

Are General Contractors Liable for Their Subcontractors' Actions or Inactions?

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June 25, 2019

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A general contractor in Southern California found itself on the hook for its subcontractor's failure to pay wages to its workers, even though the general contractor had no knowledge of it. The case illustrates an important reminder for general contractors. The general contractor was fined close to \$600,000 under a 2017 California law, A.B. 1701, which holds general contractors liable for their subcontractor's failure to pay wages owed to workers.

Holding a general contractor responsible is not new or limited to state law. Under most federal employment laws, a general contractor could be found to be a joint employer with its subcontractor, or a temporary staffing agency, when certain conditions are met. In determining if the general contractor is jointly employing workers with its subcontractors, courts will look at the level of control exercised by the general contractor over these workers, as well as intermingling of operations, common ownership, supervision of work, pooling of employees, sharing of clients or customers, and agreements between the companies.

Unexpected and significant consequences for a general contractor may result from its subcontractor's noncompliance with the law. For example, under the Fair Labor Standards Act, a general contractor found to be a joint employer could be liable for a subcontractor's failing to pay wages or overtime and misclassifying a worker as exempt or as an independent contractor, among other things.

In addition, more and more courts are looking at whether general contractors should be held accountable for a subcontractor's alleged harassing or discriminatory conduct under Title VII of the Civil Rights Act.

State and federal agencies and workers may go after a general contractor for joint-employment liability when the subcontractor cannot cover the liability on its own or it is no longer operating, and the general contractor has deeper pockets.

Accordingly, to reduce risk, general contractors should consider carefully who they choose to do business with and take steps to ensure that their business partners are compliant with federal and state laws.

Please contact a Jackson Lewis attorney with any questions.

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