Protect Your Business—Prevent Penalties

Landscaping

Department of Industrial Relations
Labor Enforcement Task Force (LETF)

2020

As a landscape contractor, you have a lot to consider. You bring jobs to the community and create landscapes for people to enjoy. When you understand and comply with labor laws, you protect the investment you have made, promote a positive image, and avoid paying penalties.

Through the Labor Enforcement Task Force (LETF), under the direction of the Department of Industrial Relations, California agencies work together to make sure employers are following labor, health and safety, licensing, and payroll tax laws. LETF can help you understand which laws apply to you and how to comply. LETF also inspects businesses and cites employers if violations are found.

PENALTIES

***NOT* following the law will hurt your business.**
Here are some examples of the kinds of penalties you would owe your workers and state agencies.

IF YOU:	YOU WOULD OWE:
Misclassify employees as independent contractors	Fines of $5,000 to $25,000 per violation, plus unpaid payroll taxes
Fail to pay the minimum wage or overtime; fail to provide rest and meal breaks	All wages owed, plus penalties
Fail to provide a pay stub	$250 per employee each time they are paid
Violate health and safety rules	Up to $25,000 for each serious violation and a possible shutdown of operating equipment
Punish or retaliate against workers	All wages owed, a fine of up to $10,000 per employee, and workers get their jobs back
Fail to have workers' compensation insurance	At least $1,500 per employee, and no one can work until all workers are covered
Fail to have appropriate licensing	Fines of up to $5,000 and/or imprisonment

TOTAL: NOT WORTH THE RISK!

In some cases, criminal charges may be filed. You may serve up to 10 years in jail.

As an employer, some of your
KEY RESPONSIBILITIES
are to:
Pay at least minimum or prevailing wage and overtime for extra hours
Allow workers to bring up concerns without punishing them
Provide a safe workplace
Have appropriate licenses and permits
Give rest and meal breaks
Pay all payroll taxes and keep records of employees and contractors
Have workers' compensation insurance
Provide a workplace free of discrimination and harassment

California Labor Commissioner cites landscape contractor over $650,000 for wage theft violations.

Workers at a Sacramento landscaping company filed a complaint for incorrect wages and misclassification as independent contractors. LETF conducted an inspection and found that the employer had as many as 43 employees but was reporting less than 10 employees on payroll. The California Labor Commissioner's Office cited the employer $664,764 for wage theft violations affecting up to 43 workers including minimum wage violations, unpaid overtime, and failure to provide itemized wage statements.

This brochure describes some of the common problems LETF inspectors find in landscaping. It also lists where you can get help.

Problems LETF finds in landscaping

Licensing

Landscape contractors are often cited for:

1 Not having a contractor's license, or hiring unlicensed subcontractors.

Employee Hiring

Landscape contractors are often cited for:

1 Misclassifying employees as independent contractors.

In September 2019, Governor Newsom signed Assembly Bill (AB) 5 into law. The new law addresses the "employment status" of workers when they are claimed to be an independent contractor and not an employee. For more information, visit the Employment Status Portal: https://www.labor.ca.gov/employmentstatus/.

2 Not keeping all required records.

You must keep records of all your employees for the past four years. This should include name, address, job type, and last four digits of the Social Security number. For minors under 18, you must list their dates of birth.

Wages and Breaks

Landscape contractors are often cited for:

1 Not paying workers the wages they are owed.

- You must pay at least minimum wage for all hours worked.

If the city where you are working or the federal government has a higher minimum wage than the state, then you must pay whichever of those rates is the highest. For minimum wage rates, see below.

- You must pay overtime (1½ times the regular rate of pay) and double-time (twice the regular rate of pay) according to the rules stated in Industrial Wage Commission Order No. 16-2001 (which must be posted at your workplace where employees can read it easily).

2 Paying a piece rate or other nonhourly rate that does not meet minimum-wage requirements (including any required overtime) or does not seperately compensate workers for required breaks and other nonproductive time. For more information on piece rate compensation, see below.

For example, if you pay a worker $32 for every ditch he digs, and he digs 2 ditches in 8 hours, he has earned $8 per hour, which is less than minimum wage. You must pay the difference.

3 Not allowing rest or meal breaks.

Workers must receive:

- A paid 10-minute rest break for every 4 hours of work.
- An unpaid meal break of at least 30 minutes if they work 5 hours or more. (An employee can agree to skip meal breaks if the workday is 6 hours or less.)

4 Not giving pay stubs or not paying payroll tax.

You must give out pay stubs, list the deductions, and pay payroll tax. For each pay period, keep records of work hours and amounts paid to each worker.

Visit: www.dir.ca.gov/dlse/DLSE-FAQs.htm for more information on all the items that must be included in a wage stub.

Health and Safety

Landscape contractors are often cited for:

1. Not complying with the following regulations:

   - § 3395 Establish a Heat Illness Prevention Plan
   - § 3203 Establish an Injury and Illness Prevention Program
   - § 3276 (e) Care, use, inspection and maintenance of ladders

   The landscaping industry is subject to various safety orders depending on the type of work that is being performed. For example; planting or trimming trees would fall under General Industry Safety Orders, but building a retaining wall or patio would fall under Construction Safety Orders. For more information, please visit the Title 8 Safety Orders webpage: www.dir.ca.gov/samples/search/query.htm.

2. Not providing the equipment, tools or protective clothing that workers need to work safely.

3. Lacking a proper safety plan (Injury and Illness Prevention Program or IIPP).

   You must have a written plan to identify hazards and protect workers. You must also have a way for workers to make suggestions without threat of being fired or punished.

4. Poor records of training.

   Safety training must be in a language that workers understand. Keep records that include date, type of training, name of trainer, and names of workers who attended. You must pay workers for the time they spend in training.

Stay up to date with new labor laws

Below are some resources to help you stay updated and comply with important recent changes to labor laws:

- **Paid Sick Leave**. Employers must do several things to comply with the Healthy Workplace Health Family Act; visit www.dir.ca.gov/DLSE/ab1522.html.
- **Piece-Rate Compensation**. Effective January 1, 2016, AB 1513 adds section 226.2 to the Labor Code concerning how to compensate piece-rate workers for required breaks and other nonproductive time. Visit www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm.

Schedule for California Minimum Wage Rate, 2020–2023

Date	Minimum wage for employers with 25 employees or less	Minimum wage for employers with 26 employees or more
January 1, 2020	$12.00/hour	$13.00/hour
January 1, 2021	$13.00/hour	$14.00/hour
January 1, 2022	$14.00/hour	$15.00/hour
January 1, 2023	$15.00/hour	

Retaliation is illegal

Employers can be required to reinstate fired employees, pay employees' lost wages, and pay fines up to $10,000 per employee if they punish or fire workers for:

- **Speaking up** about wages that are owed to them
- **Reporting** an injury or a health and safety hazard
- **Filing** a claim or complaint with a government agency.

It is illegal for employers to threaten or retaliate against workers in any way.

For example, employers cannot:

- **Threaten** workers with deportation
- **Punish** workers with undesirable tasks
- **Fire** workers or send them home
- **Prevent** workers from getting a different job.

You do not have to agree with the workers. If you are complying with labor laws, you do not have to make the changes that are being requested. But everyone benefits when workers feel safe enough to bring up concerns. Listen to your employees and involve them in coming up with solutions that work for everyone.

Where to Get Help

There are resources that can help you understand which laws apply to you and how to comply.

LETF

Call the Labor Enforcement Task Force (LETF) toll free at 855-297-5322 or go to www.dir.ca.gov/letf.

Cal/OSHA

Call Cal/OSHA Consultation at **800-963-9424** or go to www.dir.ca.gov/dosh/consultation.html**.**

Consultation Services provides free health and safety consultation to employers. Consultation Services is separate from the Cal/OSHA Enforcement Branch. All your communications with Consultation Services are confidential.

- To improve your safety plan, Cal/OSHA offers a template for a "high hazard" Injury and Illness Prevention Program.
- Go to www.dir.ca.gov/samples/search/query.htm to find regulations about specific hazards (Title 8 standards).

Other sources of help

- Contractors State License Board, www.cslb.ca.gov
- California Landscape Contractors Association, www.clca.org
- Small Business Development Centers
- Your workers' compensation insurance broker can offer assistance, including help with developing a safety plan.
- The Governor's Office of Business and Economic Development (GO-Biz): www.business.ca.gov

This booklet provides general information and is not meant to serve as legal advice. It was developed by the Department of Industrial Relations and its Labor Enforcement Task Force with assistance from the Labor Occupational Health Program at UC Berkeley.

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