers with joint and severable liability for worker misclassification, regardless of whether the motor carrier is on DLSE’s list. AB 2754 does include an exception for port drayage motor carriers that utilize their own employee drivers, or that utilize bona fide independent contractors that possess their own operating authority and have a business relationship with the motor carrier that satisfies the legal test as an independent contractor.

5. Arguments in support

According to the California Teamsters Public Affairs Council, which is the sponsor of AB 2754:

The California Legislature has continually recognized that workers’ misclassification as independent contractors is one of the most serious challenges facing the state today. Misclassified employees are deprived of all state employment protections that the Legislature has developed over decades, and employers who employ misclassified employees gain an unfair advantage over law-abiding companies (in part by avoiding their obligations to contribute as employers to California safety net systems, such as workers’ compensation insurance and unemployment insurance). One industry where this problem has become endemic is commercial trucking and freight across the state. At ports nationwide, for example, studies estimate that approximately 82% of all drivers

are labeled “independent contractors” but over 80% are actually misclassified employees.

This endemic misclassification in trucking hurts workers by depriving them of wages and other protections while making them bear the costs and responsibility of truck purchase, maintenance, and upkeep of their trucks. It hurts the state by depriving it of much needed revenue while putting it on the hook when these misclassified drivers must avail themselves of California’s safety net, which is fairly often considering that truck driving is one of the most dangerous professions in the country. It hurts our supply chain efficiency and causes delays. And it hurts the State’s compliance rates with the state’s emissions regulations, as drivers cannot afford to shoulder the costs of maintaining their trucks or purchasing newer, cleaner trucks.

Trucking is not the first nor the only industry where the Legislature has faced these exact types of issues. And over time, the Legislature has enacted laws to address these types of situations in other industries. Labor Code Section 2810.3, for example, makes client employers who obtain employees from a labor contractor liable for violations committed by that contractor. AB 2810.3, however, explicitly excludes motor carriers and does not apply to any companies who obtain labor to move their goods from motor carriers. Similarly, Section 2810 makes companies liable when they enter into a contract – with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor – that does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations.

Considering the problems that currently exist in trucking, there is no reason why these two sections of the labor code should exclude motor carriers. That is why AB 2754 would amend these two sections of the labor code to make them explicitly applicable to motor carriers and to the cargo owners that utilize their services. This means that cargo owners will be vicariously liable for any labor code violations arising out of misclassification committed by their trucking contractors, and that cargo owners will be on the hook if they knowingly enter into unsustainable contracts that would require the contractor to violate the law or to lose money on the contract. Marking cargo owners responsible in this way will incentivize them to only contract with companies that follow the law and properly classify their employees, will push them to look at the economics of the contracts they are entering into to ensure that the contract can satisfy all of its legal obligations to its workers, and will ultimately put positive pressure on the trucking industry as a whole to stop misclassifying employees. This will be a direct benefit to the workers who are being misclassified, to the state’s coffers, and to the public who will have access to a strengthened and safer supply chain.

6. Arguments in opposition

According to the California Chamber of Commerce, which is opposed to AB 2754:

We appreciate the amendments taken to date on this bill. Our outstanding concern is that, under the current language, an entity could be held liable for a carrier's actions not only for any violations arising out of their contract, but also for any violations arising out of every other contract the carrier is involved in. Even if an entity tries to do its due diligence to ensure their carrier is operating legally and is misled, it is still liable. We therefore request an amendment specifying that if a carrier is deemed to be operating illegally, the contracting entity's liability is linked to the volume of loads shipped by the carrier for that entity, not all shipments moved by the carrier. We believe this will also incentivize contracting companies to do their due diligence because they know they would be on the hook for a carrier misclassifying their drivers rather than betting on a plaintiff going after a bigger company to cover the entire liability in full. We appreciate the discussion with the author and sponsor to date and will continue to discuss a potential resolution.

SUPPORT

California Teamsters Public Affairs Council (sponsor)
California Labor Federation, AFL-CIO
City of Los Angeles

OPPOSITION

California Chamber of Commerce
California Cotton Ginners and Growers Association
California Forestry Association
California Fresh Fruit Association
California League of Food Producers
California Tomato Growers Association
Carmax
Civil Justice Association of California
Western Agricultural Processors Association
Western States Trucking Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 338 (Gonzalez, Ch. 333, Stats. 2021) expanded the set of violations that can cause port drayage contractors to be placed on a DLSE list that extends joint liability for future violations to customers of that contractor.

AB 5 (Gonzalez, Ch. 296, Stats. 2019) codified the California Supreme Court's three-part test in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* for determining when a worker should be classified as an employee and not an independent contractor.

SB 1402 (Lara, Ch. 702, Stats. 2018) required the DLSE to list the names and other information of port drayage motor carriers with unsatisfied judgments, assessments, or other awards against it based on illegal conduct, including failure to pay wages, as specified. Required joint and several liability for customers who contract with port drayage services who have unpaid wage, tax and workers' compensation liability.

AB 1897 (Hernández, Ch. 728, Stats. 2014) required a client employer, as defined, to share with a labor contractor, as defined, all civil legal responsibility and civil liability for: (1) payment of wages to workers provided by a labor contractor; (2) failure to report and pay all required employer contributions, worker contributions, and personal income tax withholdings as required by the Unemployment Insurance Code; and (3) failure to secure valid workers' compensation coverage.

SB 459 (Corbett, Ch. 706, Stats. 2011) prohibited any person or employer from engaging in willful misclassification of an employee as an independent contractor, and provided for civil penalties.

SB 179 (Alcaron, Ch. 908, Stats. 2003) prohibited a person or entity from entering into a contract for labor or services in specific industries, like farm labor or the garment industry, where the person or entity knows or should know that the contract does not provide sufficient funds to comply with labor laws for the workers hired by the contractor for the contract.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 1)

Assembly Floor (Ayes 52, Noes 3)

Assembly Appropriations Committee (Ayes 11, Noes 4)

Assembly Judiciary Committee (Ayes 9, Noes 2)

Assembly Labor and Employment Committee (Ayes 5, Noes 0)
