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AB-2754 Employment contracts and agreements: sufficient funds: liability. (2023-2024)

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Assembly Bill No. 2754

CHAPTER 739

An act to amend Sections 2810 and 2810.4 of the Labor Code, relating to employment.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2754, Rendon. Employment contracts and agreements: sufficient funds: liability.

(1) Existing law prohibits a person or entity from entering into a contract or agreement 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 all applicable local, state, and federal laws or regulations governing the labor or services to be provided. Existing law creates a rebuttable presumption affecting the burden of proof that there has been no violation of the above-described prohibition if the contract meets specified requirements, including being in a single document and containing 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 and regulations.

This bill would apply these provisions to port drayage motor carriers, except as specified. The bill would include in the requirements for the rebuttable presumption described above that the contract include a list of the current local, state, and federal motor carrier authority or registration and a copy of any agreement executed by an independent contractor identified pursuant to the provisions described above. The bill would define port drayage motor carriers for these purposes.

(2) Existing law requires the Division of Labor Standards Enforcement to post on its internet web page information on port drayage motor carriers with unsatisfied final court judgments, tax assessments, or tax liens relating to, among other things, the misclassification of employees as independent contractors with regard to a port drayage commercial driver. Existing law also requires the division to post on its internet web page a list of port drayage motor carriers that are prior offenders with a subsequent judgment finding that the port drayage motor carrier has violated a labor or employment law, among other information. Existing law requires a customer that, as part of its business, engages or uses a port drayage motor carrier that is on the list established by the division 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 to the state for port drayage services obtained after the date the motor carrier appeared on the list.

This bill, on and after January 1, 2025, and except under specified circumstances, would also require a customer that, as part of its business, engages or uses a port drayage motor carrier to share with the motor carrier or their 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 division's list.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 2810 of the Labor Code is amended to read:

2810. (a) A person or entity shall not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, security guard, port drayage motor carrier, or warehouse contractor, 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.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) if the contract or agreement with a construction, farm labor, garment, janitorial, security guard, port drayage motor carrier, or warehouse contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to any of the following:

(1) A person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement.

(2) A person who enters into a contract or agreement for labor or services to be performed on that person's home residences, provided that a family member resides in the residence or residences for which the labor or services are to be performed for at least a part of the year.

(3) A contract with a port drayage motor carrier involving 30 days or fewer of cumulative labor or services within a one-year period.

(d) To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, janitorial, security guard, port drayage motor carrier, or warehouse contractor for labor or services shall be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions that may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, security guard, port drayage motor carrier, or warehouse contractor through whom the labor or services are to be provided.

(2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, security guard, port drayage motor carrier, or warehouse contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, security guard, port drayage motor carrier, or warehouse contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, security guard, port drayage motor carrier, or warehouse contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.

(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, security guard, port drayage motor carrier, or warehouse contractor for services under the contract or agreement.

(9) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with both of the following:

(A) 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.

(B) A copy of any agreement executed by an independent contractor identified pursuant to this paragraph.

(10) The signatures of all parties, and the date the contract or agreement was signed.

(e) (1) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, janitorial, security guard, port drayage motor carrier, or warehouse contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(2) If a provision required to be contained in a contract or agreement pursuant to paragraph (7) or (9) of subdivision (d) is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements of subdivision (d). If an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required pursuant to paragraph (7) or (9) of subdivision (d) and to reduce that information to writing in accordance with the requirements of paragraph (1) once that information becomes known.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement. Upon the request of the Labor Commissioner, any person or entity who enters into the contract or agreement shall provide to the Labor Commissioner a copy of the provisions of the contract or agreement, and any other documentation, related to paragraphs (1) to (10), inclusive, of subdivision (d). Documents obtained pursuant to this section are exempt from disclosure under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(g) (1) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of the employee's actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees. An action under this section shall not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

(2) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase "construction, farm labor, garment, janitorial, security guard, port drayage motor carrier, or warehouse contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment, janitorial, security guard, port drayage motor carrier, or warehouse contractor.

(i) (1) The term "knows" includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase "should know" includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

(j) For the purposes of this section, "warehouse" means a facility the primary operation of which is the storage or distribution of general merchandise, refrigerated goods, or other products.

(k) For the purposes of this section, "port drayage motor carrier" has the same meaning as in paragraph (5) of subdivision (a) of Section 2810.4.

SEC. 2. Section 2810.4 of the Labor Code is amended to read:

2810.4. (a) As used in this section:

(1) "Commercial driver" means a person who holds a valid commercial driver's license who is hired or contracted to provide port drayage services either as an independent contractor or an employee driver.

(2) (A) "Customer" means 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.

(B) "Customer" does not include any of the following:

(i) A business entity with a workforce of fewer than 25 workers, including those hired directly by the customer or through a temporary employer or labor contractor.

(ii) The state or any political subdivision of the state, including any city, county, city and county, or special district.

(iii) A business entity, including, but not limited to, a marine terminal operator, who is not a customer, and who, incidental to the transportation of the freight for the customer, receives, makes available, or exchanges intermodal equipment, loaded or unloaded, or conducts any other transaction of equipment subject to an equipment interchange agreement with a motor carrier who is a signatory to an equipment interchange agreement.

(3) "Internet web page" refers only to the port drayage motor carrier list that the Division of Labor Standards Enforcement is required to update and maintain pursuant to subdivision (b) and shall not be construed to apply to any other information about wage claims, investigations, citations, judgments, or other activities that the Division of Labor Standards Enforcement may provide to the public through its internet website.

(4) "Labor" has the same meaning provided by Section 200.

(5) (A) "Port drayage motor carrier" means an individual or entity that hires or engages commercial drivers in the port drayage industry.

(B) "Port drayage motor carrier" also means a registered owner, lessee, licensee, or bailee of a commercial motor vehicle, as defined in subdivision (b) of Section 15210 of the Vehicle Code, 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.

(C) "Port drayage motor carrier" also means an entity or individual who succeeds in the interest and operation of a predecessor port drayage motor carrier consistent with the provisions of Section 2684.

(6) "Port" means any sea or river port located in this state.

(7) "Port drayage services" means the movement within California of cargo or intermodal equipment by a commercial motor vehicle whose point-to-point movement has either its origin or destination at a port, including any interchange of power units, chassis, or intermodal containers, or the switching of port drayage drivers that occurs during the movement of that freight. It shall not include employees performing the intra-port or inter-port movement of cargo or cargo handling equipment under the control of their employers.

(8) "Prior offender" means a port drayage motor carrier that has had at least one of the following:

(A) A final court judgment, tax assessment, or tax lien that may be released to the public under federal and state disclosure laws and which arose from unlawful conduct relating to the misclassification of employees as independent contractors.

(B) A final Labor Commissioner citation or a Labor Commissioner order, decision, or award that arose from unlawful conduct relating to the misclassification of employees as independent contractors.

(9) "Wages" has the same meaning provided by Section 200 and all sums payable to an employee or the state based upon any failure to pay wages, as provided by law.

(b) On and after January 1, 2025, a customer that, as part of its business, engages or uses a port drayage motor carrier shall 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 list established pursuant to paragraph (1) of subdivision (c). The customer shall have no liability pursuant to this subdivision under either of the following circumstances:

(1) The motor carrier utilizes its own employee drivers to perform services for the customer.

(2) 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.

(c) (1) (A) The Division of Labor Standards Enforcement shall post on its internet web page 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 pursuant to Section 98.1 finding that a port drayage motor carrier has engaged in illegal conduct including failure to pay wages, imposing unlawful expenses on employees, failure to remit payroll taxes, failure to provide workers'

compensation insurance, or misclassification of employees as independent contractors with regard to a port drayage commercial driver.

(B) The Division of Labor Standards Enforcement shall post on its internet web page, to the extent permitted by federal and state disclosure laws, 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. If the Division of Labor Standards Enforcement receives notice that a prior offender that is listed on the division's internet web page pursuant to this subparagraph has subsequently prevailed on appeal, the division shall remove the posting for the prior offender within 15 days after the division has determined that there remains no other basis under this section upon which to retain the prior offender's information on the internet web page. The Division of Labor Standards Enforcement shall be required to post the prior offender to this list on the internet web page only if notice of the subsequent and prior judgment, ruling, citation, order, decision, or award is provided in a manner and format that is acceptable to the Division of Labor Standards Enforcement.

(C) Except as provided in subparagraph (B), the Division of Labor Standards Enforcement shall not place the information required to be posted by this paragraph on the internet web page until the period for all judicial appeals has expired.

(D) A posting required by this paragraph shall be removed within 15 business days after the Division of Labor Standards Enforcement determines, first, that there has been full payment of an unsatisfied judgment or any other financial liabilities for all violations identified pursuant to subparagraphs (A) and (B) or that the port drayage motor carrier has entered into an approved settlement dispensing of the judgment or liabilities and, second, that both of the following conditions have been satisfied:

(i) The port drayage motor carrier has submitted certification, under penalty of perjury, that all violations identified pursuant to subparagraphs (A) and (B) have been remedied or abated.

(ii) On and after the date that the Division of Labor Standards Enforcement adopts regulations describing what constitutes "sufficient documentation" for purposes of this clause, the port drayage motor carrier has submitted sufficient documentation that all violations identified pursuant to subparagraphs (A) and (B) have been remedied or sufficiently abated.

(2) No less than 15 business days before posting on its internet web page the names, addresses, and essential information for any port drayage motor carrier pursuant to paragraph (1), the Division of Labor Standards Enforcement shall provide notification by certified mail to the port drayage motor carrier which, at a minimum, shall include all of the following:

(A) The name, email address, and telephone number of a contact person at the division.

(B) The alleged conduct and a copy of the citation, unsatisfied court judgment, assessment, order, decision, or award.

(C) A copy of the regulations or rules of practice or procedure adopted pursuant to subdivision (l) or (m) for removal of the posting.

(3) A customer that, as part of its business, engages or uses a port drayage motor carrier that is on the list established pursuant to paragraph (1) to perform port drayage services shall 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 to the state for port drayage services obtained after the date the motor carrier appeared on the list, meaning joint and several liability with the motor carrier for the full amount of unpaid wages, unreimbursed expenses, damages, and penalties, including applicable interest and all other amounts that are found due for all of the following:

(A) Minimum, regular, or premium wages that are unpaid by the motor carrier, including any wages that are found due under Section 226.7, 227.3, or 246.

(B) Unlawful deductions by the motor carrier from wages pursuant to Section 2802.

(C) Out-of-pocket business expenses incurred by the commercial driver that are not reimbursed by the motor carrier as required pursuant to Section 2802.

(D) Civil penalties for the failure to secure valid workers' compensation coverage as required by Section 3700.

(E) Employment tax assessments issued by the state.

(F) Civil liability stemming from the motor carrier's failure to comply with applicable health and safety laws, rules, or regulations.

(G) Damages or penalties as provided for by law that are due to the commercial driver or the state based upon the failure of the motor carrier to pay wages owed, including those set forth under Sections 203, 226, 226.8, 248.5, 558, 1194.2, and 1197.1.

(H) Applicable interest due for any sum described above.

(4) Pursuant to paragraph (3), each and every customer that engages or uses a port drayage motor carrier to provide port drayage services in a given workweek shall be jointly and severally liable with the motor carrier for the full amount of all unpaid wages, unreimbursed expenses, damages, and penalties, including applicable interest, which are found owed by the motor carrier for that workweek. The customer shall be jointly and severally liable from the time the driver is dispatched to begin work on behalf of the customer until all tasks are completed incidental to that work, including the return of an unladen chassis or intermodal container to its point of origin, and the driver is ready to be dispatched to haul freight on behalf of another customer.

(5) Except as provided in subparagraphs (B), (C), and (D) of paragraph (1) of this subdivision, the Division of Labor Standards Enforcement shall update its internet web page monthly by the fifth day of each month.

(d) A customer's liability under this section shall be determined by either one of the following:

(1) The Labor Commissioner, in an administrative proceeding pursuant to Section 98, de novo appeal under Section 98.2, or pursuant to the Labor Commissioner's citation authority under this code.

(2) By a court in a civil action brought by the Labor Commissioner, or by a commercial driver or their representative, where at least 30 business days prior to filing the civil action, the Labor Commissioner, or commercial driver or representative, notifies the customer of its potential joint and several liability for any of the wages, expenses, damages, or penalties listed in paragraph (3) of subdivision (c). No civil action for a violation or enforcement of this section shall be brought pursuant to Part 13 (commencing with Section 2698) of Division 2.

(e) The joint and several liability provided by this section shall not apply as follows:

(1) To customers who engage or use a port drayage motor carrier whose employees are covered by a bona fide collective bargaining agreement, if the agreement expressly provides for wages, hours of work, working conditions, a process to resolve disputes concerning nonpayment of wages, expenses, damages, and penalties listed in paragraph (3) of subdivision (c), including applicable interest, and a waiver of the joint and several liability provided by this section.

(2) Except for liability established pursuant to subdivision (b), where the customer and port drayage motor carrier had an existing contract for port drayage services at the time a port drayage motor carrier is listed on the internet web page maintained by the Division of Labor Standards Enforcement and the customer wishes to terminate the agreement, joint and several liability shall not apply until the expiration of the existing contract or a period of 90 business days following the listing, whichever is shorter. This paragraph does not apply to contracts entered into, renegotiated, or extended after the date a port drayage motor carrier is listed on the internet web page.

(3) Except for liability established pursuant to subdivision (b), where a port drayage motor carrier is not listed on the Division of Labor Standards Enforcement's internet web page pursuant to subdivision (c).

(4) Except for liability established pursuant to subdivision (b), where a port drayage motor carrier satisfied the conditions for removal from the internet web page pursuant to paragraph (1) of subdivision (c) prior to the time period for which the joint and several liability is alleged.

(f) A port drayage motor carrier that provides port drayage services to a customer, prior to providing these services to the customer, shall furnish the text of this section and written notice to the customer of any of the following:

(1) Any unsatisfied final judgments against the motor carrier for unpaid wages, damages, unreimbursed expenses, and penalties, including applicable interest.

(2) A final order from the Occupational Safety and Health Appeals Board regarding a citation, notice, order, or special order from the Division of Occupational Safety and Health finding that the employer has committed a serious violation that remains unabated, unremedied, or unsatisfied following the period for which any appeal may be made.

(3) If the motor carrier is a prior offender, a subsequent judgment, ruling, citation, order, decision, or award that the Division of Labor Standards Enforcement is required to post on its internet web page pursuant to subdivision (c).

(g) A port drayage motor carrier that provides port drayage services to a customer shall provide, within 30 business days of entry of the judgment, written notice of any unsatisfied final judgments against the motor carrier for unpaid wages, damages,

unreimbursed expenses, and penalties, including applicable interest, to any customer to which the motor carrier is presently providing port drayage services.

(h) The failure of the motor carrier to provide notice under subdivision (f) or (g) shall not be a defense to the joint and several liability provided by this section.

(i) A customer or port drayage motor carrier shall not take any adverse action against any 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, including applicable interest.

(j) The remedies provided by this section are in addition to, and shall be supplemental of, any other theories of liability or requirement established by statute or common law.

(k) Two or more parties who are held jointly and severally liable under this section after a final judgment is rendered by the court shall not be prohibited from establishing, exercising, or enforcing by contract or otherwise, any lawful or equitable remedies, including, but not limited to, a right of contribution and indemnity against each other for liability created by acts of a port drayage motor carrier.

(l) Pursuant to the Labor Commissioner's citation authority, a customer or a port drayage motor carrier shall provide to the Labor Commissioner any information within its possession, custody, or control required to verify compliance with applicable state laws. Upon request, the records that contain this information shall be made available promptly for inspection, and the Labor Commissioner shall be permitted to copy them.

(m) The Labor Commissioner may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (c) and (l) that are under their jurisdiction.

(n) The Employment Development Department may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivision (c) that are under its jurisdiction.

(o) A waiver of this section is contrary to public policy, and is void and unenforceable.

(p) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.