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California Bill Would Permit Employees to Record Liens for Alleged Unpaid Wages

During the last couple of legislative sessions, union interests have been working with California legislators to pass a bill that would enable employees to record liens against their employers' real and personal property, as well as against the real property where their work was performed. The current bill -- Assembly Bill 2416 ("AB-2416") -- has momentum. It has passed in the Assembly, and is headed to the Senate. Property owners need to be aware of this bill as it continues through the Legislature and possibly moves on to the Governor.

Overview of AB-2416

AB-2416 would permit an employee claiming unpaid wages to record a lien against any of the employer's property located within California. The lien attaches to any and all of the employer's properties located in every county in which the employee records the lien, including properties that the employer may acquire after the lien is recorded.

AB-2416 would also permit an employee claiming unpaid wages to record a lien against the property at which he or she performed work. For example, employees of janitorial, security, landscaping or other contractors could record a lien against the property at which their labor was furnished.



The bill would apply only to non-exempt employees, rather than professional or managerial employees. Notably, the liens are not available for labor performed under a collective bargaining agreement if the agreement provides for hourly pay of not less than 30 percent more than the state minimum wage. In other words, you do not have to worry about this if you hire only union labor for at least 30 percent over minimum wage.

The employee could record a lien at any time within 180 days after ceasing work for the employer. In the case of employees recording liens against properties not owned by their employers (e.g., contractor employees), the lien may be recorded at any time within 180 days after the employee ceases performing work at the property.

The bill provides a couple of safeguards to mitigate potential abusive claims, but these safeguards are far from perfect. First, the bill would enable a property owner to have the lien released by obtaining a surety bond, similar to a mechanics' lien release bond. Without a release bond, any employee wage lien will hold up any sale, refinancing, or other transaction unless and until the lien is released. While big companies may be able to obtain and administer release bonds, small businesses will have a tougher time of it. For a small business, the process of obtaining a release bond will be time-consuming and expensive. Bonding companies may require most small businesses to post cash collateral for 100% or more of the amount of the bond. And the recording of a lien may disrupt the small business's credit, interfering with its ability to get the cash it needs to stay in business.

Second, the bill would impose a \$1,000 penalty and an award of attorneys' fees and costs against any employee who is found by a court to have asserted a lien claim in bad faith. It remains to be seen, however, how high the courts will set the bar for a property owner trying to prove the employee's "bad faith." Similar safeguards added to laws like Proposition 65 have not curbed abusive claims and litigation practices under those laws.

Conclusion

Employers and property owners need to keep a close eye on AB-2416 as it works through the Legislature, and should make their views known to their representatives. If it becomes law, the bill will significantly impact real estate transactions and require new lease and contract terms between owners, tenants, and contractors. And yes, of course, pay your employees what they are owed.

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