

From: [John Kusper](#)
To: [NCGMA](#)
Subject: FW: ASA California News - Laws You Should Know About for 2012
Date: Wednesday, January 11, 2012 9:44:23 AM

Christina,

Please post on News for Paint & Glass.

Thanks,

JJK

From: ASA California [mailto:jordi@asacalif.ccsend.com] **On Behalf Of** ASA California
Sent: Wednesday, January 11, 2012 8:55 AM
To: John Kusper
Subject: ASA California News - Laws You Should Know About for 2012

Capitol



ASA California

American Subcontractors Association California, Inc.

January 11, 2012

The Newsletter of the
American Subcontractors Association of California

See Below:

1. 2012 Laws That May Impact the Construction Industry
2. Workers' Compensation and Discrimination
3. January 19, 2012 ASAC Meetings at Capitol in Sacramento

A 2012 Update On New California Laws That May Impact the

Construction Industry

By William C. Last, Jr. and Jonathan M. Bowne
Last & Faoro

In 2011 the California legislature passed and the governor approved new legislation that will impact the construction industry. And some previously approved laws will be coming into effect in 2012. These modifications include several relatively high impact changes. Below is a selection of new laws.

Major mechanic's lien law overhaul will be effective July 1, 2012 (SB 189) - SB 189 constitutes a significant overhaul of the statutory scheme governing mechanic's liens, stop notices and payment bond claims. It was signed into law in 2010, but will become effective on July 1, 2012. This scheme will be re-codified as Civil Code section 8000 et seq. The changes are meant to simplify, streamline and modernize the scheme, including many terminology changes. There are also many substantive amendments, including modifications to requirements relative to Preliminary 20-Day Notices, lien waivers, lien release bonds, completion determinations, and removing liens from title.

Retention on public works projects cannot exceed 5% (SB 293) - Relative to public works contracts entered into after January 1, 2012, public entities may not hold retention exceeding 5% of payment. Prime contractors are subject to the same limit relative to subcontractors, unless they have notified the subcontractor that a bond is required, and the subcontractor failed to furnish a bond. SB 293 also instituted other changes relative to Preliminary 20-Day Notices and payment bond claims.

LLC'S can now hold a contractor's license (SB 392) - This law was passed in 2010 and provided that beginning on January 1, 2012 Limited Liability Companies be allowed to hold a contractor's license. Previously, only individuals, partnerships, and corporations could hold a license.

Workers' compensation status must be confirmed upon license renewal (AB 397) - All contractors are required to maintain on file with the CSLB proof of workers' compensation insurance, or if they have no employees certification of the same. Previously this information only needed to be updated if there was a change in status. Now an update must be filed each time the contractor's license is renewed.

Prevailing wage rules apply to certain green energy projects (SB 136) - Prevailing wage rules typically only apply to public works projects. This law applies those rules to certain private contracts for renewable energy generating capacity or energy efficiency improvements if the project is performed on public land, a public entity will purchase most of the energy generated, and goal of the project is to reduce the public entities' energy costs.

Prevailing wage rules apply to hauling of refuse from a public works site (SB 514) - This law clarifies that the hauling of refuse from a public works site to an outside disposal location is among the work which requires payment of prevailing wages. This rule excludes from "refuse" separated recyclable metals which are to be sold.

Design professional lien can be converted to mechanic's lien (SB 424) - Designers may record a design professional's lien prior to commencement of a project. Beginning on July 1, 2012 designers in certain circumstances may convert their lien to a mechanic's lien and thereafter enforce the claim as a mechanic's lien.

CSLB may discipline contractors for failing to pay Board of Equalization liabilities (SB 1307) - The CSLB have been able to discipline contractors for failing to resolve outstanding final liabilities assessed by the Franchise Tax Board, Employment Development Department, and Department of Industrial Relations. Now unpaid State Board of Equalization (who collects sales, property and some special taxes) liabilities may also result in discipline. Also, [AB 1424](#) requires the CSLB to include notices regarding this issue on its applications.

Workers' compensation carriers are required to report to the CSLB policy cancellation resulting from fraud (AB 878)- Workers' compensation carriers are now required to report to the CSLB when a contractor's workers' compensation insurance policy is canceled by the carrier when the insurer has completed a premium audit or investigation, a material misrepresentation has been made by the insured that results in financial harm to the carrier, and no reimbursement has been paid by the insured to the carrier. Also, a willful or deliberate disregard and violation of workers' compensation insurance laws constitutes a cause for disciplinary action by the CSLB.

Construction vehicles weighing in excess of 14,000 pounds must be equipped with an automatic backup audible alarm (SB 341) - A construction vehicle with a gross vehicle weight rating in excess of 14,000 pounds that operates at, or transports any construction or industrial material to and from, a construction site must be equipped with an automatic backup audible alarm that sounds on backing and is capable of emitting sound audible under normal conditions from a distance of not less than 200 feet.

Restrictions against "Type I" indemnity agreements (SB 474) - SB 474 was passed in September 2011, but will not go into effect until January 1, 2013. So-called "Type I" indemnity agreements obligate subcontractors to indemnify general contractors from the latter's active negligence or willful misconduct, and require indemnity obligations even when claims do not arise out of the subcontractor's scope of work. The use of these provisions has become almost universal in subcontracts between prime and lower tier contractors. But beginning next year they will be outlawed.

This article, ©2011, was written by William C. Last, Jr. and Jonathan M. Bowne. Mr. Last is an attorney who has been specializing in Construction Law for over 32 years. In addition to belonging to a number of construction trade associations, including the Bay Area Chapter of ASA, Mr. Last holds a California "A" and "B" license. He can be contacted at 415-764-1990 or 650-696-8350. A number of his past articles can be found on his website (lhconstructlaw.com). This bulletin is published periodically to provide general information about current legal issues. The articles are not intended to be a substitute for the advice of an attorney as to a specific problem. If you have a specific legal question or need legal advice, you should contact an attorney.

Workers' Compensation and Discrimination

By Sam K. Abdulaziz and Kenneth S. Grossbart
Abdulaziz, Grossbart & Rudman

The case of *Gelson's Markets v. Worker's Compensation Appeals Board and Paul Fowler* reviews a decision of the Workers' Compensation Appeals Board ("Board").

The *Labor Code* penalizes an employer who discriminates "in any manner" against an employee who has filed a workers' compensation claim.

Gelson's Markets, Inc. ("Gelson's"), the employer in this matter, petitioned the court seeking an annulment of a Workers Compensation Appeals Board decision, an award which found Gelson's liable for discrimination against an injured employee, Paul Fowler ("Fowler"), in an industrial accident. This decision was made by the Board because Gelson's did not accept a physician's release to allow Fowler to return to work in that Gelson's did not believe the release was an appropriate medical release with clear information on Fowler's medical condition. The release stated a partial return to work. Fowler wanted to return full time. Gelson's contacted the physician for clarification on the release and the physician stated that he did not feel Fowler was ready to return to work but that Fowler felt he was able to return to work.

A few days after Gelson's denied Fowler's request to return to work, Gelson's received another release from the physician. This second release stated that Fowler felt he could return to work, but did not state that the doctor felt he was medically ready to return. Gelson's again denied Fowler's return to work.

The court stated that it reviewed the Board's legal decision de novo (from the beginning). It is for the court to decide whether the facts found by the Board constitute a violation of the Code.

Gelson's claimed that the Board erroneously applied liability for discrimination in that Fowler presented no evidence of bad treatment by Gelson's.

Labor Code Section 123a states, "...it is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment." However, the employee would have to establish lost wages and benefits caused by the employer's discrimination. The employee need only show that an action was taken by the employer to the injured workers detriment.

The court held that here, Fowler made no showing that Gelson's treated him differently from any non-industrial injured employees. That is, Fowler did not show that Gelson's would have returned any other injured employee to work whose physician provided the same releases. Therefore, Gelson's did not discriminate against Fowler by not returning him to work. The award of the Board was annulled.

Sam Abdulaziz has been practicing construction law for over 35 years, and is considered one of the premiere experts in construction law, including California contracting license laws. He is the author of "California Construction Law." Kenneth Grossbart is recognized as one of the foremost authorities in California construction law. Over the past 30 years, Ken has become a respected speaker on Mechanic's Liens and other construction related issues. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and

it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Ken Grossbart and Sam Abdulaziz can be reached at Abdulaziz, Grossbart & Rudman: (818) 760-2000 or by E-Mail at ksg@agrlaw.com, or at www.agrlaw.com

American Subcontractors Association of California Meetings at the Capitol

ASAC meetings are open to all members.
Please contact Executive Director Jordi Grant to get involved!

asac@asacalif.com

ASAC Quarterly Meeting + Government Relations Committee
January 19, 2012 - 10:00 a.m. to 2:15 p.m.
Tour the Capitol with Skip Daum, our legislative advocate, as your guide!
Capitol in Sacramento - Room 125

ASAC - Leading Construction Subcontractors to Equitable Legislation in California

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www.ASACalif.com

Includes lists of ASAC members and Government
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Add it to your favorites and visit often!

ASAC Appreciates YOUR Help!

ASAC leaders ask you to do your part, helping our Subcontractor and Supplier community with your letters and phone calls.

Many of you came through in 2011, and we'll be asking you to help again in 2012. Getting bills through the California Legislature requires that we all participate.

Remember -- We only ask when we truly believe your efforts will be influential in determining the direction a bill or movement heads.

Those efforts do make a difference! There's strength in numbers!!!!

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ASA Logo



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