



## California Employment Law Update

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### General Contractor Ordered to Pay Unpaid Wages of Unlicensed Subcontractor's Employees

In the current tough economic conditions, a general contractor might be tempted to reduce its costs by hiring an unlicensed subcontractor. The risks of doing so, however, were illustrated by a recent California Court of Appeal decision. In the case of Sanders Construction v. Michael Cerda, the Court of Appeal decided that a general contractor who hired an unlicensed subcontractor is liable for the unpaid wages of the subcontractor's employees.

In the Sanders case, the Court of Appeals stated that the unpaid workers of an unlicensed subcontractor are "the statutory employees of the general contractor." The case concerned a construction project where Sanders Construction was the general contractor. Sanders' drywall subcontractor was Humberto Figueroa Drywall Company. During the project, Sanders discovered that Humberto's contractors license had expired. Nevertheless, Sanders continued to work with and pay Humberto to complete the project. Of course, Sanders assumed that Humberto was paying its employees. In fact, it wasn't. When the work stopped, Humberto's employees filed a claim with the Labor Commissioner against Sanders for their back unpaid wages plus interest. The Labor Commissioner made an award obligating Sanders to pay the back wages of the Humberto employees with interest. Both the Superior Court and the Court of Appeal upheld the award.

The decision did not limit a general contractor's liability exposure to back pay and interest. The Court of Appeal in Sanders stated that because the employees of an unlicensed subcontractor are the "statutory employees of the general contractor," the general contractor could also be required to pay the unemployment and disability contributions on behalf of the subcontractor's employees, as well as the unpaid withholding taxes for each of the employees.

The Sanders case is a cautionary tale regarding the perils of using unlicensed subcontractors. It adds to the liability that general contractors have for injuries to the employees of unlicensed subcontractors. Accordingly, it is recommended that general contractors commence with the following:

- Implement a company policy to hire only licensed subcontractors
- Include a provision in all contracts requiring subcontractors to be licensed
- Establish a tracking system or protocol to periodically check licensed status of subcontractors
- Require subcontractors to provide proof that they are paying their employers in accordance with California labor laws.

Homeowners and building owners are well-advised to take similar measures to ensure that contractors they hire are and remain licensed.

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