

BRAD AVAKIAN
COMMISSIONER



CHRISTIE HAMMOND
DEPUTY COMMISSIONER

BUREAU OF LABOR AND INDUSTRIES

December 29, 2017

Dear Senator Roblan and Representatives Salinas, Olson, Gomberg, Doherty, Marsh and Reschke,

Thank you for your correspondence and calls regarding the implementation of HB 3279. This bill creates a licensing process for janitorial companies to better ensure safe and fair workplaces for vulnerable workers in this industry.

The Bureau of Labor and Industries appreciates both the legislature's efforts to enact these thoughtful new protections and its desire to roll out the new requirements in a way that's fair to employers and employees alike. In response to your request, our agency will emphasize employer assistance and compliance in the initial 90-day period the law becomes effective and forego all proactive enforcement.

We recognize that it will take time for employers to fully adjust to the new law. Our focus in the next year will be to get contractors licensed, not assess penalties. In addition to refraining from proactive enforcement during this 90-day period, if we come across an unlicensed contractor, our agency will work to first help them come in compliance. During this 90-day phase-in period, we will reserve enforcement only for egregious complaints and employers intentionally harming employees.

Our agency also understands that there will likely be amendments to the law proposed in the 2018 session. We stand ready to assist the legislature in any way that's helpful as it continues to consider the licensing process.

You also request that BOLI "recognize that an organization can be responsible for recruiting, soliciting, supplying or employing workers and that individual employees, should not be held responsible or liable as labor contractors," arguing that ORS 658.410(2)(f) does not require that any particular person associated with a private nonprofit corporation be licensed (unlike, for example, the case of a corporation, which requires the licensing of the majority shareholder).

While true, ORS 658.410(1) prohibits any "person" from acting as a labor contractor without first obtaining a valid license issued by BOLI. HB 3279 expands the definition of labor contractor to include a property services contractor. Consequently, any person who, as an employee of an organization, acts as a property services contractor by recruiting, soliciting, supplying or employing workers to perform labor for another person to provide janitorial services must obtain a license.

The labor contracting regulations explicitly provide for an employee indorsement for an employee who "engages in activities that would require licensing as a labor contractor solely on behalf of the employer." The language of ORS 648.410(1) and HB 3279, as written, are not ambiguous on this point. Still, if the legislature elects to address this issue in the 2018 Legislative Session, our agency would be happy to provide any technical assistance to members that's requested.

We look forward to working with you all in the next year to create a policy that works well for everyone while protecting employees and respecting the law's intent.

Respectfully,



Labor Commissioner Brad Avakian

cc: Speaker Kotek
President Courtney