CALIFORNIA MOVING AND STORAGE ASSOCIATION
10900 E. 183rd Street, Suite 300
Cerritos, CA 90703
PHONE: (562) 865-2900 (800) 672-1415 (CA Only)
FAX: (562) 865-2944
WEBSITE: www.thecmsa.org

CMSA ALERT: AB 1897

New California Law Imposes Liability on Client Employers Where Labor Contractors Fail to Pay Wages or Provide Workers' Compensation Insurance

Written by: CMSA Legal Counsel Mark Hegarty of Hegarty Law Offices

Overview. On September 28, 2014, Governor Brown signed into law AB 1897 (D-Hernandez), which takes effect January 1, 2015. Under AB 1897, a client employer will share civil legal responsibility and civil liability for all workers supplied by a labor contractor for the payment of wages and the failure to obtain valid workers' compensation coverage. In addition, AB 1897 prohibits a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions (e.g., Cal OSHA) with respect to workers provided by the labor contractor. A "client employer" means a business entity, regardless of form, that obtains or is provided workers to perform labor within it usual course of business. "Usual course of business" means the regular and customary work of a business, performed within or upon the premises or worksite of the client employer. However, AB 1897 specifically excludes from it client employer definition business entities with a workforce of less than 25 workers (including those hired directly by the client employer and those provided by a labor contractor) or businesses with five or fewer workers supplied by a labor contractor at any given time. "Worker" does not include an employee who is exempt from the payment of an overtime rate of compensation for executive, administrative or professional employees under California Industrial Welfare Commission Wage Orders.

Applied to Movers. First, moving companies that supplement their moving crews or warehouse operations with workers (temporary or long-term) supplied by labor contractors could be subject to AB 1897 liability. These workers are frequently supplied by temporary service employers or temporary staffing agencies that fit under the bill's definition of labor contractor. Second, moving company subcontractors, with or without their own operating authority, would also fall under the bill's definition of labor contractor and the prime carrier would fit the definition of client employer.

The thought of having to look over the shoulder of a moving company subcontractor or staffing agency to insure those labor contractors' compliance with wage law, workers' compensation obligations, and OSHA compliance is unsettling. But not so fast – the vast majority of California moving companies have a workforce of less than 25 "workers," as defined. Therefore, those smaller companies are not subject to AB 1897. For the larger moving companies (employing 25+ workers), they may still avoid the reach of AB 1897 if they only use five or fewer workers supplied by a labor contractor or labor contractors at any given time.

For those larger moving companies with 25+ workers that use 6 or more temporary workers at a time, another provision of the bill may offer some relief. AB 1897 states, "this section [Labor

Code 2810.3] does not prohibit a client employer from establishing, exercising, or enforcing by contract any otherwise lawful remedies against a labor contractor for liability created by acts of a labor contractor." In other words, the law appears to permit a moving company subcontractor or staffing agency to agree by contract to hold harmless and indemnify the client employer (prime carrier) where the labor contractor's failure results in liability for the client employer. Such a contractual guarantee – particularly by labor contractors with cash reserves and adequate insurance – could help eliminate the financial pain of a client employer's joint liability.

For further information, please contact Mark Hegarty by phone at (530)622-3200 or by email at hegartylaw@gmail.com.