

GENERAL CONTRACTORS BEWARE – YOUR SUBCONTRACTORS' EMPLOYEES MIGHT BE YOURS!

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The issue: Can general contractors be liable for the wages of their subcontractors' employees?

The answer: Yes, for the employees of *unlicensed* subcontractors. (See *Sanders Const.Co., Inc. v. Cerda* 2009 WL1844280 (June 29, 2009).)

CASE HISTORY

The employees of a subcontractor, Humberto Figueroa Drywall Company (Humberto), filed claims with the Labor Commissioner claiming that the general contractor, Sanders Construction Co., Inc. (Sanders), should pay their wages because Humberto failed to do so. The Labor Commissioner ordered Sanders to pay the wages because Humberto was an unlicensed subcontractor. Sanders exercised its right to have this issue heard "de novo" (anew) before a judge in the Superior Court of California. The general contractor lost again and appealed to the appellate division of the Superior Court of California, where it lost for a third time.

Not believing in "three strikes, you're out," Sanders appealed again and set the stage for a published opinion by the Fourth District Court of Appeal on the following issue: **"To decide an important question of law as to whether a general contractor may be held liable for the unpaid wages of workers hired by an unlicensed subcontractor. In other words, by operation of section 2750.5¹, are the unpaid workers of the unlicensed subcontractor the**



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statutory employees of the general contractor?" (Id. at p. 3.)

THE FACTS

Sanders hired Humberto as a subcontractor in June of 2006. Sanders paid Humberto from June through September of 2006, at which time they had a disagreement about the quality of the work. Sanders discovered that Humberto was an unlicensed contractor and that its license had expired before June 2006. Instead of severing ties immediately, Sanders kept Humberto on the project through January of 2007. Humberto's workers were not getting paid so they stopped working in December of 2006.

THE LAW

The Court of Appeal held that "Labor Code section 2750.5 operates to conclusively determine that a general contractor is the employer of not only its unlicensed subcontractors *but also those employed by the unlicensed subcontractors.*" (Id. at p. 3.) Sanders argued that the cases extending liability to general

contractors were for purposes of workers compensation and unemployment benefits only. In other words, the general contractor argued that while an unlicensed subcontractor's employees may be able to draw from the general contractors benefit pool, they should not be considered direct employees for purposes of wages. The court stated, "We discern no meaningful distinction exists between being paid wages and receiving other benefits based on wages." (Id. at p.4.) Hence, Sanders, the general contractor, was held responsible for the wages of the six employees of the unlicensed subcontractor, Humberto. While the appellate court noted that Sanders continued to work with Humberto *knowing* that Humberto was an unlicensed subcontractor, the court in its opinion did not state that such knowledge was necessary to make the general contractor responsible for the wages of Humberto's employees².

As a general contractor, your employees now potentially include everyone on your project. Be vigilant about routinely confirming throughout the life of the project that your subcontractors are licensed and in good standing. Otherwise, your payroll obligations may be greater than you ever imagined.

If you would like more information on this or other legal issues, please contact John D. Alessio at 619.525.3899 or jda@procopio.com, or your regular Procopio attorney.

² However, this fact may have had some influence on the outcome.

¹ California Labor Code.

