TITLE 8 INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT
SUBCHAPTER 13.5: ENFORCEMENT OF CLIENT EMPLOYER LIABILITY UNDER LABOR
CODE SECTION 2810.3

The proposed changes to the text of the regulations are indicated by bold underlined text to identify additions (e.g. **added language**) and bold strikeout to identify deletions (e.g., ~~**deleted language**~~) made upon the original proposed text.

Section 13830. Definitions.

"Wages" as defined in Labor Code section 2810.3(a)(4) include:

(a) Any minimum, regular, overtime or other premium wages that are due to the worker, including **but not limited to** any wages due under Labor Code sections 226.2, 226.7, 227.3, 246, and 2802;
(b) Any damages or penalties that are due to the worker or the state based upon any failure to pay wages, as provided by law, including **but not limited to** those set forth under Labor Code sections 203, 203.1, 210, 225.5, 226, 226.3, 248.5, 558, 1194.2, and 1197.1;
(c) Any applicable interest due for any sum described in this section.

Note: Authority: Section 2810.3, Labor Code. Reference: Section 2810.3, Labor Code.

Section 13831. Recordkeeping.

(a) In addition to the recordkeeping obligations of an employer**, including but not limited to those** under Labor Code sections 226 and 1174, and Section 6 or 7 ("Records") of any applicable order of the Industrial Welfare Commission, as well as Labor Code section 2810.3(i), a labor contractor shall keep the following records for a period of no less than three years:

(1) Accurate daily time records showing when each employee begins and ends each work period at each and every worksite or premises of the client employer where labor, work, or services are performed by the employee. **Compensable travel time to and from the first and last worksite,** ~~T~~travel time between client employer worksites or premises, meal periods and total daily hours worked shall also be recorded.

(2) A list identifying each client employer for which workers were provided by the labor contractor to perform labor, work, or services, including the business name of the client employer and address of the worksite or premises where labor, work, or services were performed for the client employer, and the corresponding time period (beginning and end calendar dates) during which workers were provided to perform labor, work, or services for the client employer.

(b) Records described in (a) shall be maintained at the labor contractor's place of business or at a central location within the State of California, and shall be made available to the Labor Commissioner, or her or his agents, upon request for inspection and/or copying.
(c) The failure to produce records under this section by the labor contractor pursuant to a request by the Labor Commissioner shall be subject to the provisions set forth under Labor Code Section 1174.1.

Note: Authority: Section 2810.3, Labor Code. Reference: Section 2810.3, Labor Code.

Section 13832. Methods for Determining Liability Among Multiple Client Employers.

(a) When enforcing client employer liability under Labor Code section 2810.3 where a labor contractor provides the same worker(s) to perform labor, work, or services at the premises or worksite of more than one client employer in a workweek or workday, the shared statutory liability for wages, damages, and penalties for each client employer must be allocated among the client employers. Allocation may be based upon any of the following methods, at the discretion of the Labor Commissioner in an administrative proceeding or the court in a civil action, as appropriate under the circumstances of the case:

(1) Hours Worked Per Workweek by the Worker for Each Client Employer.   The amount of time that the worker spent performing labor, work, or services at the worksite or premises of each client employer, ~~and~~ **including compensable** travel time **to and from the first and last worksite, and** between client employer worksites (if any), during the workweek, shall be calculated as a percentage of the total number of hours worked by the worker for the labor contractor during that workweek. The resulting percentage for each client employer shall be its share of liability as applied to the full amount of all wages, damages, and penalties owed by the labor contractor for that workweek.

(2) Hours Worked Per Workday by the Worker for Each Client Employer.   The amount of time that the worker spent performing labor, work, or services at the worksite or premises of each client employer, ~~and~~ **including compensable** travel time **to and from the first and last worksite, and** between client employer worksites (if any), during the workday, shall be calculated as a percentage of the total number of hours worked by the worker for the labor contractor during that workday. The resulting percentage for each client employer shall be its share of liability as applied to the full amount of all wages, damages, and penalties owed by the labor contractor for that workday.

(3) Worker Testimony **to Determine Allocation** in the Absence of Accurate Records. If any necessary records required in section 13831 are not produced, incomplete, inaccurate, or insufficient, the Labor Commissioner or a court may rely on any other available evidence, including reliable evidence from client employers. Just and reasonable inferences about the allocation may be made based on worker testimony, including any estimates, as to **travel time and** time spent ~~traveling between and~~ performing labor, work, or services at the worksite or premises of each client employer.

(4) Equal Apportionment Where Evidence is Insufficient.   If records described in section 13831, any other available evidence, and worker testimony are deemed insufficient to determine allocation of liability based on subdivision (1) or (2), the full amount of liability for wages, damages and penalties will be apportioned equally amongst all known client employers.

Note: Authority: Section 2810.3, Labor Code. Reference: Section 2810.3, Labor Code.