

## **RESOLUTION 12-01-2017**

### **DIGEST**

#### Workers Compensation: Payment of Premiums

Amends Labor Code section 3302 to provide that factoring companies be responsible for individual's workers compensation premiums.

### **RESOLUTIONS COMMITTEE RECOMMENDATION**

#### **APPROVE IN PRINCIPLE**

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Labor Code section 3302 to provide that factoring companies be responsible for individual's workers compensation premiums. This resolution should be approved in principle because it will close a loophole whereby out-of-state factoring companies are incentivized to work with fly-by-night temp agencies that flout California Law.

The Check Sellers, Bill Payers and Proraters Law (the Law) is contained in Division 3 of the California Financial Code, commencing with Section 12000. The regulations are contained in Subchapter 10 of Chapter 3, Title 10 of the California Code of Regulations, commencing with Section 1770 (10 Cal. Code Regs., § 1770, et seq.). The Law, originally named the Check Sellers and Cashers Law, was enacted in 1947. As enacted, it provided for the licensing and regulatory review of companies and individuals who sold checks, cashed checks, or paid bills on behalf of others. General proraters are persons who, for compensation, engage in the business of receiving money or something of value from a debtor for the purpose of distributing the money or something of value among creditors in payment or partial payment of the debtor's obligations.

Currently, payroll factoring companies who finance temporary employment agencies: 1) do not have licenses as "pro-raters" under the Finance Code and resist complying with existing statute; 2) directly operate and conduct business in this state through these temporary employment agencies (either by loaning so much money that cannot possibly be repaid and therefore setting up a situation in which the creditor [the factoring company] becomes the de facto operator of the temporary employment agency business, or by directly controlling the temporary employment agencies' employees because these employees are technically the "collateral" of the payroll factoring company); and 3) as unlicensed pro-raters, earn significant and usuries fees for loaning funds to these temporary employment agencies that would otherwise be unlawful if earned by a licensed pro-rater under the existing statute.

While temp agencies are currently required to have workers compensation policies, employers are not, generally, able to verify compliance. This resolution prevents unlicensed out-of-state factoring companies from taking advantage of employers by financing these shady temp agencies.

This resolution is related to Resolution 11-02-2017.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 3302 to read as follows:

1 § 3302

2 (a) (1) When a licensed contractor or other employer enters an agreement with a  
3 temporary employment agency, employment referral service, labor contractor, or other similar  
4 entity for the entity to supply the contractor or other employer with an individual to perform acts  
5 or contracts for which the contractor's license is required under Chapter 9 (commencing with  
6 Section 7000) of Division 3 of the Business and Professions Code and the licensed contractor or  
7 other employer is responsible for supervising the employee's work, the temporary employment  
8 agency, employment referral service, labor contractor, or other similar entity shall pay workers  
9 compensation premiums based on the contractor's or other employer's experience modification  
10 rating.

11 (2) The temporary employment agency, employment referral service, labor contractor, or  
12 other similar entity described in paragraph (1) shall report to the insurer both of the following:

13 (A) Its payroll on a monthly basis in sufficient detail to allow the insurer to determine the  
14 number of workers provided and the wages paid to these workers during the period the workers  
15 were supplied to the licensed contractor or other employer.

16 (B) The other employer or licensed contractor's name, address, and experience  
17 modification factor as reported by the licensed contractor.

18 (C) The workers compensation classifications associated with the payroll reported  
19 pursuant to subparagraph (A). Classifications shall be assigned in accordance with the rules set  
20 forth in the California Workers Compensation Uniform Statistical Reporting Plan published by  
21 the Workers Compensation Insurance Rating Bureau.

22 (b) The temporary employment agency, employment referral service, labor contractor, or  
23 other similar entity supplying the individual under the conditions specified in subdivision (a)  
24 shall be solely responsible for the individual's workers compensation, as specified in subdivision  
25 (a). A factor, as defined in Civil Code § 2026 et. seq., who purchases, sells, transfers, exchanges,  
26 finances, and/or otherwise provides money for the payroll invoices of a temporary employment  
27 agency, employment referral service, labor contractor, or other similar entity described in  
28 paragraph (1) shall be deemed to be an "employer" under this section and is jointly and severally  
29 liable for the individual's workers' compensation under this subdivision. Any UCC 1 financing  
30 statement as defined in Uniform Commercial Code § 9501 et seq., filed by a factor, and recorded  
31 in the State of California, against a temporary employment agency, employment referral service,  
32 labor contractor, or other similar entity described in paragraph (1) and/or filed against an  
33 employer utilizing the services of a temporary employment agency, employment referral service,  
34 labor contractor, or other similar entity described in paragraph (1) that does not include payment  
35 of workers' compensation premiums under this subdivision is void as against public policy. An  
36 injured employee who prevails in an action against a factor to recover workers' compensation  
37 benefits under this subdivision is entitled to recover all reasonable attorneys' fees and costs.

38 (c) Nothing in this section is intended to change existing law in effect on December 31,  
39 2002, as it relates to the sole remedy provisions of this division and the special employer  
40 provisions of Section 11663 of the Insurance Code.

41 (d) A licensed contractor or other employer that is using a temporary worker supplied  
42 pursuant to subdivision (a) shall notify the temporary employment agency, employment referral  
43 service, labor contractor, or other similar entity that supplied that temporary worker when either  
44 of the following occurs:

45 (1) The temporary worker is being used on a public works project.

46 (2) The contractor reassigns a temporary worker to a position other than the classification  
47 to which the worker was originally assigned.

48 (e) A temporary employment agency, employment referral service, labor contractor, or  
49 other similar entity may pass through to a licensed contractor or other employer any additional  
50 costs incurred as a result of this section.

(Proposed new language underlined; language to be deleted stricken)

**PROPOSERS:** Joseph A. Goldstein, Jonathan A. Goldstein, Charles H. Goldstein, Charles Wake, Jodi Taksar, Scott Luskin, Robin Bernstein-Lev, Brian Francis Doyle, Barry Ross, James De Sario

### **STATEMENT OF REASONS**

The Problem: Payroll finance companies, many of which are out of state, frequently purchase payroll invoices from in-state temporary employment agencies, many of whom do not have adequate workers' compensation coverage for their existing employees. In other cases, the temporary employment agency may have charged the employer utilizing their services for workers' compensation insurance coverage that was never in fact purchased by the temporary employment agency. This is a significant problem because injured employees current legal recourse is only to file an action against their temporary employment agency employer, many of whom become defunct or change their names. The current statutory framework provides no remedy to these employees. In addition, the employer who hired the temporary employees, who paid workers compensation premiums to the temporary employer, and who is jointly liable for any workers compensation claims filed for injuries sustained on their premises also has no statutory recourse.

The Solution: Would add the following language to Labor Code § 3302, subdivision b, that a factor, as defined in Civil Code § 2026 et. seq., who purchases, sells, transfers, exchanges, finances, and/or otherwise provides money for the payroll invoices of a temporary employment agency, shall also be responsible for the individuals workers compensation under this subdivision. Any financing statement and/or lien recorded in the State of California by a factor, against a temporary employment agency, that does not include adequate payment of workers' compensation premiums under this subdivision is void as against public policy. An injured employee who prevails in an action against a factor to recover workers' compensation benefits under this subdivision is entitled to recover all reasonable attorneys' fees and costs.

### **IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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