

3 Things To Know About New Calif. Labor Trafficking Law

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California is the leading destination in the country for temporary foreign workers,[1] and one of the nation’s top four destination states for trafficking in persons.[2] Temporary foreign workers are often recruited by foreign labor contractors, who communicate the job description to the foreign worker, and facilitate the legal and practical aspects of moving to the United States for a job.

While many contractors no doubt behave ethically and comply with labor rights legislation, there have been instances where they have taken advantage of foreign workers. To address this, California recently enacted a new law to protect against contractors becoming “complicit with, or ... directly involved in, the illegal trafficking of foreign workers.”[3]

The legislation affects both the labor contractors who recruit foreign workers for nonagricultural employment in California, and the corporations and people who use their services.[4] The new law, which took effect on July 1, 2016, could have unexpected consequences for unsuspecting employers.

Changes to Existing Law

Prior to July 1, 2016, the existing state law on labor trafficking governed only the conduct of foreign labor contractors, not the employers working with them. The law required that:

- Contracts for the provision of foreign labor be written in the primary language of the foreign worker, and include all material terms;
- Foreign labor contractors pay wages to the foreign worker at the agreed rate of pay for the job to which the foreign worker was being transported, even when the contractor does not then provide employment;
- No foreign labor contractor make misleading promises or misrepresent information concerning the terms or conditions of employment; and
- No foreign labor contractor make promises or provide assurances of U.S. citizenship or permanent residency.[5]

The new law imposes “stricter regulation of foreign labor contractors,”[6] and imposes civil and criminal penalties on any person, company, firm, partnership, joint venture, association, corporation, limited liability company or sole proprietorship that “act[s] in concert with” foreign labor contractors who violate the rights of foreign workers.[7]



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Specifically, the new law does the following:

- Requires foreign labor contractors to register with the California labor commissioner by submitting a written application and depositing a surety bond with the commissioner;
- Requires disclosure of the use of foreign labor contractors, and their agents, by persons seeking to employ foreign workers;
- Imposes penalties on a person using an unregistered foreign labor contractor to obtain foreign workers or employees; and
- Expands the remedies available to foreign workers aggrieved by the actions of foreign labor contractors and those acting in concert with them.[8]

The law also regulates the permissible recruitment tactics available to foreign labor contractors, and prohibits them from charging recruitment fees — even when the recruitment process “occurs wholly outside the United States.”[9]

Scope of the New Law

The law applies to “nonagricultural workers,” as defined by the federal Immigration and Nationality Act, and does not apply to any person licensed as a “farm labor contractor” or to “any employer employing agricultural workers.”[10]

It defines “foreign labor contracting activity” to mean “recruiting or soliciting for compensation a foreign worker who resides outside of the United States in furtherance of that worker’s employment in California, including when that activity occurs wholly outside the United States.” This “does not include the services of an employer, or employee of an employer, if those services are provided directly to foreign workers solely to find workers for the employer’s own use.”[11]

A “foreign worker” is “any person seeking employment who is not a United States citizen or permanent resident but who is authorized by the federal government to work in the United States, including a person who engages in temporary nonagriculture labor pursuant to Section 101(a)(15)(H)(ii)(b) of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101(a)(15)(H)(ii)(b)).”[12]

Finally, a “foreign labor contractor” is “any person who performs foreign labor contracting activity,” including “activity wholly outside the United States.” It “does not include a person licensed by the labor commissioner as a talent agency” or “a person who obtained and maintains written designation from the United States Department of State under Part 62 of Title 22 of the Code of Federal Regulations.”[13]

Three Things Companies Should Know

In order to avoid liability, employers subject to the new law must comply with three requirements:

- First, corporations must not knowingly enter into an agreement for the services of an unregistered foreign labor contractor. This includes entities and individuals who “know[] or should have known” that they are “using the services of a foreign labor contractor to procure foreign workers or employees.”[14] The commissioner posted on its website the names and contact information for all registered foreign labor contractors — both those approved and denied for renewal or registration — on Aug. 1, 2016.[15]
- Second, companies must disclose to the commissioner information about the person designated by the company to work with any foreign labor contractor, including (but not limited to), the name, address and contact information of that person. The company must also submit a declaration consenting to designate the commissioner as an agent available to accept service of summons in any action under the statute.[16]
- Third and finally, companies and individuals must not intimidate, threaten, restrain, coerce, discharge or in any manner discriminate against a foreign worker or a member of his or her family in retaliation for the foreign worker’s exercise of any right under the new law.[17]

If an entity is noncompliant, the law authorizes aggrieved workers or the commissioner to bring an action for injunctive relief and damages. A successful plaintiff can recover the greater of her actual damages, or \$500 per employee per violation for an initial violation, and \$1,000 per employee for each violation thereafter.

In addition, a prevailing plaintiff can recover costs and reasonable attorney’s fees. Any person who violates the law is guilty of a misdemeanor punishable by a fine of up to \$1,000, or imprisonment in the county jail for up to six months. Violators can also face a civil penalty between \$1,000 to \$25,000 per violation, plus any other civil remedies available to the labor commissioner or an aggrieved person.[18]

The new law exempts employers that use the services of a registered foreign labor contractor from misdemeanor or joint and several liability for an act or omission by the foreign labor contractor, so long as the foreign labor contractor was properly registered with the commissioner “no later than the first day of engagement.”[19]

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[1] California Foreign Labor Recruitment Law, S.B. 477 (2014), available at http://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201320140SB477.

[2] Kamala D. Harris, *The State of Human Trafficking in California*, State of California Department of Justice Office of the Attorney General (2012) at 3, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ht/human-trafficking-2012.pdf>

[3] California Foreign Labor Recruitment Law, S.B. 477 (2014), available at http://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201320140SB477.

[4] Cal Bus. & Prof. Code § 9998 et seq. (West 2015).

[5] Bill Analysis of SB 477, Rules Committee, California Senate (Jan. 23, 2014), available at http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0451-0500/sb_477_cfa_20140124_113130_sen_floor.html.

[6] California Foreign Labor Recruitment Law, S.B. 477 (2014), available at http://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201320140SB477; Cal Bus. & Prof. Code § 9998 et seq.

[7] California Foreign Labor Recruitment Law, S.B. 477 (2014), available at http://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201320140SB477.

[8] California Foreign Labor Recruitment Law, S.B. 477 (2014), available at http://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201320140SB477; Cal Bus. & Prof. Code § 9998 et seq.

[9] Cal Bus. & Prof. Code § 9998.1(b). For more information on the new law's regulation of foreign labor contractors, see Cal Bus. & Prof. Code § 9998.1.5(a)-(c).

[10] Cal Bus. & Prof. Code § 9998.

[11] Cal Bus. & Prof. Code § 9998.1(b).

[12] Cal Bus. & Prof. Code § 9998.1(c).

[13] Cal Bus. & Prof. Code § 9998.1(d).

[14] Cal Bus. & Prof. Code § 9998.2(a).

[15] Cal Bus. & Prof. Code § 9998.1.5(a).

[16] Cal Bus. & Prof. Code § 9998.2(b)(1).

[17] Cal Bus. & Prof. Code § 9998.6.

[18] Cal Bus. & Prof. Code § 9998.8(a)-(c).

[19] Cal Bus. & Prof. Code § 9998.8(a), (d).