

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Labor Standards Enforcement**

**NOTICE OF PROPOSED RULEMAKING**

**Subject Matter of Regulations:  
Enforcement of Client Employer Liability Under Labor Code Section 2810.3**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
Sections 13830, 13831, 13832**

NOTICE IS HEREBY GIVEN that the Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department of Industrial Relations, pursuant to the authority vested in the Labor Commissioner by Labor Code section 2810.3(j), proposes to adopt sections 13830 through 13832 in proposed Subchapter 13.5 of existing Chapter 6, of Division 1, of Title 8, California Code of Regulations, relating to Enforcement of Client Employer Liability Under Labor Code Section 2810.3.

**PROPOSED REGULATORY ACTION**

The Labor Commissioner proposes to adopt Subchapter 13.5 of Chapter 6 of Division 1, regulations consisting of the following:

Section 13830 Definitions  
Section 13831 Recordkeeping  
Section 13832 Methods for Determining Liability Among Multiple Client Employers

**TIME AND PLACE OF PUBLIC HEARING**

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

**Date:** April 26, 2019  
**Time:** 10:00a.m. to 5:00 p.m., or conclusion of business  
**Place:** Elihu Harris State Building  
Room 2 Meeting Room, 2nd Floor  
1515 Clay Street  
Oakland, CA 94612

The State Office Building and designated room are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Division of Labor Standards Enforcement at 510-285-2118 to request an accommodation, or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

**Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.**

The Labor Commissioner requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Labor Standards Enforcement. **The written comment period closes at midnight on April 22, 2019.** The Labor Commissioner will consider only comments received at the Division by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by midnight on that date by the Division.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Jennifer Stevens, Legislative Analyst and Regulations Coordinator  
Department of Industrial Relations  
Division of Labor Standards Enforcement, Legal Unit  
2031 Howe Avenue, Suite 100  
Sacramento, CA 95825

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (916) 263-2920. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [DLSERegulations@dir.ca.gov](mailto:DLSERegulations@dir.ca.gov).

### **AUTHORITY AND REFERENCE**

The Labor Commissioner is undertaking this regulatory action pursuant to the authority under Labor Code section 2810.3(j).

Reference is to Labor Code section 2810.3.

### **INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW**

Existing law establishes that a “client employer” (specifically defined with exemptions) shall “share” with its “labor contractor” (specifically defined with exemptions) “all civil legal responsibility and civil liability for all workers supplied by that labor contractor,” meaning joint and several liability of the labor contractor and its client business(es) for any failure on the part of the labor contractor to pay wages as provided by law or to secure workers’ compensation insurance. (AB 1897 [Chapter 728, Statutes of 2014].)

Existing law provides that, for purposes of client employer liability under Labor Code section 2810.3, “wages” has the same meaning provided in Labor Code section 200, and includes all sums payable to an employee or the state based upon any failure to pay wages, as provided by law. “Wages” is defined under Labor Code section 200 as “all amounts for labor performed by employees of every description.” Under Labor Code section 2810.3, “labor” is also defined according to Labor Code section 200, as including “labor, work, or service.”

Existing law authorizes the Labor Commissioner to seek from both client employers and their labor contractors “any information” required to verify compliance with the law.

Existing law does not specify how the statutory shared liability under Labor Code section 2810.3 should be allocated when a labor contractor provides the same workers to perform labor, work, or services for more than one client employer, at each respective client employer’s worksite or premises, in a workday or workweek, and the labor contractor fails to pay wages as required by law.

Existing law authorizes the Labor Commissioner to adopt regulations and rules of practice and procedure necessary to administer and enforce the shared liability and information-provision requirements of the law.

The proposed regulation will provide necessary standards for enforcement of client employer liability under Labor Code section 2810.3. These standards include a definition of “wages” for purposes of Labor Code section 2810.3(a)(4), which specifies the wages, as well as damages and penalties as “sums payable to an employee or the state based upon any failure to pay wages, as provided by law,” that are encompassed within this section. In addition, the proposal establishes a recordkeeping requirement specifying the types of records a labor contractor employer must maintain and make available to the Labor Commissioner upon request, in order to ensure compliance with the law. Finally, the proposal provides methods for allocating client employers’ shared statutory liability for wages, damages, and penalties where the same workers have performed labor, work, or services for more than one client employer, at each respective client employer’s worksite or premises, during a workweek or workday and the labor contractor has failed to pay the workers’ wages as required by law. These methods may be used to determine each client employer’s proportionate share of liability, as appropriate under the circumstances of the case. The regulation containing methods of allocating shared liability, along with the recordkeeping and definitional provisions, is necessary for the Labor Commissioner to efficiently and equitably administer and enforce multiple client employer wage liability under Labor Code section 2810.3.

The proposed regulation implements, interprets, and clarifies shared liability of multiple client employers under Labor Code section 2810.3 as follows:

Proposed **Subchapter 13.5** (of Chapter 6, Division 1, Title 8 of the California Code of Regulations) contains three discrete regulatory provisions to address client employer liability when a labor contractor provides the same workers to perform labor, work, or services for more than one

client employer, at each respective client employer's worksite or premises, in a workday or workweek, and the labor contractor fails to pay wages as required by law.

**Section 13830** provides a definition of "wages" for purposes of client employer liability under Labor Code section 2810.3(a)(4), which states that "wages" has the same meaning provided in Labor Code section 200, and includes all sums payable to an employee or the state based upon any failure to pay wages, as provided by law. The proposed definition references relevant Labor Code provisions relating to wages (including minimum, regular, overtime, or other premium wages), as well as relevant Labor Code provisions relating to damages and penalties that are due to the worker or to the state based upon any failure to pay wages as provided by law.

**Section 13831** provides a recordkeeping requirement for labor contractors under Labor Code section 2810.3 that addresses situations in which there are multiple client employers. In addition to existing requirements in Labor Code sections 226, 1174, and section 6 or 7 of any applicable order of the Industrial Welfare Commission with respect to employers' obligation to maintain records of daily hours worked (including compensable travel time), when the employee begins and ends each work period, and meal periods, labor contractors also would be required to maintain records showing when each employee begins and ends each work period at each worksite or premises of each client employer, as well as workers' time traveling between each worksite or premises of the client employer(s). This proposed recordkeeping provision also requires labor contractors to maintain a list identifying each client employer for which workers were provided by the labor contractor to perform labor, work, or services, the address of the worksite or premises where labor, work, or services were performed, and the corresponding time period (beginning and end calendar dates) of such performance.

**Section 13832** provides several methods for allocating shared liability where a labor contractor has provided the same workers to perform labor, work, or services at the worksite or premises of more than one client employer in a workweek or workday, and has failed to pay the workers' wages as provided by law. The basis for allocating liability may consist of: (1) the proportionate share of the hours worked per workweek for each client employer as compared to the total hours worked in the workweek; (2) the proportionate share of the hours worked per workday for each client employer as compared to the total hours worked in the workday; (3) if records maintained by the labor contractor are insufficient to determine allocations under the previous two methods, worker testimony and any other available evidence, including reliable client employer evidence, may be used to determine allocations under either preceding method; and (4) if records, worker testimony, and any other available evidence are insufficient to determine allocations under the first two methods, the full amount of liability will be apportioned equally amongst all known client employers. Election among these options is at the discretion of the Labor Commissioner or a court, as appropriate under the circumstances of the case.

## **OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS**

The proposed regulation is intended to address a discrete enforcement issue under Labor Code section 2810.3, which created shared liability for client employers that obtain or are provided workers through labor contractors to perform labor, work, or services within the client employer's usual course of business. According to the author of this legislation, the purpose of the bill was to

“hold[] companies accountable for serious violations of workers’ rights, committed by their own labor suppliers, to workers on their premises” and to “incentivize the use of responsible contractors.” (Senate Judiciary Committee Bill Analysis June 23, 2014 at p.5.) The author further explained that the legislation would benefit both vulnerable workers, by “offering a clear path to accountability for workplace violations,” and businesses that follow the law, by “offer[ing] a clear path to compliance.” (*Id.*)

Since enactment of the statute, the Labor Commissioner’s Office has encountered cases where workers of labor contractors perform labor, work, or services at the worksite or premises of more than one client employer business within a workday or workweek. Labor Code section 2810.3 does not provide guidance for determining the statutory shared liability among multiple client employers in this situation, and there is a need to provide more uniform guidance for the regulated community (including labor contractors and their client businesses), workers, and the courts regarding standards for allocating liability where there are multiple client employers subject to liability under the statute. The objective of the proposed regulation is to establish standards necessary for the Labor Commissioner to efficiently and equitably administer and enforce multiple client employer wage liability under Labor Code section 2810.3.

The benefit of the proposed regulation is that it will facilitate payment of unpaid wages, damages, and penalties due to workers and the state under the statutory shared liability provision in section 2810.3, and provide clarity regarding how this provision will be enforced when the same workers perform labor, work, or services at the worksite or premises of more than one client employer in a given workweek or workday. Workers, labor contractors, and client employers involved in subcontracted work arrangements will be aided by clear rules regarding allocation of liability, and courts and the Labor Commissioner’s Office will be able to more efficiently render liability determinations following promulgation of this regulation. Thus, the regulatory action furthers the mission of the Labor Commissioner’ Office, which is to ensure a just day’s pay to every worker and promote economic justice. In addition, the proposed regulation increases transparency in business and government by setting forth rules for allocating liability. Finally, the proposed action indirectly prevents discrimination, and promotes fairness and social equity.

#### **DETERMINATION OF INCONSISTENCY AND/OR INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

The Labor Commissioner has determined that these proposed regulations are not inconsistent or incompatible with existing state statutes or other regulations. After conducting a review for any regulations that would relate to or affect this area, the Labor Commissioner has concluded that these are the only regulations that pertain to enforcement of client employer liability under Labor Code section 2810.3.

#### **DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Labor Commissioner has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Direct cost impacts on housing: None.

Cost impacts on a representative private person or business: The Labor Commissioner's Office estimates one-time recordkeeping compliance costs of \$138.84 for a representative private person or business.

Effect on Small Business: The Labor Commissioner's Office estimates one-time recordkeeping compliance costs of \$138.84 for a small business.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States: None.

#### Summary Results of the Economic Impact Analysis/Assessment

The Labor Commissioner's Office concludes that it is (1) unlikely that the proposal will create any jobs within the State of California; (2) unlikely that the proposal will eliminate any jobs within the State of California; (3) unlikely that the proposal will create any new businesses within the State of California; (4) unlikely that the proposal will eliminate any existing businesses within the State of California; (5) unlikely that the proposal would cause the expansion of businesses currently doing business within the State of California; and (6) likely to provide clarity to businesses that face statutory shared liability under Labor Code section 2810.3. Accordingly, the Labor Commissioner has determined that the proposed regulatory action will not have a significant impact on business.

Benefits of the Proposed Action: By facilitating payment of unpaid wages to workers and setting forth rules for allocating liability, the proposed regulation will benefit California residents. The regulatory action furthers the mission of the Labor Commissioner's Office, which is to ensure a just day's pay to every worker and promote economic justice. In addition, the proposed regulation increases transparency in business and government by setting forth rules for allocating liability. Finally, the proposed action indirectly prevents discrimination, and promotes fairness and social equity.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the Labor Commissioner must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Labor Commissioner's attention would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected

private persons than the proposed actions, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Labor Commissioner has initially determined that no alternatives would be more effective in carrying out the purpose that underlies the proposed regulatory action, or would be at least as effective or less burdensome on the regulated public (labor contractors and businesses that use labor contractors).

The Labor Commissioner invites interested persons to present reasonable alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### **PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS**

Prior to proposing to adopt these regulations, the Labor Commissioner discussed the need for regulations governing multiple client employer liability with representatives from worker and employer communities.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, and the Economic and Fiscal Impact Statement (Form STD 399).

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Department of Industrial Relations' website at <https://www.dir.ca.gov/Rulemaking/DIRProposed.html>. To access them, please scroll to Division of Labor Standards Enforcement (DLSE), and click on the link for Enforcement of Client Employer Liability Under Labor Code Section 2810.3.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Division of Labor Standards Enforcement, 2031 Howe Avenue, Suite 100, Sacramento, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday, unless the state office is closed for a state holiday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

### **CONTACT PERSON**

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Jennifer Stevens, Legislative Analyst and Regulations Coordinator  
Department of Industrial Relations  
Division of Labor Standards Enforcement, Legal Unit  
2031 Howe Avenue, Suite 100  
Sacramento, CA 95825  
E-mail: [jstevens@dir.ca.gov](mailto:jstevens@dir.ca.gov)

The telephone number of the contact person is (916) 263-1563.

### **CONTACT PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person:

Laura Moskowitz, Staff Attorney  
Department of Industrial Relations  
Division of Labor Standards Enforcement, Legal Unit  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102  
E-mail: [lmoskowitz@dir.ca.gov](mailto:lmoskowitz@dir.ca.gov)

The telephone number of the backup contact person is (415) 703-5252.

### **AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING**

If the Labor Commissioner makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Department of Industrial Relations' website at [www.dir.ca.gov/Rulemaking/DIRProposed.html](http://www.dir.ca.gov/Rulemaking/DIRProposed.html).

### **AUTOMATIC MAILING**

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the DLSE's mailing list.



If adopted, the regulations as amended will appear in title 8, California Code of Regulations, commencing with section 13830. The text of the final regulations will also be available through the website of the Office of Administrative Law at [www.oal.ca.gov](http://www.oal.ca.gov).