AGENDA

8:00 AM – 8:30 AM  Registration and Continental Breakfast

8:30 AM – 8:45 AM  Welcome and Opening Remarks

Lupe Serrano
Alameda County Public Works Agency

Bryan Berthiaume - Executive Director (Page 1)
Foundation for Fair Contracting

8:45 AM – 9:45 AM  Office of the Director – Legal Unit
Speaker: Chris Jagard – Acting Chief Counsel (Page 8)
Topics: Public Works Coverage Determinations

9:45 AM – 10:00 AM  BREAK

10:00 AM – 11:00 AM  Office of Policy, Research and Legislation
Speaker: Veronica Black – Research Analyst (Page 14)
Topics: Determinations (Prevailing Wage and Special)
Contract Provisions (Scope of Work, Recognized
Holidays, Travel & Subsistence)
Prevailing Wage Terms and Definitions (Awarding
Body, Bid Advertisement Date, Bid Date, etc.)

11:00 AM – 11:30 PM  Department of Industrial Relations
Speaker: Christine Baker – Director (Page 77)
Topics: State of the Industry

11:30 PM – 12:30 PM  LUNCH – Provided On Site

12:30 PM – 1:30 PM  Division of Labor Standards Enforcement
Speaker: David Cross - Attorney (Page 78)
Topics: An Overview of California’s Prevailing Wage System
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<th>Time</th>
<th>Session</th>
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<tr>
<td>1:30 PM – 1:45 PM</td>
<td>BREAK</td>
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<tr>
<td>1:45 PM - 2:45 PM</td>
<td>Compliance Monitoring Unit</td>
<td>Speaker: Eric Rood - Assistant Labor Commissioner (Page 129)</td>
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<td>2:45 PM – 3:45 PM</td>
<td>US Department of Labor</td>
<td>Speaker: Kwok-Wai Lau – Investigator (Page 159)</td>
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<td>Topics: Federal Requirements/Regulations</td>
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<tr>
<td>3:45 PM – 4:00 PM</td>
<td>Closing Remarks – Evaluation</td>
<td></td>
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</tbody>
</table>
Bryan Berthiaume has worked in and around the construction industry for over 22 years. Hired at the FFC in 1997, he quickly became the top investigator/labor compliance officer. In 2004, Bryan was promoted to the position of Executive Director. Bryan now oversees a staff of 10+ employees—all working in some facet of labor compliance. In addition to his duties as FFC Director, Bryan performs training seminars throughout Northern California.

Bryan holds a degree from the California State University, Hayward.
MESSAGE FROM THE EXECUTIVE DIRECTOR

Welcome to the FFC web site!

This site has been set up to support awarding agencies, contractors, workers and worker representatives on public works construction projects. Visit this site for the latest wage and hour law information and upcoming seminar/workshops in your area.

The Foundation for Fair Contracting has been monitoring, educating, and providing support for the construction industry since 1985. All contact is handled with the strictest confidentiality. The FFC is a non-profit organization, and all services are available free of charge.

With over twenty-five years experience, the FFC is a valuable resource. Our staff is always available to provide the latest information.

Sincerely,

Bryan Berthiaume
Executive Director
FOUNADATION FOR FAIR CONTRACTING

Monitoring, Educating and Providing Support for the California Construction Industry

About Us

FOUNADATION FOR FAIR CONTRACTING


Today, keeping informed – knowing the law, your options and your responsibilities – in these critical areas can pose a real challenge.

Accordingly, a significant portion of FFC resources is directed toward streamlining the process associated with keeping the contractor/public agency community knowledgeable in a rapidly changing environment.

A fast, dependable source of reliable information

For both contractors and public agencies, FFC serves as a ready and dependable information resource. The organization maintains complete and current data on regulations related to prevailing wage rates and other public works laws, and FFC personnel are prepared to answer questions related to these issues.

An ongoing program of seminars and workshops

Providing information and assistance to agencies responsible for public works projects is a primary FFC function. The organization regularly conducts seminars that not only keep these agencies abreast of applicable state and federal laws, but cover far more extensive areas.

Similar educational programs for employers can provide a sense of confidence in regard to wage and labor law compliance and help avoid problems related to insufficient knowledge or inaccurate interpretation of existing regulations.

The bottom line...informed participants, better public works project

With knowledge of the law, understanding of the procedures, and a commitment to fairness, both agencies and contractors can be assured of public works projects that are awarded fairly and constructed in compliance with the law. The net result is that California’s citizens can count on receiving the best possible finished product in return for their investment. Studies (by both independent and government organizations) have shown that contractors who comply with the wage and hour laws are inclined to comply with other aspects of contract specifications, which leads to better built projects.

The FFC does not provide legal representation. The officers and staff of the FFC are dedicated professionals; but we are not attorneys, and we do not provide legal representation to workers or contractors. If workers or contractors need legal representation, we can refer you to attorneys who are experienced and skilled in this area of law. We have no fee sharing arrangements with any attorneys; so if we do refer someone to an attorney, we will receive no fees or any other revenue from such a referral.
## Links

### STATE: LAWS AND REGULATIONS

- **California Labor Code**
- **California Code of Regulations**
- **Industrial Welfare Commission Order No. 16 (IWC 16)**

### STATE: WAGE DETERMINATIONS AND REPORTING FORMS

- **Prevailing Wage Determinations**
- **Superseded Prevailing Wage Determinations**
- **Public Works Payroll Reporting Form**
- **Statement of Employer Payments (Fringe Benefit Statement)**

### STATE: APPRENTICESHIP AND TRAINING

- **Summary of Requirements**
- **Excerpts from the Labor Code Relating to Apprentices on Public Works (DAS10)**
- **Public Works Contract Award Information (DAS140)**
- **Training Fund Contributions (CAC 2)**
- **Request for Dispatch of an Apprentice (DAS142)**
- **Agreement to Train Apprentices (DAS7)**

### STATE: COVERAGE DETERMINATIONS

- **2002 - Present**

### STATE: CONTRACTORS STATE LICENSE BOARD

- **Search By Contractor Name**
- **Search By Personnel**
- **Search By License Number**

### FEDERAL: DEPARTMENT OF LABOR

- **Davis-Bacon Wage Determinations**
SEMINARS/WORKSHOPS

PREVAILING WAGE/LABOR COMPLIANCE WORKSHOPS

Focus:

Notable Speakers From:
California Department of Industrial Relations ~ Division of Labor Standards Enforcement ~ Division of Labor Statistics and Research ~ Division of Apprenticeship Standards ~ Compliance Monitoring Unit ~ US Department of Labor.

UNDERGROUND ECONOMY ENFORCEMENT LABOR COMPLIANCE/PREVAILING WAGE CONFERENCES

Focus:

Notable Speakers From:
California Board of Equalization ~ California Department of Industrial Relations - Division of Labor Standards Enforcement ~ Division of Labor Statistics and Research ~ Division of Apprenticeship Standards ~ Employment Development Department ~ Franchise Tax Board ~ Contractors State License Board ~ US Department of Labor, and more...

IN HOUSE WORKSHOPS

The FFC is available to conduct seminars/workshops for your organization. We provide assistance to all group sizes. Contact us today!

Focus:

REGISTRATION
Please make sure you indicate your company name and which event you wish to attend.

* First name (required):

* Last name (required):

E-mail address (required):

Phone number:

* Message (required):

Submit
FOUNDATION FOR FAIR CONTRACTING
Monitoring, Educating and Providing Support for the California Construction Industry

Contact Us

FOUNDATION FOR FAIR CONTRACTING
3807 PASADENA AVENUE, SUITE 150
SACRAMENTO, CALIFORNIA 95821
(916) 487-7871
(916) 487-0306 FAX

Executive Director
Bryan Berthiaume

Field Supervisor
Steve Bridges

Field Representatives
Mario Rodriguez
Arturo Sainz
Steve Williams

* First name (required):

* Last name (required):

* E-mail address (required):

Phone number:

Message (required):

Submit

All Rights Reserved
Chris Jagard
Acting Chief Counsel

Chris Jagard received his Juris Doctor degree from the University of San Francisco School of Law in 1997, and has specialized in employment law in both the public and private sectors for the past 15 years. Since 2005, Mr. Jagard has been employed by the State of California as an attorney in the public works section of the Department of Industrial Relations, Office of the Director, Legal Unit. Mr. Jagard’s primary responsibilities have been public works coverage determinations and litigation.

Currently, Mr. Jagard is the Acting Chief Counsel of the legal unit.

Christopher Jagard, Acting Chief Counsel
Department of Industrial Relations
Office of the Director – Legal Unit
1515 Clay Street, Suite 701
Oakland, CA 94612
Tel: (510) 286-3800
Email: cjagard@dir.ca.gov
PUBLIC WORKS COVERAGE DETERMINATIONS

I. NATURE AND PURPOSE OF PREVAILING WAGE REQUIREMENTS

A. Labor Code § 1771:

Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works. This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

B. Governing Law

Coverage determinations are governed by the law in effect when the public works project is advertised for bid, or where not advertised, by the date an agreement to construct a public work is executed. (See City of Long Beach v. Dept. of Industrial Relations (2005) 34 Cal. 4th 942; Greystone Homes, Inc. v. Cake (2005) 135 Cal.App.4th 1.)

\[1\] All of the sections of the Labor Code and California Code of Regulations noted herein are available on DIR’s website at www.dir.ca.gov. These sections represent only a portion of the entire statutory scheme governing public works and prevailing wages.
II. COVERAGE DETERMINATION PROCESS & PROCEDURES


(a) General Coverage. State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771.

(1) Any interested party enumerated in Section 16000 of these regulations may file with the Director of Industrial Relations or the Director's duly authorized representative, as set forth in Section 16301 of these regulations, a request to determine coverage under the prevailing wage laws regarding either a specific project or type of work to be performed which that interested party believes may be subject to or excluded from coverage as public works under the Labor Code. If such a request is filed by any party other than the awarding body, a copy of the request must be served upon the awarding body, in accordance with the filing procedures set forth in Section 16302(d) of these regulations, when it is filed with the Director.

(2) Within 15 days of receipt of a copy of the request for a coverage determination, the awarding body shall forward to the Director or his/her duly authorized representative as provided for in Section 16301 of these regulations, any documents, arguments, or authorities it wishes to have considered in the coverage determination process.

(3) All parties to the coverage determination request shall have a continuing duty to provide the Director or his/her duly authorized representative as provided for in Section 16301 of these regulations, with relevant documents in their possession or control, until a determination is made. Where any party or parties' agent has a document in their possession, but refuses to release a copy, the Department shall consider that the documents, if released, would contain information adverse to the withholding party's position and may close the record and render a decision on the basis of that inference and the information received.

(b) Federally Funded or Assisted Projects. The application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort.

(c) Field Surveying Projects. Field survey work traditionally covered by collective bargaining agreements is subject to prevailing wage rates when it is integral to the specific public works project in the design, preconstruction, or construction phase.

(d) Residential Projects. Residential projects consisting of single family homes and apartments up to and including four stories are subject to payment of prevailing wages when paid for in whole or in part out of public funds, including federally-funded or assisted residential projects controlled or carried out by an awarding body.
Note: Such projects may require a special determination by the Director which should be requested by the awarding body at least 45 days before the commencement of advertising of the call for bids by the awarding body.

(e) Commercial Projects. All non-residential construction projects including new work, additions, alterations, reconstruction and repairs. Includes residential projects over four stories.

(f) Maintenance. Public works contracts for maintenance are subject to prevailing wage rate payment as set forth in Section 1771 of the Labor Code.

Note: See Article 1 for definition of term "maintenance."


(a) Those interested parties enumerated in Section 16000 of these regulations may appeal to the Director of Industrial Relations or the Director's duly authorized representative as set forth in Section 16301 of these regulations a determination of coverage under the public works laws (Labor Code Section 1720 et seq.) regarding either a specific project or type of work under Section 16001(a) of these regulations. Such notice of appeal must be served within 30 days of the issuance of the coverage determination. The party appealing the determination must, in accordance with the filing procedures set forth in Section 16302(d) of these regulations, give written notification to the awarding body and any other identifiable parties.

(b) The notice of appeal shall state the full factual and legal grounds upon which the determination is appealed, and whether a hearing is desired. The decision to hold a hearing is within the Director's sole discretion. The Director may appoint a hearing officer to conduct the hearing and propose a decision on the appeal. The Director shall make the final decision on the appeal.

(c) The authority of the Director to determine coverage of projects under the prevailing wage laws is quasi-legislative, and a final determination on any appeal is subject to judicial review pursuant to the Code of Civil Procedure, Section 1085.

III. SUBSTANTIVE COVERAGE ISSUES

A. “Public works” is defined in Labor Code § 1720:

(a) As used in this chapter, “public works” means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities
Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work. For purposes of this paragraph, "installation" includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems.

…

(b) For purposes of this section, "paid for in whole or in part out of public funds" means all of the following:

(1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

(2) Performance of construction work by the state or political subdivision in execution of the project.

(3) Transfer by the state or political subdivision of an asset of value for less than fair market price.

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

(5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis.

(6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision.


Title 8, California Code of Regulations, § 16000: Maintenance. Includes:

(1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

(2) Carpentry, electrical, plumbing, glazing, [touchup painting,] and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning
and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

EXCEPTION:1: Janitorial or custodial services of a routine, recurring or usual nature is excluded.

EXCEPTION:2: Protection of the sort provided by guards, watchmen, or other security forces is excluded.

(3) Landscape maintenance. See Public Contract Code Section 21002.

EXCEPTION: Landscape maintenance work by "sheltered workshops" is excluded.

C. Exceptions

Labor Code section 1720, subdivision (c) contains exceptions for certain types of projects that otherwise meet the definition of public work.

IV. RECENT PUBLISHED COURT OF APPEAL AND SUPREME COURT DECISIONS REGARDING PUBLIC WORKS

State Bldg. and Const. Trades Council of Cal., AFL-CIO v. City of Vista
(2012) 54 Cal.4th 547

Housing Partners I, Inc. v. Duncan (DIR)

Reliable Tree Experts v. Baker (DIR)
(2011) 200 Cal.App. 4th 785

Azusa Land Partners v. Department of Industrial Relations
(2011) 191 Cal.App.4th 1

Oxbow Carbon & Minerals, LLC v. Department of Industrial Relations
(2011) 194 Cal.App. 4th 538

State Building and Construction Trades Council of California v. Duncan

Plumbers and Steamfitters, Local 290 v. Duncan

Sheet Metal Workers Intern. Ass’n., Local Union No. 104 v. Rea
Laws and regulations regarding the methodology for determining the prevailing rate

Labor Code § 1773. Ascertainment of prevailing rate; Data considered

The body awarding any contract for public work, or otherwise undertaking any public work, shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the contract from the Director of Industrial Relations…

In determining the rates, the Director of Industrial Relations shall ascertain and consider the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works, within the locality and in the nearest labor market area. Where the rates do not constitute the rates actually prevailing in the locality, the director shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized collective bargaining representatives for the particular craft, classification, or type of work involved. The rate fixed for each craft, classification, or type of work shall be not less than the prevailing rate paid in the craft, classification, or type of work…

Labor Code § 1773.1. Per diem wages; What employer payments are included therein

(a) Per diem wages, when the term is used in this chapter or in any other statute applicable to public works, shall be deemed to include employer payments for the following:
   (1) Health and welfare.
   (2) Pension.
   (3) Vacation.
   (4) Travel.
   (5) Subsistence.
   (6) Apprenticeship or other training programs authorized by Section 3093, so long as the cost of training is reasonably related to the amount of the contributions.
   (7) Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code), to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.
   (8) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are required under a collective bargaining agreement pertaining to the particular craft, classification, or type of work within the locality or the nearest labor market area at issue.
   (9) Other purposes similar to those specified in paragraphs (1) to (8), inclusive.

(b) Employer payments include all of the following:
   (1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.
   (2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.
   (3) Payments to the California Apprenticeship Council pursuant to Section 1777.5…
Labor Code § 1773.9. Determination of general prevailing rate of per diem wages

(a) The Director of Industrial Relations shall use the methodology set forth in subdivision (b) to determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed.

(b) The general prevailing rate of per diem wages includes all of the following:
   (1) The basic hourly wage rate being paid to a majority of workers engaged in the particular craft, classification, or type of work within the locality and in the nearest labor market area, if a majority of the workers is paid at a single rate. If no single rate is being paid to a majority of the workers, then the single rate being paid to the greatest number of workers, or modal rate, is prevailing. If a modal rate cannot be determined, then the director shall establish an alternative rate, consistent with the methodology for determining the modal rate, by considering the appropriate collective bargaining agreements, federal rates, rates in the nearest labor market area, or other data such as wage survey data.
   (2) Other employer payments included in per diem wages pursuant to Section 1773.1 and as included as part of the total hourly wage rate from which the basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, the director shall establish a prevailing employer payment rate by the same procedure set forth in paragraph (1).
   (3) The rate for holiday and overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, the rate for holidays and overtime work, if any, included with the prevailing basic hourly rate of pay shall be prevailing...

Labor Code § 1811. Limitation as to hours of service; Exception

The time of service of any workman employed upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

Labor Code § 1815. Work performed in excess of specified hour limitations; Compensation

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

California Code of Regulations (“CCR”) § 16100(b)(8)

… If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid, as specified in subsection 16200(a)(3)(F) of these regulations.
Definitions and other information

**Awarding body.** Any state or local government agency, department, board, commission, bureau, district, office, authority, political subdivision, regional district officer, employee, or agent awarding/letting a contract/purchase order for public works.

**Basic Hourly Rate.** The prevailing straight-time hourly wage.

**Date of Notice or Call for Bids.** The date the first notice inviting bids was published in a newspaper of general circulation or promulgated in a legally sufficient manner which results in a contract being awarded with or without competitive bidding. This may also be referred to as the Bid Advertisement Date.

**Correction Notice.** A notice correcting any error in a published determination that is a result of a clerical error, such as a typographical error or a transposition of letters or digits.

**Effective Date.** The date upon which the determinations of the Director go into effect. This date is ten (10) days after the issue date of the determination.

**Expiration Date.** The date upon which the determinations of the Director are subject to change.

**Issue Date-Issuance.** The date upon which copies of the determination of the Director are deposited in the mail. The General Prevailing Wage Determinations are issued twice a year (February 22nd and August 22nd).

**Interim Determination.** Wage determinations issued by the Director between the semi-annual updates.

**Predetermined Changes.** Definite changes to the basic hourly wage rate, overtime, holiday pay rates, and employer payments which are known and enumerated in the applicable collective bargaining agreement at the time of the bid advertisement date and which are referenced in the general prevailing rate of per diem wages as defined in Section 16000 of these regulations. Contractors are obligated to pay up to the amount that was predetermined if these changes are modified prior to their effective date. Predetermined changes which are rescinded prior to their effective date shall not be enforced.

**Total Hourly Rate.** The basic hourly rate plus employer payments for fringe benefits.

There are two types of general determinations – Basic Trades & Subtrades. The Basic Trades each have their own individual wage determination which typically covers multiple counties. Subtrades are grouped together and share a county determination. There are 58 county determinations.
Bid and Pay the Correct Prevailing Wage

From the DIR web page ([http://www.dir.ca.gov](http://www.dir.ca.gov)) click on Director’s Office tab or link to go to the OPRL page.
Office of Policy, Research and Legislation (OPRL)

Legislation, policy, and statistics about labor in California are available at the Office of Policy, Research and Legislation.
To go directly to the Director’s general prevailing wage determinations, use the ‘Quick Links’ on the right column of the screen and click on ‘Prevailing wage determinations’.
Director’s General Prevailing Wage Determinations

- 2013-1 General prevailing wage determinations menu (journeyman)
- 2013-1 General prevailing wage apprentice determinations menu
- Superseded prevailing wage determinations
- Important notices (index 2001-1 to present)
- Important notice: off-site fabrication decisions on appeal
- Frequently asked questions - Prevailing Wage
- Frequently asked questions - Off-Site Hauling
Journeyman Determinations

Selecting a basic trade from the general prevailing wage determinations menu: Index 2013-1

Basic trade determinations are organized by geographic region in the first three steps of the menu shown below – Statewide, Northern California, Southern California, and San Diego.

**Statewide** determinations generally apply to most counties in California.

**Northern California** determinations generally apply to the 46 counties north of Inyo, Kern, Mono, and San Luis Obispo Counties.

**Southern California** determinations generally apply to the following 11 counties: Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.

**San Diego** generally has stand-alone determinations but is sometimes grouped with the other **Southern California** Counties.
Statewide Determinations Menu

To access the wage determinations, click on the applicable craft name in the second column of the table.
GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

CRAFT: # IRON WORKER

DETERMINATION: C-20-X-1-2013-1
ISSUE DATE: February 22, 2013
EXPIRATION DATE OF DETERMINATION: June 30, 2013** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

LOCALITY: All localities within the State of California

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<td>Basic Hourly Rate</td>
<td>Health and Pension</td>
<td>Vacation/ Training</td>
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<tr>
<td>Iron Worker (Ornamental, Reinforcing, Structural)</td>
<td>$33.00</td>
<td>8.72</td>
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<tr>
<td>Fence Erector</td>
<td>$26.58</td>
<td>6.55</td>
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# Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet at http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp. To obtain any apprentice wage rates as of July 1, 2008 and prior to September 27, 2012, please contact the Division of Apprenticeship Standards or refer to the Division of Apprenticeship Standards' website at http://www.dir.ca.gov/das/das.html.

Includes supplemental dues.

Rate applies to the first 2 daily overtime hours and the first 8 hours on Saturday. All other overtime is at the Sunday/Holiday rate.

RECOGNIZED HOLIDAYS: Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at http://www.dir.ca.gov/OPRL/PWD. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

TRAVEL AND/OR SUBSISTENCE PAYMENT: In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at http://www.dir.ca.gov/OPRL/PWD. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.
Index 2013-1 Statewide Basic Trade Determination Menu

To access the holiday, scope of work, and travel and subsistence provisions for a craft, select the item from the drop down menu in the third column.

To access the predetermined increase, if any, click on the link in the fourth column corresponding to the applicable craft.
HOLIDAY PROVISIONS

FOR

IRONWORKER

IN

ALL LOCALITIES WITHIN THE STATE OF CALIFORNIA
July 25, 2011

Ms. Maria Robbins, Acting Chief
State of California
Department of Industrial Relations
Division of Labor Statistics and Research
P. O. Box 420603
San Francisco, CA 94142-0603

RE Agreement between Iron Worker Employers State of California
and a Portion of Nevada and District Council of Iron Workers
of the State of California and Vicinity effective 7-1-11 through 6-30-14

Dear Ms. Robbins:

On June 9, 2011 negotiations were concluded to extend the current Collective
Bargaining Agreement, dated July 1, 2007 through June 30, 2010 (as extended
through June 30, 2011) for three years through June 30, 2014 with the attached
modifications and changes. This fully executed letter is an addendum to the current
Collective Bargaining Agreement. The actual Collective Bargaining Agreement will
be forwarded once it has been printed.

We the undersigned certify under penalty of perjury that the information herein is true
and correct to the best of our knowledge and belief.

Joe Standley, Chairman
Iron Workers Negotiation Committee

Dave McEuen, Chairman
Management Negotiating Committee

Dated: July 25, 2011
Section 6. Work Hours Per Day – G – Holidays. Add the following language: If any of the above listed holidays falls on a Saturday the holiday will be observed on the preceding Friday.
June 15, 2010

TO: ALL CONTRACTOR MEMBERS

SUBJECT: IRON WORKERS WAGE/FRINGE BENEFITS FREEZE

Please be advised that the Iron Workers have approved a one (1) year extension of the current 2007-2010 Master Labor Agreement through June 30, 2011, without any changes or modifications to wages or fringe benefits. The wages and trust fund contributions will remain as follows:
AGREEMENT

IRON WORKER EMPLOYERS STATE OF CALIFORNIA

AND A PORTION OF NEVADA

AND

DISTRICT COUNCIL OF IRON WORKERS

OF THE STATE OF CALIFORNIA AND VICINITY

July 1, 2007 - June 30, 2010

RECEIVED
Department of Industrial Relations
JUN 14 2007
Div. of Labor Statistics & Research
Chief's Office
G - Holidays - Holidays to be recognized as overtime days will be:


No work shall be performed on Labor Day except to save life and property.

The above holidays shall be observed on the dates designated by the State of California and/or the State of Nevada or by Federal law.

If any of the above listed holidays falls on a Sunday, the Monday following shall be observed as a holiday.

The geographic demarcation line for holidays shall be on the same basis as provided in Northern and Southern California Master Labor Agreements with other basic crafts.

Northern California refers to the forty-six counties north of San Luis Obispo and Kern Counties. Southern California refers to the twelve counties south of and including San Luis Obispo and Kern Counties and also including Inyo and Mono Counties.
SCOPE OF WORK PROVISIONS

FOR

IRONWORKER

IN

ALL LOCALITIES WITHIN THE STATE OF CALIFORNIA
February 22, 2010

NOTICE REGARDING ADVISORY SCOPE OF WORK FOR THE SOUTHERN CALIFORNIA IRON WORKERS' GENERAL PREVAILING WAGE DETERMINATION

The California Labor Code requires the Director of the Department of Industrial Relations to determine the prevailing rate of per diem wages for all workers employed upon public works projects. The Division of Labor Statistics and Research ("DLSR") undertook an investigation in 2009 to determine the prevailing wage rates for the installation of solar and photovoltaic systems in Los Angeles, San Diego and Imperial Counties. The results of the questionnaire have been compiled and based on them the minimum rate of pay for the work in question is performed by Electricians: Inside Wiremen for the Los Angeles, San Diego, and Imperial Counties General Prevailing Wage Determinations.

The type of work listed below, as identified in the Iron Workers 2007-2010 Master Labor Agreement, between District Council of Iron Workers of the State of California and vicinity and Iron Worker Employers State of California and a portion of Nevada, were not published or recognized for the Los Angeles, San Diego, and Imperial Counties by the Department of Industrial Relations starting with the August 22, 2009 issuance of the Southern California Iron Workers' general determination, C-20-X-1-2009-1 and continuing with any subsequent Southern California Iron Workers' general determinations until superseded by the Director. The rates associated with this unrecognized type of work (solar energy systems) SHALL NOT be applied or used on public works projects for the associated type of work.
February 22, 2007

ADVISORY SCOPE OF WORK

Please note that this advisory scope of work does not apply for metal roofing systems work in the counties where we have issued prevailing wage rates for the Metal Roofing Systems Installer. Please refer to the statewide general prevailing wage determinations for the Metal Roofing Systems Installer on pages 2J to 2J-15.
July 25, 2011

Ms. Maria Robbins, Acting Chief
State of California
Department of Industrial Relations
Division of Labor Statistics and Research
P. O. Box 420603
San Francisco, CA 94142-0603

RE Agreement between Iron Worker Employers State of California
and a Portion of Nevada and District Council of Iron Workers
of the State of California and Vicinity effective 7-1-11 through 6-30-14

Dear Ms. Robbins:

On June 9, 2011 negotiations were concluded to extend the current Collective
Bargaining Agreement, dated July 1, 2007 through June 30, 2010 (as extended
through June 30, 2011) for three years through June 30, 2014 with the attached
modifications and changes. This fully executed letter is an addendum to the current
Collective Bargaining Agreement. The actual Collective Bargaining Agreement will
be forwarded once it has been printed.

We the undersigned certify under penalty of perjury that the information herein is true
and correct to the best of our knowledge and belief.

Joe Standley, Chairman
Iron Workers Negotiation Committee

Dave McEuen, Chairman
Management Negotiating Committee

Dated: July 25, 2011
June 15, 2010

TO: ALL CONTRACTOR MEMBERS

SUBJECT: IRON WORKERS WAGE/FRINGE BENEFITS FREEZE

Please be advised that the Iron Workers have approved a one (1) year extension of the current 2007-2010 Master Labor Agreement through June 30, 2011, without any changes or modifications to wages or fringe benefits. The wages and trust fund contributions will remain as follows:
AGREEMENT

IRON WORKER EMPLOYERS STATE OF CALIFORNIA

AND A PORTION OF NEVADA

AND

DISTRICT COUNCIL OF IRON WORKERS

OF THE STATE OF CALIFORNIA AND VICINITY

July 1, 2007 - June 30, 2010

RECEIVED
Department of Industrial Relations

JUN 14 2007

Div. of Labor Statistics & Research
Chief's Office
SECTION 3. Craft Jurisdiction

A - This Agreement shall cover all work in connection with field fabrication and/or erection of structural, ornamental and reinforcing steel work coming within the jurisdiction of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers recognized by the Building and Construction Trades Department of the American Federation of Labor - Congress of Industrial Organizations.

B - It is agreed that the jurisdiction of work covered by this Agreement is that provided for in the charter grant issued by the American Federation of Labor to the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, it being understood that claims are subject to trade agreements and final decisions of the AFL-CIO.

C - The Iron Workers jurisdictional claims for its journeyman and apprentice Iron Workers shall include but not be limited to job classifications of Architectural and Ornamental, Machinery Movers, Erectors and Riggers, Reinforcing Iron Workers, Structural, Stone Derrick Men, Welders, Fence Erectors and Sheeters and shall include but not be limited to the following:

All work in connection with field fabrication and/or erection or deconstruction of structural, ornamental and reinforcing steel, including but not limited to the fabrication, erection and construction of all iron and steel, ornamental lead, bronze, brass, copper and aluminum, plastics and all other substitute materials, including but not limited to, composites, carbon fiber and fiberglass, all barrier railings, handrail, aluminum, steel, glass and plastic, reinforced concrete structures or parts thereof; bridges, viaducts, inclines, dams, docks, dredges, vessels, locks, gates, guides, aqueducts, reservoirs, spillways, flumes, caissons, cofferdams, subways, tunnels, cableways, tramways, monorails, blast furnaces, stoves, kilns, coolers, crushers, agitators, pulverizers, mixers, concentrators, ovens, cupolas, roof decking such as but not limited to “Cofar”, “Trusdeck”, Mahon “M”; smoke conveyors, penstocks, flag poles, drums, shafting, shoring, fur and storage rooms, fans and hot rooms, stacks, bunkers, conveyors, dumpers, elevators, vats, tanks, enamel tanks, enamel vats, towers, pans, hoppers, plates, anchors, caps, corbels, lintels, Howe and combination trusses, grillage and foundation work, grating, bucks, partitions, hanging ceilings, hangers, clips, brackets, flooring, floor construction and domes, rolling shutters, curtains, frames; aluminum, rolling fire and iron doors; cast tiling, air ducts, duct and trench frames and plates; wire work, railings, wire cable including pipe, guards, fencing, grill work, sidewalk and vault lights, skylights, roofs, canopies, light steel framing, marquees, awnings, the erection and installation of playground equipment to include bolting, fastening, welding of swings, slides, jungle gyms, footings and other related equipment elevator and dumb waiter enclosures, elevator cars, tracks, fascias, aprons, operating devices, steel and aluminum sash, hardware and screens, frames, fronts, lockers, racks, book stacks, tables, shelving, metal furniture, seats, chutes, escalators, stairways including preengineered stairs, ventilators, boxes, fire escapes, signs, jail and cell work, safes, vaults, vault doors, safe deposit boxes, corrugated sheets when attached to steel frames, including insulation; frames in support of boilers; materials altered in field such as framing, cutting, bending, drilling,
burning and welding including by acetylene gas and electric machines; metal forms and false work pertaining to concrete construction; seismic isolation systems and dampening systems including base isolators, sectional water tube and tubular boilers and stokers; traveling sheaves, vertical hydraulic elevators, bulkheads, skip hoists, making and installation of articles made of wire and fibrous rope, rigging in connection with pumps, compressors, forced and induced draft fans, air meters, Bailey meters, agitators, oxygen converters, cinderling machines, pelleting machines, reactor vessels, reactor spheres, completed tanks and assembled sections of completed tanks, scroll cases, refineries, hydroelectric power houses and steam plants, cogeneration plants, vessels and government departments; false work, travelers, scaffolding, pile drivers, sheet piling, derricks and powered derrick swinger including the erection, installation, handling and operating of the same on all forms and types of construction work, cranes, the erection, installation, handling and operating of same on all forms and types of construction work; railroad bridge work including maintenance thereof; moving, hoisting and lowering of machinery, skid modules and placing of same on foundation, including bridges, cranes, intermittent use forklifts, derricks, buildings, piers and vessels; loading, unloading, necessary maintenance, erection, installation, removal, wrecking and dismantling of all of the above and all reinforcing work and submarine diving in connection with or about same; erection of steel towers, chutes and spouts for concrete where attached to towers and handling and fastening of cables and guys for same; unloading, racking, sorting, cutting, bending, hoisting, placing and tying including the use of any and all mechanical tying devices, burning and welding including stud welding of all iron, steel and metal in reinforced concrete construction including mesh for floor arches and the making of hoops and stirrups, metal forms and metal supports thereof; jacking of slip forms, installation of all wire, cable, parabolic cans, steel and all other materials, including, but not limited to, composites, carbon fiber and fiberglass, used for the purposes of prestressing including grouting of ducts, poststressing concrete girders, beams, columns, etc.; loading, unloading, hoisting, handling, signaling, placing and erection of all prestressed, poststressed, precast materials, G.F.R.C., Dryvit System, including the securing by bolting and/or welding and the installation of stellex and wire mesh of any type when used for reinforced concrete construction; erection of all curtain wall and window wall and entrances, panels, insulated and non-insulated, factory and field assembled, porcelain enameled panels, ceramic, laminated spandrelite, louvers and sun screens; application of thiokol, neoprene and other sealants used to seal materials installed by Iron Workers; installation and handling of Trespa products and all similarly related materials and/or systems; installation of metal window stools and sills; installation of aluminum, bronze and steel thresholds; erection and dismantling of all types of cranes and changing of booms; erection of rock, sand and gravel plants, dismantling and loading out conveyors, aggregate plants, batch plants, cableways, refrigeration plants, etc.; erection and dismantling of Monigan walking dragline, launchhammer bucket wheel excavator and other trenching equipment; signaling on highlines, whirley cranes and derricks, bucket hoists, man hoists, fork lifts, material towers and scanning antennae; metal and steel supports of all types; fabrication, assembling and erection of offshore drilling platforms or similar installations; dust collectors, precipitators, multi-plate, specialty welding processes, unloading, loading, hoisting, handling and rigging of all building materials delivered to the job site; hanging ceilings, tees, channels, beams, acoustical elements, sound barriers, computer floors, etc.; installation of stage rigging (including counterweights), curtains, draperies, traverse rods, tracks, cables,
window cleaning equipment, powered work platforms, including and loading and unloading, erection installation and removal of powered chassis-mounted elevating mast climbing work platforms, rigging in connection with display shows; ski lifts, etc.; wrecking of bridges, viaducts, elevated roads and structural steel and iron in buildings; all steel frames for openings, all porches, verandas, canopies and balconies; all overhead travelers, duorails, tramrails; erection, setting, repairing of guard or collision rails on bridges and approaches, road ways or any other structures; handling and setting of all types of steel and metal joists, including metal box joists for trusslab and preformed keystone shaped metal joists; erection of steel and metal houses and packaged buildings; all translucent and plastic material on steel frame construction; the erection of solar energy systems, energy producing windmill type towers; nuclear reactors, electromagnetic shielding plates and atomic vessels including all component parts; the plumbing, aligning and leveling of all materials and equipment through the use of optical instruments, LASER beams, etc. (this shall not preclude the use of Supervisory or Administrative personnel to direct these operations utilizing such instruments); the unloading, distributing, stockpiling and handling of all materials coming under the jurisdictional claims of the UNION such as to rail heads, storage yards, etc., shall be done by the Iron Workers.

All reinforcing work in connection with field fabrication, handling, racking, sorting, cutting, bending, hoisting, intermittent use of forklifts, placing, burning, welding and tying of all material including the use of any and all mechanical tying devices, or substitute materials, including but not limited to, composites, carbon fiber and fiberglass, stainless steel, used to reinforce concrete construction shall be done by Iron Workers. A working Iron Worker shall be employed for maintenance on jobs of substantial size while concrete is being poured on reinforcing steel, wire mesh and paper back steeltex but will not be required as a stand-by man.

All work in connection with the installation, alignment, repair & modification of panelized roofing systems, pre-engineered fabric structures, aluminum clarifier coverings, carports, mini-storages, and dock planks.
TRAVEL AND SUBSISTENCE PROVISIONS

FOR

IRONWORKER

IN

ALL LOCALITIES WITHIN THE STATE OF CALIFORNIA
July 25, 2011

MS. Maria Robbins, Acting Chief
State of California
Department of Industrial Relations
Division of Labor Statistics and Research
P. O. Box 420603
San Francisco, CA 94142-0603

RE Agreement between Iron Worker Employers State of California
and a Portion of Nevada and District Council of Iron Workers
of the State of California and Vicinity effective 7-1-11 through 6-30-14

Dear Ms. Robbins:

On June 9, 2011 negotiations were concluded to extend the current Collective
Bargaining Agreement, dated July 1, 2007 through June 30, 2010 (as extended
through June 30, 2011) for three years through June 30, 2014, with the attached
modifications and changes. This fully executed letter is an addendum to the current
Collective Bargaining Agreement. The actual Collective Bargaining Agreement will
be forwarded once it has been printed.

We the undersigned certify under penalty of perjury that the information herein is true
and correct to the best of our knowledge and belief.

Joe Standley, Chairman
Iron Workers Negotiation Committee

Dated: July 25, 2011

Dave McEuen, Chairman
Management Negotiating Committee

We the undersigned certify under penalty of perjury that the information herein is true
and correct to the best of our knowledge and belief.

Joe Standley, Chairman
Iron Workers Negotiation Committee

Dated: July 25, 2011

Dave McEuen, Chairman
Management Negotiating Committee
Section 7. Wage Rates and Other Remuneration – B – Congestion Zone Fee – Remove the Congestion Zone Fee language from under Parking Fees, delete obsolete language and add the following underlined language: The Congestion Zone Fee shall be considered expense reimbursement and shall not be paid on days where show-up expense is paid.

Section 9. Expenses Out of Town – A - Subsistence Pay – See Monetary Increases and Changes and replace existing language with the following: Where a job is located 60 miles or more from the City Hall of San Francisco, Oakland, San Jose, Sacramento, Stockton, Fresno, Bishop, Bakersfield, Eureka, Redding, Napa, Los Angeles, San Diego, San Bernardino, Ventura and El Centro of the State of California, and Reno and Las Vegas of the State of Nevada, a workmen will be compensated per scheduled work day for the job. Subsistence pay is determined by ascertaining the city hall enumerated above which is closest to the job. If the job is more than 60 miles from that city hall, subsistence shall be owed as follows: Sixty (60) miles to seventy-five (75) miles.................$20.00; Seventy-five (75) miles to one hundred (100) miles........ $25.00; One hundred (100) miles and over.........................$75.00; Mileage will be the actual number of miles traveled over the most direct regularly traveled route between the job and the
designated point. When an out-of-town job is of one day’s duration, a workman shall be paid travel reimbursement to and from the job. He shall not, in addition, be paid subsistence. If a workman is shipped from one free zone into another free zone the workman shall be paid subsistence in accordance with Section 9A. The workman’s initial free zone shall be the city hall listed above closest to his point of hire. For purposes of this paragraph the free zone shall be limited to the free zone closest to the point of hire.

B - Federal Installations – Add Fort Hunter Liggett and Camp Roberts to $6.00 section and remove Susanville.

F – Travel Reimbursement, Job Not Continuous - Separate paragraph into two sections; 2nd Section to begin with “where the break in continuous employment on the job…”
June 15, 2010

TO: ALL CONTRACTOR MEMBERS

SUBJECT: IRON WORKERS WAGE/FRINGE BENEFITS FREEZE

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IRON WORKER EMPLOYERS STATE OF CALIFORNIA
AND A PORTION OF NEVADA

AND

DISTRICT COUNCIL OF IRON WORKERS
OF THE STATE OF CALIFORNIA AND VICINITY

July 1, 2007 - June 30, 2010

RECEIVED
Department of Industrial Relations
JUN 14 2007
Div. of Labor Statistics & Research
Chief’s Office
B - Parking Fees - In congested areas the individual employer shall provide, or pay for, parking facilities for workmen where free parking is not available within three (3) standard blocks of the job. Bona fide validated parking tickets must be submitted to the individual employer.

San Francisco (including Yerba Buena Island) - Due to the unique parking and congestion problems common in San Francisco, each Iron Worker working in the City of San Francisco, as defined below, shall receive $8.00 per day as a Congestion Zone Fee. The Congestion Zone Fee shall be considered travel pay and shall not be paid on days where show-up expense is paid. The City of San Francisco is defined as the city limits of San Francisco (as described by the San Francisco County Recorder's Office as of July 1, 1998), the Golden Gate Bridge in its entirety, and the west side of the San Francisco Bay Bridge up to and including Treasure Island. The Congestion Zone Fee became effective July 1, 1999. All projects bid prior to July 1, 1999 were excluded.

The first phase of the San Francisco Bay Bridge Retrofit Project shall be excluded unless bid after January 1, 2000.

The Congestion Zone Fee will not apply to work performed in a permanent yard relative to loading and unloading company equipment.

Effective January 1, 2002, the following counties shall be added to the Congestion Zone Fee: Santa Clara, Alameda and San Mateo. The Congestion Zone Fee for these counties shall be $8.00 per day. Jobs bid prior to the effective date shall be excluded.

Effective July 1, 2002, the Congestion Zone Fee for the City and County of San Francisco only shall be $10.00 per day. Jobs bid prior to January 1, 2002 shall be excluded.

Effective July 1, 2003, the Congestion Zone Fee for the City and County of San Francisco only shall be $12.00 per day. Jobs bid prior to January 1, 2002 shall be excluded.

C - Journeyman Retraining Stipend - The employer shall pay as an incentive for voluntary journeyman retraining a stipend of $50.00 for a half day and $100.00 for a full day.

D - Tolls - The individual employer shall pay all bridge and ferry tolls. Bona fide validated receipts must be submitted to the individual employer.
SECTION 9. Expenses Out of Town

A - Subsistence Pay - Where a job is located 50 miles or more from the City Hall of San Francisco, Oakland, San Jose, Sacramento, Stockton, Fresno, Bishop, Bakersfield, Eureka, Redding, Napa, Los Angeles, San Diego, San Bernardino, Ventura and El Centro of the State of California, and Reno and Las Vegas of the State of Nevada, a workman will be compensated per scheduled work day for the job, depending on the bona fide residence of the workman. Subsistence pay is determined by ascertaining the workman's bona fide residence and the city hall enumerated above which is the closest to that residence. If the job is more than 50 miles from that city hall, subsistence is owed as follows:

Fifty (50) miles to sixty (60) miles ............... $10.00
Sixty (60) miles to seventy-five (75) miles .......... $20.00
Seventy-five (75) miles to one hundred (100) miles .... $25.00
One hundred (100) miles and over ............... $75.00

If a workman chooses to relocate to another geographic jurisdiction more than 50 miles from his primary residence with the intent to work continuously within that new jurisdiction, subsistence pay will be determined by the alternate residence that the worker is residing in while performing the work.

Mileage will be the actual number of miles travelled over the most direct regularly travelled route between the job and the designated point.

When an out-of-town job is of one day's duration, a workman shall be paid travel reimbursement to and from the job. He shall not, in addition, be paid subsistence.

B - Federal Installations:

1 - In lieu of subsistence pay and travel reimbursement, the hourly wage rate will be increased by three dollars ($3.00) per hour for all work performed at the following locations:

Effective July 1, 2005, in lieu of subsistence pay and travel reimbursement, the hourly wage rate will be increased by four dollars and fifty cents ($4.50) per hour for all work performed at the following locations:

Effective July 1, 2006, in lieu of subsistence pay and travel reimbursement, the hourly wage rate will be increased by six dollars ($6.00) per hour for all work performed at the following locations:

China Lake Naval Test Station
Chocolate Mountains Naval Reserve - Niland
Edwards Air Force Base
Fort Irwin Military Station
Fort Irwin Training Center - Goldstone
San Clemente Island
San Nicholas Island
Susanville Federal Prison
29 Palms - Marine Corps
U.S. Marine Base - Barstow
U.S. Naval Air Facility - Sealey
Vandenberg Air Force Base
2 - In lieu of subsistence pay and travel reimbursement, the hourly wage rate will be increased by two dollars ($2.00) per hour for all work performed at the following locations:

Effective July 1, 2005, in lieu of subsistence pay and travel reimbursement, the hourly wage rate will be increased by three dollars ($3.00) per hour for all work performed at the following locations:

Effective July 1, 2006, in lieu of subsistence pay and travel reimbursement, the hourly wage rate will be increased by four dollars ($4.00) per hour for all work performed at the following locations:

Army Defense Language Institute - Monterey
Fallon Air Base
Naval Post Graduate School - Monterey
Yermo Marine Corps Logistics Center

3 - In lieu of subsistence pay and travel reimbursement, the hourly wage rate will be increased by one dollar ($1.00) per hour for all work performed at the following locations:

Effective July 1, 2005, in lieu of subsistence pay and travel reimbursement, the hourly wage rate will be increased by one dollar and fifty cents ($1.50) per hour for all work performed at the following locations:

Effective July 1, 2006, in lieu of subsistence pay and travel reimbursement, the hourly wage rate will be increased by two dollars ($2.00) per hour for all work performed at the following locations:

Port Hueneme
Port Mugu
United States Coast Guard Station - Two Rock

C - Travel Expense to Whom Due - When an individual employer hires workmen for a job more than 50 miles away from the City Hall in those cities listed in Paragraph A, the workmen shall be paid travel reimbursement and subsistence, in accordance with the Agreement, whether or not the job is located within another expense-free zone as provided by this Agreement. The individual employer shall pay bridge, ferry and toll road fares.

D - Travel Reimbursement - Travel reimbursement will be paid by the individual employer as follows:

Sixty (60) miles to seventy-five (75) miles . . . . . . . . $25.00
Seventy-five (75) miles to one hundred (100) miles. . . . $50.00
One hundred (100) miles and over. . . . . . . . . . . . . . . $60.00
Each additional fifty (50) miles. . . . . . . . . . . . . . . $25.00

Mileage will be the actual number of miles travelled over the most direct regularly travelled route between the job and the designated point.

Such payments shall be based on travel from the City Hall in those cities listed in Paragraph A. The workmen shall be paid a travel reimbursement at the beginning and completion of the job. This reimbursement is in addition to subsistence as provided in this Agreement.
E - Company Transportation - When safe company transportation with proper protection from the elements is provided, workmen will be paid travel reimbursement.

F - Travel Reimbursement, Job Not Continuous - If any individual employer orders the same workmen to and from the same job more than once when the job is not continuous, workmen shall be paid travel reimbursement to and from the job for each round trip except where the break in continuous employment on the job is caused by Saturdays, Sundays, holidays or weather conditions or if the workmen are provided transportation at no cost to the workmen.

I - Adjacent Job Sites - When workmen are transferred from one individual employer to another, without loss of time on same job or on an adjacent job, the original individual employer will not be required to pay the return travel reimbursement but the final individual employer will be required to pay the return travel reimbursement. The individual employer will notify the appropriate Local Union giving the names and Social Security Account numbers of workmen so transferred.
PREDETERMINED INCREASE FOR

IRON WORKER (C-20-X-1-2013-1)
IRON WORK (ORNAMENTAL, REINFORCING, STRUCTURAL)
FENCE ERECTOR

IN ALL STATEWIDE LOCALITIES

This predetermined increase for the above named craft applies only to the above referenced determination for work being performed on public works projects with bid advertisement dates on or after March 4, 2013, until this determination is superseded by a new determination or a predetermined increase modification notice becomes effective.

When referencing our prevailing wage determinations, please note that if the prevailing wage rate determination which was in effect on the bid advertisement date of a project has a single asterisk (*) after the expiration date, the rate will be good for the life of the project. However, if a prevailing wage rate determination has double asterisks (**) after the expiration date, the rate must be updated on the following date to reflect the predetermined rate change(s).

IRON WORKER (ALL CLASSIFICATIONS)
Determination C-20-X-1-2013-1 is in effect and expires on June 30, 2013**.

Effective July 1, 2013, there will be an increase of $1.00 to Pension.

Effective January 1, 2014, there will be an increase of $1.00 to be allocated to wages and/or fringe benefits.

There will be no further increases applicable to this determination.
Selecting a Subtrade (County Sheet) from the General Prevailing Wage Determinations Menu: Index 2013-1

Main menu: To select a county sheet for the subtrades, click on the drop down menu in step four and select a county.
NOTE: CCR § 16204 (b) Modification of Effective Date of Determination by Asterisks. Meaning of single and double asterisks. Prevailing wage determinations with a single asterisk (*) after the expiration date which are in effect on the date of advertisement for bids remain in effect for the life of the project. Prevailing wage determinations with double asterisks (**) after the expiration date indicate that the basic hourly wage rate, overtime and holiday pay rates, and employer payments to be paid for work performed after this date have been predetermined. If work is to extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. The contractor should contact the Prevailing Wage Unit, DLSR, or the awarding body to obtain the predetermined wage changes. All determinations that do not have double asterisks (**) after the expiration date remain in effect for the life of the project.
NOTE: CCR § 16200(a)(3)(F). Overtime. Overtime will be paid as indicated in the wage determination.

Overtime Exceptions

EXCEPTION 1: If a workweek other than Monday through Friday is a fixed business practice or is required by the awarding body, no overtime payment is required for the first eight hours on Saturday or Sunday.

EXCEPTION 2: If the collective bargaining agreement provides for Saturday and Sunday work at straight-time, no overtime payment is required for the first eight hours on Saturday or Sunday.

EXCEPTION 3: If the awarding body determines that work cannot be performed during normal business hours or work is necessary at off hours to avoid danger to life or property, then no overtime is required for the first eight hours in any calendar day, and 40 hours during any one calendar week.

EXCEPTION 4: No overtime payment is required for less than 40 hours in a standard workweek or for less than eight hours in a calendar workday unless specified in the collective bargaining agreement used as the basis for the prevailing wage determination.
Use Prevailing Wage Determination Effective on the Bid Advertisement Date

Do not use future wage determinations to figure out what the predetermined increase is for a particular craft/classification. There may be changes between determinations that are not predetermined. To obtain information on predetermined changes applicable to a particular craft/classification, please check the OPRL website at [http://www.dir.ca.gov/OPRL/PWD/](http://www.dir.ca.gov/OPRL/PWD/) or contact the Prevailing Wage Unit at (415) 703-4774.

**Figure 1:** SAC-2012-2 General Prevailing Wage Determination

**Figure 2:** SAC-2013-1 General Prevailing Wage Determination
Predetermined Increases for the Subtrades

Figure 1: Predetermined increases and effective dates of increases.

Figure 2: Footnotes to the predetermined increases specifying the breakdown, if available.
May 13, 2013

IMPORTANT NOTICE TO AWARDING BODIES AND INTERESTED PARTIES REGARDING MODIFICATIONS TO THE PREDETERMINED WAGE INCREASES IN THE DIRECTOR’S GENERAL PREVAILING WAGE DETERMINATIONS

Dear Public Official/ Other Interested Party:

CRAFT/CLASSIFICATION: Bricklayer, Blocklayer: Bricklayer, Blocklayer, Stonemason (All Shifts)

DETERMINATIONS:


ALA-2010-1, ALP-2010-1, AMA-2010-1, BUT-2010-1, CAL-2010-1, COL-2010-1, CON-2010-1, DEL-2010-1, ELD-2010-1, FRE-2010-1, GLE-2010-1, HUM-2010-1, KIN-2010-1, LAK-2010-1, LAS-2010-1, MAD-2010-1, MAR-2010-1, MAP-2010-1, MER-2010-1, MOD-2010-1, MTY-2010-1, NAP-2010-1, PLA-2010-1, PLU-2010-1, SAC-2010-1, SBE-2010-1, SFR-2010-1, SJO-2010-1, SMA-2010-1, STC-2010-1, STZ-2010-1, SHA-2010-1, SIE-2010-1, SIS-2010-1, SOL-2010-1, SON-2010-1, STA-2010-1, SUT-2010-1, TEH-2010-1, TRI-2010-1, TUO-2010-1, YOL-2010-1, YUB-2010-1

ALA-2010-2, ALP-2010-2, AMA-2010-2, BUT-2010-2, CAL-2010-2, COL-2010-2, CON-2010-2, DEL-2010-2, ELD-2010-2, FRE-2010-2, GLE-2010-2, HUM-2010-2, KIN-2010-2, LAK-2010-2, LAS-2010-2, MAD-2010-2, MAR-2010-2, MER-2010-2, MOD-2010-2, MTY-2010-2, NAP-2010-2, PLA-2010-2, PLU-2010-2, SAC-2010-2, SBE-2010-2, SFR-2010-2, SJO-2010-2, SMA-2010-2, STC-2010-2, STZ-2010-2, SHA-2010-2, SIE-2010-2, SIS-2010-2, SOL-2010-2, SON-2010-2, STA-2010-2, SUT-2010-2, TEH-2010-2, TRI-2010-2, TUO-2010-2, YOL-2010-2, YUB-2010-2


Important Notice (Page 2 of 2)
May 13, 2013
Bricklayer, Blocklayer: Bricklayer, Blocklayer, Stonemason


The predetermined wage increases have been modified as follows:

Alameda, Contra Costa, San Benito, and Santa Clara Counties
• Effective May 1, 2013, there was an increase of $1.50 allocated as follows: $0.85 to Basic Hourly Rate, $0.50 to Vacation and Holiday, $0.05 to Pension, and $0.10 to Other Payments.

Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Stanislaus, Sutter, Tehama, Tuolumne, Yolo, and Yuba Counties
• Effective May 1, 2013, there was an increase of $1.50 allocated as follows: $1.37 to Basic Hourly Rate, $0.08 to Pension, and $0.05 to Other Payments.

Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma, and Trinity Counties
• Effective May 1, 2013, there was an increase of $1.00 allocated as follows: $0.11 to Basic Hourly Rate, $0.77 to Pension, and $0.12 to Other Payments.

Fresno, Kings, Madera, Mariposa, and Merced Counties
• Effective May 1, 2013, there was an increase of $1.40 allocated as follows: $1.30 to Basic Hourly Rate, $0.04 to Pension, and $0.06 to Other Payments.

Monterey and Santa Cruz Counties
• Effective May 1, 2013, there was an increase of $1.50 allocated as follows: $1.39 to Basic Hourly Rate, $0.02 to Pension, and $0.09 to Other Payments.

With the exception of these modifications, all of the wage rates and other conditions found in the above referenced determinations remain unchanged.
IMPORTANT NOTICE TO AWARDING BODIES & ALL INTERESTED PARTIES REGARDING CHANGES TO THE DIRECTOR’S GENERAL PREVAILING WAGE DETERMINATIONS

INTERIM DETERMINATION FOR THE CRAFT OF #ELECTRICIAN: INSIDE WIREMAN AND CABLE SPLICER (ALL SHIFTS)

Issue Date: April 8, 2013
Expiration date of Determination: May 31, 2013** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director- Research Unit for specific rates at (415) 703-4774.


Locality: All localities within Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra(portion of County West of the Main Sierra Mountain Watershed), Sutter, Tehama, Trinity, Yolo, and Yuba Counties

<table>
<thead>
<tr>
<th>CLASSIFICATION (Journeyperson)</th>
<th>Employer Payments</th>
<th>Straight-time</th>
<th>Overtime Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Basic Hourly Rate</td>
<td>Health and Welfare</td>
<td>Pension</td>
</tr>
<tr>
<td>Inside Wireman</td>
<td>$38.93</td>
<td>10.63</td>
<td>4.50</td>
</tr>
<tr>
<td>Inside Wireman, Second Shift</td>
<td>$45.67</td>
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<td>4.50</td>
</tr>
<tr>
<td>Inside Wireman, Third Shift</td>
<td>$51.15</td>
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<tr>
<td>Cable Splicer</td>
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<tr>
<td>Cable Splicer, Second Shift</td>
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<tr>
<td>Cable Splicer, Third Shift</td>
<td>$56.27</td>
<td>10.63</td>
<td>4.50</td>
</tr>
</tbody>
</table>

#Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @ http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp. To obtain any apprentice wage rates as of July 1, 2008 and prior to September 27, 2012, please contact the Division of Apprenticeship Standards or refer to the Division of Apprenticeship Standards' website at http://www.dir.ca.gov/das/das.html.

a In addition, an amount equal to 3% of the Basic Hourly Rate is added to the total hourly rate and overtime hourly rates for the National Employees Benefit Board.

b Included in Straight-Time Hourly Rate.

c In addition, an amount equal to 1.6% of the basic hourly rate, which is factored at the applicable overtime multiplier, is added to the total hourly rate and overtime hourly rates for the contract administration fund.
**Effective June 1, 2013**, there will be an increase of $0.50 to Health and Welfare and $0.01 to Contract Administration. There will be a re-allocation of $0.13 from Training to the Basic Hourly Rate and a reduction of $0.25 from Other (LMCT).

**Effective December 1, 2013** there will be an increase of $0.50 to be allocated to wages and/or fringes.

There are no further increases applicable to this determination.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at [http://www.dir.ca.gov/OPRL/PWD](http://www.dir.ca.gov/OPRL/PWD). Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at [http://www.dir.ca.gov/OPRL/PWD](http://www.dir.ca.gov/OPRL/PWD). Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.
Selecting Shift Rates for Subtrades from the General Prevailing Wage Determinations Menu

Main menu: To select shift rates, click on the drop down menu in step five and select a county.

SAC-2013-1 Prevailing Wage Determination for Shift Rates
SHIFT PROVISIONS

FOR

ELECTRICIAN:
INSIDE WIREMAN, 2\textsuperscript{ND} SHIFT
INSIDE WIREMAN, 3\textsuperscript{RD} SHIFT
CABLE SPLICER, 2\textsuperscript{ND} SHIFT
CABLE SPLICER, 3\textsuperscript{RD} SHIFT

IN

ALPINE, AMADOR, BUTTE, COLUSA, EL DORADO, GLENN, LASSEN, NEVADA, PLACER, PLUMAS, SACRAMENTO, SHASTA, SIERRA\textsuperscript{1}, SUTTER, TEHAMA, TRINITY, YOLO, AND YUBA COUNTIES

\textsuperscript{1} Applies to portion of county lying west of the main watershed divide.

Note: The shift provisions provided in the following pages provide guidance on the work hours that are applicable to each shift. Shift differential pay is required and will be enforced during each applicable shift where shift differential pay is in the determinations. Any shift provision restricting the work hours for a particular shift for a type of work will not be enforced on public works. However, if work is performed during hours typically associated with a 2\textsuperscript{nd} or 3\textsuperscript{rd} shift the appropriate shift rate of pay is required. Shift differential pay shall not apply to work during traditional shift hour (swing or grave) if the determination includes a footnote that indicates that the non-shift rate may be paid for a special single shift. Please note the exemptions in California Code of Regulations Section 16200 (a)(3)(F) do not waive the shift differential pay. These regulatory exemptions only apply to overtime pay. Overtime shall be required in accordance with the determination and Labor Code Section 1810 through 1815.
SHIFT PROVISIONS

FOR

ELECTRICIAN:
INSIDE WIREMAN, 2ND SHIFT
INSIDE WIREMAN, 3RD SHIFT
CABLE SPLICER, 2ND SHIFT
CABLE SPLICER, 3RD SHIFT

IN

ALPINE, AMADOR, BUTTE, COLUSA, EL DORADO, GLENN, LASSEN, NEVADA, PLACER, PLUMAS, SACRAMENTO, SHASTA, SIERRA\(^1\), SUTTER, TEHAMA, TRINITY, YOLO, AND YUBA COUNTIES

\(^1\) Applies to portion of county lying west of the main watershed divide.

Note: The shift provisions provided in the following pages provide guidance on the work hours that are applicable to each shift. Shift differential pay is required and will be enforced during each applicable shift where shift differential pay is in the determinations. Any shift provision restricting the work hours for a particular shift for a type of work will not be enforced on public works. However, if work is performed during hours typically associated with a 2nd or 3rd shift the appropriate shift rate of pay is required. Shift differential pay shall not apply to work during traditional shift hour (swing or grave) if the determination includes a footnote that indicates that the non-shift rate may be paid for a special single shift. Please note the exemptions in California Code of Regulations Section 16200 (a)(3)(F) do not waive the shift differential pay. These regulatory exemptions only apply to overtime pay. Overtime shall be required in accordance with the determination and Labor Code Section 1810 through 1815.
Expiration date of Agreement shall be May 31, 2012.

A.C. Steelman  
IBEW Business Manager  
Date: 1-14-09

Fran McDermott  
NECA Chapter Manager  
Date: 1-14-09
TO: All Employers signatory to Local 340’s Inside Wireman’s Agreement

RE: Deletion of Article III.10 & Article III.10(A) of the current Inside Wireman’s Agreement

Please be advised the above listed Articles of the current Inside Wireman’s Agreement between IBEW Local 340 and NECA have been deleted from said agreement. The deleted articles read as follows:

"III.10 The Employer shall have the option of establishing a four-day, ten-hour shift in the following manner: Monday through Thursday or Tuesday through Friday:
(a) The Employer, with 72 hours prior notice to the Union, and Employees may institute a workweek consisting of four (4) consecutive ten (10) hour days, subject to approval by the Business Manager, between the hours of 6:00 AM and 6:00 PM, Monday through Thursday or Tuesday through Friday with one-half hour allowed for a lunch period. After ten hours in a workday, overtime shall be paid at the rate of one and one-half times the regular rate of pay, except Sundays and Holidays which will be paid at double the straight time rate of pay.
(b) On Projects, which require four ten hour days on Saturdays, Sundays or Holidays, the Employer is required to contact the Business Manager for approval on a job-by-job basis.

III.10 (A) MAINTENANCE AND RENOVATIONS SHIFT PROVISION
In situations where work is to be performed in existing occupied facilities and the Employer’s customer determines that it is impractical for work to proceed during regular working hours, then by mutual Agreement between the parties (SECA and IBEW), the Employees will be requested to work any eight consecutive hours in a 24-hour period as follows. The Employer may schedule eight consecutive hours of work with a 30-minute lunch break after the first four hours of work, between the hours of 4:30 PM and 8:00 AM, Monday through Friday at the straight time rate of pay for all hours worked.

Any hours worked under this section in excess of the scheduled eight hours in a day or forty hours in a week, shall be paid at one and one-half times the shift rate of pay. Any work performed on Sundays and Holidays shall be paid at double the regular straight time rate of pay."

We believe these changes will lead to a more level playing field for all of our employers. Please call us if you have any questions or concerns.

Sincerely,

A.C. Steelman
Business Manager - IBEW 340

Fran McDermott
Sacto. Chapter Manager - NECA

ACS-FM / pp opelu #29 aft-clio

June 20, 2013

ACPWA/FFC Prevailing Wage/Labor Compliance Seminar 65 of 212
III.10 SHIFT WORK
When so elected by the contractor, multiple shifts of eight (8) hours for at least five (5) days’ duration may be worked. When two (2) or three (3) shifts are worked:

The first shift (day shift) shall consist of eight (8) consecutive hours worked between the hours of 8:00 A.M. and 4:30 P.M. Workmen on the "day shift" shall be paid at the regular hourly rate of pay for all hours worked.

The second shift (swing shift) shall consist of eight (8) consecutive hours worked between the hours of 4:30 P.M. and 1:00 A.M. Workmen on the "swing shift" shall be paid at the regular hourly rate of pay plus 17.3% for all hours worked.

The third shift (graveyard shift) shall consist of eight (8) consecutive hours worked between the hours of 12:30 A.M. and 9:00 A.M. Workmen on the "graveyard shift" shall be paid at the regular hourly rate of pay plus 31.4% for all hours worked.

The Employer shall be permitted to adjust the starting hours of the shift by up to two (2) hours in order to meet the needs of the customer.

If the parties to the Agreement mutually agree, the shift week may commence with the third shift (graveyard shift) at 12:30 A.M. Monday to coordinate the work with the customer’s work schedule. However, any such adjustment shall last for at least five (5) consecutive days’ duration unless mutually changed by the parties to this agreement.

Sacramento Electrical Contractors Association, Inc.          Local Union No. 340, IBEW

Fran McDermott, Chapter Manager                       A. C. Steelman, Business Manager

DATE: 7-29-08                                               DATE: 7-29-08

AC-FM/pp opelu #29 afl-clo
INSIDE WIREMAN'S AGREEMENT

Agreement by and between SACRAMENTO ELECTRICAL CONTRACTOR'S ASSOCIATION, INC. and LOCAL UNION NO. 340, I.B.E.W.

June 20, 2013

ACPWA/FFC
Prevailing Wage/Labor Compliance Seminar
June 20, 2013

67 of 212
III.10 (B) SHIFT WORK
When so elected by the Employer, multiple shifts of at least five (5) days duration may be worked. When two (2) of three (3) shifts are worked:

The first shift (day shift) shall be worked between the hours of 8:00 AM and 4:30 PM. Employees on the day shift shall receive eight (8) hours' pay at the regular hourly rate for eight (8) hours' work.

The second shift (swing shift) shall be worked between the hours of 4:30 PM and 12:30 AM. Employees on the “swing shift” shall receive eight (8) hours' pay at the regular hourly rate plus 10% for seven and one-half (7 1/2) hours' work, with eight (8) hours of benefits paid when a full shift has been worked.

The third shift (graveyard shift) shall be worked between the hours of 12:30 AM and 8:00 AM. Employees on the “graveyard shift” shall receive eight (8) hours' pay at the regular hourly rate plus 15% for seven (7) hours' work, with eight (8) hours of benefits paid when a full shift has been worked.

A lunch period of thirty (30) minutes shall be allowed on each shift. All overtime work required after the completion of a regular shift shall be paid at one and one-half (1 1/2) times the “shift” hourly rate.

There shall be no pyramiding of overtime rates and double the straight time rate shall be the maximum compensation for any hour worked.

There shall be no requirement for a day shift when either the second or third shift is worked.
The current apprentice wage rates are available on the Internet at http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp.

To obtain any apprentice wage rates as of July 1, 2008 and prior to September 27, 2012, please contact the Division of Apprenticeship Standards or refer to the Division of Apprenticeship Standards' website at http://www.dir.ca.gov/das/das.html.
Apprentice Determinations

To find the prevailing wage rates for projects advertised for bids on or after September 27, 2012 (issued September 17, 2012 – Effective September 27, 2012), enter the wage determination period and the county. This links you to a list of occupations where you can make your selection. For apprentice prevailing wage rates for projects advertised for bids prior to September 27, 2012, please contact the Division of Apprenticeship Standards or refer to the Division of Apprenticeship Standards' website at http://www.dir.ca.gov/standards.html.

This list is limited to apprenticeship wage information that has already been published. If you do not find the information for your area, please contact the Office of the Director – Research Unit at 415-703-4774.

Wage determination period: 2013-1
County: Alameda

Status | Occupation
---|---
View | Asbestos Worker, Heat and Frost Insulator
View | Boilermaker- Blacksmith
View | Bricklayer
View | Painter, Caulker and Cleaner
Special Determinations – Not Published in the General Prevailing Wage Determinations

CCR§ 16202(a). Special Determinations. Awarding body request. The awarding body shall request the Director to make a determination for a particular craft, classification or type of worker not covered by a general determination. Any such request shall be submitted at least 45 days prior to the bid advertisement date.

Residential Prevailing Wage Determinations – Available on OPRL Webpage
Director’s Residential Prevailing Wage Determinations Menu
Petition to Review

Labor Code § 1773.4. Procedure for review of rates

Any prospective bidder or his representative, any representative of any craft, classification or type of workman involved, or the awarding body may, within 20 days after commencement of advertising of the call for bids by the awarding body, file with the Director of Industrial Relations a verified petition to review the determination of any such rate or rates upon the ground that they have not been determined in accordance with the provision of Section 1773 of this code. Within two days thereafter, a copy of such petition shall be filed with the awarding body. The petition shall set forth the facts upon which it is based. The Director of Industrial Relations or his authorized representative shall, upon notice to the petitioner, the awarding body and such other persons as he deems proper, including the recognized collective bargaining representatives for the particular crafts, classifications or types of work involved, institute an investigation or hold a hearing. Within 20 days after the filing of such petition, or within such longer period as agreed upon by the director, the awarding body, and all the interested parties, he shall make a determination and transmit the same in writing to the awarding body and to the interested parties.

Such determination shall be final and shall be the determination of the awarding body. Upon receipt by it of the notice of the filing of such petition the body awarding the contract or authorizing the public work shall extend the closing date for the submission of bids or the starting of work until five days after the determination of the general prevailing rates of per diem wages pursuant to this section.

Upon the filing of any such petition, notice thereof shall be set forth in the next and all subsequent publications by the awarding body of the call for bids. No other notice need be given to bidders by the awarding body by publication or otherwise. The determination of the director shall be included in the contract.


Those interested parties enumerated in Section 1773.4 of the Labor Code, and defined in Section 16000 of these regulations, may file with the Director or the Chief of DLSR, within 20 days after commencement of advertising of a call for bids by any awarding body, a petition to review a determination of any rate or rates made by the Director, pursuant to Section 1773 of the Labor Code, which is specified in or referred to in the call for bids.

(a) Manner of Filing. Every petition filed pursuant to Section 1773.4 of the Labor Code shall be filed with the Director by mail to the Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, or may be filed in person at 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102.

(b) Filing. Where any paper, letter, petition, or document is required or permitted to be filed pursuant to these regulations or pursuant to the prevailing wage provisions of the Labor Code, it shall be deemed filed with any person, awarding body or division upon actual delivery to and receipt by such person, awarding body, or division.

(c) Content of Petition. Every petition filed pursuant to Section 1773.4 of the Labor Code shall contain and separately state the following:
(1) The name, address, telephone number and job title of:
   (A) the person filing the petition;
   (B) the person verifying the petition, if different from the person filing;
   (C) if applicable, petitioner's attorney or authorized representative.
(2) Whether the petitioner is an awarding body, a prospective bidder, or the representative of one or more crafts, classifications or types of workers involved in the public works contract;
(3) The nature of petitioner's business, if a prospective bidder, and a designation of each craft, classification, or type of worker represented, or types of workers involved in the public works project.
(4) (A) the official name of the awarding body;
   (B) the date on which the call for bids was first published;
   (C) the name and location of the newspaper in which such publication was made. An accurate copy of the call for bids as published shall be attached to the petition.
(5) If petitioner is an awarding body which is a department, board, authority or political subdivision other than a county, city and county, city, township, or regional district, the awarding body shall describe the parent or principal organization of which it is a part, and shall specify the statutory authority for undertaking public works.
(6) If the petitioner is a prospective bidder, then the parent or subsidiary corporations or associations related to such craft, classification or type of work, if any, shall be specified.
(7) The manner in which the wage rate determined by the Director fails to comply with the provisions of Labor Code Section 1773.

   (A) Every petition asserting that the applicable prevailing rate for one or more crafts, classifications or types of workers needed to execute a contract is different from that ascertained by the Director shall set forth the rate the petitioner claims to be correct for each disputed rate, together with specific reference to particular facts providing the basis for such claim.
   1. Whenever such facts relate to a particular employer of such crafts, classifications, or types of workers, the facts stated must identify the employer by name and address and give the number of workers involved.
   2. Whenever such facts relate to an applicable collective bargaining agreement which the petitioner alleges was not considered by the Director pursuant to Section 1773 of the Labor Code, a copy of the agreement, if not already filed with the Director, should be filed concurrently with the petition in the manner provided in Section 16200(a)(1) of these regulations.
   3. Whenever such facts relate to rates actually paid on public or private projects under construction or recently completed in the locality and in the nearest labor market area, the facts stated should include all of the items of information enumerated in Section 16200(e) of these regulations.
   (B) Every petition asserting that the Director has failed to ascertain and consider all applicable rates required to be considered by it shall specifically state in the petition which rates have not been considered by the Director.
   (C) Where rates ascertained by the Director are the same as the applicable rates established by the collective bargaining agreement and rates of pay determined for federal public works within the locality and the nearest labor market area where the public work is performed, the petition shall specifically describe the manner and extent to which such rates do not constitute the rates actually prevailing in the locality where the public work is to be performed, and shall set forth and fully identify the existence of any rates asserted by petitioner to be prevailing in the locality and relied upon in support of the petition.
(d) Filing Copy With Awarding Body. If the petitioner is not an awarding body, the petitioner may concurrently with the filing of the original petition, or otherwise shall within two days thereafter, excluding Saturdays, Sundays and holidays, file a copy of the petition with the awarding body and not later than five days, excluding Saturdays, Sundays and holidays, after the filing of the original petition, the petitioner shall file with the Chief of DLSR an affidavit of the filing with the awarding body. The Director may waive this requirement upon receipt of written confirmation, including a copy of such notification by the petitioner.
TELEPHONE NUMBERS
AND INTERNET ADDRESSES

OFFICE OF POLICY, RESEARCH AND LEGISLATION (OPRL) -

PREVAILING WAGE HOTLINE: (415) 703-4774
FAX NUMBER: (415) 703-4771

DEPARTMENT OF INDUSTRIAL RELATIONS WEBSITE:
http://www.dir.ca.gov

PREVAILING WAGE DETERMINATIONS (JOURNEYMAN):
http://www.dir.ca.gov/oprl/DPreWageDetermination.htm

PREVAILING WAGE DETERMINATIONS (APPRENTICE):
http://www.dir.ca.gov/oprl/pwappwage/PWAppWageStart.asp

RESIDENTIAL PREVAILING WAGE DETERMINATIONS:
http://www.dir.ca.gov/oprl/Residential/reslist.html

IMPORTANT NOTICES:
www.dir.ca.gov/OPRL/NoticeIndex.htm

PUBLIC WORKS COVERAGE DETERMINATIONS:
www.dir.ca.gov/OPRL/PubWorkDecision.htm
Christine Baker  
Director

Christine has an extensive background and a keen understanding of California workers’ compensation, having served as the Chief of the Division of Labor Statistics and Research, the Deputy Director for the Division of Workers’ Compensation, and as the Executive Officer of the California Commission on Health and Safety and Workers’ Compensation from its inception in 1994 until April of this year. She also serves on the Executive Committee of the International Association of Accident Boards and Commissions (IAIABC), the Board of Directors of the National Academy of Social Insurance, the Insurance Commissioner’s Fraud Task Force, and she has chaired the Commissioner’s Workers’ Compensation Fraud Focus Group and the Advisory Committee of the International Forum on Disability Management for 2010.

Ms. Baker holds a Masters Degree from the University of California, Berkeley School of Education.

Department of Industrial Relations
David Cross is a public works attorney in the DLSE Sacramento office. He attended U.C. Davis law school and is a member of the employment law section of the State Bar of California. David currently is the DLSE attorney responsible for prosecuting debarment actions under the Labor Code.
California’s Prevailing Wage System – An Overview from the Perspective of the Division of Labor Standards Enforcement.

Who does the law protect?

A. All “workers” employed on Public Works (Labor Code §1771) (includes employees, independent contractors, partners, sole proprietor, owner-operators)

B. “Public Works” defined
   1. Labor Code §§1720-1720.3
   2. Posted Public Works coverage determinations

C. Limited Exemptions
   1. Work carried out by a public agency “with its own forces” (Labor Code §1771)
   2. Certain janitorial services/guards (8 CCR 16000)

What must Public Works contractors do to comply with the law?

A. Maintain and furnish records (Labor Code §1776)

B. Pay the prevailing rate to all workers (Labor Code §§1771, 1774 and 1813)

C. Comply with apprenticeship requirements (Labor Code §1777.5)

What is the prevailing wage rate?

A. Published prevailing wage determinations

B. Process by which prevailing wage rates are established (Labor Code §§1773.1 and 1773.9; 8 CCR §§16200-16300)

How does DLSE enforce the law?

A. Conduct investigations
   1. Investigate complaints from workers, monitoring agencies, contractors and awarding bodies
   2. Obtain relevant documents (certified payroll records, contract documents, inspector logs, prevailing wage determinations, bond information)
   3. Prepare audits and findings

B. Issue and serve civil wage and penalty assessments (“CWPAs”) (Labor Code §1741)

C. Defend CWPAs in administrative review proceedings and in court (Labor Code §§1742-1743; 8 CCR 17201-17270)

D. Collect and disburse wages and penalties (Labor Code §1743)

E. Debarment proceedings (Labor Code §1777.1)

F. Labor Commissioner approval of forfeiture requests from approved labor compliance programs (8 CCR 16437)

G. Compliance Monitoring Unit (CMU)

Note: All of the citations to the Labor Code sections and the California Code of Regulations (CCR) noted above are available by accessing the California Department of Industrial Relations Home Page (www.dir.ca.gov) and links to that page. The web site also includes the public works coverage determinations, the prevailing wage determinations and the public works manual.
How do I respond to requests for CPRs?

A. Responding to inspection requests: where and when (Labor Code §1776(a)-(c))

1. From employee or authorized representative, awarding body, DSLSE or DAS: furnished or available for inspection at principal office of contractor, upon request, at all reasonable hours
2. From the public: no public access to records at contractor’s office; request must be made through awarding body, DLSE or DAS

B. Responding to requests for copies: how and when (Labor Code §1776(a)-(e))

1. Contractor has ten working days after receipt of written request to file CPRs with public entity making request
2. Redaction of personal information from CPRs furnished to the public (Labor Code §1776e)
3. Regulations apply to requests for inspection or copies made through awarding body, DLSE or DAS (8 CCR 16400-16403)
4. Limited reimbursement for costs (Labor Code §1776(b) (3); 8 CCR 16402)

C. How long should I keep CRPs?

1. No specific retention period stated in Public Works chapter of Labor Code (Labor code §§1720-1861)
2. Itemized statements under Labor Code §226(a) must be kept by employers for at least three years
3. DLSE recommendation: keep CPRs for at least five years after cessation of labor on a Public Works project

What Are Certified Payroll Records, Why Should I care and How Do I Respond to Requests for These Records?

What are “Certified Payroll Records” (“CPRs”)?

A. “Payroll Records” defined

1. Statutory definition: name, address, SS#, work classification, straight time and overtime hours worked by day and week, actual wages paid (Labor Code §1776(a) and Labor Code §1812)
2. Regulatory definition: all inclusive; anything having anything to do with job assignments, work schedules and wage/benefit disbursements (8 CCR 16000)
3. Includes itemized statements (aka check stubs) under Labor Code §226(a)
B. “Certified” defined

1. Legal definition: “to authenticate or verify in writing” (Black’s Law Dictionary, 7th ed)
2. Statutory definition: written declaration contained in records is true and correct (Labor Code §1776(a) (1))
3. Regulatory definition: 8 CCR 16000
4. DIR Form (8 CCR 16401(b))

C. How to maintain CPRs: DIR makes it easy?

1. DIR Form A-1-131 (8CCR 16401(a))
2. Statement of employer payments to obtain credit for fringe benefit disbursements (DLSE Form PW 26)

Why should I care?

A. Statutory penalties for non-compliance

1. Labor Code §1776(g): $100.00 per calendar day per worker until strict compliance
2. Labor Code §1777: Misdemeanor
3. Labor Code §1814: Misdemeanor
4. Labor Code §1777.1: Debarment

B. Withholding of contract payments

1. Labor Code §1726(b) and Labor Code §1776(g): awarding body withholds statutory penalties from contractor
2. Labor Code §1771.5(b) (5): awarding body with Labor Compliance Program withholds contract payments when CPRs delinquent or inadequate

C. Contractors who fail to comply may be unable to prove workers were paid prevailing wage

1. Labor Code §1742(b): burden to prove prevailing wages were paid effectively falls on contractors
3. Labor Code §1743(a): joint and several liability of contractor/subcontractor for prevailing wage deficiencies, penalties and liquidated damages

D. Statutory incentive for prime contractors to obtain and review CPRs from all subcontractors (Labor Code §1775(b) (2)}
Taking Proper credit for Fringe Benefit Payments

A. Labor Code §1773.1(a) identifies nine types of “Employer Payments” which are entitled to “credit” against obligation of contractors to pay prevailing rate of wages

B. Typical Examples of Authorized “Employer payment”:

1. Health insurance premiums paid by employer
2. Pension plan contributions paid by employer
3. Vacation plan contributions paid by employer

C. “Employer Payments” Defined: Labor Code §1733.1(b)

1. Rate of contributions irrevocably made by employer to trustee pursuant to plan
2. Rate of actual costs to employer to provide benefits to workers pursuant to “enforceable commitment” to carry out “financially responsible” plan communicated in writing to workers
3. Payments to California Apprenticeship Council pursuant to Labor Code §1777.5

D. No credit for employer payments required to be provided by other state or federal law (e.g. employer payments to EDD for unemployment benefits) (Labor Code §1773.1(c)

E. Credit for “Employer Payments” cannot reduce contractor’s obligation to pay workers “basic hourly rate” shown on applicable prevailing wage determination issued by Director (Labor Code §1773.1(c)

F. “Annualized Basis” required if contractor seeks credit for employer payments that are higher for Public Works projects than for private construction (Labor Code § 1773.1(d))

2. Sample annualized credit calculation under federal guidelines: divide total employer contributions for year by total number of hours worked on all projects, public or private, for maximum hourly rate of credit available
3. DLSE annualization calculation is explained at p.43 of the Public Works manual

G. Contractors may choose to pay any or all “Employer Payment” amounts identified on applicable prevailing wage determination issued by director as hourly wages to workers (WSB Electric, Inc. v Curry 88 F.3d 788 (9th Cir. 1996))

1. Caution: Enforceable contractual agreements entered into by contractor may require that certain contributions be made to specified plans
2. Exception: “Training” amounts identified on applicable prevailing wage determination must generally be paid to California Apprenticeship Council or an eligible, DAS-approved apprenticeship program, not to workers (Labor code §1777.5(m) (1))
Review Proceedings

Administrative Review of CWPAs.

Labor Code § 1742 provides contractors served with a CWPA an opportunity to timely request administrative review of the monetary assessment. If no hearing is requested “within 60 days after service,” the CWPA becomes final (Labor Code § 1742 (a)), and enables DLSE to either obtain contract funds withheld by the awarding body or, if insufficient funds have been retained, to enter a court judgment against the contractors served, without the necessity of an administrative hearing and without filing a lawsuit. (Labor Code §§ 1742(d) and (e)). If any of the contractors served with the CWPA do timely transmit a written request of a review hearing, a hearing will be provided by the DIR before the assessment can become a final order. (Labor Code § 1742(b)). The administrative review process involves several different participants from DLSE and DIR, and their respective roles follow.

Role of DIR / OD-Legal.

The Director, currently through the Office of the Director’s Legal Unit, is responsible under Labor Code § 1742(b) to both hold an administrative review hearing in accordance with the procedures established under the Prevailing Wage Hearing Regulations found at 8 CCR §§ 17201-17270, and “issue a written decision affirming, modifying, or dismissing the assessment.” The hearing process is required to be fair and impartial, and the findings in the written decision “must be supported by substantial evidence in the light of the whole record.” The proceedings must provide affected contractors with the protections of due process. To guarantee due process, affected contractors are specifically provided with an opportunity to obtain court review of any written decision by filing a writ under Code of Civil Procedure 1094.5 (Labor Code § 1742(c)).

Prevailing Wage Hearing Regulations.

The regulations which are in effect during the entire period after a contractor files a request for a review hearing and until those proceedings conclude, either by dismissal of the proceedings by the hearing officer (generally, because of settlement) or on the date which a written decision signed by the Director affirming, modifying, or dismissing the assessment becomes final, are found at 8 CCR §§ 17201-17270.

Settlement Meetings and Settlements.

Labor Code § 1742.1, in addition to providing the availability of liquidated damages (an amount equal to the wages covered by the CWPA if those wages remain unpaid 60 days after service of the CWPA), requires that contractors served with a CWPA be afforded an opportunity to meet to attempt to settle any dispute regarding the assessment, if such a request is made by the contractor within 30 days following service. The CWPA form (at page 3) identifies the investigator who issued the CWPA as the person to contact to arrange a settlement meeting. The meeting may be held by phone or in person, and nothing said in the meeting is either subject to discovery, or admissible as evidence, in any administrative or civil proceeding.
Liquidated Damages.

A contractor may avoid liability for liquidated damages by depositing with the DIR the full amount of the assessment (Labor Code § 1742.1(b)). The contractor should be directed to submit a letter, a copy of the CWPA, along with a check or money order made payable to the Department of Industrial Relations, Attention: Cashiering unit, P.O. Box 420603, San Francisco, CA 94142. In lieu of a cash deposit, the contractor may post an undertaking with DIR in the full amount of the CWPA. The undertaking shall be on the condition that, if any decision is issued by the Director upholding the CWPA, the contractor shall pay the amount owed pursuant to the decision the date the decision is final unless the parties have executed a settlement agreement for another amount. If the contractor fails to pay the amount owed within 10 days of the decision date or the execution of the settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, is forfeited to satisfy the amounts owed under the CWPA. The DIR will hold the deposit or undertaking until the administrative and judicial review is complete. The DIR will disburse the funds pursuant to instructions provided by the parties.

CWPAs Which Become Final / Collection from Awarding Body / Judgments.

Labor Code § 1742(a) provides that a CWPA becomes “final” if no review hearing has been requested within 60 days after service. CWPAs that have become final may be submitted to the awarding body withholding contract funds under that CWPA to obtain the amounts due. Labor Code § 1742(f). If funds are not available from the awarding body, DLSE counsel may request entry of judgment in the Superior Court in any county in which the affected contractors have property or a place of business. (Labor Code § 1742(d)).

Debarment.

Labor Code § 1777.1 authorizes the Labor Commissioner to seek an order of debarment against contractors, subcontractors, and specific individuals identified (Labor Code § 1777.1) who have been found to: (1) be in violation of the prevailing wage laws with an “intent to defraud,” (2) have committed recurring “willful violations” within three years of a separate and previous willful violation, or (3) failed to prove a timely response to a request to produce certified payroll records pursuant to Labor Code §1776. Those terms are expressly defined in the statute or regulations promulgated there under. (8 CCR § 16800 and LC § 1777.1 (e), respectively). The period of debarment is from one to three years, and prohibits contractors or individuals subject to a debarment order from either bidding on or being awarded a contract for a public works project, or performing work as a subcontractor on any public works project. (Labor Code § 1777.1(a) and (b). The procedures DLSE must follow in initiating a debarment proceeding and obtaining an order of debarment are set forth in regulations duly promulgated by the Labor Commissioner and found at 8 CCR §§ 16800-16802.

Debarment Investigations.

The DLSE conducts investigations to determine if a contractor, subcontractor, or individual has committed violations of the prevailing wage laws which authorize the debarment remedy. Generally, the investigations are based upon the facts and circumstances discovered in prior DLSE investigations which resulted in the issuance and service of CWPAs. However, DLSE may also conduct debarment investigations resulting from complaints filed by any “person” as that term is defined at 8 CCR 16800.
Posting of Debarment Orders.

A list of contractors, subcontractors, or individuals which are debarred, the period of debarment and the identity of the entities and persons subject to the debarment order are posted on DLSE’s website for the duration of the debarment.
CIVIL WAGE AND PENALTY ASSESSMENT

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<tr>
<th>Awarding Body</th>
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<td>San Joaquin Delta College Cunningham Science and Math Replacement</td>
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<tr>
<th>Subcontractor</th>
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<tr>
<td>Nicodema Plumbing &amp; Mechanical, A California Corporation</td>
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</table>

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

- Violated California Labor Code Section 1774 for failure to pay the correct prevailing wage pursuant to the General Prevailing Wage Determination SJO-2009-2 for the classification of Plumber, Wage Determination C-20-X-1-2009-1 for the classification of Iron Worker Welder. Training Fund Contributions were not paid in full in violation of Labor Code Section 1777.5.

The attached Audit Summary further itemizes the calculation of wages due and penalties under Labor Code sections 1775 and 1813.

The Division has determined that the total amount of wages due is: $858,840.20

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: $230,050.00

The Division has determined that the amount of penalties assessed against Nicodema Plumbing & Mechanical, A California Corporation under Labor Code section 1776 is: $0.00

Please refer to page 5 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By

Jerry McClain
Auditor

PW: 33 (Issued: 12/008)
Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment. To obtain a hearing, a written Request for Review must be transmitted to the following address:

Labor Commissioner, State of California
Civil Wage and Penalty Assessment Review Office
2031 Howe Ave., Suite 100
Sacramento, CA 95825

A Request for Review either shall clearly identify the Civil Wage and Penalty Assessment from which review is sought, including the date of the assessment, or it shall include a copy of the assessment as an attachment, and shall also set forth the basis upon which the assessment is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written Request for Review.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

(continued on next page)
Opportunity for Settlement Meeting

In accordance with Labor Code section 1742.1(c), the Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Civil Wage and Penalty Assessment, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is in addition to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written Request for Review has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this assessment must be transmitted to Jerry McClain at the following address: 2031 Howe Ave., Ste. 100
Sacramento, CA 95825

Liquidated Damages

In accordance with Labor Code section 1742.1(a), after 60 days following the service of this Civil Wage and Penalty Assessment, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the assessment subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

(continued on next page)
Notwithstanding the above, in accordance with Labor Code 1742.1(b), there shall be no liability of liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Civil Wage and Penalty Assessment and mailed to:

Department of Industrial Relations
Attention Cashiering Unit
P.O. Box 420603
San Francisco, CA 94142

The Amount of Liquidated Damages Available Under this Assessment is $858,840.20

(continued on next page)
Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

- Wages Due: $858,840.20
- Penalties Due Under Labor Code sections 1775 and 1813: $230,050.00
- Penalties Due Under Labor Code sections 1776: $0.00
- Total Withholding Amount: $1,088,890.20

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

X If this box is checked, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

- Wages Due: $858,840.20
- Penalties Due Under Labor Code sections 1775 and 1813: $230,050.00
- Penalties Due Under Labor Code sections 1776: $0.00
- Total Withholding Amount: $1,088,890.20

Distribution:

Awarding Body
Surety(s) on Bond
Prime Contractor
Subcontractor
| EMPLOYEE | CLASSIFICATION | PERIOD WORKED | HOURS WORKED | OVERTIME | OTHER WAGES | TOTAL WAGES PAID | PREVAILING WAGE REQUIREMENTS TOTAL WAGES | AMOUNT OWING AND UNPAID PENALTIES | PENALTIES NO. 2 PENALTIES TRN. FUND TOTAL AMOUNT DUE |
|----------|----------------|--------------|--------------|-----------|-------------|------------------|----------------------------------------|----------------------------------|----------------------------------|---------------------------------|-----------------------------------|
| Villa, Ricardo | Plumber | 09/07/11-09/10/11 | 72 18 0 | 0.00 | 607.40 | 138.60 | 5566.14 | 4758.74 | 450.00 | 225.00 | 109.00 | 5541.74 |
| Barajas, Salvador | Plumber | 01/07/12-03/12 | 204 104 0 | 0.00 | 290.90 | 765.15 | 3032.92 | 1302.62 | 2500.00 | 575.00 | 595.60 | 5013.22 |
| Barrera, Robert | Apprentice 2 | 03/03/12-03/17/12 | 206 0 0 | 0.00 | 3853.76 | 375.39 | 10825.04 | 6971.28 | 2000.00 | 0.00 | 533.60 | 9504.88 |
| Baez, Michael | Plumber | 03/12/12-03/17/12 | 288 95 0 | 0.00 | 22564.86 | 601.31 | 24041.60 | 1076.94 | 1050.00 | 375.00 | 455.60 | 2961.54 |
| Bowen, Shawn | Plumber | 11/05/11-12/17/11 | 75 0 0 | 0.00 | 4168.60 | 114.00 | 4365.00 | 195.50 | 500.00 | 0.00 | 90.00 | 786.50 |
| Boyce, Nicholas | Apprentice 1 | 06/26/10-09/14/10 | 159 8 0 | 0.00 | 4556.28 | 169.32 | 4315.88 | 0.00 | 0.00 | 0.00 | 240.70 | 240.70 |
| Bredon, Boyd | Plumber | 03/05/11-09/03/11 | 495 30 0 | 0.00 | 30137.38 | 784.32 | 29850.80 | 0.00 | 0.00 | 0.00 | 514.20 | 514.20 |
| Briones-Venegas, Miguel | Plumber | 03/29/11-03/31/11 | 824 206 0 | 0.00 | 0.00 | 1565.60 | 6357.50 | 6357.50 | 5150.00 | 2675.00 | 1076.50 | 73231.00 |
| Dean, Joseph | Welder | 08/06/11-08/05/12 | 1451 6 0 | 0.00 | 60627.41 | 6163.11 | 82590.63 | 21923.22 | 9100.00 | 75.00 | 1049.04 | 32147.26 |
| DeSoto, Daniel | Plumber | 11/26/11-01/14/12 | 208 0 0 | 0.00 | 5335.68 | 318.16 | 12107.80 | 6771.92 | 1300.00 | 0.00 | 249.60 | 8331.52 |
| Foster, Travis | Plumber | 11/26/11-01/14/12 | 101 0 0 | 0.00 | 11545.17 | 461.90 | 11884.37 | 1050.00 | 0.00 | 0.00 | 149.20 | 958.90 |
| Fram, Robert | Plumber | 11/26/11-12/14/11 | 248 0 0 | 0.00 | 7558.88 | 380.56 | 14437.20 | 6878.32 | 1500.00 | 0.00 | 297.60 | 8725.92 |
| Garcia, Victor | Plumber | 11/26/11-06/23/11 | 954 238 0 | 0.00 | 34309.00 | 1811.84 | 73224.20 | 38923.31 | 5830.00 | 2960.00 | 1132.40 | 48605.71 |
| Guerrero, Miguel | Plumber | 03/26/11-04/23/11 | 120 30 0 | 0.00 | 2322.56 | 228.00 | 9235.50 | 6912.94 | 750.00 | 375.00 | 142.50 | 8180.44 |
| Guzman, Ricardo | Apprentice 6 | 03/17/11-03/17/12 | 448 24 0 | 0.00 | 17835.98 | 481.44 | 19151.58 | 1315.72 | 1900.00 | 125.00 | 684.40 | 4023.12 |
| Lobato, Daniel | Plumber | 03/17/12-03/17/12 | 966 242 0 | 0.00 | 23104.96 | 1858.20 | 74689.82 | 51594.86 | 5800.00 | 2900.00 | 1304.50 | 61589.36 |
| Magana, Josie | Plumber | 06/10/10-05/31/11 | 3592 904 0 | 0.00 | 100996.85 | 6817.12 | 274193.48 | 109099.62 | 21400.00 | 10700.00 | 4765.70 | 144982.32 |
| Magana, Jose | Plumber | 07/26/10-03/13/10 | 3288 820 0 | 0.00 | 134213.52 | 6272.76 | 252343.16 | 118298.64 | 20000.00 | 9775.00 | 4306.10 | 152272.74 |
| Marrero, Joshua | Welder | 07/32/11-07/19/11 | 56 0 0 | 0.00 | 2377.20 | 236.88 | 3199.04 | 791.84 | 350.00 | 0.00 | 40.32 | 1192.16 |
| Martinez, Mario | Plumber | 07/24/10-06/05/12 | 1944 520 0 | 0.00 | 91966.60 | 3769.48 | 152669.64 | 61070.04 | 12450.00 | 6090.00 | 2613.55 | 82938.55 |
| Martinez, Mario Jr | Plumber | 07/24/10-05/19/12 | 1832 469 0 | 0.00 | 76815.21 | 3573.27 | 143787.61 | 86972.61 | 11750.00 | 5560.00 | 2668.70 | 87061.31 |
| Norcada, Christopher | Apprentice 2 | 01/12/12-01/28/12 | 16 0 0 | 0.00 | 651.11 | 16.32 | 462.58 | 0.00 | 0.00 | 0.00 | 23.20 | 23.20 |
| Nunez, Samuel | Apprentice 2 | 05/23/11-07/09/11 | 160 0 0 | 0.00 | 1873.92 | 163.20 | 4626.60 | 2751.68 | 650.00 | 0.00 | 232.00 | 3633.66 |
| Paz-Hernandez, Oscar | Plumber | 06/19/10-11/19/11 | 1554 394 0 | 0.00 | 78245.36 | 2960.96 | 119968.73 | 41723.36 | 9800.00 | 4825.00 | 1957.60 | 58305.96 |

The following entries represent the amounts relied upon for calculating Labor Code 1775 and 1813 penalties:

- **1775**: $50.00 Per Day
- **1813**: $25.00 Per Day

---

**Summary**

- Total Amount Due: **$1,088,890.20**
### Prevailing Wage Determination Summary

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<th>CODE NO.</th>
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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013a) OR CERTIFIED MAIL

I, ____________, do hereby certify that I am a resident of or employed in the County of
Sacramento, over 18 years of age, and not a party to the within action, and that I am employed at

and my business address is:

Division of Labor Standards Enforcement
Bureau of Field Enforcement
2031 Howe Avenue Suite 100.
Sacramento, CA 95825

On ____________, I served the within: Civil Wage and Penalty Assessment

by placing a true copy thereof in an envelope addressed as follows:

San Joaquin Delta Community College District
5151 Pacific Ave.
Stockton, CA 95207
Maria Bernardino

Taissi Construction Corporation, A California Corporation
6261 Katella Ave, Ste. 200
Cypress, CA 90630
Jose M. Mejia

Nicodemus Plumbing & Mechanical, A California Corporation
10541 Calle Lee, Suite 121
Los Alamitos, CA 90720
Paul Stephen Nicodemus

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116
M. Moody - #0240298738957202

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid, and then depositing it in the United States mail in Sacramento by:

X Ordinary first class mail
X Certified mail

I certify under penalty of perjury that the foregoing is true and correct

Executed on ____________, at ____________, County of ____________, California

[Signature]

STATE CASE NO.
40-30734-137
PW 34

June 20, 2013
ACPWA/FFC
Prevailing Wage/Labor Compliance Seminar
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Division of Labor Standards Enforcement  
Public Works Manual

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May 2013
1. **Introduction**

1.1 This Public Works Manual is designed as a training tool for the Division of Labor Standards Enforcement ("DLSE" or "Division") staff to better understand the Division's functions in carrying out its responsibilities to conduct investigations and undertake enforcement actions under the Public Works Chapter of the California Labor Code (LC § 1720-1861). Those statutory provisions are collectively referred to in the Manual as the prevailing wage laws. The Manual relies in part on judicial and administrative decisions whenever case-specific resolutions of legal issues are available. It is not intended as a comprehensive summary of existing law or duly promulgated regulations, or a pronouncement of the Division's enforcement policies, with regard to prevailing wage compliance. Rather, the purpose of the Manual is to familiarize DLSE staff assigned to prevailing wage enforcement with DLSE processes and historical issues which have arisen, and may continue to arise, as investigations are conducted and enforcement actions are initiated, and administratively reviewed, under the statutory scheme. To the extent the Manual's text might be viewed as purporting to establish rules of general application, but fails to present interpretations as a restatement or summary of existing laws, regulations or judicial and administrative decisions, it is invalid and should not be relied upon for that purpose. The Manual's text, standing alone, is therefore not binding on the enforcement activities of the Division, or the Department of Industrial Relations ("DIR"), in subsequent proceedings or litigation, or on the courts when reviewing DIR proceedings under the prevailing wage laws.
2. **Who Does the Law Protect?**

2.1 **"Workers", Defined:** Labor Code § 1771 requires that “all workers” employed on public works must be paid at not less than the “general prevailing rate of per diem wages.” Labor Code § 1772 provides that workers employed “by contractors or subcontractors in the execution of any contract for public work” are deemed to be so employed. Labor Code § 1723 defines a worker as including “a laborer, worker, or mechanic.” A standard dictionary definition of a “worker” is a “person engaged in a particular field or activity.” (Random House Dictionary of the English Language) The issue presented in the prevailing wage context is the inclusiveness of the term “workers.” In *Lusardi Construction Co. v. Aubry* (1992) 1 Cal. 4th 976, 987, the California Supreme Court interpreted section 1771 and found that “By its express terms, this statutory requirement is not limited to those workers whose employers have contractually agreed to pay the prevailing wage; it applies to all workers employed on public works.” This interpretation is consistent with the U.S. Department of Labor’s position (41 U.S. Op. Atty. Gen. 488) that any individual who personally performs skilled or unskilled labor in construction work is protected under the Davis-Bacon Act (40 U.S.C. § 276(a), the federal prevailing wage law) even though he or she is not an “employee.” These authorities support the position that protected workers under Labor Code § 1771 include not only employees, but also extends to other workers performing work covered by the prevailing wage laws.

2.2 **Statutory References To Workers “Employed” On Public Works, Explained:** Labor Code §§ 1771 and 1772 refer, respectively, to workers “employed” by contractors or subcontractors “in the execution of any contract for public work” or “employed” on public works. Courts long ago recognized that “employed” may mean several things including, for example, a person whose services are...
“utilized” in furtherance of the business of another, notwithstanding the technical absence of an employer-employee relationship, or a person “engaged in” a task for another under contract, or orders to do it. (Johnston v. Farmers Mutual Exchange of Calhoun, Inc., 218 F. 2d 588 (5th Cir. 1955); United States v. Morris (1840) 39 U.S. 463, 475.) These authorities, likewise, support the position that prevailing wage requirements are not limited to employees of a contractor or subcontractor. Moreover, public works contractors may not avoid the prevailing wage requirement by “contracting out” all or a portion of the work performed to subcontractors. In O. G. Sansone v. Department of Transportation (1976) 55 Cal.App.3d 434, 463, the Court explained that the prevailing wage laws apply to “all” workers employed on public projects, and that the legislation cannot be “frustrated” because of the subcontracting of work required to be done under the terms of the prime contract.

2.3 **Title or Status of Worker Irrelevant.** A worker’s title or status with the employer is not determinative of an individual’s coverage by the prevailing wage laws. What is determinative is whether the duties performed by the individual on a public works project constitute covered work. An individual who performs skilled or unskilled labor on a public works project is entitled to be paid the applicable prevailing wage rate for the time the work is performed, regardless of whether the individual holds a particular status such as partner, owner, owner-operator, independent contractor or sole proprietor, or holds a particular title with the employer such as president, vice-president, superintendent or foreman. For example, a “working” foreman or a “working” superintendent – one who performs labor on the project in connection with supervisorial responsibilities – is entitled to compensation at not less than the prevailing rate for the type of work performed. Of course, if the person holding the status or titles as listed above does not
Division of Labor Standards Enforcement
Public Works Manual

actually perform covered work on a project, his or her presence alone does not trigger the prevailing wage requirement.

2.4

"Public Works" Defined: Labor Code §§ 1720-1720.6 contain within their provisions all of the basic facts and conditions which must be present for a work of improvement to fall within the statutory definition of "public works." If those facts and conditions do not exist, the statutory enforcement mechanism available to DLSE under Labor Code § 1741 cannot be used to recover unpaid wages or penalties authorized by the prevailing wage laws. It is therefore necessary for Division staff to determine at the earliest possible stage of assignment to an investigation whether the required facts and conditions appear to be present. The four separate statutory sections identify four somewhat different scenarios which comprise the public works model:

2.4.1 Labor Code § 1720(a) defines public works as construction and other enumerated construction-related tasks (including "maintenance," see LC § 1771) done under contract and paid for in whole, or in part, with public funds. Maintenance is defined at 8 CCR § 16000.

2.4.2 Labor Code § 1720.2 extends the public works definition to include construction work done under private contract if (1) the construction contract is between private persons, and (2) the property subject to the construction is privately owned, but more than 50 percent of the assignable square feet of the property is leased to the state or a political subdivision thereof, and either (1) the lease was entered into prior to the construction contract, or (2) the lease was entered into before completion of the construction if the work was performed according to plans or criteria furnished by the state.
2.4.3 Labor Code § 1720.3 extends the public works definition to the hauling of refuse from a public works site to an outside disposal location. The Director has opined in a web-posted Public Works Coverage Determination (see Section 2.7 of this Manual) that "refuse" is defined as “the worthless or useless part of something," and that if, for example, dirt excavated from trenches dug for a public works contract is being put to a useful purpose, such as the covering of garbage at a landfill, it would not be considered “refuse” under those circumstances. (Public Works Case No. 2001-005 (Trash/Debris Removal from Railroad Rights-of-Way and Facilities, Blue and Green Lines).)

2.4.4 Labor Code § 1720.6 extends the public works definition to private contracts to include construction, alteration, demolition, installation, or repair work done under private contract if (1) the work is performed in connection with the construction or maintenance of renewable energy generating capacity or energy efficiency improvements, and (2) is performed on the property of the state or a political subdivision thereof, and either (1) 50 percent of the energy generated is purchased by the state or political subdivision thereof, or (2) the efficiency improvements are primarily intended to reduce energy costs that would otherwise be incurred by the state or political subdivision.

2.5 “Public Funds” Defined: Labor Code § 1720(b) defines at some length what the statutory language “paid for in whole or in part out of public funds” means. The six examples of public funds are listed specifically at Labor Code § 1720(b), subdivisions (1)-(6), and are not limited to the payment of money (subd. (b)(1)) by the state or a political subdivision directly to a public works contractor. The five other categories include work performed (subd. (b)(2)) by the state or political subdivision; transfer of an asset (subd. (b)(3)) for less than fair market price; fees or costs reduced, waived, or forgiven (subd. (b)(4)) by the state or political
subdivision; money loaned (subd. (b)(5)) by the state or political subdivision to be repaid on a contingent basis; and credits applied (subd. (b)(6)) by the state or political subdivision against repayment obligations.

2.5.1 **Public funds** include state, local and/or federal monies. (8 CCR § 16000.)

2.5.2 **Federally Funded or Assisted Projects.** State prevailing wage rates when higher are required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort. The state prevailing wage laws cannot be applied to a project, however, which is under the complete control of the federal government. (8 CCR § 16001(b); *Southern Cal. Labor Management Committee v. Aubry* (1997) 54 Cal.App.4th 873, 886.)

2.6 **Director’s Authority To Determine Coverage.** The California Code of Regulations authorizes the Director of the Department of Industrial Relations to determine coverage under the prevailing wage laws regarding either (1) a specific project or (2) type of work to be performed. (8 Cal. Code of Regs § 16001(a) (1).) The Director’s authority to determine coverage of projects under the prevailing wage laws is quasi-legislative, and a final determination on any appeal is subject to judicial review pursuant to California Code of Civil Procedure section 1085. (8 Cal. Code Regs § 16002.5(c).) The Director’s determination in any specific inquiry brought forth under the DIR’s regulatory coverage process (8 CCR §§ 16001-16002.5) is subject to judicial review. The DLSE is not required to file with the Director a request to determine coverage under the regulatory process before proceeding with its investigations, although it is not precluded from doing so. Under circumstances where the Division issues a Civil Wage and Penalty Assessment ("CWPA") before any coverage determination dealing with that same project has been requested, any affected contractor or subcontractor may timely...
request a review hearing to contest a CWPA under Labor Code § 1742, and a
claim that either the project or the type of worked performed was not subject to
the prevailing wage laws may be raised in the administrative review proceedings.
(See Sections 4.7 – 4.9 for specifics on CWPAs.)

2.7 **Posted Public Works Coverage Determinations.** The DIR posts on the DIR
website, letters and decisions on administrative appeal issued by the Director in
response to requests to determine coverage under the prevailing wage laws
made pursuant to 8 CCR § 16000(a). The determinations are indexed by date
and project, as compiled by DIR staff. The Director’s Office of Policy, Research,
and Legislation (“OPRL”) maintains this portion of the website, and the
determinations can be accessed by clicking on the topic Public works coverage
determinations, which is listed on the OPRL homepage. The rates may also be
accessed from the DLSE website public works page. DLSE investigators typically
review any applicable determinations as a research tool and for general guidance
when confronted with factual situations which may raise issues of whether a
particular project or type of work is subject to, or excluded from, coverage under
the Labor Code.

2.7.1 **Coverage Determinations are Advisory Only.** Beginning in 2001, the Director
designated certain coverage determinations as “precedential” under Government
Code § 11425.60. Pursuant to § 11425.60, only those coverage determinations
designated by the Director as precedential could be specifically relied upon by the
DIR in making future coverage determinations. In 2007, as a result of case law
developments, the Director decided to no longer rely upon § 11425.60 and
ceased designating any public works coverage determinations as precedential.
Thereafter, the coverage determinations are considered by the DIR to be advice
letters directed to specific individuals or entities about whether a specific project
or type of work is public work subject to prevailing wage requirements. According to the DIR, the coverage determination letters present the Director’s interpretation of statutes, regulations and court decisions on public works and prevailing wage coverage issues, and provide advice current only as of the date each letter is issued. See Department of Industrial Relations’ Important Notice to Awarding Bodies and Interested Parties Regarding The Department’s Decision to Discontinue Use of Precedent Determinations at http://www.dir.ca.gov/OPRL/Notices/09-04-2007(pwcd).pdf.

2.8 Exclusions From Prevailing Wage Requirements. At least five specially defined categories of work are excluded from prevailing wage requirements, either under the Labor Code itself, or duly promulgated regulations.

2.8.1 Volunteers. Labor Code § 1720.4 provides that the prevailing wage laws do not apply to work performed by a “volunteer.” “Volunteer” is defined as “an individual who performs work for civic, charitable, or humanitarian reasons, for a public agency or corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.” (Labor Code § 1720.4(a)(1).) The exclusion does not apply to work performed by anyone other than those persons specifically falling within the definition. Pressure or coercion, direct or implied, from an employer, or any form of compensation for work performed results in the loss of volunteer status. (Labor Code § 1720.4(a)(1)(A) and (B).) Additionally, a volunteer may not be employed for compensation at any time in the construction, alteration, demolition, installation, repair, or maintenance work performed on the same project. (Labor Code § 1720.4(a)(1)(C).) However, an individual may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire
context of the situation, those benefits and payments are not a substitute form of compensation for work performed. (Labor Code § 1720.4(a)(1)(B).)

2.8.2 **Public Agency’s Own Forces.** Labor Code § 1771 expressly provides that the prevailing wage requirement is “not applicable to work carried out by a public agency with its own forces.” (See also Ramirez v. Yosemite Water Co. (1999) 20 Cal.4th 785, 794.) The California Attorney General has opined that the public agency exclusion for its own forces applied to actual “employees” of a county, and there is no published judicial decision which extends the exclusion to non-employees. (35 Op. Atty.Gen. 1.) As with all specific exemptions from a minimum wage law, exclusionary language must be narrowly construed.

2.8.3 **Janitorial Services.** The definition of “maintenance” found at 8 CCR § 16000 requires payment of wages at the prevailing rate and includes a variety of specific examples of work related to the “preservation, protection and keeping of publicly owned or publicly operated” facilities. The prevailing wage requirement does not apply, however, to “[j]anitorial services of a routine, recurring or usual nature.” (8 CCR § 16000.) This exception to the prevailing wage requirements applies to routine and recurring janitorial services, such as washing, vacuuming, litter removal, etc. at a public facility. The exclusion does not apply to non-routine clean-up which, for example, might occur during, or at the conclusion of, a public works construction project.

2.8.4 **Guards.** The “maintenance” definition also excludes from the prevailing wage requirements “[p]rotection of the sort provided by guards, watchmen, or other security forces.” (8 CCR § 16000.)
2.8.5 Landscape Maintenance Work At ‘Sheltered Workshops.’” The “maintenance” definition also excludes this particular and unique type of work from the prevailing wage requirements. “Sheltered workshop” is defined as a nonprofit organization, licensed by the DLSE, employing mentally and/or physically disabled workers. (8 CCR § 16000.)

2.9 Chartered Cities. Under Article XI, Section 5 of the California Constitution, a “chartered city” may exempt those of its public works projects which are completely within the realm of the chartered city’s “municipal affairs” from the requirements of the prevailing wage laws. (City of Pasadena v. Charleville (1932) 215 Cal. 384.) Cities in California are classified as “general law cities” (organized under the general laws of the state) or “chartered cities” (organized under a charter). (Govt. Code §§ 34100, 34101, 34102.) There are approximately 120 California cities organized under a charter. The courts have identified three factors in evaluating whether a particular public works project is a “municipal affair” of a chartered city, or a matter of statewide concern. If the project would be viewed as a statewide concern, the prevailing wage requirements will apply. (So. Cal. Roads Co. v. McGuire (1934) 2 Cal.2d 115.) The factors to be considered are: (1) the extent, if any, of extra-municipal control over the project; (2) the source and control of the funds used to finance the project; and (3) the nature and purpose of the project. (Public Works Case No. 2006-016.) It should also be noted that the California Supreme Court has held that consideration of these judicially created factors for determining whether a project is a matter of statewide concern for prevailing wage purposes cannot be ignored merely because the Legislature expresses its own view in legislative enactments that prevailing wages constitute a matter of statewide concern. (State Building and Construction Trades v. City of Vista (2012) 54 Cal. 4th 574.) Although application of the factors in any particular investigation is fact driven, and interpretation of the

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judicially created factors has historically been the source of much litigation, DLSE will typically review prior coverage decisions of the Director dealing with the topic in reaching a conclusion whether the exemption applies or not. A straightforward example of when the exemption was properly claimed is found on the OPRL website in Public Works Case No. 2006-016 (New Public Library, City of Lindsay.)

2.10 **University Affairs.** This limited exemption from the prevailing wage laws is applicable only to public works of improvement awarded by the Regents of the University of California. In some respects similar to the chartered city exemption for municipal affairs (see Section 2.9 of this Manual), Article IX, section 9 of the California Constitution grants the Regents powers of government as to its internal “university affairs” and not involving statewide concern. (*San Francisco Labor Council v. Regents of University of California* (1980) 26 Cal.3d. 785.) The exemption was not recognized in the case of *DLSE v. Ericsson Information Systems, Inc.* (1990) 221 Cal.App.3d 114, where the court concluded that the protection afforded private sector employees working on the University’s public construction projects was a “matter of statewide concern.” The decision reached in *Regents v. Aubry* (1996) 42 Cal.App.4th 579, however, specifically allowed the exemption when the University contracted with private companies to build subsidized married student and faculty/staff housing on university-owned land, holding that such a project was part of the University’s core educational function, rather than a statewide concern. In instances in which the limited exemption is claimed to exist, the DLSE will make its determination based upon application of the case law to the specific facts in the matter. If the University’s bid documents or contract for the work requires the payment of prevailing wage, the DLSE will conclude that the exemption does not exist and enforce the prevailing wage requirements.
3. What Must Public Works Contractors Do To Comply With the Law?

Contractors and subcontractors which bid on and are awarded public works projects must comply with three general obligations which are enforced by the Public Works Unit of the Division. The three categories of obligations are set forth in detail below.

3.1 Contractors’ Obligations To Maintain and Furnish Records: Labor Code § 1776(a) requires each public works contractor and subcontractor to keep accurate payroll records, including the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual wages paid to each worker. The “work classification” refers to the craft classification (or type of work performed) as fixed by the Director and specified by title on the prevailing wage determinations published and maintained by the OPRL. (Labor Code § 1773 and 8 CCR § 16203.) Payroll records which do not identify the Director’s specified title (e.g., records which only identify a worker by status, such as “journeyman” or “apprentice” or “partner,” and do not refer to the Director’s published classification, such as “Laborer Group 1” or “Carpenter”) are inadequate. Payroll records shall be on forms provided by the DLSE or in a manner containing the same information as the forms provided by the DLSE. The DLSE form (DIR Form A-1-131) is available on the DLSE website in the Public Works/prevailing wage section. The payroll records may consist of printouts that are maintained as computer records so long as the printouts contain the same information as the DLSE forms. The required certification language is also on the DLSE website.

3.1.1 Payroll Records Must be Certified: Labor Code § 1776(b) requires that payroll records, as defined above, shall be “certified,” that is, verified by written declaration made under penalty of perjury, that the information contained in the records is correct.
records is true and correct. (8 CCR § 16000.) The certification language is found on the back of the form furnished by the DLSE. Payroll records furnished to DLSE which are not certified are inadequate.

3.1.2 **Statement of “Employer Payments”**. The prevailing wage laws permit contractors employing workers on public works to pay a certain portion of the “Total Hourly Rate” reflected on the applicable prevailing wage determination published by the Director, either in cash to workers, or as contributions to specified plans or entities as “Employer Payments” Labor Code § 1773.1(b) and (c), as defined at 8 CCR § 16000. The Division developed a form (see DLSE website for DLSE Form PW 26) to simplify both the preparation by contractors of the required information and DLSE’s review of that information. (See Section 4.2.5, following).

3.1.3 **Payroll Records, Defined**: California regulations define Payroll Records to mean “[a]ll time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project.” (8 CCR § 16000.) The DLSE may request a contractor to produce any such payroll records to assist the DLSE in determining whether the contractor paid its workers all wages due.

3.1.4 **Itemized Statements**. Labor Code § 226, although not part of the prevailing wage laws, requires all employers to regularly furnish each of his or her employees with an accurate itemized statement, in writing, including up to nine separate categories of information. Labor Code § 226 itemized statements fall within the broad definition of “payroll records,” and must be made available for
inspection by DLSE investigators upon request. (NOTE: Employers who fail to keep or furnish itemized statements to their employees are subject to civil and criminal penalties in accordance with the provisions found at Labor Code §§ 226-226.6. Penalties available under those sections are not enforced by the issuance of a Civil Wage and Penalty Assessment, but through a citation procedure set forth in detail at sections 226.4-226.5. DLSE investigators who encounter violations of section 226 should proceed in accordance with those sections, which are entirely distinct from the remedies available under the Public Works Chapter, which is the subject of this Manual.)

3.1.5 **DLSE Requests For Certified Payroll Records ("CPRs").**  Labor Code § 1776(b)(2) requires contractors and subcontractors to make a certified copy of all payroll records as enumerated in Labor Code § 1776(a) available for inspection or furnished to DLSE, upon DLSE's written request, to be provided within ten days of the contractor’s receipt of that request. Failure to timely “file” (furnish) the requested records subjects the contractor, or affected subcontractor, to monetary penalties. (Labor Code § 1776(d) and (h).) The Division developed a form letter entitled “Request For Certified Payroll Records” (DLSE Form PW 9) which constitutes the statutorily required written request and sets forth the penalties for noncompliance. The form letter typically requests CPRs for all workers employed by a named contractor or subcontractor for the entire duration of work performed on the project identified. Blank copies of DIR Form A-1-131 and DLSE Form PW 26 are enclosed with the form letter. The request should be mailed (first class and certified mail, return receipt requested) and/or sent electronically (facsimile or e-mail). Satisfactory evidence (certified mail receipt, facsimile confirmation, or e-mail receipt) reflecting the date of receipt by the contractor will be needed to calculate monetary penalties assessed for noncompliance.

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3.1.6 **Responses To Inspection Requests.** While DLSE is authorized to inspect a certified copy of CPRs at all reasonable hours, at the principal office of the contractor or subcontractor (Labor Code § 1776(b)(2)), DLSE investigators typically do not request inspection. Rather, copies of CPRs are routinely requested to be furnished instead.

3.1.7 **Responses To Requests For Copies.** The deadline for contractors or subcontractors to furnish the requested copies of CPRs is within ten working days of the receipt of the written request. (Labor Code § 1776(d).) The statutory language does not specify “calendar” or “working” days, but DLSE uses ten working days for enforcement purposes, and its Form PW 9 specifies ten working days. Labor Code § 1776(c) permits contractors to use copies of payroll records or printouts of payroll data, so long as the documents furnished contain the same information as the forms provided by the Division, and the records are certified in the manner specified at 8 CCR § 16000. If the documentation furnished does not meet both of these requirements, the contractor or affected subcontractor is subject to monetary penalties under Labor Code § 1776(h). **Computation Example:** The first penalty day is the calendar date after the ten working days response period has expired. The last penalty day is the calendar date upon which the tardy CPRs are received by DLSE. The assessment is calculated by multiplying the total number of penalty days times the number of workers listed on the tardy CPRs, times $100.00. If no CPRs are produced, the last penalty day is the date a Civil Wage and Penalty Assessment assessing penalties under Labor Code § 1776 is served, and the number of workers is estimated based upon the best evidence available.

3.1.8 **Costs, Limited Reimbursement To Contractors and Public Agencies.** DLSE has no statutory or regulatory obligation either to pay contractors or affected
subcontractors for requested copies of CPRs as a precondition to compliance with a DLSE-initiated request for CPRs, or to reimburse contractors for any expenses incurred. Recovery of costs for preparing or furnishing CPRs are only available to contractors (or public entities) under 8 CCR § 16402, a regulation which applies only if the request for CPRs was made by the “public” pursuant to Labor Code § 1776(b)(3). That statutory subdivision, when read in conjunction with that regulation, sets forth with specificity the timing and amounts of costs for reproduction of CPRs available to contractors and public entities (including DLSE).

3.1.9 **CPR Privacy Concerns.** Labor Code § 1776(e) mandates special handling of CPRs obtained by DLSE and two other public entities -- awarding bodies and the Division of Apprenticeship Standards ("DAS") – who are also statutorily authorized to request CPRs from public works contractors. Before making CPRs available for inspection as copies, and furnished upon request to the public or any other public agency pursuant to Labor Code § 1776(b)(3), CPRs obtained by DLSE staff must be “marked or obliterated to avoid disclosure” of workers’ names, addresses and social security numbers. That same obligation is set forth at 8 CCR § 16403.

3.1.10 **Two Exceptions:** The first exception applies to copies of CPRs furnished to a “joint labor-management committee” established pursuant to the Federal Labor Management Cooperation Act of 1978 (29 U.S.C. § 175(a)). The redaction of personal information from copies of CPRs provided to those specially authorized joint labor-management committees is limited to the workers’ names and social security numbers only. The workers’ addresses are not to be obliterated. (Labor Code § 1776(e).) The second exception applies to agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established by
pursuant to California Unemployment Insurance Code section 329, and other law enforcement agencies investigating violations of law. These particular agencies are entitled to be provided with copies of certified payroll records without any redaction of names, addresses, and social security numbers. However, any copies of such records received by these law enforcement agencies made available for inspection or furnished to the public by these agencies must be redacted to prevent disclosure of an individual's name, address, and social security number. (Labor Code § 1776(f)(1).)

3.1.11 Full Social Security Numbers Required. Labor Code § 226(a), which sets forth certain record keeping requirements for employers, limits an employer's obligation to provide only the last four digits of employees' social security numbers. Labor Code § 1776(a) has not been so amended and requires the inclusion of the full social security number. For enforcement purposes, however, it should not be considered by the DLSE as a violation of Labor Code § 1776 warranting the issuance of a CWPA if a contractor makes available for inspection, or furnishes upon request, the full social security number for all affected employees on a separate written report, signed under penalty of perjury, to the entities identified in 1776(b)(2) within the time limits specified in Labor Code 1776. These entities include a representative of the body awarding the contract, the DLSE, and the Division of Apprenticeship Standards (DAS).

3.1.12 Retention of Payroll Records by Public Works Contractors. There is no provision in the prevailing wage laws which specifies a records retention period for CPRs or all of the types of "payroll records" as defined and listed at 8 CCR § 16000. The limitations period for legally recognized wage underpayment remedies available against public works contractors, however, vary depending upon the remedy available. Accordingly, contractors should retain CPRs for the
duration of any applicable limitations period. Contractors must also separately comply with any record keeping requirements set forth in the Labor Code and applicable Industrial Welfare Commissioner wage order.

3.2 **Contractors' Obligations To Pay Prevailing Wage Rates:** Not less than the specified prevailing rates of per diem wages must be paid to all workers employed in the execution of public works contracts. (Labor Code § 1774.) Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work. (Labor Code § 1772.) Note: rates are also accessible through the DLSE Public Works website.

3.2.1 "**Prevailing Rate of Per Diem Wages,** Defined:** Labor Code § 1773.1 specifies the components which comprise the rates published by the Director, and are available on the DIR website as “General Prevailing Wage Determinations.” The specific rates applicable for each craft, classification, or type of work, and for each geographic locality throughout the state, can be located on the DIR website.

3.2.2 **Director's Authority to Determine Prevailing Wage Rates.** Labor Code § 1773 requires any body awarding a contract for public work to obtain from the Director the prevailing rates for all hours worked, including holiday and overtime rates, and provides to the Director the general methodology for making such determinations. Labor Code § 1773.9 further expands that methodology, and Labor Code § 1773.4 provides the regulated public with a process by which to request review of the Director's wage determinations. The Director is authorized by Labor Code § 1773.5 to establish rules and regulations to implement the prevailing wage laws, and the Director has done so at length with respect to the setting and publishing of the rates applicable on public works projects. 8 CCR §§ 16000-16304
Director has the sole responsibility for establishing the prevailing wage rates for all classifications of workers.

3.2.3 **Issue Date / Effective Date.** The issue date listed on each prevailing wage determination refers to the date the OPRL placed copies of the Director’s new determinations in the mail to awarding bodies and other interested persons. (8 CCR § 16000.) The more important date, however, is the effective date, which is not listed on the determination. The effective date is the first date upon which the wage rates set forth in the determinations apply to work performed on a project. The effective date is ten days after the issue date. (8 CCR § 16000.) Because rates are generally issued by OPRL twice a year (February 22\textsuperscript{nd} and August 22\textsuperscript{nd}), those rates go into effect ten days thereafter (March 3\textsuperscript{rd} in leap years and March 4\textsuperscript{th} in non-leap years, and September 1\textsuperscript{st}, respectively).

3.2.4 **Effective Date / Bid Advertisement Date.** The Bid Advertisement Date (or Date of Notice or Call for Bids) is defined at 8 CCR § 16000. This is the date an awarding body published the “first notice inviting bids” in a newspaper (or otherwise legally promulgated notice) of a prospective public works project which results in a contract being awarded. For DLSE enforcement purposes, if the effective date of a determination is on or after the bid advertisement date but before the listed expiration date, the rates listed on that particular determination constitute the prevailing wage rates for work performed under that public works contract. Consistent with the Department’s enforcement policy, if an awarding body does not advertise the public works project for bid, other benchmark events, including the first written memorialization of the agreement concerning the public works elements of project or the contract governing the award of public funds will be utilized instead. (See e.g., Baldwin Park Market Place, City of Baldwin Park, Public Works Case No. 2003-028, October 16, 2003.)
3.2.5 **Expiration Date / Double Asterisk / Predetermined Increases.** Each prevailing wage determination also includes a specified expiration date. This is defined as the date upon which the determination is “subject to change.” (8 CCR § 16000.) If there are “predetermined” changes (generally, increases to the wage rate), the expiration date will be followed by a double (**) asterisk. The new prevailing wage rate goes into effect on the day following the expiration date listed in the determination. Predetermined increases are published and available on the OPRL homepage, and specify the date upon which the increase(s) must be paid to workers. The predetermined increase web posting informs the DLSE investigator and public of applicable future predetermined increases to the rates listed in the original wage determination for work performed on that project.

3.2.6 **Expiration Date / Single Asterisk.** If there are no “predetermined” changes, the expiration date on each prevailing wage determination will be followed by a single ( * ) asterisk. Single asterisk expiration dates mean the rates listed on that particular wage determination apply for the entire duration of the project, no matter how long work under the original public works contract continues.

3.2.7 **Overtime.** The worker must be paid the applicable overtime rate set forth in the wage determination. This includes the requirement that any overtime performed under the public works contract must be compensated at the overtime rate required by the prevailing wage determination in effect on that project for the craft.

3.2.7.1 **Worker Performing Work During The Same Workday In Two Or More Different Classifications With Different Rates Of Pay.** In the situation where a worker performs work during the same workday in two or more different
classifications with different rates of pay, the worker must be paid the overtime rate in effect for the type of work he or she is performing during those overtime hours. The same requirement applies to a worker performing work on two or more public works projects during the same workday. All hours must be counted for overtime purposes, and the worker must be paid the applicable overtime rate in effect for the type of work performed for all overtime hours worked in the workday. Example: If a worker is performing work in the Inside Wireman's classification for four (4) hours and then performs work in the Painter's classification for six (6) hours, the worker would be entitled to no less than the total of four (4) hours of pay at the Inside Wireman's straight time rate of pay, four (4) hours of pay at the Painter's straight time rate of pay, and two (2) hours of pay at the Painter's overtime rate of pay for the two (2) hours worked in excess of eight (8) hours per day. As in all circumstances on public works projects where the worker is paid at two or more different rates of pay during the same workday, the employer is responsible for maintaining records showing that the worker was paid the appropriate rate of pay for all hours worked in each classification.

3.2.7.2

**Worker Performing Work On Public and Private Projects During the Same Workday With Different Rates of Pay.** In the situation where a worker is paid two rates during the course of a workday and one of those rates is based upon work on a public works project and the other rate is based upon work performed on a private works project during that same workday, the regular rate for calculating the overtime rate for work performed on the public works project is based on the higher of either the weighted average or the prevailing wage rate in effect at the time that the work is performed, which is often dependent upon when that public work was performed. Example: If a worker is employed in a workday for four (4) hours on a private construction job at $15.00 per hour and then, after completing the work on the private project, is employed during the same workday for
for eight (8) hours on a public work project at $30.00, the worker would be entitled to $15 per hour for the four (4) hours worked on the private project, $30 per hour for the first four (4) hours worked on the public works project, and the applicable overtime rate (e.g. $45 per hour) set forth in the prevailing wage determination for the final four (4) hours worked on the public works project. This is the case because the worker cannot be paid less than the applicable prevailing wage straight time or overtime rate for work performed on a public works project and since all hours worked are counted for overtime purposes, four of the worker’s hours worked on the public works project were worked in excess of eight (8) hours during the workday. Conversely, if the same worker performs four (4) hours of work on a public works project and then, later in the same workday, the worker performs eight (8) hours of work on a private construction project, the worker would be entitled to $30 per hour for the first four (4) hours worked on the public works project, $15 per hour for the first four (4) hours worked on the private project, and the weighted average of the two rates for the final four (4) hours worked on the private works project. Investigators should refer to DLSE’s 2002 Enforcement Policies and Interpretations Manual, sections 49.2.5-492.6.2, for a detailed explanation of how to establish the regular rate of pay for calculating overtime under the weighted average method. Applying that methodology here, and assuming the worker only worked one twelve (12) hour day during that workweek, the weighted average calculation results in a regular rate of $20 per hour (4 hours x $30 per hour ($120) + 8 hours x $15 per hour ($120) = $240, divided by 12 total hours worked during that workweek = $20 per hour) and the correct overtime rate for the worker would be $30 per hour (1.5 x the regular rate of $20).

3.3 Contractors’ Obligations To Comply With Apprenticeship Standards. Labor Code § 1777.5 identifies the obligations of contractors (including subcontractors)
to employ apprentices on public works. Contractors who "knowingly violate" any of these requirements are subject to monetary penalties (up to $300.00 for each full calendar day of noncompliance) under Labor Code § 1777.7, and may also be "debarred," i.e., denied the right to bid on or be awarded a contract for public works, or perform work as a subcontractor on a public works project, for up to a period of three years. The appropriate remedy in each case will be based upon a consideration of five circumstances listed in the statute. Effective June 27, 2012, the Legislature amended section 1777.7 to transfer enforcement of these apprenticeship obligations from the Chief of the Division of Apprenticeship Standards (DAS) to the Labor Commissioner (DLSE).

3.3.1 Four Overall Categories Of Apprenticeship Violations. All public works contractors must: (1) Timely submit contract award information to an authorized apprenticeship program both before commencing work on the project and after work has been concluded. (See, LC § 1777.5(e) and 8 CCR 230); (2) Request dispatch of apprentices as required. (See, LC § 1777.5(c) and 8 CCR 230.1(a)); (3) Employ DAS-registered apprentices, including compliance with minimum and maximum ratios of work hours performed by apprentices to journeymen. (See, LC § 1777.5(d) and (g), and (h)-(l), LC § 3077 and 8 CCR 230.1(a) and (c)); (4) Make training fund contributions to the California Apprenticeship Council ("CAC") in specified amounts. (See, LC § 1777.5(m)(1) and 8 CCR 230.2.) The statutory references and/or the regulations cited are extremely detailed and explain with particularity: (1) The procedures contractors must follow to properly submit contract award information (what, when, and where) and to request dispatch of apprentices to the project (when and from whom); (2) The calculation of minimum and maximum ratios for determining the number of hours apprentices are to be employed before the end of the contract or subcontract; (3) Optional payment of training fund contributions to approved apprenticeship programs.
rather than to the CAC; (4) Compliance with the “journeyman on duty” rule (when required); (5) Specified exceptions to any of these requirements. The cited regulations were written and adopted by the CAC. DLSE investigators will now enforce apprenticeship standards when apprenticeship violations are the specific subject of new complaints and will include apprenticeship compliance during the course of investigations arising from complaints alleging other violations of the prevailing wage laws, such as wage underpayments to workers.

3.3.1.1 Minimum Ratio Violations. Understanding the minimum ratio requirement (“one hour of apprentice work for every five hours of journeyman work”) and the mathematical calculation of penalties when violations occur lends itself to a step-by-step approach: (1) To determine whether a violation has occurred, the investigator must first count the total number of journeyman hours worked in a particular craft by a specific contractor “before the end of the contract or, in the case of a subcontractor, before the end of the subcontract.” (See, subdivision (h) of § 1777.5.) Assume the contractor in question has submitted certified payroll records (“CPRs”) which reflect that journeyman carpenters worked a total of 750 straight-time hours over the course of the contract. (Note that hours worked by journeymen in excess of 8 per day or 40 per week are excluded from this calculation, also pursuant to subdivision (h) of § 1777.5.) (2) Calculate 20% of 750 journeyman hours to determine the minimum number of apprentice hours required before the end of the contract. (750 x 0.20 = 150 minimum apprentice hours.) (3) Assume that this contractor’s CPRs only reflect a total of 40 apprentice hours worked in the carpenter craft during the contract. That number is less apprentice hours than the minimum required under the statutory formula. Violation of the minimum ratio requirement has therefore been established. (4) The investigator must now determine the penalty. The Legislature did not base the penalty upon the number of hours a contractor may have fallen short in

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providing apprentices with work on the project. Rather, § 1777.7(a)(1) provides a uniform calculation for penalty assessments against contractors who knowingly violate any of the apprenticeship standards found in § 1777.5; specifically, the contractor “shall forfeit as a civil penalty” an amount not exceeding $100 “for each full calendar day of noncompliance.” (Note that the maximum increases to $300 per day when two or more violations occur within a three-year period. Assume that our contractor does not have a prior violation.) Because subdivision (h) of § 1777.5 informs us that compliance with the minimum ratio requirement applies during “any day or portion of a day when any journeyman is employed at the jobsite,” noncompliance with the ratio should be also measured against that same total number of calendar days. (Note that it is therefore irrelevant for penalty purposes whether the contractor’s apprentices and journeymen were employed in accordance with the ratio on any single day. This is so because our statute mandates that compliance with the ratio is not to be determined at the end of each day, but only by “the end of the contract.”) Assume the CPRs in our example reflect that the total count of calendar days during which one or more journeyman carpenters were employed by this contractor was 50. (5) The contractor is therefore subject to a maximum penalty of $5000 ($100 x 50 days of noncompliance = $5000) for failing to employ apprentice carpenters in accordance with the minimum ratio required by § 1777.5.

3.3.2 Apprenticeship Violations Which Also Result In Prevailing Wage Underpayments. DLSE’s enforcement of the obligation of all contractors and subcontractors to pay not less than the specified prevailing rates of per diem wages may include situations where underpayments resulted from certain violations of the apprenticeship standards identified in Section 3.3.1 above. The first three apprenticeship-related examples of wage underpayments, as explained below in Sections 3.3.2.1 (Unregistered Apprentices), 3.3.2.2 (Nonpayment Of
Training Fund Contributions) and 3.3.2.3 (Maximum Ratio Violations), have all been historically addressed by DLSE as prevailing wage violations when discovered during the course of our prevailing wage investigations. The last example, explained below in Section 3.3.2.4 (Journeyman On Duty Violations), involves a discrete obligation applicable only to those public works contractors who have elected to employ and train apprentices under the rules and regulations of the CAC. Previously, it had been a policy decision that DLSE would refer complaints alleging violations of this “journeyman on duty” rule (8 CCR 230.1(c)) to DAS for investigation. Because DLSE has now replaced DAS as the state agency responsible for enforcing contractor violations of apprenticeship standards, violations of this and other duly adopted CAC regulations which may result in prevailing wage underpayments will also be enforced under LC § 1741, and therefore subject to penalties authorized by LC §§ 1775 and 1813.

3.3.2.1 **Unregistered Apprentices.** Labor Code § 1777.5(c) mandates that only bona fide apprentices, i.e., apprentices who are in training under apprenticeship standards that have been approved by the Chief of the DAS and who are parties to written apprenticeship agreements under Labor Code § 3070, may be paid at the apprentice wage rates available under the Director's prevailing wage determinations. Apprentice rates are normally lower than the journeymen rates listed in the wage determinations and are generally a percentage of the journeymen rate, rather than the full journeymen rate. Thus, in order for contractors to pay an employee at an apprentice rate of pay, each apprentice must be registered in a DAS-approved apprenticeship training program whose training work processes include the type of work performed or where the published Scope of Work (available on the OPRL homepage for each wage determination) for the collective bargaining agreement (“CBA”) for that classification of work performed is included. Contractors who identify certain...
workers on their CPRs as “apprentices” and who pay those workers less than the full journeymen rate may be required to provide to DLSE copies of the DAS-signed written apprentice agreements, bearing the individual worker’s name and the date upon which the worker was enrolled in the training program for a particular classification of work, in order to verify bona fide apprenticeship status. Although DAS itself also maintains records listing the names of individuals registered in particular training programs, and which are available to DLSE investigators, a copy of the written agreement will be requested from the parties as evidence necessary to confirm a worker’s entitlement to only the apprentice rate. The actual apprentice rates are maintained and made available by DAS. The applicable journeymen rate for the type of work performed must be paid to the worker if he or she is not actively enrolled in a DAS-approved apprentice training program at the time the work is performed, regardless of the perceived level of skills (or lack of skills) that worker may actually possess.

3.3.2.2 Nonpayment Of Training Fund Contributions. Labor Code § 1777.5(m)(1) requires contractors who employ journeymen or apprentices in any “apprenticeable craft” (the Director’s wage determinations include a symbol ( # ) next to the craft designation to indicate an apprenticeable craft) must contribute to the California Apprenticeship Council (“CAC”) the amount reflected as the hourly “training” rate that appears on the Director’s wage determination, for each hour worked. A contractor is also entitled to take credit for such contributions made to a DAS-approved apprenticeship program that can supply apprentices to the site of the public work. The training contribution is a distinct obligation of the contractor under Labor Code § 1777.5(m)(1) and cannot be satisfied by paying the required hourly contribution directly to the worker. The DLSE may issue a Civil Wage and Penalty Assessment against a contractor if the contractor fails to
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pay the required hourly training contributions to a DAS-approved apprenticeship program or the CAC.

3.3.2.3 **Maximum Ratio Violations.** Labor Code § 1777.5(g) includes a “maximum ratio” limitation on the total number of hours of work performed by apprentices in a particular craft as measured against the total number of hours performed by journeymen in that craft under a public works contract. The applicable maximum ratio (if any) is not contained in either the Labor Code itself or duly promulgated regulations, but found only in the apprenticeship standards under which the apprenticeship program operates if the contractor agrees to be bound by those standards. If a maximum ratio violation is suspected, the DLSE will request a copy of the standards under which the apprenticeship program operates, including the maximum ratio requirement, as well as evidence that the contractor has agreed to be bound by those standards. Any violation of a maximum ratio requirement can be measured only by determining the total hours worked by apprentices and journeymen at “the end of” the contract or the subcontract, rather than on a daily basis. (LC § 1777.5(h).) If such a violation is found, the aggregate prevailing wage underpayment is typically calculated and remedied by raising a sufficient number of the excess hours originally paid at the apprentice rate to be paid at the journeymen rate, thereby ensuring compliance with the maximum ratio.

3.3.2.4 **Journeyman On Duty Violations.** Labor Code § 1777.5(c)(2) allows a contractor to elect to have its apprentices employed and trained in accordance with the “rules and regulations” of the CAC to satisfy its statutory obligation to employ apprentices (and to simultaneously qualify its DAS-registered apprentices as eligible to be paid at lower apprentice wage rates). Alternatively, under LC § 1777.5(c)(1,) the contractor may elect to have its apprentices employed and
trained in accordance with the standards of a DAS-approved apprenticeship committee. If the contractor elects to follow the CAC rules, the applicable regulation is found at 8 CCR 230.1(c), and expressly requires that apprentices so employed “must at all times work with or under the direct supervision of journeyman/men.” This is not a ratio requirement (such as the maximum ratio limitation explained above at Section 3.3.2.3) for which compliance is determined “at the end of the contract.” Rather, this is a mandatory, daily obligation that is in effect whenever a worker paid as an apprentice is working on the public works project. Thus, apprentices who are not at all times working “with or under” a journeyman (for the same classification of work in which the apprentice is being trained) must be paid not less than the journeyman rate. The lower apprentice wage rate is simply not available for the worker in this situation because his or her employment and training under LC § 1777.5(c)(2) is by definition “not in accordance” with the CAC rules which the contractor has elected to follow. This is so even though the worker may be registered as an apprentice with the DAS.

The regulation found at 8 CCR 230.1(c) is frequently referred to as the “journeyman on duty” rule. Violations are remedied by the DLSE’s issuance of a Civil Wage and Penalty Assessment. Note that the rule would not apply if a contractor elects the alternative method to employ and train apprentices set forth at LC § 1777.5(c)(1). From a practical standpoint, DLSE investigators should routinely request that contractors provide evidence of their compliance with their obligation to submit contract award information to an authorized apprenticeship program before commencing work on the project, as required by LC § 1777.5(e).

A completed DAS form entitled “Public Works Contract Award Information” (DAS 140) includes the contractor’s selection of either the CAC rules or a particular apprenticeship committee’s standards under which their apprentices will be employed.
4. **DLSE Prevailing Wage Enforcement Process.** The DLSE enforces California’s prevailing wage requirements.

4.1 **Calculation of Wages Due.** Labor Code § 1774 requires payment of not less than the “specified prevailing rates of wages” for all hours worked. The specified rates are the rates found in the Director’s wage determinations which correspond with the type of work performed by individual workers. Contractors are required to select the applicable wage determination based on the work actually performed by a worker for each hour of work on the project. Contractors also must identify one of the Director’s classifications (such as “carpenter” or “drywall finisher”) for each of the hours worked by an individual worker. In its investigations, the DLSE will determine the difference between the total wages required to be paid and the total wages actually paid.

4.1.1 **Travel and Subsistence Requirements.** Labor Code § 1773.1 includes within its definition of “per diem wages” both “travel” and “subsistence” payments in the Director’s determination of the applicable prevailing wages due for a particular type of work. Historically, the amounts required for either travel or subsistence are fixed daily amounts due to workers whenever the terms of a collective bargaining agreement are adopted by the Director as setting forth the prevailing wage rates in a particular locality. These fixed amounts are not specifically set forth in any of the Director’s published wage determinations, but are only noted in footnotes appearing on the wage determinations. The footnote language appears in bold on each affected determination under the heading: “TRAVEL AND/OR SUBSISTENCE PAYMENT.” The text below the footnote directs the reader to the DIR website to obtain the travel and subsistence requirements, and the fixed daily amounts if the requirements are met. There is little uniformity among the requirements found in the OPRL’s posted collective bargaining agreement (CBA)
provisions, and contractors must verify the provisions in each case to determine when and under what circumstances travel and/or subsistence payments may be required. The requirements differ among classifications, but are usually based on the distance a worker must travel from a designated location to the public work jobsite. The fixed daily amount also differs among classifications. SPECIAL NOTE: Compensable travel time is distinct from travel and/or subsistence payments. Compensable travel time is included in the calculation of hours worked. Travel and/or subsistence payments are a separate and distinct obligation of public works contractors if the conditions set forth in the CBA are adopted by the Director to apply to work on a public works project.

4.1.2 "Scope of Work" Provisions Published by the DIR. The classification of work subject to a specific, Director-issued wage determination is often a primary area of dispute between DLSE and public works contractors in enforcement proceedings under the prevailing wage laws. In addition to routine factual disputes (such as workers claiming they performed certain duties while the employing contractor claims otherwise), even if the duties performed are not in dispute, the correct classification for that very type of work (and therefore the prevailing rate which applies) may be contested. The Director will make the final determination on the correct classification. (DLSE v. Ericsson Information Services, Inc. (1990) 221 Cal.App.3d 114.) Occasionally, the wage determination itself may include references to specific types of work subject to that determination (such as a particular “Operating Engineer” Group Number referring to a particular type of equipment). Other determinations may not include that level of specificity. In prior litigation, the Director has typically relied on the Scope of Work provisions contained in the collective bargaining agreement ("CBA") posted by the DIR, along with that particular wage determination, when such an issue arises. It is therefore important that Division staff review those Scope of Work provisions.
Work provisions whenever this issue arises during an investigation. It is irrelevant from DLSE’s perspective whether a worker happens to be a member of a union whose CBA provisions are posted by OPRL with the wage determination, or whether an affected contractor is signatory to that CBA. In the prevailing wage context, DLSE does not enforce CBA provisions which may be in effect between public works contractors and one or more labor organizations. The applicable wage rate is determined by the worker’s classification and is based on the work actually performed. Rather, DLSE enforces the rates set forth in the Director’s wage determinations and the Scope of Work provisions may provide guidance in interpreting the determinations. Workers may be reclassified when the duties or work tasks do not accurately reflect the work being performed.

4.1.3 Factual Disputes Concerning the Type of Work Performed. Factual issues of this nature are one of the primary areas of dispute arising in DLSE investigations. From a practical standpoint, the best approach for Division investigators is to obtain as much evidence as may become available. Although it is impossible to predict the weight which might be assigned to any evidence by a trier-of-fact in the event a CWPA is contested, the following sources of evidence may be available (this listing is not meant to be all-inclusive):

1. Worker complaints, statements (preferably, written) or questionnaires identifying the duties and equipment used by the worker;
2. Public works contracts and subcontracts, including specifications;
3. Inspection reports or logs maintained by awarding bodies, contractors or any other observers of the work performed;
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(4) Time and pay records, prepared either by workers (such as calendars) or contractors, which may include descriptions of duties.

4.1.4 **Different Classifications For the Same Worker.** The minimum prevailing wage for hours worked in the execution of a contract for public works is based upon the specified prevailing rates “for work of a similar character” (LC §§ 1771 and 1774.) Therefore, it is possible that one worker may perform more than one type of work during the course of a project. Two important considerations for Division staff encountering this situation during an investigation are: (1) The potentiality that even though two different classifications of work identified in the Director’s wage determinations may sometimes provide the minimum rates required to be paid for the worker’s separate duties, the higher minimum rate may apply for all of the hours worked. The U.S. Department of Labor analyzed this issue under similar provisions in the Davis-Bacon Act (40 U.S.C. § 276(a), the federal prevailing wage law) and determined that when a worker performs duties in a higher paying classification (such as a Pipefitter), the fact that some of the work performed by that same worker is similar to a type of work in a lower paying classification (such as Laborer Group 1), when that same work is performed by a Pipefitter (as a small or large part of his or her whole assigned task on any given job) it is the work of a Pipefitter, and must be compensated at the higher rate. (In re Corley (1978), Case No. 77-DB-114, 23 Wage and Hour Cases, 1071, 1075.) The In re Corley analysis is not intended to presumptively apply to all situations where a contractor’s CPRs identify the same worker as performing work during the same day in two different classifications at two different rates of pay. Consistent with the language of Labor Code 1771, a contractor is generally not required to pay its workers at a rate higher than that specified in a particular wage determination for the type of work performed. The In re Corley rationale is
applicable only where both types of work performed by the same worker are part of the work assigned to that worker in accomplishing the overall task performed under the higher-paying classification. Absent compelling evidence as to the type of work performed, any uncertainties will likely be resolved in the favor of worker testimony (and against the affected contractor whose failure to maintain the required records created the uncertainties) concerning the duties actually performed. (See, *Hernandez v. Mendoza* (1988), 199 Cal.App.3d 721.)

4.1.5 **Compensable Travel Time.** Compensable travel time related to a public works project constitutes “hours worked” on the project, which is payable at not less than the prevailing rate based on the worker’s classification, unless the Director’s wage determination for that classification includes a lesser travel time rate. (See Director’s Decision in *In the Matter of Kern Asphalt Paving & Sealing Co., Inc.* (March 28, 2008), Case No. 04-0117-PWH. (See also *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575.).)

4.1.6 **Calculation of Overtime (or Saturday/Sunday/Holiday) Wages.** Labor Code § 1815 requires that work performed on public works projects in excess of 8 hours per day, or 40 hours per week, must be compensated at not less than time and one-half the basic rate of pay. In addition, the Director’s wage determinations generally designate specific premium rates for all Saturday and/or Sunday and Holiday work. The DIR website identifies the particular Holidays covered by the premium rate requirements under each wage determination. The daily overtime rates apply whenever the work performed exceeds 8 hours per day or 40 hours per week. Saturday, Sunday, and Holiday premium rates apply for the hours worked on each of those days as specified in the applicable determination. Failure to pay the appropriate premium rate subjects the contractor to penalties pursuant to Labor Code § 1813.
4.1.6.1  **Note:** In some cases, the wage determination for a specific classification may specify the requirement that overtime be paid for hours worked in excess of a maximum number that is less than 8 hours per day or 40 hours per week. For instance, the general prevailing wage determination may require that overtime be paid for all hours worked in excess of seven (7) hours per day or 35 hours per week. In those circumstances, overtime must be paid in accordance with the conditions set forth in the general wage determination. (See, 8 CCR 16201(a)(3)(F), Exception 4, discussed below at 4.1.7.4.) Contractors that fail to comply with this requirement are subject to penalties under Labor Code § 1775 in addition to the amount of any wages due.

4.1.7  **Exceptions to Overtime Requirements.** Overtime is to be paid as indicated in the applicable wage determination. There are four limited exceptions to the overtime requirements under 8 CCR 16200(a)(3)(F). They are:

4.1.7.1  **Exception 1:** If a workweek other than Monday through Friday is a fixed business practice or is required by the awarding body, no overtime payment is required for the first eight hours on Saturday or Sunday. The “fixed business practice” portion of this exemption is construed narrowly. It will not be permitted in circumstances where the contractor cannot establish that such a practice exists on all its projects, including public and private projects.

4.1.7.2  **Exception 2:** If the collective bargaining agreement provides for Saturday and Sunday work at straight-time, no overtime payment is required for the first eight hours on Saturday or Sunday.
4.1.7.3 **Exception 3:** If the awarding body determines that work cannot be performed during normal business hours, or work is necessary at off hours to avoid danger to life or property, no overtime is required for the first eight hours in any one calendar day, and 40 hours during any one calendar week.

4.1.7.4 **Exception 4:** No overtime payment is required for less than 40 hours in a standard work week, or for less than eight hours in a calendar workday, unless specified in the collective bargaining agreement used as the basis for the prevailing wage determination.

4.1.8 **Restriction on Alternative Workweek Schedules:** The California Labor Code requires that workers employed on public works in excess of eight hours per day receive compensation for all such hours at not less than the specified overtime rate. (Labor Code §§ 1810, 1811, and 1815.) The California Constitution also restricts the hours that may be worked on public works projects to eight hours a day, except in specified circumstances. (Article XIV, section 2). Notwithstanding Labor Code §§ 511, 514 and Wage Order 16, these restrictions apply to all workers performing work on public works projects, including workers covered under collective bargaining agreements and workers covered by an alternative workweek schedule adopted under Labor Code § 511 or Wage Order 16. Accordingly, no worker may be employed on a public works project for more than eight hours a day unless the worker receives the overtime compensation specified by the applicable prevailing wage determination.

4.1.9 **Saturday Make-Up Days:** The determinations for some crafts permit contractors to pay straight time rates for Saturday work if certain conditions are satisfied. Any such exception from the general prevailing wage requirements is construed narrowly in accordance with its express terms. Furthermore, the exception must
be included in the applicable prevailing wage determination in order to apply. The DLSE will not recognize exceptions which may exist in underlying collective bargaining agreements which rates are adopted by the Director for purposes of public works unless the Director also adopts the exception and it is included in the determination.

4.2  

**Credit for Employer Payments.** California prevailing wage law requires the payment of per diem wages, which includes two components. The first component is the Basic Hourly Rate. The second component is the Employer Payments. Taken together, these two components make up the Total Hourly Rate which must be paid to each worker for any work performed on a public works project.

4.2.1  

**Employer Payments Are A Credit Against The Obligation To Pay The General Prevailing Wage Rate Of Per Diem Wages.** Contractors obligated to pay prevailing wages may take credit for amounts up to the *aggregate* total of all benefits, such as pension, health & welfare, etc., listed as prevailing in the applicable wage determination. Contractors are not limited to the individual amounts specifically listed under the various categories of benefits specified in a wage determination in taking credit for providing Employer Payments. Rather, the contractor may take a credit for the aggregate total of permissible Employer Payments made on behalf of the affected worker. For example, the Director’s current prevailing wage Determination (SC-3-5-1-2013-1) in Los Angeles County for the Craft of Asbestos Worker, Heat and Frost Insulator, in the Classification of Mechanic, reflects a Basic Hourly Rate $32.79, with permissible Employer Payments of $7.54 per hour (Health and Welfare), $7.68 per hour (Pension), $7.47 per hour (Vacation/Holiday), and one mandatory employer payment of $0.64 per hour (Training), which must be paid to the California Apprenticeship...
Council ("CAC") or an approved apprenticeship program. The Sum of all these components ($51.30) is the Total Hourly Rate listed on the Determination. The aggregate total of permissible Employer Payments is $22.87. The permissible Employer Payment amounts listed here typically reflect the particular hourly benefit rates found in a collective bargaining agreement which the Director determined had established the prevailing rate for this craft and classification of work in this geographic area. Absent contractual obligations which may apply to a particular contractor, the total of $22.87 per hour may be paid by an employer in full or in part to any category of permissible Employer Payments, and the employer will be entitled to credit against the total prevailing wage obligation. Thus, an employer may choose to contribute $20 of the aggregate total to a private medical insurance plan or a pension plan for its workers, and pay the remainder of $2.87 directly to the workers. Full credit will be to that employer for the medical insurance payments, and all of the payments added together ($35.66 to workers + $20.00 to medical plan + $0.64 to CAC = $51.30) would reflect compliance by this employer with the prevailing wage rate obligation. (WSB Electric, Inc. v. Curry (9th Cir. 1996) 88 F.3d 788.) This credit may be taken only as to amounts which are actual payments. (8 Cal. Code of Regs. § 16200(a)(3)(I).) No credit may be taken for benefits required to be provided by other state or federal law. (Labor Code § 1773.1(c).) For instance, a contractor may not take a credit against its prevailing wage obligations for benefits such as workers’ compensation, unemployment benefits, and social security and Medicare contributions.

4.2.2 **No Reduction of the Basic Hourly Rate.** California law prohibits the use of credits for Employer Payments to reduce the obligation to pay the hourly straight time or overtime wages specified as the Basic Hourly Rate in the general prevailing wage determination. (Labor Code § 1773.1(c) and 8 Cal. Code of...
Regs. § 16200(a)(3)(I).) Two legislatively created exceptions to this general rule are now found at Labor Code section 1773.1(c) and section 1773.8. Both exceptions are extremely limited in scope and are only applicable to increases in employer payment contributions made pursuant to criteria set forth in a collective bargaining agreement ("CBA"), and only if the specific statutory conditions listed in the Labor Code have been met. DLSE investigators will typically require a contractor claiming an exception under these sections to submit satisfactory evidence that the exception applies, including, but not limited to, a certified copy of the CBA upon which the exception is based, and to certify that the CBA's terms applied to the workers identified on the contractor's certified payroll records.

4.2.2.1 Example:

Basic Hourly Rate $25.00

Employer Payments $15.00

Total Hourly Rate $40.00

The contractor can comply with California prevailing wage laws by paying:

1. $40.00 per hour in wages;

2. $25.00 per hour in wages plus $15.00 in Employer Payments.

3. Any combination of the wages and Employer Payments so long as the Basic Hourly Rate is not less than $25.00 per hour and the Total Hourly Rate meets or exceeds $40.00 per hour.
4.2.2.2 Different for Purely Federal Projects Under Davis-Bacon Act. The California law restricting the reduction of the Basic Hourly Rate is distinct from the federal prevailing wage laws under the Davis-Bacon Act. The Davis-Bacon Act does not prohibit the crediting of employer payments or benefit contributions towards fulfilling the hourly wage rate listed in the contract wage determination on federally funded projects. Contractors performing work on projects which are governed by both the federal Davis-Bacon Act and the California prevailing wage requirements must, however, continue to comply with state requirements in order to be in compliance with California law. DLSE investigators may encounter this issue when dealing with contractors on public works projects which have mixed funding (both federal and state) or federally funded projects which are controlled or carried out by California awarding bodies of any sort. In both of these situations, the application of state prevailing wage rates when higher is required. (See 8 CCR § 16001(b).)

4.2.3 Application to All Hours Worked. Employer Payments must be paid for all hours worked, including overtime hours, unless expressly provided otherwise in the general prevailing wage determination. The general prevailing wage determinations specify the applicable daily, Saturday, Sunday, and Holiday overtime payment. Although the applicable overtime rates set forth in the determination include the Employer Payments, the overtime rate (for example, time and one half) is based upon the Basic Hourly Rate only. The Employer Payment is therefore excluded from calculating the applicable overtime premium due as overtime compensation.

4.2.3.1 Example: An employee worked 12 hours in the workday as an Iron Worker on a public works project. The Basic Hourly Rate of pay in the determination is $32.00 plus
$22.00 in Employer Payments. The overtime rate for the first 2 daily overtime hours is $48.00 (one and one half (1½) times the Basic Hourly Rate of $32.00, or $32.00 + $16.00). The wages due for each overtime hour is $70.00 (the overtime rate plus Employer Payments, or $48.00 + $22.00). The wages due per hour for all other overtime is $86.00 (two (2) times the Basic Hourly Rate plus Employer Payments, or $64.00 + $22.00).

The worker would be due:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 Hours at $54.00 ($32.00 + $22.00)</td>
<td>$432.00</td>
</tr>
<tr>
<td>2 Hours at $70.00</td>
<td>$140.00</td>
</tr>
<tr>
<td>2 Hours at $86.00</td>
<td>$172.00</td>
</tr>
<tr>
<td>Total Wages Due</td>
<td>$744.00</td>
</tr>
</tbody>
</table>

4.2.4 

Types of Employer Payments for Which An Employer May Take a Credit Against Its Prevailing Wage Obligations. The types of employee benefits recognized as Employer Payments under Labor Code § 1773.1 include payments for:

2. Pension.
3. Vacation.
4. Travel.
5. Subsistence.
6. Apprenticeship or other training programs authorized by Section 3093, so long as the cost of training is reasonably related to the amount of the contributions.

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1 This example is for illustration purposes. The general prevailing wage determinations specify the applicable Total Hourly Rates that must be paid to workers for straight time, overtime, Saturday and Sunday work, and there is no need for contractors to independently determine the hourly amount to be paid.
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(7) Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.

(8) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are required under a collective bargaining agreement pertaining to the particular craft, classification, or type of work within the locality or the nearest labor market area at issue.

(9) Other purposes similar to those specified in paragraphs (1) to (8), inclusive.

4.2.4.1 Types Of Benefits Which Do Not Constitute Employer Payments: The types of benefits for which an employer may not take a credit against its prevailing wage obligations include benefits such as the use of a cell phone or company vehicle, gas reimbursement, or a Christmas bonus.

4.2.5. “Employer Payments” Defined: Labor Code § 1773.1 defines Employer Payments to include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.
4.2.5.1 It is not necessary that the Employer Payment satisfy all of these three conditions in order for the credit to be valid. It is sufficient that the Employer Payment satisfies any one of the specified conditions in order to be considered an Employer Payment for which a contractor is entitled to take a credit against its prevailing wage obligation.

4.2.5.2 **Irrevocably Made to a Trustee or Third Person Pursuant to a Plan, Fund, or Program.** Examples of these types of Employer Payments include contributions by a union signatory contractor to a labor-management affiliated pension, health & welfare, training, and vacation programs, contractor payments for health insurance premiums, contractor payments irrevocably made to a trustee or third party for pension benefits, and similar types of payments.

4.2.5.2.1 **Employer Payments made to these types of plans must be made regularly.** For enforcement purposes, the Division requires that payment be made no less than quarterly, which is consistent with the requirement under the Davis-Bacon Act and its implementing regulations. (29 C.F.R. § 5.5(a)(1)(i).)

4.2.5.2.2 **Employer Payments Must Be Determined Separately For Each Worker.** Credit against the prevailing wage obligation may be taken only toward the prevailing wage requirement for each applicable worker. Employers may not take credit for an individual worker based upon an average payment or contribution made on behalf of a group of workers. For a specific example demonstrating DLSE’s method of converting a contractor’s monthly or annual contributions to a
typical benefit plan into an hourly wage equivalent to calculate the amount of credit available against the prevailing wages due to an individual worker, please refer to Section 4.2.6.4.1 of this Manual.

4.2.5.2.3 Vesting Does Not Normally Affect Right to Credit. Many pension plans, particularly union-affiliated pension plans, contain “vesting” requirements which, under the plan, require that the worker complete a certain length of service before the worker has a nonforfeitable right to benefits under the plan. The existence of such vesting requirements does not affect the amount of credit an employer may take for such contributions, provided that the pension plan is a bona fide plan that meets the applicable requirements under ERISA, including the minimum vesting requirements. Under no circumstances, however, may the forfeited contributions revert to the employer.

4.2.5.3 Employer Payments That Are Reasonably Anticipated to Benefit Workers. Employer Payments that are not irrevocably made to a trustee or third person pursuant to a plan, fund, or program may still be valid as a credit against the prevailing wage obligation, provided that they meet all of the conditions set forth in Labor Code § 1773.1(b)(2). Such rate of actual costs for such plan or programs can be credited against the prevailing wage only if the plan or program:

(1) Can be reasonably anticipated to provide benefits to workers;

(2) Is pursuant to an enforceable commitment;

(3) Is carried out under a financially responsible plan or program; and

(4) Has been communicated to the workers affected.
4.2.5.3.1 **Example.** The type of Employer Payments contemplated under § 1773.1(b)(2) may include certain vacation and holiday plans for which the employee accrues the benefit during the time worked on a public works project. Such payments must meet all the conditions set forth above. In addition, the credit may be taken only as to amounts which are “actual payments.” (8 CCR § 16200(a)(3)(I).)

4.2.5.4 **Payments to the California Apprenticeship Council.** Employer Payments for which a contractor may take a credit against its prevailing wage obligations also include payments made to the CAC pursuant to Labor Code § 1777.5(m)(1). The amount of contribution is listed on the general prevailing wage determination for those crafts which are recognized by the Director of the DIR as an apprenticeable craft. Such amounts are typically listed in the general prevailing wage determination under the heading Training or similar type heading.

4.2.5.4.1 **Includes Payments Made to An Approved Apprenticeship Program.** A contractor may take as a credit for payments to the CAC any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public work project. (Labor Code § 1777.5(m)(1).)

4.2.5.4.2 **Training Contributions Not Paid to the Worker.** Although such payments constitute part of the Total Hourly Rate required to be paid by the employer, such payments are not paid to the worker. Rather, such payments are made to either the CAC or the applicable approved apprenticeship program. The contractor may add the amount of the contributions in computing his or her bid for the public works contract. (Labor Code § 1777.5(m)(1).)
4.2.5.4.3 **Exception - Non-Apprenticable Crafts.** For non-apprenticeable crafts, any training contributions should be paid to the worker as wages and not paid to the CAC. For example, the Teamsters are not recognized by the Director of the DIR as an apprenticeable craft. Accordingly, any training contribution listed in the general prevailing wage determination for the Teamsters should be paid to the worker, or to the applicable union training program, if the contractor is contractually obligated to make such payments under its collective bargaining agreement with the Teamsters.

4.2.6. **Annualization.** Annualization is a principle adopted by the federal Department of Labor in enforcing the Davis-Bacon Act for crediting contributions made to fringe benefit plans based on effective rate of contributions for all hours worked during a year by an employee on both public (Davis-Bacon) and private (non-Davis-Bacon) projects. ([Miree Construction v. Dole](http://www.labor.gov) (11th Cir. 1991) 930 F.2d 1536, 1539.) California law requires that the credit for employer payments must be computed on an annualized basis where the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer. (Labor Code § 1773.1(d).)

4.2.6.1 **Exceptions:** Annualization is required except where one or more of the following occur:

1. The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.

2. The higher rate of payments is required by a project labor agreement.

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(3) The payments are made to the CAC pursuant to Section 1777.5.

(4) The director determines that annualization would not serve the purposes of this chapter.

4.2.6.2 The annualization principle requires that when converting an employer’s contribution to a pension or medical plan into an hourly amount, the amount of payments must be divided by the total number of hours worked in a year on all projects, public and private, not just the number of hours worked during that year on public projects. This method of calculation, the “annualization” principle, provides a means to permit an employer to take credit only for employer contributions paid to workers while employed on covered public works projects.

4.2.6.3 **DLSE Annualization Calculation.** For enforcement purposes, the DLSE follows the federal enforcement guidelines. See Department of Labor Field Enforcement Handbook – 6/29/90, Section 15f11. (See [http://www.dol.gov/whd/FOH/index.htm](http://www.dol.gov/whd/FOH/index.htm) to review the handbook.) Under the federal enforcement guidelines, where a contractor makes annual payments in advance to cover the coming year and actual hours will not be determinable until the close of that year, the total hours worked by the workers performing work covered by California’s prevailing wage laws, if any, for the preceding calendar year (or plan year) will be considered as representative of a normal work year for purposes of annualization. Similarly, where the contractor pays monthly health insurance premiums in advance on a lump sum basis, the total actual hours worked in the previous month, or in the same month in the previous year, may be used to determine (i.e. estimate) the hourly equivalent credit per employee during the current month. It is not considered a violation if the contractor uses the full year equivalent of 2,080 (40...
hours x 52 weeks) hours in determining the applicable credit unless, of course, the affected employee worked more than 2,080 hours in that applicable year.

4.2.6.4 Representative Period. Any representative period may be utilized in such cases, provided the period selected is reasonable. Employers using other methods to calculate the allowable credit have the burden of establishing that their method satisfies the annualization requirements set forth in Labor Code 1773.1(d).

4.2.6.4.1 Example:

An employee works as a carpenter where the basic hourly rate set forth in the wage determination for Carpenter is $30 and the total employee benefit (Employer Payment) package is $15, excluding the training contribution. Accordingly, the total hourly rate required to be paid under California’s prevailing wage laws is $45.

Where the employer provides the carpenter with medical insurance in the amount of $4,800 per year, the employer would divide the total annual cost of the benefit by the total hours worked by the employee for the preceding year. The employer may also use 2,080 hours, which is the equivalent of full year employment to arrive at the allowable Employer Payment credit.

For instance, where the employer uses the equivalent of full year employment, or 2,080 hours, the applicable credit is as follows:

\[
\frac{($400 \times 12 \text{ months})}{2,080 \text{ hours}} = \frac{4,800}{2,080} \approx 2.31 \text{ per hour.}
\]

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If the worker in this example receives no other employee benefits which are recognized as bona fide Employer Payments under California law, then for each hour worked on a project covered by California's prevailing wage laws, the employer is entitled to take a credit of no more than $2.31 against its obligation to pay the worker $45 per hour, up to a maximum credit of $4,800, which is the total amount paid for medical insurance. The difference between the $15.00 per hour employer payment required under the applicable wage determination and the credit allowed for the provision of medical insurance must be paid to the worker as part of his or her hourly wage for work performed on the public works project.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Hourly Rate</td>
<td>$30.00</td>
</tr>
<tr>
<td>Medical Insurance Benefit</td>
<td>$2.31</td>
</tr>
<tr>
<td>Additional Wages Due</td>
<td>$12.69</td>
</tr>
<tr>
<td>Total Due Per Hour</td>
<td>$45.00</td>
</tr>
</tbody>
</table>

If the worker works the entire year only on projects covered by California's prevailing wage laws, or under circumstances otherwise exempt under the exceptions set forth above in Labor Code § 1773.1(d)(1)-(4), the employer would be entitled to take the full credit of $2.31 up to a maximum of $4,800.

Conversely, if the worker worked only 1,500 hours of the year on projects covered by California's prevailing wage laws and 580 hours of the year on other jobs which are not covered by California's prevailing wage laws or are otherwise not exempted under Labor Code § 1773.1(d)(1)-(4), the employer would be entitled to take a credit of only $2.31 per hour towards meeting the employer's obligation to pay the prevailing wage on the California public works projects. Therefore, although an employer may have paid $4,800 in insurance premiums for that year, the employer is entitled to take a total annual credit of only $3,465.00 (1,500 x
$2.31) against its prevailing wage obligation because the employer may take the
credit only for those hours worked on a public works project.

4.2.6.5 Payments To The California Apprenticeship Council Pursuant To Section 1777.5. As specified in Labor Code § 1771.3(d)(3), payments made to the CAC, or to an applicable approved apprenticeship program pursuant to Labor Code § 1777.5(m)(1), do not need to be annualized. For enforcement purposes, the Division takes the position that the exemption from the annualization requirements under section 1771.3(d)(3) is limited to the training contribution amounts set forth in the applicable general prevailing wage determination. Any amounts paid in excess of the amount set forth in the applicable general prevailing wage determination must be annualized unless otherwise exempt under section 1771.3(d).

4.3 Calculation of Labor Code § 1775 Penalties. The Labor Code provides that the contractor and subcontractor, if any, under the contract shall forfeit not more than two hundred dollars ($200.00) for each calendar day, or portion thereof, for each worker paid less than the required prevailing wage rate. This dual liability is most easily described as a penalty which is combined, united, and shared by both the contractor and subcontractor. The fact that a contractor may have been totally ignorant of its subcontractor’s prevailing wage underpayment is not, standing alone, a defense to liability for this penalty. Moreover, and contrary to an argument sometimes raised by prime contractors, the language of the statute does not mean that the prime contractor only becomes responsible for the penalty if the subcontractor fails to pay it first. While the Labor Commissioner may only collect the total penalty once, the contractor and subcontractor equally share full responsibility for the amount assessed. The only exception is found in the “safe harbor” provisions available to prime contractors who meet the
requirements of Labor Code § 1775(b), discussed in detail below in Section 4.3.1 of this Manual. In assessing the amount of the penalty, the DLSE considers two factors. The first factor is whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor. The second factor is whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations. There are minimum penalties. The DLSE may assess not less than forty dollars ($40.00), unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor. The DLSE may assess not less than eighty dollars ($80.00) if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned. The DLSE may assess not less than one hundred twenty dollars ($120.00) if the DLSE determines that the violation was willful, as defined in subdivision (c) of Section 1777.1. The DLSE’s determination of the penalty amounts is reviewable for abuse of discretion. Any outstanding wages shall be satisfied before applying that amount to the penalties.

4.3.1.1 **Limited Prime Contractor Safe Harbor.** Section 1775(b) provides that a prime contractor may avoid liability for section 1775 penalties when workers employed by its subcontractor were paid less than the required prevailing wage.

The prime contractor of the project is not liable for any penalties under section 1775 unless (a) the prime contractor had knowledge of that failure of the
subcontractor to pay the specified prevailing rate of wages to those workers or (b) the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.
**Important.** Even if a prime contractor avoids section 1775 penalties where the evidence presented to DLSE satisfies the conditions of Labor Code § 1775(b)(1)-(4), a prime contractor remains jointly and severally liable for all wage underpayments occasioned by its subcontractors, and penalties and liquidated damages available under Labor Code §§ 1813 and 1742.1.

### 4.4 Calculation of Labor Code § 1813 Penalties

Prime contractors and subcontractors are jointly and severally liable for all monetary penalties forfeited and assessed under Labor Code § 1813. As is the case with penalties assessed under Labor Code § 1775, this dual liability means the penalty is combined, united, and shared by both the contractor and the subcontractor. And unlike the penalty under §1775, there is no “safe harbor” available to prime contractors for § 1813 penalties assessed against both them and their subcontractors. The dollar amount of this penalty is fixed at $25.00 for each worker for each calendar day during which the worker is required or permitted to work more than eight hours in any one calendar day or 40 hours in any one calendar week. Unlike Labor Code § 1775 penalties, the Labor Commissioner has no discretion to not assess or to reduce or modify the penalty amount under § 1813.

### 4.5 Calculation of Unpaid Training Fund Contributions

Absent credit having been given to the contractor for payments made in satisfaction of this prevailing wage obligation, the DLSE will calculate the unpaid contributions based upon the hours worked in any particular classification, and reflect the amounts due under the “Training Fund” heading. NOTE: Not all payments for training funds are entitled to credit against the total prevailing wage obligation.

### 4.6 Determination of Hours Worked and Amounts Paid

While CPRs furnished by public works contractors must reflect both hours worked and amounts paid, there
Division of Labor Standards Enforcement
Public Works Manual

may be frequent conflicts between the information provided by workers and contractors on these two components of the audit. The DLSE will consider other sources to determine the accuracy of the payroll records and to determine whether the workers were paid fully for all hours worked on the public works projects.

4.6.1 **Releases Signed By Workers As Proof Of Amounts Paid.** California law prohibits an employer from requiring an employee to release wages due unless such wages have been paid in full. (Labor Code § 206.5.) The DLSE will generally not accept “Releases” provided by contractors, standing alone, as conclusive proof that these payments have actually been paid for hours worked on the project in question. Such releases must be supported by independent proof that the payment reflected in the release has actually been made (for example, cancelled checks), and confirmation with the worker who signed the release that payment was actually received for work performed on the project in question.

4.7 **Civil Wage and Penalty Assessments (“CWPA”).** Labor Code § 1741 describes in detail the statutory process by which DLSE enforces its claims for unpaid wages and penalties. DLSE’s compliance with that process has been achieved by the creation and use of the form entitled “Civil Wage and Penalty Assessment” (DLSE Form PW 33) which tracks, in all respects, the statutory language. The use of this specific form by DLSE investigators is mandatory to initiate statutory enforcement actions under the prevailing wage laws.

4.7.1 **Service of the CWPA / Statute of Limitations.** Labor Code § 1741 provides two alternate deadlines by which a CWPA must be deposited in the mail (by first class and certified mail, return receipt requested). Service under the shorter
deadline (no later than 180 days after recordation of a valid notice of completion for the public work of improvement, or acceptance of the public work, whichever occurs last) enables DLSE to obtain remedies (including a court judgment) against the contractor, the subcontractor and any bonding company issuing a bond that secures the payment of wages covered by the CWPA, up to the full amount of wages, penalties and liquidated damages identified in the CWPA. Service accomplished beyond the 180-day deadline, but no later than 360 days after the last of the same two events, enables DLSE to obtain a remedy, but only up to the amount of contract funds being retained by the awarding body at the time of service.

4.8 Administrative Review of CWPAs. Labor Code § 1742 provides contractors served with a CWPA an opportunity to timely request administrative review of the monetary assessment. If no hearing is requested “within 60 days after service,” the CWPA becomes final (Labor Code § 1742(a)), and enables DLSE to either obtain contract funds withheld by the awarding body or, if insufficient funds have been retained, to enter a court judgment against the contractors served, without the necessity of an administrative hearing and without filing a lawsuit. (Labor Code §§ 1742(d) and (e).) If any of the contractors served with the CWPA do timely transmit a written request for a review hearing, a hearing will be provided by the DIR before the assessment can become a final order. (Labor Code § 1742(b).) The administrative review process involves several different participants from DLSE and DIR, and their respective roles follow.

4.8.1 Role of DIR / OD-Legal. The Director, currently through the Office of the Director’s Legal Unit, is responsible under Labor Code § 1742(b) to both hold an administrative review hearing in accordance with the procedures established under the Prevailing Wage Hearing Regulations found at 8 CCR §§ 17201-17270,
and “issue a written decision affirming, modifying, or dismissing the assessment.” The hearing process is required to be fair and impartial, and the findings in the written decision “must be supported by substantial evidence in the light of the whole record.” The proceedings must provide affected contractors with the protections of due process. To guarantee due process, affected contractors are specifically provided with an opportunity to obtain court review of any written decision by filing a writ under Code of Civil Procedure 1094.5. (Labor Code § 1742(c).)

4.8.2  **Prevailing Wage Hearing Regulations.** The regulations which are in effect during the entire period after a contractor files a request for a review hearing and until those proceedings conclude, either by dismissal of the proceedings by the Hearing Officer (generally, because of settlement) or on the date which a written decision signed by the Director affirming, modifying, or dismissing the assessment becomes final, are found at 8 CCR §§ 17201-17270. Two particular regulations which have not been previously addressed in this Manual are important to DLSE investigators: (1) No direct or indirect communication regarding any issue in the review proceeding is permitted between the DLSE investigator and the Hearing Officer without notice and the opportunity for all parties to participate in the communication. (8 CCR § 17207(a).) DLSE investigators typically ensure compliance with this rule prohibiting “ex parte” communications by avoiding any communications with the Hearing Officer, except during the formal proceedings; (2) The required method of service of a CWPA and the required contents of a CWPA are restated at 8 CCR § 1720.

4.8.3  **Settlement Meetings and Settlements.** Labor Code § 1742.1, in addition to providing the availability of liquidated damages (an amount equal to the wages covered by the CWPA if those wages remain unpaid 60 days after service of the
Division of Labor Standards Enforcement  
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CWPA), requires that DLSE afford contractors served with a CWPA an opportunity to meet to attempt to settle any dispute regarding the assessment, if such a request is made by the contractor within 30 days following service. The CWPA form (at page 3) identifies the DLSE investigator who issued the CWPA as the person to contact to arrange a settlement meeting. The meeting may be held by phone or in person, and nothing said in the meeting is either subject to discovery, or admissible as evidence, in any administrative or civil proceeding. The DLSE investigator may handle the meeting with or without involvement by DLSE Legal, but it is always prudent to review the issues which might be discussed in the meeting with either a Senior Deputy or DLSE counsel. Either a Senior Deputy or DLSE counsel should be notified if settlement can be achieved. In the event a contractor requests that a written settlement agreement or release be signed by DLSE, DLSE counsel must be notified and must review any such document before signing. The proposed terms of a post-CWPA settlement are to be approved by a Senior Deputy or DLSE Legal.

4.8.4 **Liquidated Damages.** Contractors and their sureties are also subject to liquidated damages (LC § 1742.1(a)) in an amount equal to the wages, or portion thereof, that still remain unpaid for 60 days after service of a DLSE-issued CWPA or a Notice To Withhold Contract Payments issued by a DIR-approved LCP. Liquidated damages are distributed to workers. If an assessment is contested, the Director may exercise his or her discretion to waive the amount available as liquidated damages when the contractor demonstrates substantial grounds for appealing with respect to a portion of the unpaid wages. If the assessment is overturned or modified after administrative or judicial review, liquidated damages are only available on the wages found to be due and unpaid. Additionally, the statute provides that a contractor may avoid liability for liquidated damages by depositing in escrow with the DIR the full amount of the assessment, including...
penalties, within 60 days following service of the CWPA or Notice. (LC § 1742.1(b).) The DLSE’s CWPA form specifies that a check or money order in the full amount is required, accompanied by a copy of the contested CWPA or Notice, and mailed to: Department of Industrial Relations, Attention Cashiering Unit, P.O. Box 420603, San Francisco, CA 94142. The DIR will release such funds (plus any interest earned) at the conclusion of all administrative and judicial review to the persons or entities who are found to be entitled to the amounts so deposited.

4.9 **CWPAs Which Become Final / Collection From Awarding Body / Judgments.** Labor Code § 1742(a) provides that a CWPA becomes “final” if no review hearing has been requested within 60 days after service. CWPAs that have become final may be submitted to the awarding body withholding contract funds under that CWPA to obtain the amounts due. (Labor Code § 1742(f).) If funds are not available from the awarding body, DLSE counsel may request entry of judgment in the Superior Court in any county in which the affected contractors have property or a place of business. (Labor Code § 1742(d).) DLSE counsel will decide whether to proceed with either collection from the awarding body, or by pursuing entry of a court judgment against the contractors.

4.10 **Role of the Compliance Monitoring Unit (“CMU”) in DLSE’s Prevailing Wage Enforcement.** In 2012, the Legislature enacted Labor Code §1771.3 to enhance DLSE’s ability to monitor and enforce prevailing wage compliance, primarily on public works projects which are paid for with funds derived from bonds issued by the state. (Other statutes not listed here also require awarding bodies to pay a fee to the Department of Industrial Relations for the monitoring and enforcement of prevailing wage requirements by the CMU on specified public works projects. Please refer to the DIR website to obtain an updated list and capsule summary of the statutes that require use of the CMU for specified projects. The current list is...
included in this Manual as Addendum 6. All DLSE investigators who are assigned prevailing wage matters should refer to the list for guidance on which public works contracts are subject to CMU activities.) Historically, prevailing wage investigations had only been triggered by the filing of written complaints with the Division, and certified payroll records ("CPRs") were only requested from contractors who were the subject of such complaints. This new statute provides an ongoing compliance monitoring function by requiring all contractors subject to CMU monitoring to furnish CPRs directly to the CMU, which are then to be reviewed within 30 days after receipt to determine whether (1) all information required by Labor Code § 1776(a) has been reported; (2) certification forms have been signed in compliance with Labor Code §1776(b); and (3) no less than the correct prevailing wage rates have been reported as paid for each classification of labor listed. The CMU is also authorized to confirm the accuracy of CPRs, through worker interviews, examination of any other time and pay records, verification of "employer payments" through third-party recipients such as trust funds or health plans, or any other legal and reasonable method of corroboration. CMU representatives may also conduct in-person inspections at the site or sites at which the contract for public work is being performed, and such visits may include observation of work activities, interviews of workers and others involved with the project, or any other activities deemed necessary by the CMU to ensure compliance with prevailing wage requirements, and to obtain any information or evidence of compliance with Labor Code §226 (itemized wage statements for employees) and any other laws enforced by the Labor Commissioner. Regulations which set forth all of the various activities of the CMU have already been adopted and are found at 8 CCR 16460-16464. These regulations include deadlines for contractors to furnish CPRs to the CMU (generally, at times designated by the Awarding Body in the contract, which shall be at least monthly, or within 10 days of any separate request by the CMU). Other more recently

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adopted regulations found at 8 CCR 16450-16455 include the obligations of Awarding Bodies to provide informational notices to the Department of Industrial Relations of any projects that are subject to CMU requirements and the payment of fees to the DIR for compliance monitoring and enforcement by the CMU. While creation of the CMU will greatly increase the number of public works projects investigated by DLSE staff, the procedures, forms and deadlines that DLSE will use and follow to enforce prevailing wage requirements when violations are discovered by the CMU’s monitoring activities have not been changed. Thus, all of the materials in this Manual which describe the manner in which DLSE investigators decide whether prevailing wage violations have occurred, and how and when Civil Wage and Penalty Assessments under Labor Code §1741 are to be issued and served, apply equally to all CMU investigations. (See, 8 CCR 16464.)

4.11 Debarment. Labor Code § 1777.1 authorizes the Labor Commissioner to seek an order of debarment against contractors, subcontractors, and specific individuals identified (Labor Code § 1777.1(e)) who have been found to: (1) be in violation of the prevailing wage laws with an “intent to defraud,” or (2) have committed recurring “willful violations” within three years of a separate and previous willful violation. Those terms are expressly defined in the statute or regulations promulgated there under. (8 CCR § 16800 and LC § 1777.1(e), respectively.) The period of debarment is from one to three years, and prohibits contractors or individuals subject to a debarment order from either bidding on or being awarded a contract for a public works project, or performing work as a subcontractor on any public works project. (Labor Code § 1777.1(a) and (b).) The procedures DLSE must follow in initiating a debarment proceeding and obtaining an order of debarment are set forth in regulations duly promulgated by the Labor Commissioner and found at 8 CCR §§ 16800-16802.
4.11.1 **Debarment Investigations.** The DLSE conducts investigations to determine if a contractor, subcontractor, or individual has committed violations of the prevailing wage laws which authorize the debarment remedy. Generally, the investigations are based upon the facts and circumstances discovered in prior DLSE investigations which resulted in the issuance and service of CWPAs. However, DLSE may also conduct debarment investigations resulting from complaints filed by any “person” as that term is defined at 8 CCR 16800. The investigator must establish that the contractor, subcontractor, or individual has not only committed violation(s) of the prevailing wage laws (such as wage underpayments), but also that the violation(s) fall within the two listed categories, with “intent to defraud” or “willful violations.”

4.11.2 **Posting of Debarment Orders.** A list of contractors, subcontractors, or individuals which are debarred, the period of debarment and the identity of the entities and persons subject to the debarment order are posted on DLSE’s website for the duration of the debarment.

4.12 **The Division’s Jurisdiction to Enforce California’s Prevailing Wage Laws is Not Exclusive.** The Division does not have exclusive jurisdiction to enforce California’s prevailing wage laws. The California Labor Code authorizes specified awarding bodies to initiate and enforce a labor compliance program for public works projects, as specified, under the authority of the awarding body. (Labor Code §§ 1771.5, 1771.7, 1771.8, and 1771.9.) In addition, statutes and case law authorize other entities and individuals to enforce California’s prevailing wage laws.
4.12.1 **Action by Joint Labor-Management Committee.** Labor Code § 1771.2 authorizes a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. 175a) to bring a civil action against an employer that fails to pay the prevailing wage to its employees. The action must be commenced not later than 180 days after the filing of a valid Notice of Completion in the office of the County Recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever last occurs.

4.12.2 **Worker's Private Right of Action.** In a 2002 decision, the California Court of Appeal held that a union, as assignee of the worker’s statutory rights, had standing to assert the employer’s duty to pay prevailing wages under the California Labor Code. (*Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.* (2002) 102 Cal.App.4th 765, 770.) In so holding, the court concluded that the workers have private statutory rights to recover unpaid prevailing wages under Labor Code §§ 1194 and 1774 as well as waiting time penalties under Labor Code § 203. (*Id.* At 809.)

4.12.3 **Third Party Beneficiary.** The California Court of Appeal found that a worker on a public works project may maintain a private suit against the contractor to recover unpaid prevailing wages as a third party beneficiary of the public works contract if the contract provides for the payment of prevailing wages. (*Tippett v. Terich* (1995) 37 Cal.App.4th 1517, 1531-32.)

4.13 **Industrial Welfare Commission (IWC) Wage Order 16-2001.** Contractors employing workers on California public works projects must comply with any applicable provisions of Wage Order 16, or other applicable wage order. These obligations are in addition to any prevailing wage obligations that may apply on
the public works project. These obligations include, among other things, requirements concerning record keeping, meal and rest periods, uniform and equipment, and reporting time. (See Addendum 5 for the IWC order 16.)

4.13.1 **Referral of Wage Order Violations to BOFE.** The requirements under Wage Order 16, or any other applicable wage order that may apply to workers employed on a public works project, are not enforced by means of the administrative procedures set forth in Labor Code § 1741. However, the Public Works Unit will issue citations under other Labor Code provisions for violations it finds, such as the Labor Code 226 requirement of itemized wage statements. In appropriate circumstances, the Public Works Unit of the Division will bring in the Division’s Bureau of Field Enforcement (BOFE) for investigation and prosecution by the Bureau of Field Enforcement. In addition, workers who believe that they may have a claim for violation of Wage Order 16, or any applicable wage order, may file an administrative claim with the Division under Labor Code § 98.

5. **DLSE’s Role in Prevailing Wage Enforcement by Labor Compliance Programs (“LCPs”).** Labor Code § 1771.5 first became effective in 1990 and authorized certain awarding bodies to “initiate and enforce” a labor compliance program to assist DLSE in handling compliance with the prevailing wage laws. To qualify as a statutory LCP, applicants must obtain approval to operate as such from the Director. (LC § 1771.5(c).) The number of approved LCPs expanded after 2003, when new Labor Code provisions (such as LC § 1771.7) and other new laws required that LCPs be utilized for prevailing wage compliance whenever certain public funds (such as statutorily specified bonds or other legislation-generated monies) are used to finance any part of a public works project. Regulations dealing with LCP activities were duly promulgated by the Director nearly 20 years ago, and have been amended several times since. The current

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May 2013
LCP regulations are approximately 30 pages in length and are found at 8 CCR §§ 16421-16439. New amendments to the existing regulations were approved by the Office of Administrative Law and became effective January 21, 2009. Only a few of the existing regulations directly involve tasks to be performed by DLSE in LCP matters. This Manual will not attempt to explain any of the LCP regulations which do not directly involve Division staff. This Manual will highlight certain LCP regulations which require DLSE participation in prevailing wage enforcement activities handled by LCPs.

5.1 Forfeitures Requiring Approval By the Labor Commissioner. The regulation found at 8 CCR § 16436 defines the categories of “forfeitures” which LCPs are required to withhold from public works contractors who are subject to LCP prevailing wage compliance activities on projects for which an awarding body has a statutory duty to utilize an LCP. Under the LCP statutes, the LCP activities may be conducted by the awarding body’s own DIR-approved LCP or by a third-party LCP, likewise approved by the Director. In either situation, the amount of the “forfeiture” must be submitted to and approved by the Labor Commissioner (or Division staff designated by the Labor Commissioner), if the forfeiture is more than $1000, before the LCP can implement the statutory enforcement mechanism. That mechanism is the issuance and service of a “Notice of Withholding Contract Payments,” a document which is the mirror image of the DLSE CWPA form. The method by which the LCP seeks Labor Commissioner approval of the desired forfeiture is delivery of a written “request for approval of the forfeiture” to Division staff. Forfeitures less than $1000 are deemed approved upon service of the Labor Commissioner of copies of the Notice of Withholding, audit and a brief narrative summarizing the nature of the violation(s). (See 8 CCR § 16436.) A suggested form or format for these written requests can be found as Appendix D following § 16437. The LCP regulations specify the items which must...
be included with any submission. The required items are spelled out in detail at 8 CCR § 16437. Division staff who typically have been assigned the responsibility of approving or denying LCP forfeiture requests has been at the Senior Deputy level or higher. The two types of forfeitures which require DLSE approval are: (1) Unpaid prevailing wages found by the LCP to be due under Labor Code § 1774 and (2) Penalty assessments under Labor Code §§ 1775, 1776 and 1813. (8 CCR § 16436.) Because LCPs must enforce the requirements of the prevailing wage laws “consistent with the practice of the Labor Commissioner” (8 CCR § 16434), all of the sections of this Manual which describe the DLSE’s method of calculating amounts due for wages (including giving credit available to contractors for Employer Payments) and the formulas, amounts and circumstances giving rise to the listed statutory penalties apply. Division staff assigned to handle LCP requests for approval of forfeitures must be familiar with all of these sections, which will not be individually referenced by the applicable Section numbers here.

5.2 Determination of Amount of Forfeiture by the Labor Commissioner. The regulation found at 8 CCR § 16437, as noted above, lists all of the items required to be included in any LCP’s request for approval of a defined “forfeiture.” Those items are self-explanatory and will not be repeated here. The regulation also includes time deadlines for both the LCP’s submission of a written request for approval (not less than 30 days before final payment is due from the awarding body to the contractor, and never less than 30 days before expiration of the statute of limitations set forth in Labor Code § 1741), and the DLSE’s response to the request for approval. The deadline for DLSE’s response is required within 30 days of the receipt of the proposed forfeiture. For LCPs with “extended authority” from the Director to operate, approval is automatically effective 20 days after the requested forfeitures are served on the Labor Commissioner, unless DLSE notifies the LCP (within the 20-day period) that the proposed forfeiture is subject
to further review. (8 CCR § 16437(e)(2).) In this situation, DLSE has an additional 30 days (from the date of service of the DLSE’s notice of extension to the LCP) to serve the LCP with the Labor Commissioner’s approval, modification, or disapproval of the proposed forfeitures. Although the language of the regulation is couched in mandatory terms (“shall”), there is no specific mention in the regulation that the Labor Commissioner would lose the authority to respond in an untimely manner. Under longstanding Supreme Court precedent, it would therefore appear that delays by the Labor Commissioner in responding timely would have no effect on the authority to approve, modify, or disapprove the proposed forfeitures in an untimely manner. (See, Edwards v. Steele (1979) 25 Cal.3d 405.) Nevertheless, DLSE staff assigned to handle requests for approval of forfeitures from LCPs is expected to respond timely.

5.3 Director’s Authority to Approve / Revoke LCPs. Although the LCP regulations authorize only the Director to approve or revoke LCPs to operate as approved labor compliance programs (8 CCR §§ 16425-16429), the Director’s Office has historically relied upon Division staff to make recommendations to the Director concerning an applicant’s qualifications to become an approved LCP, or to assist in various ways during the course of LCP revocation proceedings. DLSE staff will, of course, assist the Director in whatever manner is required in performing these functions.
Eric Rood
Assistant State Labor Commissioner

Eric Rood has been the Assistant State Labor Commissioner since February 2010. Eric graduated from California State University, Chico, in 1994, with a degree in Business Administration, with an emphasis in Accounting. He began his career with the State of California in July 1993 with the Employment Development Department’s Tax Office. Eric also worked for the State Board of Equalization and has spent the past thirteen years working at DLSE. Eric has worked as a tax auditor, tax collector, public works investigator, hearing officer and has spent the past six years as a manager for the State Labor Commissioner.

Department of Industrial Relations
Public Works Compliance and Monitoring Unit
Department of Industrial Relations
Division of Labor Standards Enforcement

Compliance Monitoring Unit

Eric Rood
Assistant Labor Commissioner
March 14, 2013

Topics

- CMU Year in Review- 2012
- Projects Subject/Exempt
- Awarding Body Requirements
- CMU Billing/Invoicing
- Electronic Certified Payroll Records
  - MyLCM Challenges and New Beginnings
2012 CMU Statistics

- Over 500 projects subject to CMU
- 2/3 of all projects involve K-12 School Districts
- Over 3,800 contractors
- Over 85,000 employees
- Over 44,000 CPRs reviewed

2012 CMU Violations

- 10,325 basic hourly rate underpayments
- 4,200 Fringe benefit underpayments
- 5,430 overtime underpayments
- 14,056 training fund underpayments
Calendar Year 2012 Statistics

- 1,356 Complaints Received
- Over $25 million in wages in penalties
- Over $9.3 million in wages and penalties recovered

CMU Applicability

- CMU requirements apply to –
  - Projects funded by any state bond with the exception of Proposition 84
  - Certain Design-bid/build statutes in various codes require CMU
  - Projects undertaken by an awarding body that chooses to use the CMU on all of its projects
Exceptions from CMU

- Use of previously DIR approved in-house LCP
  - Projects covered by qualified Project Labor Agreement/Project Stabilization Agreements
  - Proposition 84-funded projects: LCP required (no alternatives or exceptions)
  - Local or Federal Bond Funding
  - CSU design-Build Projects

Awarding Body Requirements

- Notice to the Department of Industrial Relations
- Contract Language
- Job Site Postings
- Fees to the Department
- Vigilance, Reporting, Cooperation, and Assistance
Electronic Certified Payroll Records

- Hill International, Inc. (Third-Party Vendor)
  - MyLCM Service ending March 31, 2013
  - Allow for PDF uploads of CPRs into the PWC 100

- DLSE heard the frustrations from contractors
- Uploading Certified Payroll Records
- Fringe Benefit Package
**PWC 100 – Required Notification**

- Required Awarding Body Notice to DIR
- On-line capability- Search Database On-Line
  - Example on Next Slide
- The PWC 100 fulfills the requirement of notification from:
  - DAS – has all the information from the DAS 13
  - CMU – new notification requirements from recent regulations
PWC 100 – Required Notification

- Effective March 1, 2013, Contractors are able to upload Certified Payroll Records into PWC 100
- PWC 100 eCPR Phase I Integration
  - Awarding agencies will have access to all CPRS
  - Does not have preliminary system audit capability
- Department is looking to building its own On-Line System by using the PWC 100 and the Office of Policy, Research and Legislation, formerly known as Division of Labor Statistics and Research, Wage Determination System
**SD MacDonald Construction**
34027 Build Ave
Sacramento, CA 95823

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**SD MacDonald Construction**
34027 Build Ave
Sacramento, CA 95829

### Search Utility

<table>
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<tr>
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<th>Project Name</th>
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<th>Site Address</th>
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**ACPWA/FFC Prevailing Wage/Labor Compliance Seminar**
With each Certified Payroll Record (CPR), please include the following California State forms:
1) CPR (A-1-131) (including weeks of non-performance of work)
2) PWSS Statement of Encumbrance Payments
3) Signed Certification Statement

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March 2011

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</table>

Add Document
Confirm Accuracy of Certified Payroll Records

- Corroboration of information in payroll reports through independent sources:
  - Job Site Inspections
  - Audits- Examination of any time and pay records
  - Any other legal or reasonable method of corroboration

- Inspection for other DLSE laws and regulations
  - Valid Workers’ Compensation Insurance
  - Valid and Accurate Deduction Statements
  - Valid CSLB Licenses
  - DLSE Required Employer Postings

Public Complaints

- DLSE will accept complaints from workers or the public alleging prevailing wage law violations for CMU enforced projects

- DLSE will notify prime contractors and/or subcontractors of any noncompliance as soon as practicable so that the prime contractor and/or subcontractor can correct the non-compliance
Withholdings, Citations and Assessments

- Withhold contract payments by the Awarding Body to the general and subcontractor due to delinquent or inadequate payroll records

- BOFE Citations
  - Failing to secure Workers’ Compensation Insurance
  - Cash Pay, etc.
  - Failing to have a CSLB License

- Civil Wage And Penalty Assessments

Debarment and Criminal Investigation

- Debarment from Public Works: (LC 1771.1)
  - Bid on or be awarded a contract for a public works project. (2) Perform work as a subcontractor on a public works project
  - Debarment Length: One to Three Years

- Criminal Investigations
  - Felony Kick-Backs (LC 1778)
Contact us

- Web: www.dir.ca.gov/dlse/cmu
- Email: cmu@dir.ca.gov
- Posters available
- Local offices
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1 INTRODUCTION

The Department of Industrial Relations has implemented an electronic certified payroll reporting (eCPR) system to allow contractors to submit certified payroll records (CPRs) to the Public Works Compliance Monitoring Unit (CMU).

1.1 CMU APPLICABILITY

Contractors are required to submit CPRs to the CMU if their public works project falls under the following criteria:

- Project is paid for in whole or part out of public funds that are derived from bonds issued by the state, except Proposition 84 (2006 Water project bond initiative)
- Project is undertaken by a public entity that utilizes design–build contracts as a project delivery method that have a CMU requirement within the authorizing statute
- Project is undertaken by an awarding body that elects to use the CMU on all of its projects

1.2 PROJECT REGISTRATION

The awarding body, commonly referred to as the “owner” or entity awarding a contract for public work, is required to provide notice of the project to DIR using the electronic PWC-100 form. The PWC 100 form requires the awarding body to submit detailed project information including Contractor Information.

If the project is determined to fall under CMU requirements, the awarding body will be notified by the CMU. It is the responsibility of the awarding body to ensure their contractors are informed of CMU requirements and the eCPR application.
1.3 CMU PAYROLL RECORDS APPLICATION

The CMU Payroll Records Application allows contractors to upload Certified Payroll Records and Statements of Employer Payments (PW 26) using PDF format. Contractors will be able to add their subcontractors to a project so that subcontractors can upload their CPRs. In order to upload CPRs and other payroll documents, contractors must be associated with one or more projects submitted by the awarding body via the PWC 100 form.
2 ACCOUNT REGISTRATION

Once the contractor is informed of their requirement to submit CPRs to the CMU, the contractor should register for an account on the CMU Payroll Records Application at https://apps.dir.ca.gov/ecpr/DAS/AltLogin.

2.1 CREATING A NEW ACCOUNT


2. Click on the “First Time User” button on the Login page (Figure 1).

3. Enter the information requested on the Registration page (Figure 2).
   a. The email address and password you enter will be your login information. You will not be able to make changes to your email address.
   b. A Contractor’s State License Board (CSLB) Number or Professional number is required to create an account.

4. Click “Submit”
   a. You will receive an email confirming your account creation.
Figure 1 – CMU PAYROLL RECORDS LOGIN PAGE
Create An Account - Personal Information

** = Required Information

- **Email Address**: Enter your email address.
- **Repeat Your Email Address**: Repeat your email address to confirm.

- **Type Your Password**: Enter your password. (Password must have at least one letter, one digit, one special character of the following @#$%^&*()_=+-, and have a minimum of 8 characters)
- **Repeat Your Password**: Repeat your password to confirm.

- **Type A Secret Question To Reset Password**: Select a secret question.
- **Answer to Secret Question**: Enter your answer.
- **Repeat Your Answer to Secret The Question**: Repeat your answer to confirm.

- **CSLB# or Professional**: Enter your professional identifier.
- **First Name**: Enter your first name.
- **Middle Initial**: Enter your middle initial.
- **Last Name**: Enter your last name.
- **Work Title**: Enter your work title.
- **Work Phone**: Enter your work phone number.

Figure 2 – REGISTRATION PAGE
3 USING THE CMU PAYROLL RECORDS APPLICATION

3.1 SIGNING IN

1. From the login page (Figure 1), enter the email address and password into the required fields and click the “Sign In” button.

3.2 SELECTING A PROJECT

1. From the Home Page / Main Menu (Figure 3), click on “Add Certified Payroll Records”.

2. From the dropdown menus (Figure 4), select the Awarding Body, Project ID, and Contract Number for which you wish to submit CPRs for and click the “Search” Button.

   a. NOTE: IF THE AWARDING BODY AND PROJECT IS NOT LISTED ON THE DROPDOWN MENU, YOUR COMPANY HAS NOT BEEN ADDED TO THE PROJECT. You will need to be added to the project by either the Awarding Body or the General Contractor. If you are a general contractor, you will need to contact the awarding body or owner of the project and have them list you on their PWC 100 form (project notification). If you are a subcontractor you will need to contact your general contractor and have them add you to the project using the eCPR application.

3. The project will appear. Click on the Project Number to select the project.
Figure 3 – Home Page/ Main Menu
3.3 UPLOADING PAYROLL RECORDS

1. After selecting a project, click on “Add Document” on the Add/View Records Page (Figure 5).

2. Enter the Start and End dates of the pay period (Figure 6).

3. Click on the “Browse” button and select the file from your computer (Figure 6).

4. Click the “Add” button at the bottom of the screen (Figure 6).
Figure 5 – ADD/VIEW DOCUMENT PAGE
3.4 VIEWING UPLOADED RECORDS

1. After selecting a project (see section 3.2), click on the month in which the records were submitted under (Figure 5).

2. View the list of documents submitted (Figure 7).
   
   a. The actual PDF file that was uploaded is not viewable. The Pay Period, Submitted Date, File Name, and the date the record was updated (if applicable) are available.
3.5 CORRECTING AN UPLOADED RECORD

1. After viewing uploaded records (see section 3.4), Click on the link “Add Corrected Record” next to the file name / record that needs to be corrected (Figure 7).

2. A browse box will appear next to the file name.

   ![Browse Box](image)

3. Select the “Browse” button and choose the corrected file from your computer.

4. Select the “Upload” button.
   a. A new record will be listed in the “View Records Page” (Figure 7).
   b. The corrected/new record will have the link “Add Corrected Record” next to the file name. The incorrect/old record will list the date the file was updated under the “Function” column.
3.6 ADDING A SUB-CONTRACTOR

1. From the Home Page/ Main Menu (Figure 3), click on “Add Sub-Contractor”.

2. Select the Awarding Body, Project ID and Contract ID that the sub-contractor needs to be added under (Figure 8).

3. Enter the Contractor’s State License or Professional Number (Figure 8).

4. Click the “Search” button. The company name, address and phone number will auto populate (Figure 8).

5. Enter a valid email address in the required field (Figure 8).

6. Choose Classification(s) (Figure 8).

7. Click the “Save” button. A message at the top of the screen will appear confirming that the sub-contractor has been added.

Contractor information successfully saved.
3.7 UPDATING ACCOUNT INFORMATION

1. From the Home Page/ Main Menu (Figure 3), Click on the “Update Account” link located at the upper right corner of the page.

2. Make any necessary changes and click “Submit” when finished.
   
   a. You will not be able to make any changes to your email address.
3.8 CHANGING PASSWORD

1. From the Home Page/ Main Menu (Figure 3), Click on the “Change Password” link located at the upper right corner of the page.

2. Enter your current password in the required field.

3. Type in your new password.

   a. Password must have one digit, one letter, one of the following !@$%^&+=) and be a minimum length of 8 characters

4. Type in your new password a second time to ensure accuracy.

3.9 RESETTING FORGOTTEN PASSWORD

1. From the CMU Records Application Login Page (Figure 1), click on the “Forgot Password” button.

2. Enter your account email address in the required field.

3. Enter the Code shown on the screen and click ”Next”.

4. Provide the answer to your secret question and click “Submit.

5. Your account will be locked and you will receive an email with a temporary password and link. Use the link and temporary password to reset your password.
Lilita Hom
Wage Hour Investigator

Wage Hour Investigator Lilita Hom started her career with the U.S.D.O.L., Wage Hour Division, over 10 years ago and is currently working out of the San Francisco District Office in the San Jose Area Office.

Contact Information:

Lilita Hom, Wage Hour Investigator
U.S. Department of Labor, Wage Hour Division
96 North Third Street, Suite 400
San Jose, California 95112
Direct Tel/Fax: (408) 282-4767
Email: Hom.Lilita@dol.gov
Davis-Bacon Compliance Principles

DBA/DBRA Compliance Principles

- Laborers and mechanics
- Site of the work
- Truck drivers
- Apprentices Trainees & Helpers
- Area Practice
- Fringe Benefits
- Federal contracts: PCA interaction with DBA
- Computing overtime pay

Laborers and Mechanics

- Workers whose duties are manual or physical in nature
- Includes apprentices, trainees, and helpers
- For CWHSSA, includes watchmen and guards
Laborers and Mechanics

- Does not include:
  - Timekeepers, inspectors, architects, engineers
  - Bona fide executive, administrative, and professional employees as defined under FLSA

- Working foremen are generally non-exempt
  - must be paid the Davis Bacon (DB) rate for the classification of work performed if not 541 exempt

Site of the Work

- Davis-Bacon applies only to laborers and mechanics employed “directly on the site of the work”

- A three-part definition applies to determine the scope of the term “site of the work”

Site of the Work Definition ¶1

- DBA applies only to workers on the “site of the work”
  - The physical place or places where the construction called for in the contract will remain after work has been completed; and,
  - Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the contract
Site of the Work Definition ¶2

"Site of the work" also includes job headquarters, tool yards, batch plants, borrow pits, etc., provided they are:

- Located adjacent or virtually adjacent to the "site of the work" described in paragraph 1 and
- Dedicated exclusively or nearly so to the performance of the contract or project
- Except if they are excluded – see next slide

Site of the Work Definition ¶3

"Site of the work" does not include a contractor’s or subcontractor’s

- permanent home office, branch locations, fabrication plants, tool yards, etc.,
- whose location and continuance in operation are determined without regard to a particular covered project.

Definition ¶3 (Cont’d.)

Also not included in the “site of the work” are:

- Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials
  - Before the opening of bids for a project, and
  - Not located on the actual site of the work
- Such permanent, previously established facilities, are not part of the “site of the work,” even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract
Truck Drivers

Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:
- Spent driving on the "site of the work," and
- Spent loading or unloading materials and supplies on the "site of the work," if such time is more than de minimis.

Truck Drivers

Truck drivers are also covered when:
- Transporting materials and supplies between a facility that is part of the "site of the work" and the actual construction site; or
- Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain.

Truck Drivers

Truck drivers are not covered in the following instances:
- Material delivery truck drivers while off the "site of the work"
- Truck drivers of a contractor or subcontractor traveling between a commercial facility and the Davis-Bacon job when they are off the "site of the work"
- Truck drivers whose time spent on the "site of the work" is de minimis for pick-up or drop off.
Truck Drivers
Owner-Operators
- DOL has an enforcement position with respect to bona fide owner-operators of trucks who are independent contractors (an owner-operator is a person who owns and drives a truck). Certified payrolls including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation “owner-operator.”
- This position does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.

Apprentices
- Persons individually registered in a bona fide apprenticeship program registered with DOL or a DOL approved State apprenticeship agency
- Include individuals in their first 90 days of probationary employment as an apprentice
- DOL regulations: 29 CFR 5.2(n)(1) and 5.5(a)(4)(i)

Trainees
- Persons registered and receiving on-the-job training in a construction occupation under a program that has been approved in advance by DOL’s Employment Training Administration (ETA)
- DOL regulations: 29 CFR 5.2(n)(2) and 5.5(a)(4)(ii)
Apprentices and Trainees

- Are laborers and mechanics, but are not listed on the WD
- Permitted to be used on covered projects and paid less than the journeyman rate when:
  - Individually registered in an approved apprenticeship or training program
  - Paid the percentage of hourly rate required by the apprenticeship or training program

- Paid the FB’s specified in the approved program, or the full amount of FB’s listed on the WD, if the program is silent; and,
- Within the allowable ratio specified in the approved program for the number of apprentices or trainees to journeymen

 Helpers

- May be employed if:
  - Duties are clearly defined and distinct from other classifications on the WD
  - An established prevailing practice in the area,
  - Not employed in an informal training program
- May be added to WD if all above conditions are met; no WD class performs the work
Area Practice Surveys

- Used to determine proper classification of workers on Davis-Bacon projects
- Limited Area Practice survey is acceptable when the prevailing practice is clear based upon preliminary data
- Full Area Practice Survey is necessary when preliminary data indicate varied classification practices

Conducting a “Limited” Area Practice Survey Involving Union Rates

- Contact unions whose members may perform the work in question to determine if they performed the work in question on similar projects in the same county during the year prior to lock-in date of WD applied to contract
- Survey each union on how workers who performed that work were classified
- If the unions agree, obtain confirmation from the collective bargaining representatives of contractors

Conducting a “Limited” Area Practice Survey Involving Open-Shop Rates

- Contact open-shop contractors to determine if they worked on similar projects in the same county during the year prior to the lock-in date of the WD applied to the contract
- If so, ask how workers were classified
- If all or a clear majority of contractors agree, the prevailing area practice is established
Conducting a “Limited” Area Practice Survey Involving Mixed Rates

- Union and open-shop rates in the WD are involved in the area practice question
- For WD classification that has union rate, contact appropriate union and union contractors to seek information as discussed on slide regarding limited area practice survey for union rates
- For WD classification that has open-shop rate, contact open-shop contractors to determine if open-shop workers performed the work in question on similar projects in the same county during the year prior to the WD lock-in date
- If all parties, or a clear majority agree, the area practice is established

Conducting a “Full” Area Practice Survey

- Identify the similar projects (same type of construction) in progress during year prior to WD lock-in-date in local area of project in question
- Identify firms that performed the work in question and contact those that are either open-shop or union based on the wage rates in the WD
- From each relevant firm contacted (open shop or union), determine the week in which greatest number of workers performed the work in question and how they were classified

Conducting a “Full” Area Practice Survey

- Compile the relevant information received, tally the relevant employment data, and total the number of workers in each classification that performed the work in question
- Only union sector data can be used to support a union classification and rate on the WD
- Only open shop sector can support use of non-union classification and rate on WD
- The classification with clear majority (60%) is proper (local prevailing) classification for the work
**Wages & Fringe Benefits**

- **DBA:** the term “wages” or “prevailing wages” includes:
  - The basic hourly rate (BHR)
  - Contractor contributions *irrevocably* made to a trustee or third party pursuant to a bona fide fringe benefit (FB) fund, plan, or program
  - The rate of costs the contractor reasonably anticipates in providing bona fide FB’s where certain conditions are met

**Fringe Benefits**

- Under DBA, FB’s are a component “prevailing wage”
- The WD obligation may be satisfied by:
  - Paying the BHR and FB in cash
  - Contributing payments to a bona fide plan
  - Any combination of the two

**Fringe Benefits**

- Must be paid weekly for all hours worked
- Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation (unlike under SCA)
Fringe Benefit Example

- BHR $10.00
- FB $ 1.00
- Total prevailing wage $11.00

The contractor may comply by paying:
- $11.00 in cash wages
- $10.00 in cash wages plus $1.00 for FB
- $  9.00 in cash wages plus $2.00 for FB

Examples of Fringe Benefits

- Life Insurance
- Health Insurance
- Pension
- Vacation
- Holiday
- Sick Leave

Funded Fringe Benefit Plans

- Contractors may take credit (without prior approval from DOL) for bona fide FB fund contributions made to third-party trustees or insurers that:
  - Are irrevocably paid; and,
  - Are made regularly, not less often than quarterly
- Credit is for payments made for individual workers eligible to participate in the plan, program, or fund
Unfunded Fringe Benefit Plans

- Costs for an “unfunded” FB plan count towards WD obligation if specific following are met:
  - Costs reasonably anticipated to provide bona fide FB
  - Pursuant to an enforceable commitment
  - Carried out under a financially responsible plan
  - Has been communicated in writing to affected workers

Annualization Principle

- Applies to benefits of a continuous nature (e.g., health insurance, pension plans)
- Determine hourly rate of contribution that is creditable towards contractor’s Davis-Bacon prevailing wage obligation by:
  - Dividing the total annual contributions by the total annual hours worked (both Davis-Bacon and non-Davis-Bacon work); and
  - Allocating fringe benefit credits so that Davis-Bacon work is not used to fund benefits on private (non-Davis-Bacon) work

Annualization Defined Contribution Pension Plans

- Davis-Bacon credit is based on the effective annual rate of contributions for all hours worked in a year (both Davis-Bacon and non-Davis-Bacon work)
- An exception to the annualization principle applies to plans that provide immediate participation and essentially immediate vesting (100% vesting after an employee works 500 or fewer hours).
  - This exception allows full credit for the amount of contributions made on Davis-Bacon work
Annualization Example
Defined Contribution Pension Plan

A firm’s contribution for an employee’s pension plan that does not provide for immediate vesting was computed at $2,000 a year. The employee worked 1,500 hours on a Davis-Bacon project and 500 hours on other jobs not Davis-Bacon covered.

Credit per hour: $2,000 / 2000 (hours) = $1.00

Annualization Example
Medical Insurance

- Employer provides medical insurance at $200 per month to electrician on Davis-Bacon project. WD requires $12.00 plus $2.50 in FB’s, or $14.50 an hour. Employee works 160 hours a month:
  - $200/160 hours = $1.25 (credit per hour)
  - No other benefit provided
  - Electrician is due: $13.25 an hour
    ($14.50 - $1.25 = 13.25, is remaining balance of applicable prevailing wage)

Discharging DB
Prevailing Wage Obligation

- If WD requires a prevailing wage of $14.50 ($12.00 BHR plus $2.50 in FB’s), the contractor can comply by paying:
  - $14.50 in cash wages; or
  - $12.00 plus $2.50 in bona fide FB; or
  - $11.00 plus $3.50 in bona fide FBs
Computing Overtime Pay (CWHSSA Earnings)

An employee worked 44 hours as electrician, where WD BHR is $12.00 plus $2.50 in FB’s:

\[
\begin{align*}
44 & \text{ hours} \times \$2.50 = \$110.00 \quad \text{FB’s} \\
44 & \text{ hours} \times \$12.00 = \$528.00 \quad \text{BHR} \\
4 & \text{ hours} \times \$12.00/2 = \$24.00 \quad \text{OT} \\
\end{align*}
\]

$662.00

Overtime Computation where Employee Employed at Two Rates

During a workweek an employee works 20 hours as an Electrician at $12.00 BHR plus $2.50 in FB’s and as a Painter for 24 hours at $10.00 BHR plus $3.00 in FB’s.

The regular rate for determining the Overtime rate is:

\[
\begin{align*}
20 & \times \$12.00 = \$240.00 \quad \text{(as Electrician)} \\
24 & \times \$10.00 = \$240.00 \quad \text{(as Painter)} \\
$480.00/44 & = \$10.91
\end{align*}
\]

Overtime due: $10.91 \times 1/2 \times 4 \text{ hours} = \$21.82

INTERACTION AMONG GOVERNMENT CONTRACTS LAWS

- **Federal contracts requiring PCA & DBA**
  - PCA covered contract has more than incidental amount of construction work
  - DBA applies to construction work
  - Construction includes "construction, alteration and repair, including painting and decorating"
  - See FAR 48 C.F.R. § 22.402(b).
**INTERACTION AMONG GOVERNMENT CONTRACTS LAWS Cont.**

**PCA & DBA – Example 1**

Contract for supply of security system:
- Davis-Bacon applies to:
  - Replacement of existing conduit,
  - Laying cable, and
  - Tearing out and replacing walls.

**INTERACTION AMONG GOVERNMENT CONTRACTS LAWS Cont.**

**PCA & DBA – Example 2**

Contract for supply and installation of modular furniture
- DBA applies to:
  - Bolting furniture or fixtures to floors, walls and/or ceilings,
  - Modifying walls, floors and/or ceilings to accommodate shelving,
  - Installing electrical connections for desk area outlets.

**INTERACTION AMONG GOVERNMENT CONTRACTS LAWS Cont.**

**PCA & DBA – Example 3**

Lighting retrofit contract for supply and installation of energy-efficient lighting fixtures:
- DBA applies to installing new ballasts and/or lighting fixtures.
Overview of ARRA

- Signed into law by President Obama on February 17, 2009
- ARRA is structured in two separate parts:
  - ARRA Division A — Appropriations Provisions
  - ARRA Division B — Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions
- Each “Division” stands alone.

ARRA Division A – Appropriations

- ARRA Division A appropriates substantial funding for
  - Construction, alteration and repair of federal buildings (federal contracts - DBA)
  - Infrastructure projects such as roads, bridges, public transit, water systems, and housing (DBRA)
  - Various activities that federal agencies may contract out for service employees to perform (SCA)
ARRA & Davis-Bacon Labor Standards

- ARRA includes Davis-Bacon labor standards provisions:
  - Division A and Division B have separate Davis-Bacon provisions.
- Under ARRA Division A, section 1606:
  - Davis-Bacon labor standards apply to construction projects funded by ARRA Division A appropriations.
- The ARRA Division B Davis-Bacon provision applies to projects financed by certain types of bonds.

DOL ARRA Guidance

**All Agency Memoranda (AAMs)**

- **AAM No. 207** - May 29, 2009:
  - DOL guidance on applying Davis-Bacon labor standards to federal and federally assisted construction projects funded in whole or in part by ARRA Division A appropriations.
- **AAM No. 208** - May 5, 2010:
  - DOL guidance on applying Davis-Bacon labor standards to construction projects funded in whole or in part with tax-favored bonds specified in ARRA Division B, section 1601.

Advisory Letters & HUD Clarification

- Advisory letters, such as those issued to the Department of Energy and Department of Interior, provide further guidance.
- The Supplemental Appropriations Act of 2009, enacted on June 24, 2009 (Pub. L. 111-32) includes a provision that affects the scope of Davis-Bacon applicability to certain specific HUD programs.
Clarification on DB applicability to HUD programs

- Section 1205 of the Supplemental Appropriations Act of 2009 applies to the same statutory provisions applicable to non-ARRA funded assistance under specific programs to ARRA funded assistance under those programs.
- Thus, previously applicable thresholds on coverage now apply to ARRA projects funded under:
  - CDBG, Public Housing, and Native American Housing programs.
- ARRA funding not affected by section 1205 of the supplemental appropriations act:
  - Assisted Housing Green Retrofit
  - Lead Hazard Reduction / Healthy Homes Program
  - HUD’s tax credit assistance program.

ARRA Division B §1601

- ARRA Division B, section 1601 requires application of Davis-Bacon prevailing wage requirements to projects financed with certain tax-favored bonds:
  - New clean renewable energy bonds (New CREBs)
  - Qualified energy conservation bonds (QECBs)
  - Qualified zone academy bonds (QZABs)
  - Qualified school construction bonds (QSCBs)
  - Recovery zone economic development bonds (RZEDBs)
- as defined in relevant Internal Revenue Code provisions.
- If issued after ARRA enactment (Feb. 17, 2009).

Labor Standards Coverage on ARRA funded projects

- Reorganization Plan No. 14 of 1950 gives:
  - Federal agencies responsibility to ensure that laborers and mechanics are paid at least the applicable Davis-Bacon prevailing wages.
  - DOL has regulatory authority and oversight responsibility and can investigate compliance.
ARRA Labor Standards Implementation

- Federal agencies must:
  - Ensure that their bid solicitations and resulting covered contracts contain labor standards and wage determinations in accordance with Federal Acquisition Regulations
  - Generally, ensure that recipients of assistance funded by ARRA appropriations require contractors and subcontractors to pay laborers and mechanics employed on covered ARRA-assisted construction at least the Davis-Bacon prevailing wages

The Wage and Hour Division has established a special ARRA website where AAM Nos. 207 and 208, advisory letters, important links, and other relevant information is posted:

www.dol.gov/whd/recovery

The Wage and Hour Division has established a special ARRA website where AAM Nos. 207 and 208, advisory letters, important links, and other relevant information is posted:

WHD ARRA Website

- WHD ARRA Website
- WHD ARRA Website
- WHD ARRA Website

WHD Internet Sites

- WHD ARRA inquiries e-mail address – whdarra@dol.gov

WHD Internet Sites
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