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CALIFORNIA LEGISLATURE—2015-16 REGULAR SESSION

ASSEMBLY BILL No. 1727

Introduced by Assembly Member Gonzalez
(Coauthor: Senator Allen)

January 28, 2016

An act to add Chapter 4.8 (commencing with Section 1080) to Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST

AB 1727, as amended, Gonzalez. Hosting platforms: independent contractors.
Existing law relating to employment governs the grant of restraining orders or injunctive relief in labor disputes, as defined.
This bill would establish for eligible groups of independent contractors the right to organize and negotiate with hosting platforms, and would declare the activity of such a group to be a labor dispute for purposes of injunctive relief. The bill would require a hosting platform to meet and negotiate with a group on specified subjects. The bill would define terms for those purposes.
The bill would require that, at the request of the group, a written contract for independent contractor services, entered into on or after the date of the conclusion of negotiations conducted in accordance with the bill, by the hosting platform and a member of that group, incorporate any agreement reached in those negotiations.
The bill would require the State Mediation and Conciliation Service to facilitate negotiations, provide mediation services, and investigate
any complaint by a group claiming a violation of the negotiation requirement. The bill would require the service, if it finds that there is probable cause to believe a violation has occurred, to bring an action in a specified superior court for injunctive and other appropriate equitable relief to remedy the violation.

The bill would prohibit a person from penalizing or retaliating against an independent contractor for taking specified actions within the scope of the bill.

The bill would authorize an independent contractor or a representative of independent contractors claiming a violation under this bill to bring an action in superior court for prescribed remedies, and would provide for treble damages with regard to lost income for a willful violation.

The exercise of any rights established by the bill would not be admissible as evidence that a person is an independent contractor in any judicial or administrative proceeding.

The bill would make its provisions severable.


The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares the following:

(1) A new form of work has proliferated in which individuals work by the job through an electronic platform, such as the Internet or telephone. These individuals are hired through these hosting platforms to perform short-term work, usually of a day or less, for multiple customers.

(2) These individuals are not treated by the hosting platforms as employees and do not receive the benefit of state labor protection laws such as minimum wage, unemployment insurance, and workers' compensation. The platforms treat these individuals as independent contractors and even though they perform work for multiple clients, usually individual people, the individuals securing work through a hosting platform are normally prohibited from negotiating the terms of their services. Instead, the hosting platforms dictate the terms and take a considerable portion of the amount paid for services, even though the hosting platforms purport that they provide only a means of connecting workers with clients.
(3) These are circumstances that inevitably lead to exploitation. The people who secure work through the hosting platforms may in fact be employees, but establishing their true status often requires lengthy and expensive litigation during the pendency of which they continue to have no protection.

(b) The Legislature therefore finds and declares that the bargaining power between the hosting platforms and the people seeking work through them must be better balanced and creates in this act a process for these workers to get together and negotiate with the hosting platforms for the improvements they desire.

(c) The Legislature further finds and declares that, through these negotiations, these workers will be able to improve their conditions, including their income, to the benefit of the economy of this state and reduce pressure on public resources.

SECTION 1: SEC. 2. Chapter 4.8 (commencing with Section 1080) is added to Part 3 of Division 2 of the Labor Code, to read:

CHAPTER 4.8. HOSTING PLATFORMS

1080. As used in this chapter:
(a) “Group activity” means to self-organize, to negotiate as a group with one or more hosting platforms, or to engage together in other activities for the purpose of group negotiations or other mutual aid or protection, which activity includes, but is not limited, to the following:
(1) Communicating with each other and with hosting platforms, customers, and the public through any medium, including, but not limited to, social media and other electronic modes of communication.
(2) Withholding or restricting the amount of work done through a hosting platform at any time and for any duration. This paragraph does not apply to an independent contractor who performs “supportive services,” as defined in Section 12300.1 of the Welfare and Institutions Code.
(3) Boycotting or critiquing a hosting platform’s business practices.
(4) Reporting to law enforcement authorities or making public practices of a hosting platform which an independent contractor
reasonably believes violate local, state, or federal law and adversely
affect either workers or clients, or both.
(b) "Hosting platform" is a facility for connecting people or
entities seeking to hire people for work with people seeking to
perform that work, using any medium of facilitation, including,
but not limited to, a dispatch service, an Internet Web site, or other
Internet-based site. "Hosting platform" does not include a service
provider if that entity provides only listings of goods or services
that are contracted directly between buyers and sellers without the
involvement of the provider and receives no income related to the
price of the transaction.
1081. (a) An independent contractor who is not treated by a
hosting platform as an employee and who does not employ his or
her own employees shall have the right to engage in group activity
with respect to one or more hosting platforms.
(b) Work by an independent contractor, including the use of
equipment or goods supplied as part of the work performed by the
independent contractor, is labor within the meaning of Section
16703 of the Business and Professions Code and group activity
by independent contractors shall not be subject to any statutory or
common law prohibition or limitation on combinations in restraint
of trade, including, but not limited to, Chapter 2 (commencing
with Section 16700) of Part 2 of Division 7 of the Business and
Professions Code.
(c) Group activity is a "labor dispute" within the meaning of
Section 527.3 of the Code of Civil Procedure and Section 1138.1,
provided that a court may issue injunctive relief to remedy
violations of this chapter pursuant to Sections ______ and _____.
subdivisions (e) and (g).
(d) (1) A hosting platform shall meet at reasonable times and
negotiate in good faith about allowed subjects for negotiation with
any group of independent contractors constituting at least 10 of
the independent contractors using the platform on an average of
at least once per week. As used in this paragraph, "allowed subjects
for negotiation" are pricing, division of revenue, priority for
assignments or listings, advertising by independent contractors on
the hosting platform, insurance, acceptance and termination of
independent contractor participation on the hosting platform,
acceptance or refusal of services by independent contractors or
customers, and responsibility for nonpayment by customers.
(2) An individual or organization that represents independent contractors in negotiations with a hosting platform regarding the allowed subjects of negotiation pursuant to this section shall not be funded directly or indirectly by a hosting platform.

(3) Participation in the group shall be evidenced by an electronic communication from an independent contractor using the same address the independent contractor uses to communicate with the hosting platform, or a physical document signed by the independent contractor, sent to either the hosting platform or to one or more other members of the group accepting participation in the group and agreeing to be bound contractually by the outcome of any negotiations between the group and the hosting platform. An independent contractor shall not be bound by the outcome of any negotiations between a group and a hosting platform unless the independent contractor has given that authorization.

(4) At the request of the group, a written contract for independent contractor services, entered into on or after the date of the conclusion of negotiations conducted in accordance with paragraph (1), between the hosting platform and a member of that group, shall incorporate any agreement reached in those negotiations.

(e) The State Mediation and Conciliation Service shall facilitate the performance of the obligation of a hosting platform under subdivision (d). The State Mediation and Conciliation Service shall provide meeting space for negotiations unless the hosting platform and the group make other arrangements that are mutually agreeable. The State Mediation and Conciliation Service shall provide mediation services at the request of either the hosting platform or the group. The State Mediation and Conciliation Service shall investigate any complaint by a group claiming a violation of subdivision (d), and, if it finds that there is probable cause to believe a violation has occurred, bring an action in the Superior Court of the State of California for the City and County of San Francisco for injunctive and other appropriate equitable relief to remedy the violation. The court shall award reasonable attorney's fees and costs to the State Mediation and Conciliation Service if it prevails in any enforcement action.

(f) A person shall not terminate, discriminate against, or otherwise penalize or retaliate against any independent contractor for exercising any rights established in this chapter or for making
a complaint, participating in any enforcement proceedings under
this chapter, using any civil remedies to enforce his or her rights,
or otherwise asserting his or her rights under this chapter or
demonstrating his or her support for the policies of this chapter.
A person terminating or taking any other adverse action against
any independent contractor who has engaged in any of the
foregoing activities within one year preceding the termination or
other adverse action shall provide to the independent contractor
at or before the time of the termination or other adverse action a
detailed written statement of the reason or reasons for the
termination or other adverse action, including all the facts
substantiating the reason or reasons and all facts known to the
person that contradict the substantiating facts.
(g) An independent contractor or a representative of one or more
independent contractors claiming a violation of this chapter may
bring an action in superior court and shall be entitled to all remedies
available under the law or in equity appropriate to remedy that
violation, including, but not limited to, injunctive relief or other
equitable relief, including reinstatement to participation in a hosting
platform and compensatory damages. For a willful violation of
subdivision (d), the amount of damages attributable to lost income
due to the violation shall be trebled.

1082. (a) The exercise of any rights established by this chapter
shall not be admissible as evidence that a person is an independent
contractor in any judicial or administrative proceeding.
(b) Nothing in this chapter is intended to impact the
determination of whether any worker is an employee or
independent contractor or to impact any pending litigation.

1083. The provisions of this chapter are severable. If any
provision of this chapter or its application is held invalid, that
invalidity shall not affect other provisions or applications that can
be given effect without the invalid provision or application.