



## STANFORD LEGAL OFFICE MEMORANDUM

**TO:** Distribution

**FROM:** Patrick Dunkley

**SUBJECT:** New Law Regarding Liability for Injuries Caused by Contractors

**DATE:** December 18, 2003

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A new law going into effect on January 1, 2004 could result in liability to Stanford *for the actions of its contractors* unless certain language is contained in contracts that fall within the scope of the law.

### **Scope of S.B. 179 (Responsibility for Contractor Compliance with Labor Laws)**

Under current law, an entity that obtains labor or services from an independent contractor is not liable for the contractor's violations of the Labor Code, unless it is determined to be a joint employer of the contractor's employees. S.B. 179 prohibits an entity from entering into any contract for labor or services with a "construction, farm labor, garment, janitorial, or security guard contractor," if the entity knew or should have known that the contract did not include sufficient funds to ensure that the contractor complies with all the applicable local, state and federal employment laws and regulations (e.g., payment of legally required wages, workers' compensation insurance, etc.). Excluded from the law is any person or entity that has signed a collective bargaining agreement with a union covering the workers providing the labor or services.

### **Safe Harbor**

S.B. 179 includes a "rebuttable presumption" that companies meeting specified requirements did not violate the law. However, to qualify for the rebuttable presumption protection, the contract must be a single written document containing each of the following provisions (and any others that may be adopted by the Labor Commissioner in the future):

- The name, address and telephone number of the company and the contractor that will provide the labor or services;
- A description of the labor or services to be provided, and the start and completion date of the contract;
- The contractor's state tax employer identification number;
- The contractor's workers' compensation insurance policy number, and the name, address and telephone number of the contractor's workers' compensation carrier;
- The vehicle identification number of each vehicle owned by the contractor that may be used for transportation in connection with the services provided, and the vehicle liability

insurance policy number and name, address and telephone number of the insurance carrier covering the vehicle;

- The address of any housing provided by the contractor to the workers performing services;
- The total number of workers to be employed in connection with the contract, the total amount of wages to be paid, and the dates when those wages will be paid;
- The service fee, commission or other payment made to the contractor for providing the services;
- The total number of independent contractors that will be utilized by the contractor, along with the local, state and federal contractor license identification numbers for each of the independent contractors; and
- The signature of all parties to the contract, and the date the contract was signed.

### ***Record retention requirement***

The entity must keep a copy of the written contract for at least four years after its termination.

### ***Remedies for Violations***

If an employee of the contractor is “injured” (e.g. not paid wage or workers’ compensation benefits) as a result of any violation of an employment law or regulation in connection with performing services under the contract, he or she may, if the safe harbor requirements are not met, bring an action ***against the entity that hired the contractor*** for the greater of actual damages or \$250 per employee per violation for the initial violation and \$1,000 per employee for each subsequent violation. The employee also may bring an action for an injunction requiring compliance with applicable employment laws. The law also provides for recovery of attorneys’ fees and costs by a successful employee of the contractor.

This is intended to merely be a summary of the law. A complete copy of S.B. 179 is posted on the Office of the General Counsel website at <http://www.stanford.edu/dept/legal/recent/index.html>. If you have any questions about this law, please contact Patrick Dunkley in the Office of the General Counsel at 5-7655 or [pdunkley@stanford.edu](mailto:pdunkley@stanford.edu).