

Employee Relations LAW JOURNAL

California Adopts Garment Worker Protection Act, Creating New Obligations for Manufacturers, Contractors and Brands

Michael R. Littenberg, Samantha Elliott and Abigail Alfaro

The authors discuss a new California law that is intended to result in fair wages and improved working conditions for garment workers.

On September 27, California Governor Gavin Newsom signed into law Senate Bill 62, known as the Garment Worker Protection Act (the “Act”). The Act is intended to result in fair wages and improved working conditions for garment workers.

The Act took effect on January 1, 2022. Among other things, the Act:

- Prohibits piecework pay;
- Creates joint and several liability for unpaid wages for “brand guarantors,” along with manufacturers and contractors; and
- Creates new recordkeeping requirements for manufacturers and brand guarantors.

This article discusses the Act in more detail.

Michael R. Littenberg, a partner in Ropes & Gray LLP and chair of the firm’s Environmental, Social and Governance (“ESG”), Corporate Social Responsibility (“CSR”) and business and human rights compliance practice, represents U.S. and foreign public and private companies, investment banks, private equity funds and other managers in transactional matters, including securities offerings and mergers and acquisitions, and ongoing compliance. Samantha Elliott and Abigail Alfaro are associates in the firm’s ESG, CSR and business and human rights compliance practice. The authors may be contacted at michael.littenberg@ropesgray.com, samantha.elliott@ropesgray.com and abigail.alfaro@ropesgray.com, respectively.

THE SOCIAL CONTEXT

The Act is intended to prevent wage theft, mandate fair pay and improve working conditions for the roughly 45,000 garment workers employed in California, many of whom are immigrant women. California has the highest concentration of garment workers in the country, with approximately 2,000 manufacturers located in Los Angeles. According to the Garment Worker Center, most garment workers work approximately 60 to 70 hours per week, but only earn \$300 due to the practice of paying per item made – earning between two and six cents for each garment. Additionally, piecework places a premium on speed, which in some cases has led to unsafe and unhealthy work practices.

THE LEGAL CONTEXT

The Act builds upon Assembly Bill 633, a worker protection law enacted in 1999, which aimed to prevent wage theft in California's garment industry. AB 633 enabled garment workers to recoup back wages from garment manufacturers that engaged contractors that failed to pay their employees by imposing joint and several liability on the garment manufacturer and contractor.

AB 633 is viewed as having had limited success. The Act is intended to address perceived deficiencies in AB 633.

KEY FEATURES OF THE ACT

The Act is concerned with worker pay in connection with garment manufacturing.

Under the Act, "garment manufacturing" means sewing, cutting, making, processing, repairing, finishing, assembling, dyeing, altering a garment's design, causing another person to alter a garment's design, affixing a label to a garment, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, for sale or resale by any person or any persons contracting to have those operations performed. This definition expands on AB 633 by adding to the definition dyeing, altering a garment's design and affixing a label to a garment.

The definition of garment manufacturing indicates it includes, but is not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs and belts.

A "contractor" is an entity engaged, with the assistance of employees or others, in garment manufacturing. A subcontractor also is considered a contractor.

Garment manufacturing may include other operations and practices in the apparel industry that are identified in regulations of the Department

of Industrial Relations consistent with the purpose of the Act. The Act also allows the Labor Commissioner to adopt regulations to clarify and refine the definitions of “garment manufacturing” and “contractor” to be consistent with current and future industry practices.

Prohibition Against Piecework

The Act prohibits paying workers engaged in garment manufacturing by the piece or unit. Rather, garment workers will be required to be paid an hourly rate not less than the applicable minimum wage, which in California is currently \$14 at the state level. In addition, for each pay period in which an employee is paid by the piece, garment manufacturers and contractors will be subject to compensatory damages of \$200 per employee.

The prohibition on piecework does not apply to incentive-based bonuses. It also does not apply to workplaces where employees are covered by a bona fide collective bargaining agreement that meets requirements specified in the Act relating to wages, hours, working conditions, monitoring and dispute resolution.

Joint and Several Liability of Manufacturers, Contractors and Brand Guarantors for Wages

The Act is intended to restore the purpose of AB 633 by clarifying ambiguities in AB 633. The intent of AB 633 was to ensure that persons who contracted to have garments manufactured were liable as guarantors for the unpaid wages and overtime of the workers making the garments, regardless of how many layers of contracting were used.

Under the Act, if there are unpaid wages or wage theft, a garment worker may recover from not only the garment manufacturer or contractor, but also the brand guarantor.

“Brand guarantor” is defined as anyone contracting for the performance of garment manufacturing. Contracts for the performance of garment manufacturing include licensing of a brand or name, regardless of whether the person with whom the licensor contracts performs the manufacturing operations or hires contractors or subcontractors to perform the manufacturing operations. The Labor Commissioner may adopt regulations to clarify and refine the definition of “brand guarantor” to be consistent with current and future industry practices.

In the event of a violation of the Act, a garment manufacturer, contractor or brand guarantor who contracts with another person for the performance of garment manufacturing operations will be jointly and severally liable – with any manufacturer and contractor who performs these operations for the garment manufacturer or brand guarantor – for a garment worker’s full amount of unpaid wages (and any other compensation

owed, including interest), attorney's fees, and civil penalties for failing to secure valid workers' compensation coverage.

The Act creates a presumption that, if an employee provides the Labor Commissioner with labels or the equivalent from a brand guarantor or garment manufacturer that the Commissioner finds credible relating to the identity of the brand guarantor or garment manufacturer, the brand guarantor or garment manufacturer is liable with the contractor for any amounts found to be due to the employee. To rebut this presumption, the brand guarantor, garment manufacturer or contractor must provide specific, compelling and reliable written evidence to the contrary, as provided for in additional detail in the Act.

Additional Recordkeeping Requirements

Current California law requires garment manufacturers to keep certain records for three years. Under the Act, garment manufacturers will have enhanced recordkeeping requirements.

The following information will be required to be kept for four years:

- The names and addresses of all garment workers directly employed by such person;
- The hours worked daily by employees, including the times the employees begin and end each work period;
- The daily production sheets, including piece rates;
- The wage and wage rates paid each payroll period;
- The contract worksheets indicating the price per unit agreed to between the contractor and manufacturer;
- All contracts, invoices, purchase orders, work or job orders, and style or cut sheets; this documentation is required to include the business names, addresses and contact information of the contracting parties;
- A copy of the garment license of every person engaged in garment manufacturing who is required to register with the Labor Commissioner, and with whom the employer has entered into a contract for the performance of garment manufacturing;
- The ages of all minor employees; and

- Any other conditions of employment.

Under the Act, brand guarantors also will be required to keep records of the following for four years:

- Contract worksheets, including the price per unit agreed to between the brand guarantor and the contractor or manufacturer;
- All contracts, invoices, purchase orders, work or job orders and style or cut sheets. This documentation must include the business names, address and contact information of the contracting parties; and
- A copy of the garment license of every person engaged in garment manufacturing required to register with the Labor Commissioner and with whom the employer has entered into a contract for the performance of garment manufacturing.

Bringing Claims; Enforcement of the Act

Employees may seek to recover unpaid wages and associated penalties by filing a claim with the Labor Commissioner against the contractor, garment manufacturer and brand guarantor.

Accurate and organized recordkeeping will be of critical importance if a claim is brought. Within 10 business days of the Labor Commissioner receiving a claim from an employee, it is required to issue a subpoena requiring the contractor and any identified manufacturer and brand guarantor to submit the books and records necessary to investigate the claim. The respondents must comply with the subpoena within 10 days of the mailing of the notice to continue their registration pursuant to Section 2675 of the California Code of Labor. Note that the Act includes additional procedures for investigating and resolving claims that are not summarized in this article.

The Act does not preclude an employee from pursuing other applicable remedies under California or federal law.

RECOMMENDATIONS

The Act is intended to create greater accountability for worker wages. Leading up to the effectiveness of the Act, manufacturers, contractors and brand guarantors should consider the following steps, as applicable:

Supply Chain Due Diligence

- Evaluate the sufficiency of current internal supply chain diligence measures, both at onboarding and on an ongoing basis.
- If third-party auditors are used, assess whether third-party audit protocols address compliance with the Act.

Supplier Code of Conduct

- Review and, if necessary, update the supplier code of conduct or equivalent instruments, including to prohibit unauthorized contracting.
- Ensure a system is in place to regularly review and, if necessary, further update the supplier code of conduct.

Terms and Conditions and Contracts

- Assess whether indemnity and contribution provisions are sufficient to address potential joint and several liability under the Act.

Recordkeeping

- Ensure that recordkeeping and document retention systems conform to the requirements of the Act.

Supplier Engagement

- Communicate new expectations and requirements to suppliers, as applicable.
- Update supplier training as applicable.

Copyright © 2022 CCH Incorporated. All Rights Reserved. Reprinted from *Employee Relations Law Journal*, Spring 2022, Volume 47, Number 4, pages 32–37, with permission from Wolters Kluwer, New York, NY, 1-800-638-8437, www.WoltersKluwerLR.com

