Senate Bill No. 809

CHAPTER 659

An act to add Sections 2750.9, 2775.5, and 2802.2 to the Labor Code, relating to employment.

[Approved by Governor October 11, 2025. Filed with Secretary of State October 11, 2025.]

LEGISLATIVE COUNSEL'S DIGEST

SB 809, Durazo. Employees and independent contractors: construction trucking.

(1) Existing law, as established in the case of Dynamex Operations W. v. Superior Court (2018) 4 Cal.5th 903 (Dynamex), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for those purposes.

Existing law establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. This test is commonly known as the "ABC" test, as described above. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.

Existing law exempts specified occupations and business relationships from the application of Dynamex and the provisions described above.

This bill would provide that mere ownership of a vehicle, including a personal vehicle or a commercial vehicle, used by a person in providing labor or services for remuneration does not make that person an independent contractor. The bill would state that this provision is declarative of existing law.

(2) Existing law establishes the Motor Carrier Employer Amnesty Program administered by the Labor Commissioner and the Employment Development Department. Pursuant to the program, notwithstanding any law, a motor carrier performing drayage services may be relieved of liability for statutory or civil penalties associated with the misclassification of commercial drivers as independent contractors if the motor carrier enters

into a settlement agreement with the commissioner, with the cooperation and consent of the department, prior to January 1, 2017, whereby the motor carrier agrees to classify all of its commercial drivers as employees, and the settlement agreement contains prescribed components, including, but not limited to, an agreement by the motor carrier to pay all wages, benefits, and taxes owed, if any.

This bill would establish a similar program, known as the Construction Trucking Employer Amnesty Program, to be administered by the commissioner and the department. Under the bill, an eligible construction contractor would be relieved of liability for statutory or civil penalties, except as provided, associated with the misclassification of construction drivers as independent contractors, if the eligible construction contractor executes a settlement agreement negotiated with, or approved by, the commissioner prior to January 1, 2029, whereby the eligible construction contractor agrees to properly classify all drivers performing construction work on their behalf as employees and the settlement agreement contains prescribed components, including, but not limited to, an agreement by the construction contractor to pay all wages, benefits, and taxes owed, if any. If a construction driver declines to accept the terms of a settlement agreement, the bill would still require an eligible construction contractor to reclassify the construction driver as an employee and the construction driver would be precluded from pursuing a claim for civil or statutory penalties under specified provisions of law for a claim arising during the period of time covered by the settlement agreement.

(3) Existing law requires an employer to indemnify their employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, or of their obedience to the directions of the employer, as provided.

This bill would provide that the duty of an employer to indemnify their employee for all necessary expenses or losses applies to the use of a vehicle owned by an employee and used by that employee in the discharge of their duties. The bill would provide that, with respect to construction trucking, a commercial motor vehicle driver who owns the truck, tractor, trailer, or other commercial vehicle that they use in the discharge of their duties as an employee working for an employer would be entitled to reimbursement for the use, upkeep, and depreciation of that truck, tractor, trailer, or other commercial vehicle, as provided. The bill would state that specified provisions described above are declarative of existing law.

The people of the State of California do enact as follows:

SECTION 1. Section 2750.9 is added to the Labor Code, to read:

2750.9. (a) The Labor Commissioner and the Employment Development Department shall administer the Construction Trucking Employer Amnesty Program pursuant to which, notwithstanding any other law, an eligible construction contractor shall be relieved of liability for statutory or civil penalties associated with the misclassification of construction drivers as independent contractors, as provided by this program, if the eligible construction contractor executes a settlement agreement negotiated with, or approved by, the Labor Commissioner whereby the eligible construction contractor agrees to, among other things, properly classify all drivers performing construction work on its behalf as employees.

(b) As used in this section, the following terms shall have the following meanings:

(1) (A) “Construction contract” means a contract, whether on a lump sum, time and material, cost plus, or other basis, to do any of the following:

(i) Erect, construct, alter, or repair any building or other structure, project, development, or other improvement on or to real property.

(ii) Erect, construct, alter, or repair any fixed works, including waterways and hydroelectric plants, steam and atomic electric generating plants, electrical transmission and distribution lines, telephone and telegraph lines, railroads, highways, airports, sewers and sewage disposal plants and systems, waterworks and water distribution systems, gas transmission and distribution systems, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, refineries, and chemical plants.

(iii) Pave surfaces separately or in connection with any of the above works or projects.

(iv) Furnish and install the property becoming a part of a central heating, air-conditioning, or electrical system of a building or other structure, and furnish and install wires, ducts, pipes, vents, and other conduit imbedded in or securely affixed to the land or a structure on the land.

(B) “Construction contract” does not include either of the following:

(i) A contract for the sale, or for the sale and installation, of tangible personal property, including machinery and equipment.

(ii) The furnishing of tangible personal property under what is otherwise a construction contract if the person furnishing the property is not responsible under the construction contract for the final affixation or installation of the property furnished.

(2) “Construction contractor” means a person who agrees to perform and does perform a construction contract. Construction contractor includes subcontractors and specialty contractors and those engaged in building trades, including carpentry, bricklaying, cement work, steel work, plastering, drywall installation, sheet metal work, roofing, tile and terrazzo work, electrical work, plumbing, heating, air-conditioning, elevator installation and construction, painting, and persons installing floor coverings, including linoleum, floor tile, and wall-to-wall carpeting, by permanently affixing those coverings to a floor. Construction contractor includes any person required to be licensed under the Contractors’ State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) and any person contracting with the federal government to perform a construction contract.

(3) “Construction driver” means a person who operates a motor vehicle to perform construction work on behalf of a construction contractor, utilizing

a vehicle owned by the driver or a vehicle supplied by the construction contractor.

(4) “Department” means the Employment Development Department.

(5) “Eligible construction contractor” means a construction contractor that does not have either of the following on the date they apply to participate in the program:

(A) A civil lawsuit that was filed on or before December 31, 2025, pending against it in a state or federal court that alleges or involves a misclassification of a construction driver.

(B) A penalty assessed by the department pursuant to Section 1128 of the Unemployment Insurance Code that is final imposition of that penalty.

(6) “Program” means the Construction Trucking Employer Amnesty Program established by this section.

(c) (1) A construction contractor shall only apply to participate in the program by doing both of the following:

(A) Submitting an application to the Labor Commissioner, on a form provided by the Labor Commissioner. The application shall, at a minimum, require the construction contractor to establish they qualify as an eligible construction contractor.

(B) Reporting on the results of a self-audit in accordance with the guidelines provided by the Labor Commissioner.

(2) A construction contractor that voluntarily or as a result of a final disposition in a civil proceeding reclassified its construction drivers as employees on or before September 1, 2028, shall, in addition to other information requested by the Labor Commissioner, also submit with its application all of the following:

(A) Documentation demonstrating that the construction contractor reclassified their construction drivers as employees, including the commencement period applicable to the reclassification.

(B) The identification of each construction driver reclassified in the documents provided in subparagraph (A), the amounts paid to each construction driver to compensate for the previous misclassification, and the time period applicable to the amount paid to each construction driver prior to reclassification.

(C) A report of a self-audit for all construction drivers reclassified by the construction contractor identified in subparagraphs (A) and (B), and also include a separate self-audit report for any construction driver who is subject to reclassification, but is not identified in subparagraph (B).

(3) A proceeding or action against a construction contractor pursuant to Sections 2698 to 2699.5, inclusive, shall not be initiated after the construction contractor has submitted an application for participation in the program, but may be initiated if the construction contractor’s application is denied.

(4) If a construction contractor’s application to participate in the program is denied by the Labor Commissioner, the application or its submission shall not be considered an acknowledgment or admission by the construction contractor that they misclassified their construction drivers as independent contractors, and the application or its submission shall not be construed in

any way to support an evidentiary inference that the construction contractor failed to properly classify their construction drivers as employees.

(d) The Labor Commissioner shall analyze the information provided pursuant to paragraph (2) of subdivision (c) for the purpose of evaluating the scope of a prior reclassification of an eligible construction contractor's construction drivers to employees and has discretionary authority to determine whether the scope was sufficient to afford relief to the misclassified construction drivers.

(1) Before January 1, 2029, the Labor Commissioner, with the cooperation and consent of the department, may negotiate and execute a settlement agreement with an eligible construction contractor that applied to participate in the program. The Labor Commissioner shall not execute a settlement agreement on or after January 1, 2029.

(2) Before January 1, 2029, an eligible construction contractor may negotiate a settlement agreement with a labor union representing its drivers, or with any city attorney, and shall submit that settlement agreement to the Labor Commissioner, who shall review and may approve that settlement agreement under the program. The Labor Commissioner shall not approve a settlement agreement on or after January 1, 2029.

(e) Prior to the Labor Commissioner executing or approving a settlement agreement, an eligible construction contractor shall file their contribution returns and report unreported wages and taxes to the department for the time period the construction contractor seeks relief under the settlement agreement.

(f) A settlement agreement executed or approved by the Labor Commissioner involving an eligible construction contractor pursuant to the program shall require an eligible construction contractor to do all of the following:

(1) Pay all wages, benefits, and taxes owed, if any, to or in relation to all of its construction drivers reclassified from independent contractors to employees for the period of time from the first date of misclassification to the date the settlement agreement is executed, but not exceeding the applicable statute of limitations. The settlement shall include interest on unpaid taxes at the adjusted annual rate and by the method established pursuant to Section 19521 of the Revenue and Taxation Code and interest for unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code.

(2) Maintain any converted construction driver positions as employee positions.

(3) Consent that any future construction drivers hired to perform the same or similar duties as those employees converted pursuant to the settlement agreement shall be presumed to have employee status and that the eligible construction contractor shall have the burden to prove by clear and convincing evidence that they are not employees in any administrative or judicial proceeding in which their employment status is an issue.

(4) Immediately after the execution of the settlement agreement, secure the workers' compensation coverage that is legally required for the

construction drivers who were reclassified as employees, effective on or before the date the settlement agreement is executed.

(5) Provide the Labor Commissioner with proof of workers' compensation insurance coverage in compliance with paragraph (4) within five days of securing the coverage.

(6) Pay the costs authorized by subdivision (g), if required.

(7) Perform any other requirements or provisions the Labor Commissioner and the department deem necessary to carry out the intent of this section, the program, or to enforce the settlement agreement.

(g) A settlement agreement may require an eligible construction contractor to pay the reasonable, actual costs of the Labor Commissioner and the department for their respective review, approval, and compliance monitoring of the settlement agreement. The costs shall be deposited into the Labor Enforcement and Compliance Fund. The portion of the costs attributable to the department shall be transferred to the department upon appropriation by the Legislature.

(h) The settlement agreement may include provisions for an eligible construction contractor to make installment payments of amounts due pursuant to paragraphs (1) and (6) of subdivision (f) in lieu of a full payment. The period of installment payments shall not exceed 24 months from the date the settlement agreement is signed. An installment payment agreement shall be included within the settlement agreement and charge interest on the outstanding amounts due for unpaid taxes at the adjusted annual rate and by the method established pursuant to Section 19521 of the Revenue and Taxation Code and due for unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code. Interest on amounts due shall be charged from the day after the date the settlement agreement is executed, which will be the new date of delinquency, until paid. The settlement agreement shall contain a provision that if a construction contractor fails, without good cause, to fully comply with terms of the settlement agreement authorizing installment payments, the settlement agreement shall be null and void and the total amount of tax, interest, and penalties for the time period covered by the settlement agreement shall be immediately due and payable.

(i) The Labor Commissioner and the department may share any information necessary to carry out the program. Sharing information pursuant to this subdivision shall not constitute a waiver of any applicable confidentiality requirements and the party receiving the information shall be subject to any existing confidentiality requirements for that information.

(j) (1) Notwithstanding any other law and pursuant to the program, an eligible construction contractor that executed and performed its obligations pursuant to a settlement agreement shall not be liable, and the Labor Commissioner or the department shall not enforce, any civil or statutory penalties under this code or the Unemployment Insurance Code resulting from the misclassification of employees, including, but not limited to, remedies available under subdivision (e) of Section 226, that might have become due and payable for the time period covered by the settlement agreement, except for the following penalties:

(A) A penalty assessed by the department under Section 1128 of the Unemployment Insurance Code that is final on the date of the settlement agreement is executed, unless the penalty is reversed by the California Unemployment Insurance Appeals Board.

(B) A penalty for an amount an eligible construction contractor admitted was based on fraud or made with the intent to evade the reporting requirements set forth in this division, Division 1 (commencing with Section 100) of the Unemployment Insurance Code, or authorized regulations.

(C) A penalty based on a violation of this division or Division 6 (commencing with Section 13000) of the Unemployment Insurance Code and either of the following:

(i) The eligible construction contractor was on notice of a criminal investigation due to a complaint having been filed or by written notice having been mailed to the eligible construction contractor informing the construction contractor that they are under criminal investigation.

(ii) A criminal court proceeding has already been initiated against the eligible construction contractor.

(2) (A) Notwithstanding any other law and pursuant to the program, an eligible construction contractor that executed and performed their obligations pursuant to a settlement agreement shall not be liable, and the Labor Commissioner or the department shall not enforce, any unpaid penalties or interest owed on unpaid penalties for which an eligible construction contractor may have been liable but that were not yet assessed by the department or by a court of competent jurisdiction on or before the date the settlement agreement was executed, pursuant to Sections 1112, 1112.5, 1126, and 1127 of the Unemployment Insurance Code for the tax reporting periods for which the settlement agreement is applicable, that may be owed as a result of the nonpayment of tax liabilities due to the misclassification of one or more construction drivers as independent contractors and the reclassification of these construction drivers as employees. Any penalties, and interest owed on penalties, established as a result of an assessment issued by the department or by a court of competent jurisdiction before the date the settlement agreement was executed shall not be waived pursuant to the program.

(B) For purposes of paragraph (1), state personal income taxes required to be withheld by Section 13020 of the Unemployment Insurance Code and owed by the construction contractor pursuant to Section 13070 of the Unemployment Insurance Code shall not be collected, if the eligible construction contractor issued an information return pursuant to Section 6041A of the Internal Revenue Code reporting payment or if the construction driver certifies that the state personal income tax has been paid or that the construction driver has reported to the Franchise Tax Board the payment against which the state personal income tax would have been imposed.

(3) A refund or credit for any penalty or interest paid prior to the date an eligible construction contractor applied to participate in the program shall not be granted.

(4) Except for violations described in Section 2119 of the Unemployment Insurance Code, the department shall not bring a criminal action for failing to report tax liabilities against an eligible construction contractor that executed and performed their obligations pursuant to a settlement agreement for the tax reporting periods subject to the settlement agreement.

(k) The statute of limitations on any claim or liability that might have been asserted against a construction contractor based on the construction contractor having misclassified a construction driver as an independent contractor shall be tolled from the date a construction contractor applies for participation in the program through the date the Labor Commissioner either denies the construction contractor participation in the program or the construction contractor, as an eligible construction contractor, has failed to perform an obligation under the settlement agreement, whichever is later.

(*l*) (1) The recovery obtained by the Labor Commissioner on behalf of a reclassified construction driver pursuant to a settlement agreement shall be tendered to the construction driver on the condition that the construction driver shall execute a release of all claims covered by the settlement agreement that the construction driver may have against the eligible construction contractor based on the eligible construction contractor's failure to classify the construction driver as an employee.

(2) A construction driver shall not be under any obligation to accept the terms of a settlement agreement.

(A) If a construction driver declines to accept the terms of a settlement agreement, the construction driver shall not be bound by the settlement agreement, except that the eligible construction contractor shall still reclassify the construction driver as an employee and that construction driver shall be precluded from pursuing a claim for civil penalties or statutory penalties under the Labor Code Private Attorneys General Act of 2004 (Part 13 (commencing with Section 2698) of Division 2) for a claim arising during the period of time covered by the settlement agreement.

(B) If a construction driver does not accept the terms of a settlement agreement, the construction contractor shall be excused from performing their requirement under the settlement agreement to pay the amount acknowledged in the settlement agreement to be due to that construction driver.

(m) (1) If the Labor Commissioner determines an eligible construction contractor violated or failed to perform any of their obligations under a settlement agreement, the Labor Commissioner may file a civil action to enforce the settlement agreement.

(2) (A) If the Labor Commissioner files a civil action seeking only recovery of the amounts due to construction drivers under the settlement agreement, the Labor Commissioner may obtain judicial enforcement by filing a petition for entry of judgment for the liabilities due and remaining pursuant to the settlement agreement.

(B) After filing a petition pursuant to subparagraph (A), the Labor Commissioner may file an application for an order to show cause and serve it on the eligible construction contractor. Within 60 days of the date the Labor Commissioner filed the order to show cause, the court shall hold a hearing and enter a judgment. The judgment shall be in amounts which are due and owing to construction drivers pursuant to the settlement agreement with credits, if any, for applicable payments the eligible construction contractor made under the settlement agreement. A judgment entered pursuant to this paragraph shall not preclude subsequent action to recover civil penalties or statutory penalties by the Labor Commissioner, or by an employee pursuant to Sections 2698 to 2699.5, inclusive.

(3) If the court determines in any action filed by the Labor Commissioner that a construction contractor has violated or otherwise failed to perform any of their obligations under a settlement agreement, the court shall award the Labor Commissioner costs and reasonable attorney's fees.

SEC. 2. Section 2775.5 is added to the Labor Code, to read:

2775.5. (a) Mere ownership of a vehicle, including a personal vehicle or a commercial vehicle, used by a person in providing labor or services for remuneration does not make that person an independent contractor. A person who owns a vehicle they use to provide labor or services, either as an individual or through a business entity they own, may be either an employee or an independent contractor depending on whether the conditions in paragraph (1) of subdivision (b) of Section 2775 are satisfied. If the conditions are not satisfied and the owner of the vehicle is an employee, the employee shall be reimbursed for use of the vehicle as described in Sections 2802 and 2802.2.

(b) This section is declarative of existing law.

SEC. 3. Section 2802.2 is added to the Labor Code, to read:

2802.2. (a) Section 2802 applies to the use of a vehicle, including a personal vehicle or a commercial vehicle, owned by an employee and used by that employee in the discharge of their duties. This subdivision is declarative of existing law.

(b) (1) With respect to construction trucking, a commercial motor vehicle driver who owns the truck, tractor, trailer, or other commercial vehicle that they use in the discharge of their duties as an employee working for an employer is entitled to reimbursement for the use, upkeep, and depreciation of that truck, tractor, trailer, or other commercial vehicle. This subdivision applies whether the vehicle is owned by the driver as an individual or whether the vehicle is owned by the driver through a corporate entity. This paragraph is declarative of existing law.

(2) (A) The amount to be reimbursed for the use of the truck, tractor, or trailer shall be negotiated either by the driver and the employer, or by a labor union representing that driver and the employer. The amount negotiated shall be either a flat rate reimbursement or a per-mile reimbursement, but in no case shall the amount negotiated be less than the actual amount expended by the driver for a flat rate reimbursement or less than the standard

mileage reimbursement rate set by the Internal Revenue Service for the time the services were provided for a per-mile reimbursement.

(B) An amount owed to a driver under this section may be paid directly to the driver in the driver's name, or may be paid to a corporate entity owned and controlled by the driver if the truck, tractor, or trailer is owned by the corporate entity rather than by the driver directly.

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