



AB 227 WILL NEGATIVELY IMPACT THE NEVADA CONSTRUCTION INDUSTRY AND COST THOUSANDS OF NEVADA JOBS

AB 227 changes a long-established and well-known construction industry practice whereby licensed Nevada contractors utilize licensed and regulated Nevada private employment agencies (PEAs) to provide project by project workers.

What are Private Employment Agencies?

Private Employment Agencies (“PEAs”) are Nevada businesses that are licensed and regulated by the Nevada Labor Commissioner. PEA’s provide jobs for over 30,000 Nevadans in a variety of industries, including the construction industry. PEA employees receive W-2s, are covered by unemployment insurance, workers compensation, and have their state and federal tax withholdings. Moreover, many Nevadans work for a PEA as a way to open doors, leading to full time employment in the industry.

PEA’s are ideal places to work for Nevadans seeking to transition from one career to another. Many PEA’s actively recruit veterans and provide valuable job skills that allow our veterans to transition into full time positions in the industry.

Nevada contractors have, for decades, used licensed private employment agencies for both skilled and unskilled workers on a project-by-project basis under a Nevada Judge recently referred to as the “long-established and well-known industry standard of contractors using temporary leased labor.” AB 227, as introduced, will prohibit a private employment agency from providing skilled labor, but allow the provision of unskilled labor. The justification for this distinction is unclear, but it will have a major negative impact on the over 4,300 Nevadans who received W2s in the last year for skilled work through a private employment agency.

What is the Problem AB 227 Seeks to Fix?

The hearing on AB 227 took place in the Assembly Committee on Commerce and Labor on March 22, 2021. At that hearing, bill proponents identified two reasons for the bill:

1. To address worker misclassification, wage theft, and other employee abuses, and the revenue loss to the state due to such abuses (e.g., failure to withhold and remit employment taxes).
2. To address a decision out of Washoe County in the *Legacy v. Contractors Board* case where the district court determined that an out of state and unlicensed “employee leasing” firm hired by a Nevada contractor to supply workers did not meet the definition of “contractor” under Nevada law—and therefore the Board could not penalize that contractor for using an unlicensed contractor.

Does the Bill Address the Identified Problems?

The language in the “as introduced” version of the bill addresses these issues but goes *much further* and also unnecessarily restricts the type of labor Nevada contractors can utilize from licensed and regulated private employment agencies.

Over 4,300 skilled Nevadans worked in construction through a PEA in the last year, including many

veterans. Those 4,300 Nevadans will lose their jobs if this bill passes as introduced. The bill should be amended to remedy these negative consequences.

With respect to concerns over worker misclassification, any workers provided by a PEA are employees of the PEA. They receive W-2's, are covered by unemployment insurance and workers compensation, and have state and federal taxes withheld. PEA's are licensed by, and subject to regulation by, the Nevada Labor Commissioner.

Does the Contractor's Board Have Jurisdiction Over A Contractor Who Uses PEA Employees?

Yes. At the hearing on AB 227, the Contractors Board suggested that AB 227 is needed so it can properly hold contractors accountable for the quality of the work performed at the construction site, which they assert has been constrained by the *Legacy* decision. But the *Legacy* case simply held that the Board did not have a clear legal basis for treating a leasing company as a contractor under existing law. The Board clearly has authority under existing law to hold actual contractors, such as Legacy, responsible for the *work performed* by leased employees under their direction and control. However, that was not the issue in the *Legacy* case.

The *Legacy* case arose because the out of state "employee leasing" firm did not pay its workers, leading to a wage complaint against Legacy. To suggest that this exposes some kind of systemic problem with Nevada licensed private employment agencies is simply inaccurate. Indeed, if Legacy had used a licensed private employment agency and the workers were not paid, they would have been able to seek relief from the Labor Commissioner and the private employment agency could be fined and lose its license. Moreover, employees and the Commissioner can also file claims for wage and other employment law violations against the PEA's *clients* (e.g., contractors) which have long been recognized as joint employers. *Thus, PEA employees have, not just one, but two, employers that can be held legally responsible.*

If the Legislature wants to clarify that Nevada private employment agencies should come within the jurisdiction of the Nevada Contractor's Board, AB 227 can be easily amended to require contractors to use only licensed private employment agencies. That would give the Contractors Board another tool in its enforcement toolbox to ensure quality service and accountability. The court in *Legacy* noted that this might impose some burden on contractors to investigate whether private employment agencies are licensed and suggested that this was a policy issue for the legislature. ASA would support such a requirement.

The Legislature has no reason, however, for concern with wage and labor law violations by private agency employees because private agency employees, as noted, are already fully protected under existing law under the jurisdiction of the Labor Commissioner and can assert claims against either the private employment agency or its client—or both.

How do We Keep AB 227 From Putting Nevadans Out of Work?

The Legislature should consider an amendment to AB 227 that will allow the "long-established and well-known industry standard of contractors using temporary leased labor" to continue in Nevada. Nevada contractors should be able to use licensed and regulated PEAs for project by project workers, both skilled and unskilled.

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