

LAW REVIEW

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DO NOT HIRE UNLICENSED CONTRACTORS OR SUBS

Contractors, here's one more reason not to ever hire an unlicensed subcontractor or allow a sub's license to lapse during construction of a project.

Sub's License Expires

Sanders Construction Company was the general contractor on the construction of an Hesperia hotel. Sanders hired Humberto Drywall for a fixed price. Sanders paid Humberto who of course was to pay its workers.

Midway through the project a dispute developed and Sanders discovered that Humberto Drywall's contractors license had expired--even before their work had begun. Big mistake coming up folks. Sanders continued to pay Humberto to complete the project. Bad move.

Labor Claims

Humberto Drywall failed to pay its employees' wages and the workers filed wage claims with the state Labor Commissioner against general contractor Sanders.

Sanders, naturally, fought the wage claim saying that as a general it hired Humberto Drywall as a subcontractor who at the time was unlicensed.

Sanders agreed that a general contractor hiring an unlicensed subcontractor might, just might, be responsible for the unlicensed sub's workers

compensation and unemployment benefit obligations, but certainly not the wages of the sub's unpaid workers. That would be going too far. Or would it?

Labor Code 2750.5

This case centers around Labor Code section 2750.5 which recites "...a general contractor is the employer of not only its unlicensed subcontractors but also those employed by the unlicensed subcontractors."

Under that code, an unlicensed contractor is not an independent contractor (which is true) but is a "statutory employee" of the general contractor, which makes the general the employer of not only its unlicensed sub but also those employed by the unlicensed sub. Or so the unpaid workers argued.

Court of Appeal

This Court ruled that when a subcontractor is unlicensed, the general contractor is responsible not only for workers compensation liability for the subcontractor's employees and to the Employment Development Department for unpaid contributions and withholdings--for its unlicensed subcontractor's employees, but also, which is the point of this new case, for the unpaid wages of the unlicensed sub's employees. That is one serious repercussion for hiring an unlicensed subcontractor.

Two Twists

Owners who hire unlicensed workers who are not paid as employees (with withholdings, etc.) face the same potential liability. It is a common misconception that owners may pay unlicensed workers hourly (without treating them as employees) as long as the owner pays for the materials. No can do.

One last caveat. General contractors who hire licensed contractors to work hourly, essentially like an employee but without withholding, face a similar potential risk of liability for withholding and for the contractor's injury.

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