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## **Legislature Doubles Labor Code Fine for Contracting with Unlicensed Contractor**

By: Christopher W. Olmsted, Insurance Defense Attorney

California construction contractors should take note of an amendment to a Labor Code section recently enacted into law by the California state legislature. State Assembly Bill 276 has amended a number of Labor Code sections, increasing fines collectable by the Labor Commissioner.

One of the amended sections is Labor Code section 1021.5. Pursuant to section 1021.5, any licensed contractor who enters into a contract with any person to perform services for which a license is required as an independent contractor, and that person does not meet the burden of proof of independent contractor status or hold a valid state contractor's license, is subject to a civil penalty. Until now, the penalty was \$100.00 per person contracted for each day of the contract. The legislature has now increased the fine to \$200.00 per person per day.

The doubling of the Labor Code penalty calls attention to the need for contractors to confirm the license status of subcontractors. Confirmation is as simple as calling the Contractors State License Board or visiting its website. A prudent contractor will keep a record of the confirming information. Labor Code penalties are only part of the reason to confirm the license status of independent contractors. Among other problems, hiring unlicensed subcontractors may also lead to workers compensation and payroll tax liability if the subcontractor's workers are deemed to be your direct employees.

Contractors should also be mindful that license status is only part of the inquiry regarding independent contractor status. According to Labor Code section 2750.5, there must also be proof: that (a) the contracted individual controls the manner of performance of the contract; (b) the contracted individual is customarily engaged in an independently established business; and (c) the individual's independent contractor status is not merely an attempt to avoid employee status. Diligent attention to these issues during the pre-contract phase of a project will go a long way towards minimizing the risk of costly fines and civil liability.

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### Practice Area:

Civil Litigation

### Areas of Emphasis:

Employment Litigation and Labor Law  
Insurance Defense  
Insurance Bad Faith  
Construction Litigation  
Business Litigation

### Bar Admissions:

California, 1994  
California District Court, Central District of California, 1994  
U.S. Court of Appeals, Ninth Circuit, 1996

### Education:

J.D., Loyola Law School, 1994  
B.A., University of California, Berkley, 1991

### Summary:

Mr. Olmsted is an attorney practicing in the areas of employment litigation and compliance, business litigation, insurance defense, and insurance bad faith. His experience in insurance defense includes automobile, commercial, and homeowners claims, and encompasses personal injury, property damage, mold claims, and wrongful death matters. He has litigated bad faith cases including homeowners, mold, automobile, and disability insurance claims. Additionally, he has represented clients in the areas of business and commercial litigation, asbestos litigation, construction collection and construction defects.

Mr. Olmsted's employment litigation experience includes: FEHA claims regarding race, gender, age, religion, national origin, sexual orientation, disability, pregnancy and sexual harassment; California CFRA and federal FMLA; federal ADA and ADEA; False Claim and whistleblowing actions; public policy violations; ERISA; Labor Board and Unemployment Insurance claims. He has represented clients in state and federal jury and bench trials, appeals before California and federal courts of appeal, judicial and contractual arbitrations, and administrative law hearings. Mr. Olmsted is a member of: San Diego Risk and Insurance Management Society, Association of Business Trial Lawyers, California Bar Employment Law Section and San Diego County Bar Association Insurance Section.

### Seminars presented include:

- Speaker on "The Nuts & Bolts of Prevailing Wage Law" for the Engineering General Contractor's Society, San Diego, December 2, 2003.
- Speaker regarding California Leaves of Absences, Lorman Educational Services Seminar, San Diego, CA, October 15, 2003.
- Speaker on "How to Litigate Your First Civil Trial in California," National Business Institute, San Diego, CA, 2003.
- Firm-sponsored seminar on Employment Law: Avoiding Liability in the Hiring Process, San Diego, CA, March 27, 2003.

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- San Diego Volunteer Lawyer Program – Disaster Relief Assistance