Prevailing Wage Seminar

Learn how to be in compliance by knowing your duties and responsibilities

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WHAT WE ARE GOING TO COVER

- What is Public Works
- Awarding Body & Contractor Obligations
- Prevailing Wage Requirements
- Certified Payroll Reporting
- Apprenticeship Standards
- Consequences & Penalties
- Resources
WHAT IS PUBLIC WORKS

Public Works is:

- Construction under contract and paid for in part or in whole by Public Funds (state, local, and/or federal monies)
- *New construction ($1K+)* - *Cannot split cost to stay under $ value*
- Alteration, demolition, installation, repair work, maintenance, warranty work
- Includes pre-construction activities (soil & material testing and surveying) and post-construction work
- Includes final clean-up of a construction project
There are exemptions to Public Works requirements:

- Work carried out by a public agency "with its own work force"
- Certain janitorial and guard services
- Public Works Projects of $1000 or less are exempt

Sub-Contractors under 1 half of 1 percent are not exempt from compliance standards, just appearing on bid list (i.e., $500,000 .5% = $2500)
AWARDING BODY OBLIGATIONS

1. Submit form PWC-100 to the DIR within 30 days of the award of a contract but in no event later than the first day in which a contractor has workers employed upon the public work (CA Labor Code Section 1773.3).
2. Include the Notice of requirement described in CA Labor Code 1771.1 in all bid invitations and public works contracts.
3. Ensure the contractors are registered (CA Labor code 1771.1).
4. Require proof of Public Works Contractor Registration (CA Labor Code 1771.1(b)).
5. Ensure contractors are paying prevailing wages and are in compliance with prevailing wage laws.
6. Report any violations (CA Labor Code 1726(b)).
7. Withhold and retain all amounts required to satisfy the Civil Wage an Penalty Assessment.
8. Post or require contractors to post jobsite notices on public works requirements.

The Awarding Body is required to specify in the call for bid the web site for applicable determinations. State funded only needs to provide the website to access the determinations. Federally funded projects MUST include the wage determinations in the bid notice (bid rates can change up to 10 days of Bid Opening which is the applicable rate)

Applicable wage determinations based on bid advertisement date & funding.
Precautionary Legal Notice to Awarding Bodies

SB 854 includes new or revised statutory obligations for “awarding bodies” (as defined in Labor Code Section 1722). These new and revised obligations are found in the following sections of the Labor Code:

- 1771.1(b) – Duty to include notice of contractor and subcontractor registration requirement in all bid and contract documents, and duty not to accept bid or enter into a contract without proof of the contractor’s current registration pursuant to Section 1725.5.
- 1771.4(a)(1) – Duty to specify in bid and contract documents that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 1771.4(a)(2) – Duty to post or require the prime contractor to post job site notices, as prescribed by regulation.
- 1773.3 – Duty to provide notice to the Department of Industrial Relations of any public works contract within five days of the award [using the online PWC-100 form].

This informational notice is being provided to ensure that awarding bodies are aware of the potential legal consequences arising from a failure to satisfy their own unique statutory obligations found in Article 2 of the Public Works Chapter. Article 2 is comprised of Labor Code Sections 1770 through 1782, and includes the new and revised obligations listed above.

The Labor Commissioner wants to remind all awarding bodies that Article 2 also includes Labor Code Section 1777, which was enacted in 1937 and remains the law today. Section 1777 establishes a criminal penalty (misdemeanor) against "any officer, agent, or representative of the state or of any political subdivision who willfully violates any provision" of Article 2.

The availability of a criminal penalty applies to a broad group of entities and individuals because:

1. The definition of "awarding body" found at Labor Code Section 1722 includes the "department, board, authority, officer, or agent awarding a contract for public work," and
2. The term "political subdivision" as defined in Labor Code Section 1721 "includes any county, city, district, public housing authority, or public agency of the state, and any assessment or improvement districts."

San Diego Airport
Let's Go.
AWARDING BODY OBLIGATIONS

Pre-Bid Meeting: LC rep reviews the requirements set forth in the Labor Compliance Program. *(This is a brief prelude to the pre-con meeting.)*

Pre-Construction Meeting: Mandated by CCR §16421 & CLC 1771.5
Provides successful bidder a detailed explanation of contractual requirements.
- Contractor **can mandate** sub attendance
- The LC rep provides required Labor Compliance Program documents/forms
  - The contractor is responsible for ensuring all docs are distributed to their sub-contractors
  - A signed pre-con agreement is required, confirming their understanding of the presentation
- The LC representative will also inform the contractors of periodic job site visits
CONTRACTOR OBLIGATIONS

- Register as a public works contractor prior to bid (CA Labor Code 1771.1)
- Pay prevailing wages
- Overtime requirement *(DOL/DIR)*
- Maintain and furnish Certified Payroll Reports
- Comply with apprenticeship requirements
- Ensure workplace postings are visible *(8) pay notice (date change)*

Med-Health/Determinations/Whistle Blower/Paid Sick Leave/State Contractors License number/Calf Contractor Registration number/Workers Comp Certification

- Prime contractor may conduct their own investigation and withhold contract payments from subs

  *The Prime has options to protect themselves against penalties as well: 1775(b) known as Limited Prime Contractor Safe Harbor*

  - By ensuring the Labor Code Provisions are also in each subcontract 1771, 1775, 1776, 1777.5, 1813 & 1815
  - Prime is required to review CPR submitted by all sub/tier subcontractors to ensure prevailing wages are paid
  - Prime must take corrective actions when violations are discovered
  - Prime should have subcontractor sign an affidavit signed under penalty of perjury that all submitted documents/CPR are true & correct and have no violations
Prevailing Wage Requirements

➢ By Statute, prevailing wages are required on public works projects.

➢ As a part of the contract, an Awarding Body can require a contractor to pay prevailing wages on any project, public works or not.
HOW IS PREVAILING WAGE DETERMINED

STATE
The state of California follows the collective bargaining agreements of each of the construction unions. They will negotiate provisions and determinations on the state, regional and county level.

*The more specialized the trade the more likely it will be located on the county level.*

FEDERAL
The Federal Government does a survey of the wages in an area. Union and Non-Union contractors respond.
There is no breakdown by craft as in the state process.
WAGE DETERMINATIONS

CA Prevailing Wage Determination: [www.dir.ca.gov](http://www.dir.ca.gov)

- DIR issues determinations twice a year (Feb. 22/Aug. 22)
- Residential rates are published once a year

Davis-Bacon Wage Rates: [https://beta.sam.gov](https://beta.sam.gov)

Important to Identify:

1. Project Bid Advertisement Date
2. Funding Source
3. Type of Project
4. Project Locality
5. Specific Determinations
Wage Determinations:
Types of determinations

There are 5 main types of wage determination layouts:

- By group #’s: which list several trades under each group #
- By specific classification: which list the exact trades
- By Specialty classification spreadsheet: which list several specific trades
Wage Determinations:
Types of determinations...cont.

By group #'s: & specific classification

Federal

By specific classification due to project type

Residential: San Diego

The DIR only PUBLISHES Residential determinations once a year, in November:
- 11/01/13 – 12/10/14
- 11/01/14 – 12/10/15
- 11/01/15 – 12/10/16
- 11/01/16 – 12/10/17
Wage Determinations

No matter which type of determination you will be using on whatever type of project, you will always have:

- **The Basic Hourly rate**
  - Employee’s cannot be paid less this this rate

- **Employer Payments or Fringes**
  - Which can be paid to the employee directly ~OR~ to an approved Plan/Program/Fund

- **The Total Hourly Rate**
  - The rate that must be paid on a Public Works Project for each worker

Public Works is a BIG money business

With BIG money penalties and fines
Knowing What Trades Do What Work

When bidding on Prevailing Wage projects, it is the bidder’s job to ensure the scope of work being performed matches the trade/craft you have performing it - as well if multiple trades can do the task, which fits what you are doing best.

Make sure that once your workers are on site they are doing the tasks they are trained & classified to do

Misclassification of workers is one of the top issues that contractors are penalized for
Certified Payroll Reporting

CA Labor Code Section 1776:
Contractors must maintain and provide payroll records on a weekly basis of all workers employed on a public work, their names, addresses and social security numbers, their daily and weekly hours of work, classification of work, rate of pay, all payroll deductions, their net and gross pay, and check numbers.

29 Code of Federal Regulations (CFR) 3.3:
Contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls.

These records must be certified under penalty of perjury.

Failure to provide those records to DLSE within 10 days after receipt of written request is subject to a $100 per day per worker penalty.
Electronic Certified Payroll Uploads for Contractors

Beginning August 1, 2016, contractors have been required to upload Certified Payroll records on all public works projects, new or ongoing on DIR website at:

http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html

Exceptions for projects monitored by:

- DIR-approved legacy Labor Compliance Programs
- Project Labor or Stabilization Agreements
- $25,000 for new construction and $15,000 for maintenance
Fringe Benefit Statement

You will see and find many variations of the Fringe Benefit Statement form, it is important to comply per project with each Awarding Bodies requirements for forms and working rules, as they will all be the same but many have slight differences or stricter requirements than the next...

- Make sure all benefits have to whom they are paid on the line next to each individual benefit to include the name of Plan/Fund/Program and address
  - The employee
  - All into one plan/program/fund
Labor Compliance Forms Due Weekly:
Public Works payroll reporting form
Statement of Compliance

Notice to Public Entity

For Privacy Considerations:

Fold back along dotted line prior to copying for release to general public (private persons).

(Paper Size: then 8-1/2 x 11 inches)

I, __________________________________________, the undersigned, am the
(Name - print) ____________________________________________
(Position in business) ________________________________________
(Name of business and/or contractor) ________________________________________

certify under penalty of perjury that the records or copies thereof submitted and consisting of
(Description, number of pages) ________________________________________
are the originals or true, full, and correct copies of the originals which depict the payroll record(s)
of the actual disbursements by way of cash, check, or whatever form to the individual or
individuals named.

Date: __________________________ Signature: __________________________

A public entity may require a stricter and/or more extensive form of certification.
STATEMENT OF NON-PERFORMANCE
PAYROLL FORM

Payroll Report No. ______

I, _______________________________, hereby certify under penalty of perjury
no person(s) employed by _______________________________ performed
work on the construction project known as _______________________________
for the payroll period commencing on the ______ day of __________, 200____
and ending on the ______ day of __________, 200____.

______________________________
SIGNATURE OF AUTHORIZED PERSON

______________________________
TITLE / POSITION

______________________________
NAME OF AUTHORIZED PERSON

______________________________
DATE
Pay Stub Example
For employees who are paid an hourly wage

Pursuant to Labor Code Section 226(a), every time you are paid your wages, whether by check, in cash, or otherwise, you **must** be given a detachable part of the check or a separate writing showing required information.

The following information is required to be on your itemized statement:

1. Gross wages earned
2. Total hours worked (not required for salaried exempt employees)
3. The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis
4. All deductions (all deductions made on written orders of the employee may be aggregated and shown as one item)
5. Net wages earned
6. The inclusive dates of the period for which the employee is paid
7. The name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number
8. The name and address of the legal entity that is the employer
9. All applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee
CERTIFIED PAYROLL Errors & Violations

RED FLAGS

- Contractor licenses-know variables
  - i.e., Class-B General Building+ 2 unrelated bldg. trades
- Omitting required information
- Not paying proper prevailing wage
- Misclassification of Worker
- Failure to verify if apprentices are certified or indentured
- Failure to submit requested certified payroll records timely
- Failure to report training fund contribution
- Field Interview & Observations/WP Postings
- KICKBACKS (UN- Authorized Deductions)
- FAILURE TO PROVIDE BREAKS AND MEAL PERIODS
Apprenticeship Standards

Division of Apprenticeship Standards CLC 1777.5

- Employ State (DAS)- Federal (BAT) registered apprentices:
- Apprentice to Journeyman Ratio
  *standard ratio 1 to 5, may vary by trade
- Apprentices under the supervision of a journeymen within same trade
- Pay apprentices the correct prevailing wage
- Pay the correct Apprentice Training Contribution
  *To CAC or Training Committee
- Residential Apprentices
  *Approximately 80% of commercial journey rate
- Submit DAS 140 Form
  *Contract Award-Required/mandated- Must be submitted within 10 days of signing contract or subcontract
  *A separate DAS 140 Form must be used for each apprentice-able craft employed on the job by all contractors and subcontractors
- Submit DAS 142 Form
  *Request dispatch of apprentices from all appropriate committee
Apprenticeship Standards/DAS
Exemptions: LC 1777.5

- Contracts less than $30,000 (total project value)
  Sub-contractors NOT exempt even if sub-contract is less than $30,000
- If project is a federal project and does not contain any city, county, and/or state money
  Unless the project is administered by a California Public agency, exemption is negated
- Sole Proprietor/Owner Operator
- When craft or trade is not apprenticeable
- Exemption is granted by DAS
- Projects of less than 40 hrs are NOT exempt, but apprentices can be requested in less than 8-hour increments
- DAS 140 is required even with approved exemption
You will get your estimate number of apprentice hours based off the estimate number of journeyman hours at a 1:5 ratio minimum.

Contractors who are SIGNATORY (DAS 7), and are already approved to train apprentices by an Apprenticeship Training Committee.

Contractors who are NOT signatory, but have “agreed to comply” with an Apprenticeship Training Committee (i.e. PSA, PLA, Single-Job Agreements) for the current project ONLY.

Contractors who are NOT signatory, and who have not “agreed to comply” with an Apprenticeship Committee’s standards.
REQUEST FOR DISPATCH OF AN APPRENTICE – DAS 142 FORM

DO NOT SEND THIS FORM TO DAS

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: http://www.dir.ca.gov/DAS/PublicWorksForms.htm for information about programs in your area and trade. You may also consult your local Division Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards. **Except for projects with less than 40 hours of journeyman work, you must request and employ apprentices in no less than 8 hour increments**.

If you have less than 40 hours of journeyman work you are **not EXEMPT** from requesting an Apprentice but you can utilize them for less than an 8 hour period.

- Please be diligent in filling all the information in correctly
  - Often we see the number of apprentices, trade, dates to report, and where to report left blank… **that is not acceptable**
- We also require verification of submittal to committee, fax confirmation, certified mail return receipt, or “CC” us on the e-mail
Training Fund Contributions

Training Fund Contributions must be submitted to the appropriate committee on a monthly basis following work being performed.

If paid to the CAC amounts can be verified on the DIR web site, so it is essential to complete this form thoroughly with the project information.

This form is generally submitted only once to us here at the Airport unless there are increases which effect the Training Fund rates.

- Primes are responsible for receiving and keeping track of all documentation from their subcontractors to ensure sub’s are complying with public works regulations.
CONSEQUENCES & PENALTIES

➢ Failure to submit form-DAS 140-CLC 1777:
  $100 for each full calendar day of noncompliance. Additional violation(s) within three years increase to $300 per day

➢ Failure to pay the prevailing wage rate – CLC 1775
  $200 per worker, per calendar day

➢ Non-payment of premium rates CLC 1813
  $25 per worker, per calendar day

➢ Failure to submit Certified Payroll Records on a weekly basis:
  $100 per worker, per calendar day

➢ Expired or Inactive Contractors License
  Performing without active license is a misdemeanor, repeat offenders, could be sent to county jail for not less than 90 days and fined the greater of $4500 or 20% of the contract price

➢ "Willful Violation“- Debarment penalty for PW violations – CLC 1777.1
  Is a penalty for willfully violating the prevailing wage laws and/or the violation of the law with "Intent to Defraud"; contractor/subcontractors knew or should have known of violations

➢ Failure to Register as a contractor for Public Works Projects– CLC 1771.1
  Penalty increased to $8,000
  Contractor can be penalized for up to $10,000 for unregistered subcontractors
Labor Commissioner Collected Over $8 Million in Wages for Hensel Phelps Public Works Job at Hilton Convention Center Hotel in San Diego

Non-Payment of full Prevailing Wages to:

2,051 employees equaling $8,072,273

The Director determined this project was public works, as it was paid for out of public funds due to a $46.5 million rent credit provided by the San Diego Port District, which leased the land to the hotel owner.

- The prime contractor will also pay an additional $400,000.00 (fines) to the Labor Commissioner as reimbursement for investigation costs.
RESOURCES

STATE AGENCIES
WWW.DIR.CA.GOV
- DLSE – Labor Standard Enforcement
- DAS – Apprenticeship Standards
- OPRL - Statistics & Research
- CALOSHA – Health & Safety
- DWC – Workman’s Comp
- Public Works Manual (V-8/16)
- Important Notices (enroll)

Wage changes, craft/trade updates, new laws, effected county changes etc.
www.dir.ca.gov/oprl/2017-/NoticeIndex.htm

FEDERAL AGENCIES
BETA.SAM.GOV
- Dept. of Labor/ WHD
- Bureau of Apprenticeship & Training
- Copeland – Anti-Kick Back
- SCA – Service Contract Act
- FLSA – Federal Labor Standards Act
- OFCCP – Office of Federal Contract Compliance Program
QUESTIONS?