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Senator Thomas Umberg, Chair
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SB 809 (Durazo)
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SUBJECT

Employees and independent contractors: construction trucking

DIGEST

This bill creates the Construction Trucking Employer Amnesty Program, through which an eligible construction contractor of construction trucking is relieved of liability for civil and statutory penalties related to the misclassification of their construction drivers if the construction contractor pays owed wages, benefits, and taxes, as specified.

EXECUTIVE SUMMARY

The misclassification of workers, in which an employer incorrectly classifies an employee as an independent contractor, is a serious problem in California. 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, misclassifying workers as independent contractors allows employers to unlawfully charge employees for the tools required for their job, and deny them vital benefits. It also allows an employer who classifies their workers as independent contractors to avoid paying payroll taxes for those workers. In 2019, the Legislature passed AB 5 (Gonzalez, Ch. 296, Stats. 2019), which codified the "ABC test" for determining whether an employee is an independent contractor. AB 5 included an exception for construction trucking which expired on January 1, 2025. SB 809 aims to create an amnesty program, and a two-check system for construction trucking drivers to provide construction contractors protection from liability for penalties associated with misclassifying their drivers if they pay owed wages, benefits, and taxes, and meet other requirements. Under the bill, the two-check system would require employee drivers to be paid two checks: one for their wages, and another for reimbursement of the costs of the use of their vehicle. SB 809 is sponsored by the California Teamsters and the State Building and Construction Trades Council of California, and is supported by the California Federation of Labor Unions, AFL-CIO. It is opposed by the Western States

Trucking Association. It passed the Senate Labor, Public Employment, and Retirement Committee by a vote of 4 to 1.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Specifies that, for the Labor and Unemployment Insurance Codes and wage orders of the Industrial Welfare Commission, a person providing labor or services for compensation is considered an employee, unless the hirer can demonstrate that:
    a) The person is free from the control and direction of the hirer in the performance of the work, both under the contract and in fact;
    b) The person performs work that is outside the usual course of the hirer's business; and
    c) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. (Lab. Code § 2775(b).)

2) Specifies that, if a court rules that the ABC test described in (1), above, cannot be applied to a particular context outside of specified exceptions, the test that shall apply for determining employee or independent contractor status is the test provided in *S.G. Borello & Sons v. Dept. of Industrial Relations* (1989) 48 Cal. 3d 341. (Lab. Code § 2775(b)(3).)

3) Specifies that (1), above, and the holding in the *Dynamex* case do not apply, and instead the test described in the *Borello* case applies, to the following:
    a) a bona fide business-to-business contracting relationship when an individual acting as a sole proprietor, a partnership, limited liability company, limited liability partnership, or corporation contracts to provide services to another such business or to a public agency or quasi-public corporation, if specified requirements are met (Lab. Code § 2776);
    b) where an individual acting as a sole proprietor, or a partnership, limited liability company, limited liability partnership, or corporation provides services to clients through a referral agency, if the referral agency demonstrates certain criteria (Lab. Code § 2777);
    c) a contract for "professional services," defined as marketing, administration of human services, travel agent services, graphic design, grant writing, fine artistry, services provided by an agent licensed by the United States Department of the Treasury, payment processing at an independent sales organization, photography and similar services, freelance writing or editing services, services related to books or other published materials, services by a licensed esthetician or similar profession, and other professional services, as defined, if certain factors are met (Lab. Code § 2778);

   d) where two individuals are contracting for providing services at the location of a stand-alone, non-recurring, or limited-duration event, if certain conditions are met (Lab. Code § 2779);
   e) specified occupations related to the creation, marketing, promotion, or distribution of sound recordings or musical composition, with exceptions (Lab. Code § 2780);
   f) a musician or musical group performing a live performance or an individual performance artist performing material that is their original work, as specified (Lab. Code § 2780(b)-(c));
   g) the relationship between a data aggregator and a research subject, under specified conditions (Lab. Code § 2782);
   h) a person providing insurance and financial services as a licensee of the Department of Insurance, a physician and similar medical professions, a lawyer, an architect, an engineer, a private investigator, an accountant, a securities broker-dealer or investment advisor, a direct insurance salesperson, a manufactured housing salesperson, a commercial fisher, a newspaper distributor, an individual engaged by an international exchange visitor program, and a competition judge, as specified (Lab. Code § 2783); and
   i) an individual providing motor club services, as specified. (Lab. Code § 2784.)

4) Specifies that (1), above, and the holding in the *Dynamex* case do not apply, and instead the test described in the *Borello* case applies, to a contractor and individual performing work in the construction industry, if the following criteria are met:
   a) the subcontract is in writing;
   b) the subcontractor is licensed by the Contractors State License Board, and the work is within the scope of that license;
   c) the subcontractor has the required business license or business tax registration, if the subcontractor's jurisdiction of domicile requires a subcontractor to have such a license or registration;
   d) the subcontractor maintains a business location that is separate from the business or work location of the contractor;
   e) the subcontractor has the authority to hire and to fire other persons to provide or assist in providing the services;
   f) the subcontractor assumes financial responsibility for errors or omissions in labor or services, as evidence; and
   g) the subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed. (Lab. Code § 2781.)

5) Specifies that, for the exception for the construction industry described in (4), above, the criteria that the subcontractor be licensed does not apply to a subcontractor

providing construction trucking services for which a contractor's license is not required, if:

a) The subcontractor is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation;
b) For work performed after January 1, 2020, the subcontractor is registered with the Department of Industrial Relations as a public works contractor;
c) The subcontractor utilizes its own employees to perform the construction trucking services, or is a sole proprietor with a valid motor carrier permit who operates their own truck to perform the entire contract; and
d) the subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor. (Lab. Code § 2781(h).)

6) Specifies that the provisions related to construction trucking provided for in (5), above, only apply to work performed before January 1, 2025. (Lab. Code § 2781(h)(2).)

7) Specifies that nothing in the provisions described in (5), above, prohibit an individual who owns their truck from working as an employee of a trucking company and utilizing that truck in the scope of that employment. Requires that an individual employee providing their own truck for use by an employer trucking company must be reimbursed for the reasonable expense of the use of their truck. (Lab. Code § 2781(h)(5).)

8) Specifies that, in addition to any other remedies available, an action for injunctive relief to prevent the continued misclassification of employees may be brought against an employer by the Attorney General, a district attorney, a city attorney of a city with more than 750,000 residents, by a city attorney in a city and county, or by a city prosecutor in a city with a full-time city prosecutor. (Lab. Code § 2786.)

This bill:

1) Requires the Labor Commissioner (LCO) and the EDD to administer the Construction Trucking Employer Amnesty Program to provide an eligible construction contractor relief from liability for any statutory or civil penalties related to their misclassification of construction drivers through settlement agreements between the LCO and the eligible construction contractor.

2) Defines, for the purpose of this bill's provisions:
   a) "Construction contract" to mean a contract, whether in a lump sum, time and material, cost plus, or other basis, to erect, construct, alter, or repair any building or structure or other improvement on or to real property, any fixed works, as defined, to pave surfaces, and to furnish and install the property to be part of a heating, air-conditioning, or electrical system.

i. Excludes from this definition a contract for the sale, or sale and installation, of tangible real property, or the furnishing of tangible personal property under what is otherwise a construction contract if the person furnishing the property is not responsible under the construction contract for the final affixing or installing of the property.

b) "Construction contractor" to mean a person who agrees to perform and performs a construction contract, including subcontractors and specialty contractors and those engaged in building trades, and to include any person required to be licensed under the Contractors' State License Law and any person contracting with the federal government for a construction contract.

c) "Construction driver" to mean a person who operates a motor vehicle to perform construction work on behalf of a construction contractor, utilizing a vehicle that they own or a vehicle supplied by the construction contractor.

d) "Eligible construction contractor" to mean a construction contractor who does not have either, on the date of application to the program:
   i. A civil lawsuit pending against them alleging misclassification of a construction driver, if the lawsuit was filed on or before December 31, 2025;
   ii. A final imposition of a penalty assessed by the EDD pursuant to the Unemployment Insurance Code.

3) Requires a settlement agreement between the LCO and an eligible construction contractor to require the contractor to:
   a) pay all wages, benefits, and taxes owed to all of its construction drivers who are reclassified as employees under the program, from the first misclassification within the applicable statute of limitations to the date the settlement agreement is executed;
   b) maintain all construction driver positions reclassified to employee positions as employee positions;
   c) consent that any future construction drivers who are hired to perform the same or similar duties as those who were reclassified under the settlement be presumed to be employees, and that the contractor has the burden to prove by clear and convincing evidence that the new drivers are independent contractors in any judicial proceeding regarding their classification;
   d) secure workers' compensation coverage that is legally required for reclassified construction drivers immediately after the execution of the settlement agreement, effective on or before the date the settlement agreement is executed;
   e) provide the LCO and the EDD with proof of the workers' compensation insurance coverage obtained, within five days of securing such coverage;

   f) pay any costs of the LCO and EDD for the administration of the settlement agreement; and
   g) perform any other requirements that the LCO or EDD deem necessary to carry out the intent of the program or enforce the settlement agreement.

4) Requires that a construction contractor apply to participate in the program by either:
   a) Submitting an application to the LCO on a form provided by the LCO which, at a minimum, establishes that the contractor qualifies as an eligible construction contractor; or
   b) Reporting to the LCO the results of a self-audit in accordance to guidelines provided by the LCO.

5) Specifies that a construction contractor that reclassifies its construction drivers as employees on or before January 1, 2026, either voluntarily or as a result of a final disposition in a civil proceeding, must also submit with its application the following information, in addition to other information requested by the LCO:
   a) Documentation demonstrating that the construction contractor reclassified their construction drivers as employees and when;
   b) The identification of each construction driver reclassified, the amounts paid to each to compensate for the previous misclassification, and the time period applicable to the amount paid to each construction driver; and
   c) A report of a self-audit for all construction drivers reclassified, and a separate self-audit report for any construction drivers subject to reclassification but not included in the previous documentation.

6) Provides that the LCO must analyze the information submitted pursuant to (5), above to evaluate the scope of a prior reclassification of a construction contractor's drivers to employees, and that the LCO has discretion to determine whether the scope was sufficient to provide relief to the misclassified construction drivers.

7) Specifies that a proceeding or action under the Private Attorneys' General Act (PAGA) may not be initiated against a construction contractor after they have submitted an application for participation in the program, unless the application is denied.

8) Specifies that, if the construction contractor's application is denied, their application for the program or its submission may not be considered an acknowledgement or admission by the construction contractor that they misclassified their construction drivers, and cannot be construed in any way to support an evidentiary inference that the construction contractor failed to properly classify their construction drivers as employees.

9) Provides that, prior to the execution of a settlement agreement, the construction contractor must file their contribution returns and report unreported wages and taxes for the time period covered by the settlement agreement.

10) Provides that a settlement agreement pursuant to the program may require a construction contractor to pay the reasonable, actual costs of the LCO and the EDD for their respective review, approval, and compliance monitoring of the settlement agreement, and requires such costs to be deposited into the Labor Enforcement and Compliance Fund, with the portion of the costs attributable to the EDD to be transferred to the EDD upon appropriation of the Legislature.

11) Permits the settlement agreement to include provisions for a construction contractor to make installment payments for the amounts of wages, benefits, taxes, and costs of the LCO and EDD owed, with interest as provided. Requires a settlement agreement that allows for installment payments to include a provision that, if the construction contractor fails without good cause to comply with the installment payments, the agreement is null and void and all costs due are due immediately and payable.

12) Permits the LCO to share any information necessary to carry out the program, but that sharing such information does not constitute a waiver of any applicable confidentiality requirements, and the party receiving the information shall be subject to any existing confidentiality requirements for the information.

13) Specifies that an eligible construction contractor that executes and performs its obligations under a settlement agreement pursuant to the program shall not be liable for, and the LCO and EDD may not enforce, any civil or statutory penalties that might have become due and payable for the time period covered by the settlement agreement. Exceptions for this provision are certain Unemployment Insurance Code penalties that were final on the date the settlement agreement was executed, unless reversed by the Unemployment Insurance Appeals Board, a penalty for an amount that the construction contractor admitted was based on fraud or made with intent to evade reporting requirements, and a penalty based on a violation of the Labor Code or Unemployment Insurance Code where the eligible construction driver was on notice of a criminal investigation against it and the criminal court proceeding has already been initiated against the construction contractor.
    a) Specifies that personal income taxes required to be withheld under the Unemployment Insurance Code and owed by the construction contractor may not be collected if the contractor issued an information return reporting payment, or if the construction driver certifies that the state personal tax has been paid or reported to the Franchise Tax Board.

14) Specifies that an eligible construction contractor that executes and performs their obligations under the settlement agreement may not be liable, and the LCO and EDD may not enforce, any unpaid penalties and interest on or before the date the

settlement agreement was executed for the tax reporting periods for which the settlement agreement is applicable, and owed as a result of the nonpayment of tax liabilities due to the misclassification of one or more construction drivers, except that penalties and interest established as a result of an assessment by the EDD issued before the date the settlement agreement was executed may be enforced.

15) Prohibits a refund or credit for any penalty or interest paid by the construction contractor prior to the date the contractor applied to participate in the program.

16) Prohibits the EDD from bringing a criminal action for failing to report tax liabilities against an eligible construction contractor that executed or performed their obligations pursuant to a settlement agreement for tax reporting periods under the agreement.

17) Provides that the statute of limitation on any claim of liability that might have been asserted against a construction contractor for misclassification is tolled from the date that the contractor applies for the program, until either the date that the LCO denies the application, or the construction contractor fails to perform an obligation under the settlement agreement.

18) Requires that any recovery of wages and benefits on behalf of a construction driver through the program may only be tendered to the construction driver on the condition that they release all claims they may have against the eligible construction contractor based on the contractor's misclassification of that driver, but specifies that a construction driver is not under obligation to accept the terms of a settlement agreement. Specifies that, if the construction driver declines the settlement agreement, they are not bound by it, except that they may not pursue a claim for civil or statutory penalties and that the construction contractor must still reclassify them as an employee. If the construction driver declines the settlement agreement, the construction contractor is excused from paying the amount due to the construction driver under the settlement agreement.

19) Specifies that, if the LCO determines that an eligible construction contractor violated or failed to perform any obligations under the settlement agreement, the LCO may file a civil action to enforce the agreement, and specifies that, if the LCO files a civil action seeking only the amounts due to construction drivers under the settlement agreement, the LCO may obtain judicial enforcement through an entry of judgment for the liabilities due and remaining pursuant to the settlement agreement. Specifies that, after filing an entry of judgment, the LCO may file an application for an order to show cause, and that the court must hold a hearing within 60 days of the filing of the application and enter judgment. Requires the judgment to be in the amounts due and owing to construction drivers under the settlement agreement with credits for applicable payments made by the construction contractor. Specifies that a judgment

does not preclude the LCO or an employee from filing a subsequent action to recover civil or statutory penalties.

20) Specifies that, if the court determines that a construction contractor violated or otherwise failed to perform their obligations under the settlement agreement in a civil action filed by the LCO to enforce the settlement agreement, the court must award the LCO costs and reasonable attorney's fees.

21) Specifies that mere ownership of a vehicle, including a personal or commercial vehicle, for the purposes of providing labor or services for remuneration does not make the owner an independent contractor, and specifies that a person who owns a vehicle they use to provide labor or services may be either an employee or an independent contractor, as determined by the ABC test. Specifies that, if an owner of a vehicle is an employee, the employee must be reimbursed for the use of their vehicle, as provided.

22) Specifies that, with respect to construction trucking, a commercial motor vehicle driver who owns the vehicle that they use in the discharge of their duties as an employee is entitled to reimbursement from their employer for the use, upkeep, and depreciation of that vehicle. Specifies that this requirement applies regardless of whether the vehicle is owned by the driver as an individual or through a corporate entity.
    a) Specifies that the amount to be reimbursed for the use of the employee's vehicle must be negotiated either by the driver and the employer, or by a labor union representing the driver, and that the amount must be either a flat rate reimbursement or a per-mile reimbursement. Specifies that the amount may not be less than the actual amount expended by the driver or the standard mileage reimbursement rate set by the Internal Revenue Service for the time period the services were provided.
    b) Requires reimbursement be paid directly to the driver in their name, or to a corporate entity owned and controlled by the driver, if the corporate entity owns the vehicle.

COMMENTS

1. Author's statement

According to the author:

> SB 809 addresses a critical issue in California's construction industry: the misclassification of truck-owner drivers as independent contractors. This misclassification denies workers essential employee protections like overtime pay, workers' compensation, and unemployment benefits, while also putting employers who follow the law at a competitive disadvantage. SB 809 seeks to

incentivize employers to correct this issue by offering legal amnesty from penalties if they reclassify truck-owner drivers as employees and properly compensate them using the "two-check system."

The two-check system is a well-established model in the trucking industry, ensuring truck drivers who own their vehicles are compensated for both their labor and the use of their trucks. This system helps employers comply with California labor laws and ensures drivers are paid appropriately for both their time and operational expenses, such as fuel and maintenance.

The bill helps create a level playing field for construction employers by encouraging compliance and preventing a race to the bottom, where noncompliant employers undermine the integrity of the industry. By incentivizing proper classification rather than punishing past mistakes, SB 809 provides an opportunity for both workers and employers to move forward in a fair and legal manner.

2. Worker misclassification is a major issue 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 Californians 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 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. It also allows an employer who classifies their workers as independent contractors to avoid paying payroll taxes for those workers. Likewise, independent contractors are unable to receive a variety of public benefits like unemployment insurance and workers' compensation.

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[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.

One study found that 90 percent of businesses inspected by the state were out of compliance with worker classification laws.[3]

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. The ABC Test and history of misclassification

The history of worker misclassification law in California is a long and contentious one. In early California history, common law distinguished between an employee and independent contractor based on the degree to which the hirer controlled the details of the hired person's services.[6] This test was adopted into California employment law statutes that distinguished between employees and independent contractors for the purposes of coverage of the laws' protections.

However, a series of California Supreme Court cases changed this landscape in the last thirty-five years. In the case *S.G. Borello & Suns v. Department of Industrial Relations*, the California Supreme Court adopted a multi-factor test that considered the original control of details as one factor along with a variety of other factors. (*Borello* 48 Cal. 3d 351.) Such a test was incredibly fact intensive and case specific, and courts and defendants in different contexts could emphasize different factors. No one factor was necessary or more important than others. Thus, its vagueness left workers and employers in the dark regarding who would be classified as employees in any one

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[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/.
[6] *S.G. Borrello & Sons v. Dept. of Industrial Relations*, (1989) 48 Cal. 3d 341, 350.

context, and allowed employers to more easily classify employees as independent contractors.

The California Supreme Court ultimately overturned its multi-factor test in *Borello* as unworkable in 2018, and instead adopted the ABC test. (*Dynamex Operations W. v. Superior Court*, (2018) 4 Cal. 5th 903, 956.) Under the ABC test, a person is an independent contractor when: they are free from the control and direction of their hirer, they perform work that is outside the usual course of business for the hirer, and they are customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. (*Dynamex*, 4 Cal. 5th 957.) A worker is presumed to be an employee, unless the employer demonstrates that all three factors exist.

However, that was not the end of the story. The *Dynamex* decision dealt specifically with Wage Order Nine of the Industrial Welfare Commission, which was a wage order specific to the wages, hours, and working conditions in the transportation industry. Thus, the Legislature enacted AB 5 (Gonzalez, Ch. 296, Stats. 2019) in 2019 to codify the ABC test in *Dynamex* and expand it to apply to most other industries and workers in California. AB 5 also included a number of exemptions for specific professions and industries, for which the previous multi-factor test in *Borello* and other requirements would apply instead. One exemption was for the construction industry, which provided an exemption when the contractor meets a number of criteria, including that the subcontractor is licensed by the Contractors State License Board, and the contracted-for work is within the scope of that license.

However, for subcontractors providing construction trucking services to contractors, this licensure requirement was specifically waived if the subcontractor met a number of additional requirements. Those requirements include that: the subcontractor is a sole proprietorship, limited liability company, limited liability partnership, or corporation; the subcontractor, for work performed after January 1, 2020, is registered as a public works contractor; the subcontractor uses their own employees or is a sole proprietor operating their own truck; and that the subcontractor negotiates and contracts with, and is compensated by, the licensed contractor. AB 5 limited this exemption to the licensure requirement for construction trucking subcontractors to work performed before January 1, 2022. Subsequent legislation extended this deadline to December 31, 2024. This date has now passed, with no additional extension.

4. <u>The Port Drayage Motor Carrier Amnesty Program</u>

In response to reports of high rates of worker misclassification in the port drayage motor carrier industry, which is the industry of transporting goods a short distance to and from a port, the Legislature passed AB 621 (R. Hernandez, Ch. 741, Stats. 2015). AB 621 created the Motor Carrier Employer Amnesty Program, a voluntary program administered by the LCO to allow port drayage motor carriers to "come in from the

cold" of misclassifying their drivers as independent contractors. It did so by relieving port drayage motor carriers of liability for the steep statutory and civil penalties that apply for misclassifying workers, if those motor carriers: reclassify their drivers as employees; pay all wages, benefits, and taxes owed to their drivers for the period in which they were classified as independent contractors; and agree that all future drivers performing the same or similar duties as the driver employees are presumed to be employees. (Lab. Code § 2750.8.) Through this program, AB 621 aimed to provide an incentive to and some protection for employers to comply with the law and reclassify their drivers as employees. Instead of potentially being subject to steep civil and statutory penalties for not being in compliance with labor law, AB 621 provided motor carriers the opportunity to come clean and pay their drivers what they should have had the drivers been classified as employees, thereby making their employees whole.

5. SB 809 would create an amnesty program similar to that for Port Drayage Motor Carriers

SB 809 aims to provide a similar compliance incentive as AB 621, but for the context of construction trucking. In fact, many of its requirements mirror those for AB 621's Motor Carrier Employer Amnesty Program. SB 809 would create the "Construction Trucking Employer Amnesty Program," through which a construction contractor that successfully applies would be relieved of liability for any statutory or civil penalties associated with misclassification of its construction drivers. This immunity is significant because civil penalties for misclassification can amount to significant sums, even for misclassifying one worker. That is because the misclassification necessarily results in violations of other labor laws like those regarding the minimum wage and overtime, violations that each can carry their own civil penalties. In addition, there is a civil penalty for the action of willfully misclassifying a worker itself, which allows for a civil penalty of between $5,000 and $25,000 per violation. (Lab. Code § 226.8.) The Employment Development Department (EDD) also has the authority to assess a penalty of 15% of the amount of the deficiency if it determines that a misclassification resulted in a negligent or intentional disregard of the requirements to report and pay taxes for unemployment insurance. (Unemp. Ins. Code § 1127(a).)

SB 809's amnesty program also would provide additional protections for contractors. It would provide that a contractor would not be liable for any penalties or interest charged thereon for the nonpayment of tax liabilities as a result of the contractor's misclassification, except for any penalties and interest owed as a result of an assessment issued before the contractor entered into the program. Additionally, it provides that the Employment Development Department (EDD) may not bring a criminal action against a contractor in the amnesty program for failing to report tax liabilities regarding employees, except in limited circumstances. Lastly, SB 809 would prohibit any representative claims under PAGA from being initiated against a contractor who has submitted an application to enter the amnesty program, unless the application is denied.

To qualify for the program, a construction contractor would have to:

- reclassify its drivers as employees;
- pay the wages, benefits, and taxes owed their drivers due to classifying them as independent contractors;
- consent to the presumption that any future construction drivers hired to do same or similar work as the reclassified drivers are employees in any judicial proceeding in which the drivers' worker status is at issue;
- obtain workers' compensation coverage and provide proof to the LCO;
- pay the reasonable, actual costs of the LCO for the program, if required; and
- perform any other duties as required by the LCO.

SB 809 prescribes how a construction contractor would be able to apply for the amnesty program. The contractor would either submit to the LCO an application establishing that they do not have a civil lawsuit for misclassification pending against them and that they have no final penalty assessed against them for failing to file unemployment insurance returns or reports, or report the results of a self-audit. If a contractor reclassified its drivers prior to SB 809's enactment, either voluntarily or due to a civil action, the contractor may also apply for the program, provided they submit additional documentation.

SB 809 specifically provides that an application for the amnesty program that is denied, or its submission, cannot be considered an acknowledgement or admission or used evidence of an inference that the contractor did in fact misclassify their drivers. This protection is meant to encourage construction contractors to apply for the program, and to provide some assurance that there will not be negative consequences for applying.

SB 809 does exclude some construction contractors, specifically those that have a pending lawsuit against them as of December 31, 2025, that claims misclassification. It also excludes any contractor that was assessed a penalty by EDD for not filing an unemployment insurance return in order to evade unemployment insurance contributions or commit fraud.

While SB 809 provides a number of protections, it also includes provisions that ensure the LCO or aggrieved drivers may still enforce the labor laws against a contractor who violates the requirements to remain in the program. It preserves drivers' and the LCO's claims of misclassification by tolling the statute of limitations on any such claim from the time a contractor applies for the program to when the application is either denied, or the contractor violates the agreement. This tolling would help ensure that, if the contractor ultimately fails to conform to the program requirements, an aggrieved driver or the LCO may still bring a civil action for misclassification, if they would have been able to when the contractor applied to be a part of the program. Additionally, while SB 809 requires a driver to release the contractor for all claims of misclassification in order to receive their unpaid past wages and damages under the program, it allows a driver to reject this release and retain their ability to pursue damages against their employer.

Lastly, SB 809 allows the LCO to enforce the agreements entered into with construction contractors pursuant to the program. It provides that the LCO may file a civil action to enforce the agreement if they determine that the contractor violated or failed to perform any part of the agreement. If the LCO files such a claim solely for the amounts due to a driver under the agreement, the LCO is permitted to obtain an entry of judgment and file an order to show cause. SB 809 would require a court to hold a hearing on the order to show cause within 60 days. If a court determines that the contractor did violate the agreement, it must award the LCO costs and reasonable attorney's fees.

6. The two-check system

The second innovative proposal made by SB 809 is to require that construction contractors pay their employee drivers through a "two-check" system. Under this system, a construction driver who uses the vehicle they own for their job must be reimbursed for the use, upkeep, and depreciation of their vehicle, and they must be paid directly for that reimbursement. Thus, the system is truly meant to be a "two-check" system, in that the employee driver would receive a check for their wages, and a separate check to reimburse them for the use of their vehicle. The reimbursement may either be a flat rate reimbursement, or a per-mile reimbursement, and must be no less that the actual amount of expenses to the driver of using their vehicle or the standard mileage reimbursement rate set by the Internal Revenue Services (IRS). The concept of a "two-check" is not entirely new, and is being implemented by at least one company that provides drivers for trucking companies.[7] Because it allows for drivers to be compensated separately for the use of their vehicle, it can operate as a hybrid system between the employee and the independent contractor, where the driver is an employee of the contractor but is paid for the leasing or use of their vehicle by the primary party using the contracting services.

SB 809's program is a comprehensive system meant to ensure that construction drivers who were wrongly classified as independent contractors can recover what they are owed for that misclassification, as well as that construction drivers who are properly employees continue to be classified that way by program participants. It creates a regulatory regime that has both enforceability mechanisms as well as incentives for compliance, thereby providing the LCO tools to ensure contractors are complying with the program while also encouraging participating contractors to become compliant. SB 809 takes advantage of the fact that worker misclassification risks steep penalties under California law to push contractors to voluntarily reclassify their drivers.
It should be noted that construction contractors should already be in compliance with the ABC test, as the exemption for such contractors of construction trucking expired on January 1, 2025. Any misclassified driver, and the LCO, currently have a right to any

[7] John Kingston, "TransForce offers 'two-check' solution to help independents comply with AB5," FreightWaves (Jul. 25, 2022), https://www.freightwaves.com/news/transforce-offers-two-check-solution-to-help-independents-comply-with-ab5.

claims for damages or statutory or civil penalties against any construction trucking contractor not in compliance with the ABC test or the narrow exemption for construction contractors. Such aggrieved drivers and the LCO do not need to wait to be made whole and enforce the law. However, considering that studies have shown that misclassification is still rampant in California, it is likely that SB 809's amnesty could help at least some construction trucking contractors avoid liability. While it is difficult to predict how utilized the program will be, it may provide one avenue for ensuring compliance with the law, and for, in the words of the author, bringing noncompliant construction contractors "in from the cold."

7. Amendments

A provision of SB 809, relating to when the LCO may negotiate and execute settlement agreements with eligible construction contractors, includes conflicting dates. The author has agreed to amendments that will correct these dates and provide until January 1, 2029 for the LCO to enter into such settlement agreements. A full mock-up of the amendments is included at the end of this analysis.

8. Arguments in support

The State Building and Construction Trades Council of California, AFL-CIO, is a sponsor of SB 809, and argues that:

> The two-check system is a payment model in the trucking industry that ensures truck drivers are properly classified as employees rather than independent contractors. Under this system, trucking companies pay drivers with two separate checks: one check for their labor, and one check for use of their commercial vehicle. This compensates drivers for their time, ensuring they receive at least minimum wage, overtime pay, and benefits, as well as expenses related to the truck, such as fuel, maintenance, and insurance.
>
> Trucking companies, trucking brokers, and contractors often misclassify drivers as independent contractors, forcing them to cover all operating expenses while depriving them of employee protections like overtime pay, workers' compensation, unemployment benefits, and the right to unionize. The two-check system corrects this by clearly separating wages from expenses, making it easier to establish that drivers are employees. At the same time, these drivers, who have often made enormous personal investments in purchasing their vehicles, are separately compensated for the use of their equipment.
>
> The two-check system challenges the exploitative "lease-to-own" or "owner-operator" models that leave many truckers in financial hardship. By making the distinction between wages and expenses transparent, it strengthens enforcement of labor laws, preventing companies from disguising employment relationships

to cut costs at workers' expense. Put simply—this important bill will help eliminate the misclassification of drivers in the construction industry.

AB 5 was a landmark California law enacted in 2019 to combat worker misclassification, particularly in industries like trucking, rideshare, and delivery services. The law codified the ABC test, a stricter standard for determining whether a worker is an employee or an independent contractor. At the time of enactment, the construction industry was given a five-year sunset to come into compliance with AB 5. That exemption expired at the end of 2024, and construction employers are now obligated to fully comply with the law.

SB 809 allows construction employers to meet their legal obligations through the implementation of the two-check system. In return, these employers would be granted legal amnesty for their prolonged, and sometimes systemic misclassification of drivers. This will save employers in the construction industry tens to hundreds of millions of dollars in potential liability stemming from unpaid overtime, meal and rest break violations, failure to provide reimbursements and health benefits, and more. For these reasons, we believe that SB 809 will provide meaningful protection to construction businesses while offering workers all the benefits they are entitled to under the law.

9. Arguments in opposition

The Western States Trucking Association is opposed to SB 809, and argues that:

Independent contractor owner-operators have been the backbone of the trucking industry for more than 75 years and have dutifully served a critical role in the transportation of goods that Americans continue to utilize on a daily basis throughout the country. WSTA's owner-operators are fiercely protective of their independent contractor status, as the independent contractor model provides many unique advantages to them in the workforce, including increased entrepreneurial opportunities and earnings, as well as a more flexible work schedule. For a hiring entity, the ability to hire an owner-operator to provide specialized skills or fulfill an urgent demand on a short-term or emergency project that simply exceeds the abilities of its employee workforce, is critical. And for customers – both government or private – legitimate independent contractors play an invaluable role in delivering projects safely, on time, and on budget.

Unfortunately, California continues to enact laws and regulations that thwart the ability for independent contractor owner-operators to be utilized, including with AB 5 (2019) and now with SB 809. Recognizing that the rigid ABC test was ill-fitting for much of today's workforce, in particular owner-operator trucking companies working in the construction industry, the Legislature included within AB 5 a provision allowing subcontractors providing construction trucking

services to instead continue to utilize the multi-factor approach found in the *Borello* test. While sensible in theory, this carve-out proved too narrow and unworkable in practice, and was ultimately allowed to sunset on December 31, 2024.

In a state where the cost of building homes and projects continues to escalate, further jeopardizing affordability for Californians, the Legislature continues to drive these prices up by curtailing the use of independent contractor owner-operators within the construction industry. Instead of creating further obstacles to cost-effective construction, like with SB 809, the Legislature should focus its efforts on crafting a workable construction trucking carve-out to the ABC test, which actually facilitates the use of legitimate owner-operators instead of abolishing them.

SUPPORT

State Building and Construction Trades Council of California, AFL-CIO (sponsor)
California Federation of Labor Unions, AFL-CIO

OPPOSITION

Western States Trucking Association

RELATED LEGISLATION

Pending Legislation:

SB 527 (Alvarado Gil, 2025) adds an exemption to the applicability of the ABC test and the holding of *Dynamex Operations West, Inc. v. Court of Los Angeles* (*Dynamex*) for a sports coach of an elementary or secondary private school or local educational agency when the coach does not perform any other services for the school or local educational agency beyond coaching, and instead applies the *Borello* test. SB 527 is currently pending before the Senate Labor, Public Employment, and Retirement Committee.

AB 816 (Flora, 2025) creates an exemption to the to the applicability of the ABC test and the holding of *Dynamex* for a merchandiser contracting with bona fide business or hiring entities to provide stand-alone, in-store inventory and product placement services on behalf of retainers and brands. AB 816 is currently pending in the Assembly Labor and Employment Committee.

AB 504 (Ta, 2025) makes permanent the exemption for manicurists from the ABC test and the holding of *Dynamex*. AB 504 is currently pending before the Assembly Labor and Employment Committee.

Prior Legislation:

AB 1561 (Assembly Committee on Labor and Employment, Ch. 422, Stats. 2021) extended the repeal dates of various exemptions to the applicability of the ABC test in AB 5 (Lorena Gonzalez, Ch. 296, Stats. 2019), and made other changes to the exemptions and exceptions within the law.

AB 2257 (Lorena Gonzalez, Ch. 38, Stats. 2020) reordered the provisions of AB 5 (Gonzalez, Ch. 296, Stats. 2019) and made clarifications to the bona fide business-to-business exemption.

AB 5 (Lorena Gonzalez, Ch. 296, Stats. 2019) codified the ABC test in *Dynamex* for determining when an employee is actually an independent contractor, and expands the applicability of the test to all industries and workers in California, with specific industry and profession exemptions.

PRIOR VOTES:

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

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Amended Mock-up for 2025-2026 SB-809 (Durazo (S))

(Amendments may be subject to technical changes by Legislative Counsel)

Mock-up based on Version Number 98 - Amended Senate 3/28/25

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2750.9 is added to the Labor Code, to read:

2750.9. (a) The Labor Commissioner and the Employment Development Department shall administer the Construction Trucking Employer Amnesty Program pursuant to which, notwithstanding any other law, an eligible construction contractor shall be relieved of liability for statutory or civil penalties associated with the misclassification of construction drivers as independent contractors, as provided by this program, if the eligible construction contractor executes a settlement agreement with the Labor Commissioner whereby the eligible construction contractor agrees to, among other things, properly classify all drivers performing construction work on its behalf as employees.

(b) As used in this section, the following terms shall have the following meanings:

(1) (A) "Construction contract" means a contract, whether on a lump sum, time and material, cost plus, or other basis, to do any of the following:

(i) Erect, construct, alter, or repair any building or other structure, project, development, or other improvement on or to real property.

(ii) Erect, construct, alter, or repair any fixed works, including waterways and hydroelectric plants, steam and atomic electric generating plants, electrical transmission and distribution lines, telephone and telegraph lines, railroads, highways, airports, sewers and sewage disposal plants and systems, waterworks and water distribution systems, gas transmission and distribution systems, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, refineries, and chemical plants.

(iii) Pave surfaces separately or in connection with any of the above works or projects.

(iv) Furnish and install the property becoming a part of a central heating, air-conditioning, or electrical system of a building or other structure, and furnish and install wires, ducts, pipes, vents, and other conduit imbedded in or securely affixed to the land or a structure on the land.

(B) "Construction contract" does not include either of the following:

(i) A contract for the sale, or for the sale and installation, of tangible personal property, including machinery and equipment.

(ii) The furnishing of tangible personal property under what is otherwise a construction contract if the person furnishing the property is not responsible under the construction contract for the final affixation or installation of the property furnished.

(2) "Construction contractor" means a person who agrees to perform and does perform a construction contract. Construction contractor includes subcontractors and specialty contractors and those engaged in building trades, including carpentry, bricklaying, cement work, steel work, plastering, drywall installation, sheet metal work, roofing, tile and terrazzo work, electrical work, plumbing, heating, air-conditioning, elevator installation and construction, painting, and persons installing floor coverings, including linoleum, floor tile, and wall-to-wall carpeting, by permanently affixing those coverings to a floor. Construction contractor includes any person required to be licensed under the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) and any person contracting with the federal government to perform a construction contract.

(3) "Construction driver" means a person who operates a motor vehicle to perform construction work on behalf of a construction contractor, utilizing a vehicle owned by the driver or a vehicle supplied by the construction contractor.

(4) "Department" means the Employment Development Department.

(5) "Eligible construction contractor" means a construction contractor that does not have either of the following on the date they apply to participate in the program:

(A) A civil lawsuit that was filed on or before December 31, 2025, pending against it in a state or federal court that alleges or involves a misclassification of a construction driver.

(B) A penalty assessed by the department pursuant to Section 1128 of the Unemployment Insurance Code that is final imposition of that penalty.

(6) "Program" means the Construction Trucking Employer Amnesty Program established by this section.

(c) (1) A construction contractor shall only apply to participate in the program by doing either of the following:

(A) Submitting an application to the Labor Commissioner, on a form provided by the Labor Commissioner. The application shall, at a minimum, require the construction contractor to establish they qualify as an eligible construction contractor.

(B) Reporting on the results of a self-audit in accordance with the guidelines provided by the Labor Commissioner.

(2) A construction contractor that voluntarily or as a result of a final disposition in a civil proceeding reclassified its construction drivers as employees on or before January 1, 2026, shall, in addition to other information requested by the Labor Commissioner, also submit with its application all of the following:

(A) Documentation demonstrating that the construction contractor reclassified their construction drivers as employees, including the commencement period applicable to the reclassification.

(B) The identification of each construction driver reclassified in the documents provided in subparagraph (A), the amounts paid to each construction driver to compensate for the previous misclassification, and the time period applicable to the amount paid to each construction driver prior to reclassification.

(C) A report of a self-audit for all construction drivers reclassified by the construction contractor identified in subparagraphs (A) and (B), and also include a separate self-audit report for any construction driver who is subject to reclassification, but is not identified in subparagraph (B).

(3) A proceeding or action against a construction contractor pursuant to Sections 2698 to 2699.5, inclusive, shall not be initiated after the construction contractor has submitted an application for participation in the program, but may be initiated if the construction contractor's application is denied.

(4) If a construction contractor's application to participate in the program is denied by the Labor Commissioner, the application or its submission shall not be considered an acknowledgment or admission by the construction contractor that they misclassified their construction drivers as independent contractors, and the application or its submission shall not be construed in any way to support an evidentiary inference that the construction contractor failed to properly classify their construction drivers as employees.

(d) The Labor Commissioner shall analyze the information provided pursuant to paragraph (2) of subdivision (c) for the purpose of evaluating the scope of a prior reclassification of an eligible construction contractor's construction drivers to employees and has discretionary authority to determine whether the scope was sufficient to afford relief to the misclassified construction drivers.

(e) Before ***January 1, 2029***~~January 1, 2027~~, the Labor Commissioner, with the cooperation and consent of the department, may negotiate and execute a settlement agreement with an eligible construction contractor pursuant to the program that applied to participate in the program. The Labor Commissioner shall not execute a settlement agreement on or after ***January 1, 2029***~~January 1, 2026~~.

(f) Prior to the Labor Commissioner executing a settlement agreement, an eligible construction contractor shall file their contribution returns and report unreported wages and taxes for the time period the construction contractor seeks relief under the settlement agreement.

(g) A settlement agreement executed by the Labor Commissioner and an eligible construction contractor pursuant to the program shall require an eligible construction contractor to do all of the following:

(1) Pay all wages, benefits, and taxes owed, if any, to or in relation to all of its construction drivers reclassified from independent contractors to employees for the period of time from the first date of misclassification to the date the settlement agreement is executed, but not exceeding the applicable statute of limitations.

(2) Maintain any converted construction driver positions as employee positions.

(3) Consent that any future construction drivers hired to perform the same or similar duties as those employees converted pursuant to the settlement agreement shall be presumed to have employee status and that the eligible construction contractor shall have the burden to prove by clear and convincing evidence that they are not employees in any administrative or judicial proceeding in which their employment status is an issue.

(4) Immediately after the execution of the settlement agreement, secure the workers' compensation coverage that is legally required for the construction drivers who were reclassified as employees, effective on or before the date the settlement agreement is executed.

(5) Provide the Labor Commissioner and the department with proof of workers' compensation insurance coverage in compliance with paragraph (4) within five days of securing the coverage.

(6) Pay the costs authorized by subdivision (h), if required.

(7) Perform any other requirements or provisions the Labor Commissioner and the department deem necessary to carry out the intent of this section, the program, or to enforce the settlement agreement.

(h) A settlement agreement may require an eligible construction contractor to pay the reasonable, actual costs of the Labor Commissioner and the department for their respective review, approval, and compliance monitoring of the settlement agreement. The costs shall be deposited into the Labor Enforcement and Compliance Fund. The portion of the costs attributable to the department shall be transferred to the department upon appropriation by the Legislature.

(i) The settlement agreement may include provisions for an eligible construction contractor to make installment payments of amounts due pursuant to paragraphs (1) and (6) of subdivision (g) in lieu of a full payment. An installment payment agreement shall be included within the settlement agreement and charge interest on the outstanding amounts due at the rate prescribed in Sections 1113 and 1129 of the Unemployment Insurance Code. Interest on amounts due shall be charged from the day after the date the settlement agreement is executed. The settlement agreement shall contain a provision that if a construction contractor fails, without good cause, to fully comply with terms of the settlement agreement authorizing installment payments, the settlement agreement shall be null and void and the total amount of tax, interest, and penalties for the time period covered by the settlement agreement shall be immediately due and payable.

(j) The Labor Commissioner and the department may share any information necessary to carry out the program. Sharing information pursuant to this subdivision shall not constitute a waiver of any applicable confidentiality requirements and the party receiving the information shall be subject to any existing confidentiality requirements for that information.

(k) (1) Notwithstanding any other law and pursuant to the program, an eligible construction contractor that executed and performed its obligations pursuant to a settlement agreement shall not be liable, and the Labor Commissioner or the department shall not enforce, any civil or statutory penalties, including, but not limited to, remedies available under subdivision (e) of Section 226, that might have become due and payable for the time period covered by the settlement agreement, except for the following penalties:

(A) A penalty charged under Section 1128 of the Unemployment Insurance Code that is final on the date of the settlement agreement is executed, unless the penalty is reversed by the California Unemployment Insurance Appeals Board.

(B) A penalty for an amount an eligible construction contractor admitted was based on fraud or made with the intent to evade the reporting requirements set forth in this division or authorized regulations.

(C) A penalty based on a violation of this division or Division 6 (commencing with Section 13000) of the Unemployment Insurance Code and either of the following:

(i) The eligible construction contractor was on notice of a criminal investigation due to a complaint having been filed or by written notice having been mailed to the eligible construction contractor informing the construction contractor that they are under criminal investigation.

(ii) A criminal court proceeding has already been initiated against the eligible construction contractor.

(2) (A) Notwithstanding any other law and pursuant to the program, an eligible construction contractor that executed and performed their obligations pursuant to a settlement agreement shall not be liable, and the Labor Commissioner or the department shall not enforce, any unpaid penalties, and interest owed on unpaid penalties, on or before the date the settlement agreement was executed, pursuant to Sections 1112.5, 1126, and 1127 of the Unemployment Insurance Code for the tax reporting periods for which the settlement agreement is applicable, that are owed as a result of the nonpayment of tax liabilities due to the misclassification of one or more construction drivers as independent contractors and the reclassification of these construction drivers as employees, except that penalties, and interest owed on penalties, established as a result of an assessment issued by the department before the date the settlement agreement was executed shall not be waived pursuant to the program.

(B) For purposes of paragraph (1), state personal income taxes required to be withheld by Section 13020 of the Unemployment Insurance Code and owed by the construction contractor pursuant to Section 13070 of the Unemployment Insurance Code shall not be collected, if the eligible construction contractor issued an information return pursuant to Section 6041A of the Internal Revenue Code reporting payment or if the construction driver certifies that the state personal tax has been paid or that the construction driver has reported to the Franchise Tax Board the payment against which the state personal income tax would have been imposed.

(3) A refund or credit for any penalty or interest paid prior to the date an eligible construction contractor applied to participate in the program shall not be granted.

(4) Except for violations described in Section 2119 of the Unemployment Insurance Code, the department shall not bring a criminal action for failing to report tax liabilities against an eligible construction contractor that executed and performed their obligations pursuant to a settlement agreement for the tax reporting periods subject to the settlement agreement.

(l) The statute of limitations on any claim or liability that might have been asserted against a construction contractor based on the construction contractor having misclassified a construction driver as an independent contractor shall be tolled from the date a construction contractor applies for participation in the program through the date the Labor Commissioner either denies the construction contractor participation in the

program or the construction contractor, as an eligible construction contractor, has failed to perform an obligation under the settlement agreement, whichever is later.

(m) The recovery obtained by the Labor Commissioner on behalf of a reclassified construction driver pursuant to a settlement agreement shall be tendered to the construction driver on the condition that the construction driver shall execute a release of all claims the construction driver may have against the eligible construction contractor based on the eligible construction contractor's failure to classify the construction driver as an employee. A construction driver shall not be under any obligation to accept the terms of a settlement agreement. If a construction driver declines to accept the terms of a settlement agreement, the construction driver shall not be bound by the settlement agreement, except that the eligible construction contractor shall still reclassify the construction driver as an employee and that construction driver shall be precluded from pursuing a claim for civil penalties or statutory penalties covered by the period of time covered by the settlement agreement. If a construction driver does not accept the terms of a settlement agreement, the construction contractor shall be excused from performing their requirement under the settlement agreement to pay the amount acknowledged in the settlement agreement to be due to that construction driver.

(n) (1) If the Labor Commissioner determines an eligible construction contractor violated or failed to perform any of their obligations under a settlement agreement, the Labor Commissioner may file a civil action to enforce the settlement agreement.

(2) (A) If the Labor Commissioner files a civil action seeking only recovery of the amounts due to construction drivers under the settlement agreement, the Labor Commissioner may obtain judicial enforcement by filing a petition for entry of judgment for the liabilities due and remaining pursuant to the settlement agreement.

(B) After filing a petition pursuant to subparagraph (A), the Labor Commissioner may file an application for an order to show cause and serve it on the eligible construction contractor. Within 60 days of the date the Labor Commissioner filed the order to show cause, the court shall hold a hearing and enter a judgment. The judgment shall be in amounts which are due and owing to construction drivers pursuant to the settlement agreement with credits, if any, for applicable payments the eligible construction contractor made under the settlement agreement. A judgment entered pursuant to this paragraph shall not preclude subsequent action to recover civil penalties or statutory penalties by the Labor Commissioner, or by an employee pursuant to Sections 2698 to 2699.5, inclusive.

(3) If the court determines in any action filed by the Labor Commissioner that a construction contractor has violated or otherwise failed to perform any of their obligations under a settlement agreement, the court shall award the Labor Commissioner costs and reasonable attorney's fees.

SEC. 2. Section 2775.5 is added to the Labor Code, to read:

2775.5. Mere ownership of a vehicle, including a personal vehicle or a commercial vehicle, used by a person in providing labor or services for remuneration does not make that person an independent contractor. A persons who owns a vehicle they use to provide labor or services, either as an individual or through a business entity they own, may be either an employee or an independent contractor depending on whether the conditions in paragraph (1) of subdivision (b) of Section 2775 are satisfied. If the conditions are not satisfied and the owner of the vehicle is an employee, the employee shall be reimbursed for use of the vehicle as described in Sections 2802 and 2802.2.

SEC. 3. Section 2802.2 is added to the Labor Code, to read:

2802.2. (a) Section 2802 applies to the use of a vehicle, including a personal vehicle or a commercial vehicle, owned by an employee and used by that employee in the discharge of their duties.

(b) With respect to construction trucking, a commercial motor vehicle driver who owns the truck, tractor, trailer, or other commercial vehicle that they use in the discharge of their duties as an employee working for an employer is entitled to reimbursement for the use, upkeep, and depreciation of that truck, tractor, trailer, or other commercial vehicle. This subdivision applies whether the vehicle is owned by the driver as an individual or whether the vehicle is owned by the driver through a corporate entity.

(1) The amount to be reimbursed for the use of the truck, tractor, or trailer shall be negotiated either by the driver and the employer, or by a labor union representing that driver and the employer. The amount negotiated shall be either a flat rate reimbursement or a per-mile reimbursement, but in no case shall the amount negotiated be less than the actual amount expended by the driver or less than the standard mileage reimbursement rate set by Internal Revenue Service for the time the services were provided.

(2) An amount owed to a driver under this section may be paid directly to the driver in the drivers' name, or may be paid to a corporate entity owned and controlled by the driver if the truck, tractor, or trailer is owned by the corporate entity rather than by the driver directly.