

## Apartment Owners and Property Managers Brace for New Lawsuits over Independent Contractors

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### ***The Problem***

The trial lawyers got California Labor Code 2810 passed and signed by Governor Davis effective January 1, 2004 before his removal from office. What this new code does is make property owners and property managers responsible for labor, wage and hours laws and worker's compensation insurance for outside contractors such as gardening, janitorial, maintenance, construction, security, etc. If your licensed landscaper didn't pay overtime or the current wages or let worker's compensation lapse, you are now responsible under 2810. The employees can sue their employer and you for actual damages, \$250 per employee for the first violation, \$1,000 per employee for additional violations. This will be another lawsuit goldmine for the trial attorneys as they can bring individual suits and not have to rely on the California Labor Commission. Now comes the best part. If the employee wins they are entitled to collect attorney's fees, but if the owner or manager wins, they cannot recover attorney's fees. This is a stacked deck as they would say in poker. The cost to defend will probably be \$10,000 but the attorneys for the plaintiff will probably offer to settle for less than the \$10,000 so they can keep most of the money and do little or no work for their blackmail scheme.

### ***Exemptions***

It doesn't matter whether the independent contractor is state licensed and insured when you hire them. This anti-business law still allows the owner and manager to be liable. The exceptions are your primary residence or contractors providing services pursuant to a union bargaining agreement. In other words, if you hire a union electrician or gardener, you would be exempt.

### ***What Can We Do***

Remember that liberal democrats such as Senator Joe Dunn who is a trial attorney are not friends of real estate owners when they solicit your money and vote. In a more practical rein we need to insure that we have a wall of protection between the independent contractors whose employees are now treated as your employees under 2810. We need to have a contract with our 3<sup>rd</sup> party vendors that meets the following 10 requirements:

1. Name and address of owner and contractor
2. Description of labor service to be performed
3. Employer (owner) and vendor Tax ID Number
4. Workers compensation policy number and carrier name and address
5. Vehicle ID numbers for any vehicles used to transport workers pursuant to contract and insurance policy number and name of carrier
6. Address of any real property used to house workers pursuant to contract
7. Total number of workers to be employed, total wages and date wages are to be paid
8. Amount of compensation to vendor for services

9. Total number of persons who will be utilized as independent contractors along with their Tax ID Number
10. Signature of all parties and date

### ***Compliance***

Have a contract covering the 10 requirements doesn't relieve you of liability if despite the information you provided you knew or should have known that the contractor would not have sufficient funds to comply with minimum wage and overtime laws. There are many reasons that contractors fail such as lawsuits, theft, loss of customer base that would have no bearing on your service contract but may prevent the vendor from making payroll payments which may then fall back on the property owner.

### ***Solution to 2810***

Use the 10 requirement vendor contract and require copies of worker's compensation insurance and use licensed reputable contractors. You also need a means to follow up on worker's compensation timely renewal. We may also require a bond to be posted to identify the owner and property manager which is presently being researched.

### ***Summary***

California Labor Code Section 2810 is another example of Government bureaucracy and harassment of property owners and business in California. Use the 10 point vendor contract and hire a reputable and established property management company to keep you out of having to deal with these and other potential minefields and time consuming problems in the management of your real estate investments. An individual apartment is now worth more than an expensive BMW. Not many owners today try and service an expensive car due to its complexity. The same argument can be made for trying to understand and comply with regulations in managing your own apartments.

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