

## Information on compliance with prevailing wage requirements under California law for programs funded by the American Recovery and Reinvestment Act of 2009 (ARRA)

### **Basic Provisions**

- **What are prevailing wage requirements under California law?**

California law requires payment of locally prevailing wages (including employer payments for employee benefits) to workers, laborers, and mechanics on state government contracts in excess of \$1,000 for public works projects.<sup>1</sup> California prevailing wage requirements may also apply where a construction contract between private persons involves public works.<sup>2</sup>

Contractors and subcontractors on covered projects must also comply with additional requirements, such as providing workers' compensation coverage, maintaining certified payroll records and making such records available for inspection, and complying with apprenticeship obligations.<sup>3</sup> For an example of contractual language that includes these requirements refer to the sample terms and conditions (Attachment 6), Special Condition regarding Prevailing Wage, attached as Exhibit E.

- **Are activities funded under the American Recovery and Reinvestment Act of 2009 (ARRA) subject to prevailing wage requirements under California law?**

In California, courts have held that because legislation providing for the payment of prevailing wages comes under the historic police powers of the state, absent a contrary intention expressed in a federal statute, the presumption is that such legislation is not superseded.<sup>4</sup> Therefore, absent such an express statement preempting state prevailing wage requirements, whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort, California prevailing wage rates, when higher, must be applied.<sup>5</sup> Although section 1606 of ARRA provides that federal prevailing wage requirements under the Davis-Bacon Act (DBA) broadly apply to

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<sup>1</sup> Cal. Labor Code §§ 1723 (defining the statutory term "worker" to include "laborer, worker, or mechanic"), 1771 (stating general prevailing wage requirements applicable to workers on qualifying public works projects). 8 C.C.R. § 16000 (defining general prevailing rate of per diem wages to include the prevailing rate of employer payments for employee benefits). Labor Code Sections may be found online at <http://www.leginfo.ca.gov/calaw.html>.

<sup>2</sup> Cal. Labor Code § 1720.2 (stating that "public works" is defined to include construction work done under a private contract where prescribed conditions exist). See also Cal. Labor Code § 1720(c).

<sup>3</sup> See 8 C.C.R. § 16100(c) (enumerating obligations for contractors and subcontractors under California prevailing wage law).

<sup>4</sup> *Reyes v. Van Elk, Ltd.* (Cal.App. 2 Dist. 2007) 148 Cal.App.4th 604, 616.

<sup>5</sup> 8 C.C.R. § 16001(b).

construction projects funded with ARRA appropriations,<sup>6</sup> neither ARRA nor DBA expressly preempt state prevailing wage requirements.

- **What constitutes a prevailing rate under California law?**

Under California law, a “Prevailing Rate” is comprised of three components: (1) the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within the locality and in the nearest labor market area (if a majority of such workers are paid at a single rate);<sup>7</sup> (2) the rate for holiday or overtime work, as specified in an applicable collective bargaining agreement, or otherwise included with the prevailing basic hourly rate; and, (3) the prevailing rate of employer payments for any or all programs or benefits for employees, their families and dependents, and retirees, as enumerated in prevailing wage regulations issued by the California Department of Industrial Relations (DIR).<sup>8</sup>

- **What types of work are covered by California prevailing wage requirements?**

The California Labor Code beginning at section 1720 deals with this issue. Labor Code sections 1720 and 1771 define public works as:<sup>9</sup>

- Construction (includes work performed during the design and preconstruction phases of construction including but not limited to, inspection and land surveying work).
- Alteration.
- Demolition.
- Installation.
- Repair work.
- Maintenance work.

Below are some examples (this list is not exhaustive) of the types of activities that typically lead to finding that a project is a public work:

- Cement work such as pouring a cement pad.
- Site preparation such as grading.
- Surveying.
- Electrical work such as wiring.
- Carpentry work.
- Limited inspection activities.

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<sup>6</sup> Sec. 1606, Division A, Pub. L. No. 111-5, 123 Stat. 303.

<sup>7</sup> 8 C.C.R. § 16000 (explaining alternative methods of calculating the basic hourly rate if there is no single rate being paid to a majority in a particular locality). See also Frequently Asked Questions – Prevailing Wage, Department of Industrial Relations, available at [http://www.dir.ca.gov/dlsr/faq\\_prevailingwage.html](http://www.dir.ca.gov/dlsr/faq_prevailingwage.html).

<sup>8</sup> 8 C.C.R. § 16000. The full text of DIR’s prevailing wage regulations can be found at: <http://ccr.oal.ca.gov> (Title 8, Division 1, Chapter 8, Subchapter 3).

<sup>9</sup> See also 8 C.C.R. § 16001.

## **Specific Job Categories**

- **What kind of trades or workers must be paid prevailing wages under California law?**

The California Department of Industrial Relations (DIR) Division of Labor Statistics and Research (DLSR) makes the final determination on which trades and/or workers are covered by prevailing wage laws. DLSR maintains a list of the covered trades/workers that are entitled to prevailing wage for public works commercial construction projects.<sup>10</sup>

Generally, workers such as the following would be covered trades:

- Operating engineer (heavy equipment operator)
- Surveyor
- Carpenter
- Cement Mason
- Electrician
- Laborer

The following types of workers usually would NOT be covered trades entitled to payment of prevailing wages:

- Engineer
- Project superintendent / construction manager / project manager
- Architect
- Planner
- Computer programmer

The above examples are for general information only. If you have questions about whether a worker is in a covered trade requiring payment of prevailing wages, you should check directly with DIR.

- **Are apprentices covered by prevailing wage requirements under California law?**

An apprentice is permitted to work on a project subject to California prevailing wage requirements at less than the prevailing rate prescribed for the trade she performs. However, persons may only be employed at the apprentice wage rate on projects involving public works in limited circumstances. More specifically, in order to be eligible the employment and training of each apprentice must be in accordance with either the apprenticeship standards and apprentice agreements under which she is training, or the rules and regulations of the California Apprenticeship Council.<sup>11</sup>

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<sup>10</sup> See [www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html) or call the DLSR Prevailing Wage Hotline (415) 703-4774 for more information about these trades.

<sup>11</sup> Additional requirements that must be satisfied in order for persons employed in these classifications to be paid an apprentice wage rate on projects involving public works are found in California Labor Code Section 1775.5.

- **Are helpers covered by prevailing wage requirements under California law?**

Under DIR prevailing wage regulations, a helper is defined as any subjourneyman classification traditionally used to assist a journeyman.<sup>12</sup>

In the absence of a determination that the use of such a subclassification prevails in a particular area, the helper classification may not be used as a substitute for a journeyman or apprentice.<sup>13</sup>

### ***Miscellaneous Issues***

- **Do California prevailing wage requirements apply to a public agency that performs project work with its own employees?**

No. California prevailing wage requirements do not apply to work carried out by a public agency with its own employees.<sup>14</sup>

- **If my project is a public work, how do I know what prevailing wages are required in order to prepare a budget?**

If your project is a public work, please submit your budget with the applicable prevailing wage for each trade entitled to prevailing wages as determined by DLSR. For prevailing wage rate information for commercial projects, see [www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html) or call the Prevailing Wage Hotline at (415) 703-4774. If your project involves residential construction, the rates are not listed on DIR's website, and you must call the DLSR Prevailing Wage Hotline.

- **How should I budget if I am unsure whether my project involves public works and requires the payment of prevailing wages?**

You are encouraged to determine if your project involves public works as soon as possible. In order to determine if your project is a public work, you will need to contact DIR. They can be reached at (415) 703-4774. If you do not know whether your project is a public work and you have not obtained a determination from DIR that the project is not a public work, you must budget with the assumption that the project is a public work and comply with the prevailing wage laws, including but not limited to the payment of prevailing wages.

On the budget, please indicate whether your budget includes amounts for the payment of prevailing wage. You must indicate "yes" unless you have received a determination from DIR that the project is not a public work.

If you do not budget for prevailing wage, and it is later determined that the project involves public works and prevailing wage must be paid, you may be liable for damages

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<sup>12</sup> 8 C.C.R. § 16000.

<sup>13</sup> 8 C.C.R. § 16200(a)(3)(H).

<sup>14</sup> Cal. Labor Code § 1771.

and penalties.<sup>15</sup> You also cannot later increase your grant award if it is determined that prevailing wages apply and increase project costs higher than budgeted. The amount requested in your proposal is the maximum that will be paid. Any increased costs for payment of prevailing wage must be paid with match funds. The Energy Commission's grant award amount does not change or increase if the applicant's costs increase for any reason.

- **How do I get assistance in determining whether the project involves public works?**

First, call the DLSR Prevailing Wage Hotline, (415) 703-4774. The Prevailing Wage Hotline can frequently give advice quickly on routine questions. If the Prevailing Wage Hotline is unable to answer your question, you will need to write to the Director of DIR for a coverage determination on whether your project involves public works. You would include all the relevant facts and documents related to the project. DIR regulations, Title 8 California Code of Regulations, section 16001(a)(1), provides that any interested party may file a request with the Director of DIR to determine coverage under the prevailing wage laws. The request can be either for a specific project or type of work to be performed that the interested party believes may be subject to or excluded from coverage as public works under the Labor Code. Send requests for a coverage determination to:

Department of Industrial Relations  
Office of the Director  
455 Golden Gate Avenue  
San Francisco CA 94102

- **How long will it take to get an answer?**

Generally the question can be asked and answered informally and quickly through the Prevailing Wage Hotline. However, if you need to submit a request to the Director of DIR, it will take longer to get a coverage determination.

- **What happens if I make a request to DIR but do not have a decision or am still unsure whether prevailing wages must be paid by the time the Energy Commission makes an award at a business meeting, or by the time I execute the grant agreement?**

In this case, the Energy Commission would execute a grant agreement with a budget that assumes prevailing wage is required. If the Recipient, prior to performing the activities in question, then receives a determination from DIR that the project is not a public work, then the Energy Commission can execute an amendment with the

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<sup>15</sup> Cal. Labor Code § 1775.

Recipient to decrease the budget accordingly. The prevailing wage terms and conditions can also be removed.

- **What if I submit a proposal to the Energy Commission with a project that I say is not a public work, and the Energy Commission believes that it might be a public work?**

The Energy Commission would request that you first call the Prevailing Wage Hotline. If you do not receive an answer, the Commission would request that you write a letter to DIR and ask DIR to make the decision. If DIR says the project is a public work, then you will need to pay prevailing wages. If you do not obtain a DIR determination that the project is not a public work requiring the payment of prevailing wages, then you must assume that the project is a public work and comply with the prevailing wage laws, including paying prevailing wages.

- **What do I do if workers will be used who do not fit neatly into one of the categories on the DIR website?**

Contact DLSR and describe the type of trade you anticipate will be required in your project and ask whether there is an existing prevailing wage already set by DLSR.

#### **Additional Information on State Prevailing Wage**

- Department of Industrial Relations (DIR) Public Works Manual, May 2009, *available at* <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>.
- Public Works Determination No. 2003-029, *available at* <http://www.dir.ca.gov/dlsr/coverage/year2005/2003-029.pdf>.