



California Fashion Association (CFA) provides information about our industry's vulnerable business issues. The current issue's importance sends a clear "Protect Yourself" message and is part of CFA's continuing effort to assist our members.

October 12, 2021

"PROTECT YOURSELF": Alert

Governor Newsom signed SB62...NOW WHAT?!

Background

Senate Bill 62 specifies that a garment manufacturer, contractor, or brand guarantor who contracts with another entity or person for the purpose of garment manufacturing will be jointly and severally liable with any other manufacturer or contract for an employee's full amount of unpaid wages and any other compensation, including interest, attorney's fees, and civil penalties.

Previously, existing law (AB633) made garment manufacturers and contractors jointly liable for the full amount of damages and penalties for any violation.

*SB 62 expands the definition of "brand guarantor" to include any entity that **contracts for its assembly, "including sewing, cutting, making, dyeing, processing, repairing, finishing, assembling, altering a garment's design, causing another person to alter a garment's design, affixing a label on a garment, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual."***

Here is how it would work

Retailer contracts with Manufacturer (A) to purchase a line of dresses. Manufacturer (A) subcontracts the cutting to Company (B), the dyeing to Company (C), and the sewing to Company (D). **All companies in the chain** may have joint liability to cover the unpaid or underpaid wages of Company D's employees if Company D fails to pay its employees in compliance with the wage and hours law.

SB 62 seeks to hold each person or entity in the supply chain liable for unpaid wages, damages, penalties, etc. owed to the workers **regardless of how many layers of contracting are used**. The bill makes both **brands and holding companies jointly liable as wage guarantors** for all legal responsibility for any workers retained by the contractor.

"A retailer who contracts with another person or entity to perform garment manufacturing operations will be jointly and severally liable with any entity that performs those operations, no matter how far down the manufacturing chain that entity may be." This means that the retailer who

sells the final garment could be found liable for wage violations of a subcontractor even where the ultimate vendor did not know that subcontractor was part of the supply chain.

Nothing in SB 62 will address the problem of unlawful garment contractors who evade the law. SB 62 allows these unlawful entities to continue operating as usual while passing the liability to others who have no control over payrolls.

SB 62 Eliminates Piece Rate Compensation

It prohibits garment manufacturers from choosing to pay their workers a set rate per piece or article of clothing produced.

Takeaways and Workplace Solutions

Vendors should only deal directly with other vendors who themselves carefully select and audit the vendors they deal with. Every link in the chain must meet minimum standards.

Because litigation is expensive, anything that can be done to ensure that the supply chain is viable is the best way to go.

Bottom line – there are no shortcuts.

Companies selecting vendors or deciding whether to continue retaining vendors should consider adopting some type of due diligence process. At a minimum, a review by a knowledgeable person or certification by a third party should take place and include a review of the following:

- Actual time records
- W2s - Only W2s....no 1099s
- California Wage Theft Prevention Act Notice per Labor Code Section 2810.5
- The Meal and Rest Break Policies—and waivers—at every facility
- Check records of prior violations, and records of complaints filed with the DOL,
- Documentation of Exempt vs. Non-exempt employees. If classified as Exempt, define the criteria.
- Review compensation and overtime rates
- Requirements for recording time must be in writing - and signed by employees - along with meal and rest period requirements. (in employee's language.)
- Paystub/Earning Statement examples with:
 - Gross wages earned;
 - Total hours worked;
 - All deductions (including contributions and payments);
 - Net wages earned;
 - The inclusive dates of the period for which the employee is paid;
 - The name of the employee and the last four digits of his or her Social Security number (or employee identification number)
 - For non-exempt employees, all applicable hourly rates in effect
 - The amount of paid sick leave available,
- Employment Posters required by California law with applicable translations
 - Current California Registration Certification
 - Current Worker's Compensation Insurance Certificate:
 - Current Business Tax Registration:

- California Industrial Welfare Commission 1-2001 form:
- Cal-OSHA Injury & Accident Prevention Plan (I.I.P.P.) and safety plan
- First Aid & Clinic Notice
- Evacuation Plan (10 or more employees)
- Federal and State Equal Employment Rights and Protection:
- Current Employment Development Department (EDD) notices
- State Sexual Harassment Poster:
- Payday notice
- Federal & State Minimum Wage notice:
- The Employee Handbook – or, if none, at least defined employee POLICIES:
 - LEAVE under the new California Family Rights Act—applies to all companies with 5 or more employees
 - LEAVE under the California Paid Sick leave law- applies to all companies with 1 or more employees
 - LEAVE under the Pregnancy Disability Law - applies to all companies with 5 or more employees
 - POLICY Against Discrimination, Harassment, Bullying, and Retaliation - required under California law
 - POLICY re: Lactation Accommodation – required
 - Any Covid-19 protocols—e.g. masks must be worn at all times when indoors

**All the above policies and any important employee notices should be in English and in the language spoken by the employees*

For more specific information, please contact:

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