

# California Legislature Passes Bill That Will Permit Shippers To Be Held Jointly Liable For State Labor And Employment Law Violations By Port Trucking Companies

On August 31, 2018 California's legislature passed Senate Bill 1402. Unless vetoed by Governor Brown on or before September 30, SB 1402 will allow shippers to be held jointly liable for state labor and employment law violations by port trucking companies. The bill, which was authored by Senator Lara (D-Bell Gardens), is aimed at ending the purported "exploitation of truck drivers who haul cargo from California's ports." According to its text, "[h]olding customers of trucking companies jointly liable for future labor law violations by port drayage motor carriers who they engage, where the customer has received advance notice of their record of unsatisfied judgments for labor law violations, will exert pressure across the supply chain to protect drayage drivers from further exploitation."

To further these goals, SB 1402 (which will be found at California Labor Code section 2810.4) requires California's Division of Labor Standards Enforcement ("DLSE") to post on its web site the names, addresses, and essential information for any port drayage motor carrier that has any unsatisfied final and public court judgments, decisions, awards, tax assessments, or tax liens arising out of a proceeding in which the port drayage motor carrier has been found to have unlawfully failed to pay wages, imposed unlawful expenses on employees, failed to remit payroll taxes, failed to provide workers' compensation insurance, or to have misclassified port drayage drivers as independent contractors. Pursuant to the bill, the DLSE must post the names of said drayage motor carriers monthly and must remove names from the list within 15 days of determining that "there has been full payment of the unsatisfied judgment or that the port drayage motor carrier has entered into an approved settlement dispensing of the judgment."

SB 1402 provides that any shipper that engages a port drayage motor carrier that is on the DLSE's list is jointly and severally liable to any port drayage driver for port drayage services performed **after** the date the motor carrier appeared on the DLSE's list. Under SB 1402, shippers will be jointly and severally liability with the motor carrier for the full amount of unpaid wages, unreimbursed expenses, damages, penalties and applicable interest, which are found due against the motor carrier.

SB 1402 provides two avenues for determining a shipper's

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liability under the law. The bill makes clear that aggrieved drivers may file claims against shippers with California's Labor Commissioner or in court. The Labor Commissioner may also investigate and pursue claims on behalf of drivers. Shippers, however, will not be subject to joint and several liability under SB 1402 if, amongst other things:

1. The shipper engages a port drayage motor carrier whose employees are covered by a bona fide collective bargaining agreement; or
2. The shipper and the port drayage motor carrier had an existing contract for port drayage services at the time a port drayage motor carrier is listed on the DLSE web site and the customer wishes to terminate the agreement. Under this scenario, the shipper will not be jointly and severally liability during the expiration of the existing contract or for a period of 90 business days following the listing, whichever is shorter.

The bill requires port drayage motor carriers to provide written notice to its customers of any unsatisfied final judgments against the motor carrier for unpaid wages, damages, unreimbursed expenses, penalties, and/or interest. However, a port drayage motor carrier's failure to provide its customers with such notice will not be a defense to the joint and several liability provided by the law.

Finally, SB 1402 prohibits shippers and port drayage motor carriers from retaliating against or taking any adverse action against any commercial driver for providing notification of violations or filing a claim or civil action pertaining to unpaid wages, unreimbursed expenses, or the recovery of damages, penalties, and applicable interest.

SB 1402 is the latest challenge faced by transportation companies in California. It will require shippers and port drayage carriers to even more closely examine their relationships, agreements and various notices to one another.

Should companies have any questions about the bill and its impacts, please contact William Taylor or Paul Mello of Hanson Bridgett's Transportation and Logistics Law.

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