

TITLE 8. INDUSTRIAL RELATIONS  
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS  
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT  
SUBCHAPTER 15: PUBLIC LIST OF CERTAIN PORT DRAYAGE MOTOR CARRIERS AND  
CUSTOMER SHARING OF LIABILITY UNDER LABOR CODE SECTION 2810.4

Add new Subchapter 15 and sections 13875 through 13888, inclusive, as follows:

**Article 1. Definitions Used in Subchapter**

**Section 13875. Definitions**

In addition to the definitions provided in section 2810.4(a) of the Labor Code, the following apply to both section 2810.4 and to this subchapter:

- (a) “Alleged conduct” as used in Labor Code section 2810.4(b)(2)(B) means an unsatisfied final court judgment, tax assessment, or tax lien, including the amount of such final court judgment, tax assessment or tax lien.
- (b) “Division of Labor Standards Enforcement” as used in Labor Code section 2810.4 has the same meaning and is referred to as the “Labor Commissioner” or the “Labor Commissioner’s Office.”
- (c) “Essential information” as used in Labor Code section 2810.4(b)(1) includes the amount of the unsatisfied final court judgment, tax assessment, or tax lien, the date such liability was established (became final), any applicable reference number for the judgment, assessment, or lien, and whether the port drayage motor carrier is listed as a successor of a predecessor port drayage motor carrier.
- (d) “Notification by certified mail” as used in Labor Code section 2810.4(b)(2) means notification to the last listed address on the Notice of Entry of Judgment or any agent for service of process listed with the Secretary of State.
- (e) “Successor” means a port drayage motor carrier, as defined in Labor Code section 2810.4(a)(4)(C), who succeeds in the operation of a predecessor port drayage motor carrier and shall be liable to the same extent as the predecessor, if one or more of the following criteria are met:
  - (1) Uses substantially the same equipment, facilities, or workforce to provide substantially the same services for substantially the same type of customers as the predecessor port drayage motor carrier.
  - (2) Shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor port drayage motor carrier.
  - (3) Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the drivers owed wages, damages, or penalties by the predecessor port drayage motor carrier.
  - (4) Is an immediate family member of any owner, partner, officer, or director of the predecessor port drayage motor carrier or of any person who had a financial interest in the predecessor port drayage motor carrier. As used in this subsection, “immediate family member” means a spouse, parent, sibling, child, uncle, aunt, niece, nephew, grandparent, granddaughter, grandson, mother-in-law, father-in-law, brother-in-law, sister-in-law, or cousin.
- (f) “Tax assessment or tax lien that can be released to the public under federal and state disclosure laws” as used in Labor Code section 2810.4(b)(1) means a tax assessment or tax lien that is public.
- (g) “Wages” as defined in Labor Code section 2810.4(a)(7) include:

- (1) 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;
- (2) 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; and
- (3) Any applicable interest due for any sum described in this section.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

## **Article 2. Compilation and Maintenance of Public List of Port Drayage Motor Carriers**

### **Section 13876. Sources of Information for Internet Website Posting**

Labor Code section 2810.4(b)(1), which lists the types of information that the Division of Labor Standards Enforcement is required to post on its website with respect to port drayage motor carriers, recognizes that the source of information may derive from a public or private entity. The Labor Commissioner's Office will include unsatisfied judgments resulting from proceedings before the Labor Commissioner on the public website list. Private parties and other public entities that have essential information regarding an unsatisfied final court judgment, or a publicly-available tax assessment or tax lien for a port drayage motor carrier, as defined in Labor Code section 2810.4(a)(4), may submit such information to the Labor Commissioner's Office via email: [SB1402@dir.ca.gov](mailto:SB1402@dir.ca.gov). Upon review of the essential information provided by a private party or other public entity, the Labor Commissioner shall notify the port drayage motor carrier pursuant to Section 13877.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

### **Section 13877. Notice to Port Drayage Motor Carriers**

In addition to the notice requirements in Labor Code section 2810.4(b)(2), the notice that the Labor Commissioner's Office will provide to port drayage motor carriers prior to posting their names, addresses, and other essential information on the Labor Commissioner's website will notify recipients of the following:

- (a) The fact that the Labor Commissioner is required to maintain a public list on the Labor Commissioner's website pursuant to Labor Code section 2810.4.
- (b) The definitions of "port drayage motor carrier" under Labor Code section 2810.4.
- (c) The basis for the port drayage motor carrier's identification for inclusion on the list.
- (d) The information contained in Sections 13878 through 13881, which detail the ways in which the port drayage motor carrier can either avoid placement on the public list or request removal from the public list.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

### **Section 13878. Response to Notice**

- (a) A port drayage motor carrier that receives notice from the Labor Commissioner's Office regarding potential placement on the public list on the Labor Commissioner's website must respond within 20 calendar days from the date of the notice sent by the Labor Commissioner, if the carrier believes it should not be placed on the public list of port drayage motor carriers with an unsatisfied final court judgment, tax assessment, or tax lien. If 20 calendar days from the date of the notice falls on a weekend or holiday, the date for timely response will be the next business day immediately following the weekend or holiday.
- (b) A port drayage motor carrier that does not believe it should be placed on the public list because the judgment, assessment, or lien has been satisfied or settled must present adequate proof that it has satisfied the judgment, assessment, or lien, or entered into an approved settlement agreement dispensing of the judgment, assessment, or lien by submitting the following to the Labor Commissioner's Office:
  - (1) A *Proof of Payment or Settlement* form (WCA 128 PORT Proof of Payment or Settlement 12/2019), which the Labor Commissioner shall send along with the notice for the motor carrier to complete and submit, and which is hereby incorporated by reference; and
  - (2) A copy of any of the following that applies:
    - a. acknowledgment of Satisfaction of Judgment form (Judicial Council EJ-100);
    - b. an executed release from the judgment creditor approved by the Labor Commissioner's Office;
    - c. an executed release or settlement approved by the relevant taxing authority;
    - d. a court-approved settlement agreement;
    - e. a notarized settlement agreement;
    - f. a written settlement agreement signed by an authorized representative of the Labor Commissioner's Office or relevant taxing authority; or
    - g. evidence of settlement payment, including any installment payment (if applicable) that has been made;
    - h. other evidence showing that the motor carrier has otherwise satisfied the judgment, assessment, or lien.
- (c) The port drayage motor carrier must mail a completed *Proof of Payment or Settlement* with all accompanying documentation postmarked no later than 20 calendar days from the date of the notice to the Labor Commissioner's Office, Attn: SB 1402 Proof of Payment or Settlement, 300 Oceangate, Suite 302, Long Beach, CA 90802, or must submit a completed *Proof of Payment or Settlement* with all accompanying documentation electronically no later than midnight on the 20<sup>th</sup> calendar day from the date of the notice via email to: [SB1402@dir.ca.gov](mailto:SB1402@dir.ca.gov).

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

### **Section 13879. Labor Commissioner Disposition of Responses Timely Received**

- (a) If the port drayage motor carrier completes and submits the *Proof of Payment or Settlement* form (WCA 128 PORT Proof of Payment or Settlement 12/2019) and accompanying documentation no later than 20 calendar days from the date of the notice, as set forth under Section 13878, the motor carrier will not be placed on the public list pending the Labor Commissioner's determination of whether the motor carrier presented adequate proof that the judgment,

assessment, or lien has been satisfied, or proof of an approved settlement dispensing of the judgment, assessment or lien.

- (b) The Labor Commissioner will inform the port drayage motor carrier by letter:
- (1) If the motor carrier will not be placed on the list with respect to a specific judgment, assessment, or lien because sufficient proof has been provided demonstrating that the judgment, assessment, or lien identified has been satisfied or settled. However, port drayage motor carriers with more than one judgment, assessment, or lien who fail to present sufficient proof that all outstanding judgments, assessments, or liens have been satisfied will be placed on the public list.
  - (2) If the motor carrier will be placed on the public list because the motor carrier entered into a settlement agreement but the Labor Commissioner's Office has determined that a settlement payment (including any installment payment) has not been timely made according to the terms of the settlement agreement.
  - (3) If the motor carrier will be placed on the public list because the Labor Commissioner's Office determines that the motor carrier has not provided sufficient proof that the judgment, assessment, or lien identified has been satisfied or settled.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

### **Section 13880. Labor Commissioner Disposition Where No Timely Response or No Response Received**

- (a) If a port drayage motor carrier does not complete and submit the *Proof of Payment or Settlement* form (WCA 128 PORT Proof of Payment or Settlement 12/2019) within 20 calendar days from the date of the notice, as set forth under Section 13878, then the port drayage motor carrier will be placed on the public list.
- (b) After being placed on the public list:
- 1) The port drayage motor carrier will not receive any additional notice from the Labor Commissioner's Office; and
  - 2) The port drayage motor carrier will continue to appear on the list unless it requests removal because it has satisfied the judgment, assessment, or lien, or entered into an approved settlement agreement dispensing of the judgment, assessment, or lien.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

### **Section 13881. Removal from Public List**

- (a) After a port drayage motor carrier has been placed on the public list, the Labor Commissioner may remove the carrier from the list if it subsequently provides the Labor Commissioner with sufficient proof of satisfaction or settlement of the judgment, assessment, or lien.
- (b) A motor carrier shall present such proof by completing and submitting a *Proof of Payment or Settlement* form (WCA 128 PORT Proof of Payment or Settlement 12/2019) and accompanying documentation by mail to the Labor Commissioner's Office, Attn: SB 1402 Proof of Payment or Settlement, 300 Oceangate, Suite 302, Long Beach, CA 90802 or electronically via email to: [SB1402@dir.ca.gov](mailto:SB1402@dir.ca.gov).
- (c) The *Proof of Payment or Settlement* form (WCA 128 PORT Proof of Payment or Settlement 12/2019) will be available on the Labor Commissioner's website: [https://www.dir.ca.gov/dlse/List\\_Port\\_Trucking\\_Companies\\_Outstanding\\_Judgments.html](https://www.dir.ca.gov/dlse/List_Port_Trucking_Companies_Outstanding_Judgments.html).

- (d) The Labor Commissioner's Office will inform the motor carrier by letter of the agency's determination of whether the motor carrier has presented sufficient proof of satisfaction or settlement of the judgment, assessment, or lien.
- (e) In accordance with Labor Code section 2810.4 subdivision (b)(1), the port drayage motor carrier's listing shall be removed from the public list within 15 business days of the Labor Commissioner's determination that there has been full payment of the unsatisfied judgment, assessment, or lien, or that an approved settlement dispensed with the judgment, assessment, or lien.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

### **Section 13882. Notice to Port Drayage Motor Carrier Successors**

- (a) In addition to the information contained in Sections 13878 through 13881 and the notice requirements of Labor Code section 2810.4(b)(2), the Labor Commissioner's Office will notify port drayage motor carrier successors of the following:
  - (1) That the port drayage motor carrier has been identified as a successor to the predecessor port drayage motor carrier listed in the notice with an unsatisfied final court judgment, tax assessment, or tax lien based on one or more of the criteria for a successor as defined in Section 13875(e).
  - (2) That the port drayage motor carrier may request an informal hearing on the matter of successorship before the Labor Commissioner, by completing and submitting a *Request for Hearing* form which will accompany the notice. Use of this form is an optional method of filing a request for a hearing, but the request for hearing must be submitted in writing.
  - (3) That all responses to the notice must be postmarked or emailed no later than 20 calendar days of the date of the notice from the Labor Commissioner. If 20 calendar days from the date of the notice falls on a weekend or holiday, the date for timely response will be the next business day immediately following the weekend or holiday.
  - (4) That if the successor does not complete and submit the *Proof of Payment or Settlement* form (WCA 128 PORT Proof of Payment or Settlement 12/2019) and accompanying documentation or submit a request for hearing within 20 calendar days from the date of the notice to the same mailing address or email address, the successor:
    - a. Will be placed on the public list;
    - b. Will waive the right to request a hearing on the matter of successorship before the Labor Commissioner;
    - c. Will not receive any additional notice from the Labor Commissioner's Office; and
    - d. Will continue to appear on the list unless the successor requests removal because the underlying judgment, assessment, or lien against the predecessor port drayage motor carrier has been satisfied, or an approved settlement agreement dispensing of the judgment, assessment, or lien has been executed, and the Labor Commissioner's Office subsequently determines that the successor should be removed pursuant to Section 13881.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

### **Article 3. Hearing Procedures, Judicial Review**

#### **Section 13883. Hearing Regarding Determination of Port Drayage Motor Carrier Successor**

- (a) After a port drayage motor carrier that has been identified as a successor to a predecessor port drayage motor carrier with an unsatisfied final court judgment, tax assessment, or tax lien receives the notice described in Section 13882 and submits a timely request for hearing within 20 calendar days of date of the notice, the Labor Commissioner will assign the matter to a hearing officer for hearing. The proceeding under this section is an informal hearing conducted in accordance with the adjudication provisions of the Administrative Procedure Act, Chapters 4.5 and 5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the rules set forth in this article. Except as specifically provided herein, the provisions of Title 2, Division 3, Part 1, Chapter 5 of the Government Code (commencing with Government code section 11500) shall not apply to these proceedings.
- (b) The subject matter of the hearing includes whether the port drayage motor carrier is an entity or individual who succeeds in the interest and operation of the predecessor port drayage motor carrier as defined in Section 13875(e). The Labor Commissioner will present evidence of successorship. The request for hearing will be deemed to dispute the Labor Commissioner's successorship determination and the successor will not be placed on the public list until a determination has been made on successorship after a hearing conducted in accordance with the procedures set forth in this article, and such hearing decision is final.
- (c) Subpoenas and subpoenas duces tecum may be issued for the attendance of witnesses at the hearing, and for the production of documents at any reasonable place and time or at a hearing, in accordance with the procedures set forth at Government Code sections 11450.05 to 11450.50.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

#### **Section 13884. Rights of Parties at Hearing; Taking of Evidence; Rules of Procedure**

- (a) Each party to a hearing shall have the right to appear in person and by counsel; to call and examine witnesses and cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; to rebut evidence; and to introduce documentary exhibits and other evidence.
- (b) Oral evidence shall be taken on oath and affirmation.
- (c) The hearing proceedings shall be electronically recorded. In lieu of or supplemental to an electronic recording, the hearing officer shall allow a party to have the proceedings transcribed by a court reporter, provided that the court reporter furnish the Labor Commissioner with a certified copy of the transcript as soon as it is prepared, and that the party requesting that the proceedings be transcribed pay the cost of all transcripts.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

#### **Section 13885. Conduct of Hearing; Rules of Evidence; Role of Hearing Officer**

- (a) The hearing shall be presided over by a hearing officer appointed by the Labor Commissioner.

(b) The hearing need not be conducted according to the technical rules of evidence relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions, except that the rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(c) Hearsay evidence may be used to supplement or explain other evidence, but shall not of itself be sufficient to support a finding, if it is objected to at the hearing. An objection is timely if made before submission of the case.

(d) The hearing officer appointed by the Labor Commissioner who presides over the hearing, in exercising sound discretion, may control the order of presentation of evidence at the hearing; keep out repetitive and cumulative evidence; and otherwise rule out evidence.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

### **Section 13886. Hearing Officer Decision**

Within 45 calendar days of the conclusion of the hearing, the hearing officer shall prepare a written decision based on the record of the proceedings, including the hearing, which shall contain a statement of the factual and legal basis of the decision as provided in Government Code section 11425.50. Copies of the hearing officer's decision shall be delivered to the parties personally or sent to them by first class mail.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

### **Section 13887. Judicial Review**

(a) A port drayage motor carrier successor aggrieved by a decision issued pursuant to Section 13886 may seek review of the decision made after a hearing held pursuant to this article by filing a petition for writ of mandate to the appropriate superior court pursuant to section 1094.5 of the Code of Civil Procedure within 45 calendar days after service of the decision. If no petition is timely filed with the appropriate superior court, the decision shall be the final administrative order.

(b) Once a hearing officer's decision that a motor carrier is a successor becomes final, either when there is no petition for writ of mandate that is timely filed or after disposition of the writ and any further appeal proceedings, the port drayage motor carrier successor will be placed on the public list.

(c) A decision that has become final as provided in this section will be determinative in any future proceeding regarding liability for unpaid wages, unreimbursed expenses, damages and penalties, including applicable interest, and may not be challenged or litigated again.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

## **Article 4. Enforcement**

### **Section 13888. Determining Customer Liability**

For purposes of determining customer liability under Labor Code section 2810.4, the following terms used in Labor Code section 2810.4(b)(4) mean as follows:

- (a) “From the time the driver is dispatched to begin work on behalf of the customer” means the earlier of the time the driver inspects the truck in preparation for performing services on behalf of the customer, begins to wait to perform services on behalf of the customer, begins to perform services on behalf of the customer by hauling freight, or begins to perform work that is compelled by the necessity of the employer’s business on behalf of the customer.
- (b) “Until all tasks are completed incidental to that work” includes, in addition to either returning the unladen chassis or intermodal carrier to its point of origin, delivering the unladen chassis or intermodal carrier to its final destination.
- (c) “Ready to be dispatched to haul freight on behalf of another customer” means the later of all tasks associated with becoming ready to take on a new assignment, including any vehicle maintenance, completion of paperwork, and obtaining of fuel.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.