

State of California
Department of Industrial Relations

**DIVISION
OF
LABOR STANDARDS ENFORCEMENT**



PUBLIC WORKS MANUAL

California Labor Commissioner Julie A. Su

May 2013

455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Tel: (415) 703-4810 Fax: (415) 703-4807

MAILING ADDRESS:
P. O. Box 420603
San Francisco, CA 94142-0603

**Julie A. Su**

*California Labor Commissioner
Division of Labor Standards Enforcement*

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It is with great pride that the Division of Labor Standards Enforcement releases this updated DLSE Public Works Manual. This Manual reflects:

- changes in the law, including increases in prevailing wage penalties and added debarment authority to get bad actors off of public works jobs (Assembly Bill 551) and the creation of the Compliance Monitoring Unit (Senate Bill X2-9 and Assembly Bill 436);
- structural changes in public works enforcement which has brought apprenticeship enforcement authority to the DLSE (Senate Bill 1038) and now gives DLSE the ability and responsibility to ensure full compliance with all labor law requirements on public works projects; and
- internal improvement and streamlining of our investigative tools and processes to help us work smarter to prevent wage theft and ensure a level playing field for employers who play by the rules, and to protect the integrity of all public works projects in California by enforcing the State's labor laws.

This Manual is designed to be used by DLSE staff to ensure consistent, timely, and accurate enforcement of the law in every DLSE office across California and is also intended as an educational tool for our public works stakeholder community.

My gratitude and acknowledgement for their hard work and tremendous expertise go to the following staff, who have brought this Manual to fruition: Assistant Chief Eric Rood, Statewide Regional Manager Susan Nakagama, Deputy Labor Commissioners Reynaldo Tuyor, Michael Monteiro and Ying Wu, and Executive Secretary to the Labor Commissioner Mary Ramirez. Special thank you to DLSE Legal's Tom Fredericks.

I hope you find this useful.

A handwritten signature in black ink that reads "Julie A. Su".

Julie A. Su
State Labor Commissioner

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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.3^d 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” superintendant – one who performs labor on the project in connection with supervisory 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

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.

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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 work 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](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

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 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.

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

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 The

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 22nd and August 22nd), those rates go into effect ten days thereafter (March 3rd in leap years and March 4th in non-leap years, and September 1st, 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 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- 49.2.6.2, 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. ($750 \times 0.20 = 150$ *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

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

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 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;

- (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)(l).) 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

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\$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.

8 Hours at \$54.00 (\$32.00 + \$22.00)	\$432.00
2 Hours at \$70.00	\$140.00
2 Hours at \$86.00	\$172.00
Total Wages Due	\$744.00 ¹

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:

- (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.

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.

- (3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

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-Apprenticeable 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* (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.

- (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> 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

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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:

$(\$400 \times 12 \text{ months}) \text{ divided by } 2,080 \text{ hours} = \2.31 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.

Basic Hourly Rate	\$ 30.00
Medical Insurance Benefit	\$ 2.31
Additional Wages Due	\$ 12.69
Total Due Per Hour	\$ 45.00

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

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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

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’s”).** 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

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

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

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.

ADDENDUM 1

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LIST OF COURT CASES

City of Pasadena v. Charleville (1932) 215 Cal. 384

DLSE v. Ericsson Information Systems, Inc. (1990) 221 Cal.App.3d 114

Edwards v. Steele (1979) 25 Cal.3d 405.

Hernandez v. Mendoza (1988), 199 Cal.App.3d 721

Johnston v. Farmers Mutual Exchange of Calhoun, Inc., 218 F. 2d 588 (5th Cir. 1955)

Lusardi Construction Co. v. Aubry (1992) 1 Cal. 4th 976

Miree Construction v. Dole (11th Cir. 1991) 930 F.2d 1536

Morillion v. Royal Packing Co. (2000) 22 Cal.4th 575

O. G. Sansone v. Department of Transportation (1976) 55 Cal.App.3d 434

Ramirez v. Yosemite Water Co. (1999) 20 Cal.4th 785

Regents v. Aubry (1996) 42 Cal.App.4th 579

Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc. (2002) 102 Cal.App.4th 765

San Francisco Labor Council v. Regents of University of California (1980) 26 Cal.3d. 785

Southern Cal. Labor Management Committee v. Aubry (1997) 54 Cal.App.4th 873

So. Cal. Roads Co. v. McGuire (1934) 2 Cal.2d 115

State Building and Construction Trades v. City of Vista (2012) 54 Cal.4th 547

Tippett v. Terich (1995) 37 Cal.App.4th 1517, 1531-32

United States v. Morris (1840) 39 U.S. 463

WSB Electric, Inc. v. Curry (9th Cir. 1996) 88 F.3d 788

Addendum 1

ADDENDUM 2

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ABBREVIATIONS USED

CAC	California Apprenticeship Council
CBA	Collective Bargaining Agreement
CCR	California Code of Regulations
CMU	Compliance Monitoring Unit
CPR	Certified Payroll Records
CWPA	Civil Wage and Penalty Assessment
DAS	Division of Apprenticeship Standards
DIR	Department of Industrial Relations
DLSE	Division of Labor Standards Enforcement or Labor Commissioner's Office
LC	Labor Code
LCP	Labor Compliance Program
OD-Legal	Office of the Director's Legal Unit
OPRL	Director's Office of Policy, Research, and Legislation
PW	Public Works

ADDENDUM 3

RESOURCES AND USEFUL WEB LINKS

Prevailing Wage Rates and Coverage Information

- 2013-1 General Prevailing Wage Determinations Menu (Journeymen)
 - <http://www.dir.ca.gov/OPRL/PWD/index.htm>
- Superseded Prevailing Wage Determinations (Journeymen)
 - <http://www.dir.ca.gov/OPRL/main.htm>
- Important Notices (Index 2001-1 to Present)
 - <http://www.dir.ca.gov/OPRL/NoticeIndex.htm>
- Public Works Coverage Determinations (Most Recent)
 - <http://www.dir.ca.gov/OPRL/PWDetMostRecent.asp>
- Public Works Coverage Determinations (2002 to Present)
 - <http://www.dir.ca.gov/OPRL/PWDecision.asp>
- Frequently Asked Questions – Prevailing Wage
 - http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html
- Frequently Asked Questions – Off-Site Hauling
 - http://www.dir.ca.gov/OPRL/FAQ_Hauling.html

Record Keeping

- Certified Payroll Requirements
 - <http://www.dir.ca.gov/dlse/dlsePublicWorks.html>
- Public Works Payroll Reporting Form (A-1-131)
 - <http://www.dir.ca.gov/dlse/DLSEFormA-1-131.pdf>
- Statement of Employer Payments Form (PW-26)
 - <http://www.dir.ca.gov/dlse/dlseform-pw26.pdf>

Apprenticeship

- Apprenticeship Information
 - <http://www.dir.ca.gov/das>
- Frequently Asked Questions – Apprenticeship
 - <http://www.dir.ca.gov/das/publicworksfaq.html>
- Apprenticeship Program Information Public Works – Search
 - <http://www.dir.ca.gov/databases/das/pwaddrstart.asp>
- Checking Apprenticeship Status of an Individual
 - <http://www.dir.ca.gov/das/appcertpw/appcertsearch.asp>

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Apprenticeship (continued)

- Public Works Apprentice Wage Sheets
 - <http://www.dir.ca.gov/DAS/PWAppWage/PWAppWageStart.asp>
- Public Works Contract Award Information Form (DAS Form 140 (Rev. 1/04))
 - <http://www.dir.ca.gov/DAS/dasform140.pdf>
- Request for Dispatch of an Apprentice Form (DAS Form 142 (Rev. 12/11))
 - <http://www.dir.ca.gov/DAS/dasform142.pdf>
- Training Fund Contributions Form – California Apprenticeship Council – (CAC Form 2 (Rev. 6/12))
 - <http://www.dir.ca.gov/DAS/dascac2.pdf>
- Apprenticeship Debarments
 - <http://www.dir.ca.gov/DAS/debarment.htm>

Enforcement

- How to File a Public Works Complaint
 - <http://www.dir.ca.gov/dlse/HowToFilePWComplaint.htm>
- Public Works Complaint Form – English (Form DLSE-PW 1) (Rev. 9/12)
 - http://www.dir.ca.gov/dlse/Forms/PW/PW1_English.pdf
- Public Works Complaint Form – Spanish (Form DLSE-PW 1) (Rev. 9/12)
 - http://www.dir.ca.gov/dlse/Forms/PW/PW1_Spanish.pdf
- Director's Prevailing Wage Enforcement Decisions (Labor Code Section 1742) (2007 to present)
 - <http://www.dir.ca.gov/OPRL/PrevWageEncDecision.htm>
- DLSE Debarments (Public Works Contractors)
 - <http://www.dir.ca.gov/dlse/debar.htm>
- Labor Code Section 1741(c) Judgments – Public Works
 - <http://www.dir.ca.gov/dlse/DLSE-Databases.htm>
- Labor Compliance Programs
 - <http://www.dir.ca.gov/lcp.asp>

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Department of Industrial Relations (DIR) Regulations

- Payment of Prevailing Wages upon Public Works (Sections 1600-16414)
 - <http://www.dir.ca.gov/t8/ch8sb3.html>
- Awarding Body Labor Compliance Programs (Sections 16421-16802)
 - <http://www.dir.ca.gov/t8/ch8sb4.html>
- Department of Industrial Relations – Prevailing Wage Hearings (Sections 17201-17270)
 - <http://www.dir.ca.gov/t8/ch8sb6.html>

ADDENDUM 4

LABOR CODE
SECTION 1720-1743

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.

(2) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" does not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(3) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

(4) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

(5) The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.

(6) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

(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.

(c) Notwithstanding subdivision (b):

(1) Private residential projects built on private property are not subject to the requirements of this chapter unless the projects are built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

(2) If the state or a political subdivision requires a private developer to perform construction, alteration, demolition, installation, or repair work on a public work of improvement as a condition of regulatory approval of an otherwise private development project, and the state or political subdivision contributes no more money, or the equivalent of money, to the overall project than is required to perform this public improvement work, and the state or political subdivision maintains no proprietary interest in the overall project, then only the public improvement work shall thereby become subject to this chapter.

(3) If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

(4) The construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of Section 33334.2 of the Health and

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Safety Code that are paid for solely with moneys from the Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to Section 33334.2 or 33334.3 of the Health and Safety Code do not constitute a project that is paid for in whole or in part out of public funds.

(5) "Paid for in whole or in part out of public funds" does not include tax credits provided pursuant to Section 17053.49 or 23649 of the Revenue and Taxation Code.

(6) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:

(A) The project is a self-help housing project in which no fewer than 500 hours of construction work associated with the homes are to be performed by the home buyers.

(B) The project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as temporary or transitional housing for homeless persons with a total project cost of less than twenty-five thousand dollars (\$25,000).

(C) Assistance is provided to a household as either mortgage assistance, downpayment assistance, or for the rehabilitation of a single-family home.

(D) The project consists of new construction, expansion, or rehabilitation work associated with a facility developed by a nonprofit organization to be operated on a not-for-profit basis to provide emergency or transitional shelter and ancillary services and assistance to homeless adults and children. The nonprofit organization operating the project shall provide, at no profit, not less than 50 percent of the total project cost from nonpublic sources, excluding real property that is transferred or leased. Total project cost includes the value of donated labor, materials, architectural, and engineering services.

(E) The public participation in the project that would otherwise meet the criteria of subdivision (b) is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income.

(d) Notwithstanding any provision of this section to the contrary, the following projects shall not, solely by reason of this section, be subject to the requirements of this chapter:

(1) Qualified residential rental projects, as defined by Section 142(d) of the Internal Revenue Code, financed in whole or in part through the issuance of bonds that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8869.80) of the Government Code on or before December 31, 2003.

(2) Single-family residential projects financed in whole or in part through the issuance of qualified mortgage revenue bonds or qualified veterans' mortgage bonds, as defined by Section 143 of the Internal Revenue Code, or with mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, as defined by Section 25 of the Internal Revenue Code, that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8869.80) of the Government Code on or before December 31, 2003.

(3) Low-income housing projects that are allocated federal or state low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, Chapter 3.6 of Division 31 (commencing with Section 50199.4) of the Health and Safety Code, or Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on or before December 31, 2003.

(e) If a statute, other than this section, or a regulation, other than a regulation adopted pursuant to this section, or an ordinance or a contract applies this chapter to a project, the exclusions set forth in subdivision (d) do not apply to that project.

(f) For purposes of this section, references to the Internal Revenue Code mean the Internal Revenue Code of 1986, as amended, and include the corresponding predecessor sections of the Internal Revenue Code of 1954, as amended.

(g) The amendments made to this section by either Chapter 938 of the Statutes of 2001 or the act adding this subdivision shall not be construed to preempt local ordinances requiring the payment of prevailing wages on housing projects.

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1720.2. For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, "public works" also means any construction work done under private contract when all of the following conditions exist:

(a) The construction contract is between private persons.

(b) The property subject to the construction contract is privately owned, but upon completion of the construction work, more than 50 percent of the assignable square feet of the property is leased to the state or a political subdivision for its use.

(c) Either of the following conditions exist:

(1) The lease agreement between the lessor and the state or political subdivision, as lessee, was entered into prior to the construction contract.

(2) The construction work is performed according to plans, specifications, or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or political subdivision, as lessee, is entered into during, or upon completion of, the construction work.

1720.3. (a) For the limited purposes of Article 2 (commencing with Section 1770), "public works" also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state.

(b) For purposes of this section, the "hauling of refuse" includes, but is not limited to, hauling soil, sand, gravel, rocks, concrete, asphalt, excavation materials, and construction debris. The "hauling of refuse" shall not include the hauling of recyclable metals such as copper, steel, and aluminum that have been separated from other materials at the jobsite prior to transportation and that are to be sold at fair market value to a bona fide purchaser.

1720.4. (a) This chapter shall not apply to any of the following work:

(1) Any work performed by a volunteer. For purposes of this section, "volunteer" means 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.

(A) An individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.

(B) 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.

(C) An individual shall not be considered a volunteer if the person is otherwise employed for compensation at any time (i) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project, or (ii) by a contractor, other than a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, that receives payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

(2) Any work performed by a volunteer coordinator. For purposes of this section, "volunteer coordinator" means an individual paid by a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, to oversee or supervise volunteers. An individual may be considered a volunteer coordinator even if the individual performs some nonsupervisory work on a project alongside the volunteers, so long as the individual's primary responsibility on the project is to oversee or supervise the volunteers rather than to perform nonsupervisory work.

(3) Any work performed by the California Conservation Corps or by Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

(b) This section shall apply retroactively to otherwise covered work concluded on or after January 1, 2002, to the extent permitted by law.

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(c) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2017, deletes or extends that date.

1720.6. For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, "public work" also means any construction, alteration, demolition, installation, or repair work done under private contract when the following conditions exist:

(a) The work is performed in connection with the construction or maintenance of renewable energy generating capacity or energy efficiency improvements.

(b) The work is performed on the property of the state or a political subdivision of the state.

(c) Either of the following conditions exists:

(1) More than 50 percent of the energy generated is purchased or will be purchased by the state or a political subdivision of the state.

(2) The energy efficiency improvements are primarily intended to reduce energy costs that would otherwise be incurred by the state or a political subdivision of the state.

1721. "Political subdivision" includes any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts.

1722. "Awarding body" or "body awarding the contract" means department, board, authority, officer or agent awarding a contract for public work.

1722.1. For the purposes of this chapter, "contractor" and "subcontractor" include a contractor, subcontractor, licensee, officer, agent, or representative thereof, acting in that capacity, when working on public works pursuant to this article and Article 2 (commencing with Section 1770).

1723. "Worker" includes laborer, worker, or mechanic.

1724. "Locality in which public work is performed" means the county in which the public work is done in cases in which the contract is awarded by the State, and means the limits of the political subdivision on whose behalf the contract is awarded in other cases.

1725. "Alien" means any person who is not a born or fully naturalized citizen of the United States.

1726. (a) The body awarding the contract for public work shall take cognizance of violations of this chapter committed in the course of the execution of the contract, and shall promptly report any suspected violations to the Labor Commissioner.

(b) If the awarding body determines as a result of its own investigation that there has been a violation of this chapter and withholds contract payments, the procedures in Section 1771.6 shall be followed.

(c) A contractor may bring an action in a court of competent jurisdiction to recover from an awarding body the difference between the wages actually paid to an employee and the wages that were required to be paid to an employee under this chapter, any penalties required to be paid under this chapter, and costs and attorney's fees related to this action, if either of the following is true:

(1) The awarding body previously affirmatively represented to the contractor in writing, in the call for bids, or otherwise, that the work to be covered by the bid or contract was not a "public work," as defined in this chapter.

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(2) The awarding body received actual written notice from the Department of Industrial Relations that the work to be covered by the bid or contract is a "public work," as defined in this chapter, and failed to disclose that information to the contractor before the bid opening or awarding of the contract.

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 any civil wage and penalty assessment issued by the Labor Commissioner under this chapter. The amounts required to satisfy a 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.

(b) If the awarding body has not retained sufficient money under the contract to satisfy a 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. These amounts shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

1728. In cases of contracts with assessment or improvement districts where full payment is made in the form of a single warrant, or other evidence of full payment, after completion and acceptance of the work, the awarding body shall accept from the contractor in cash a sum equal to, and in lieu of, any amount required to be withheld, retained, or forfeited under the provisions of this section, and said awarding body shall then release the final warrant or payment in full.

1729. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the subcontractor's failure to comply with the terms of this chapter, and if payment has already been made to the subcontractor the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

1730. The Director of Industrial Relations shall post a list of every California code section and the language of those sections that relate to the prevailing rate of per diem wage requirements for workers employed on a public work project on the Internet Web site of the Department of Industrial Relations on or before June 1, 2013, and shall update that list each February 1 thereafter.

1734. Any court collecting any fines or penalties under the criminal provisions of this chapter or any of the labor laws pertaining to public works shall as soon as practicable after the receipt thereof deposit same with the county treasurer of the county in which such court is situated. Amounts so deposited shall be paid at least once a month by warrant of the county auditor drawn upon requisition of the judge or clerk of said court, to the State Treasurer for deposit in the General Fund.

1735. A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

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1736. During any investigation conducted under this part, the Division of Labor Standards Enforcement shall keep confidential the name of any employee who reports a violation of this chapter and any other information that may identify the employee.

1740. Notwithstanding any other provision of this chapter or any other law of this State, except limitations imposed by the Constitution, the legislative body of a political subdivision which has received or is to receive a loan or grant of funds from the Federal Government or a federal department or agency for public works of that political subdivision, may provide in its call for bids in connection with such public works that all bid specifications and contracts and other procedures in connection with bids or contracts shall be subject to modification to comply with revisions in federal minimum wage schedules without the necessity of republication or duplication of other formal statutory requirements.

1741. (a) If the Labor Commissioner or his or her designee determines after an investigation that there has been a violation of this chapter, the Labor Commissioner shall with reasonable promptness issue a civil wage and penalty assessment to the contractor or subcontractor or both. The assessment shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures due and shall include the basis for the assessment. The assessment shall be served 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 occurs last. However, if the assessment is served after the expiration of this 180-day period, but before the expiration of an additional 180 days, and the awarding body has not yet made full payment to the contractor, the assessment is valid up to the amount of the funds retained. Service of the assessment shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor, subcontractor, and awarding body. The assessment shall advise the contractor and subcontractor of the procedure for obtaining review of the assessment. The Labor Commissioner shall, to the extent practicable, ascertain the identity of any bonding company issuing a bond that secures the payment of wages covered by the assessment and any surety on a bond, and shall serve a copy of the assessment by certified mail to the bonding company or surety at the same time service is made to the contractor, subcontractor, and awarding body. However, no bonding company or surety shall be relieved of its responsibilities because it failed to receive notice from the Labor Commissioner.

(b) Interest shall accrue on all due and unpaid wages at the rate described in subdivision (b) of Section 3289 of the Civil Code. The interest shall accrue from the date that the wages were due and payable, as provided in Part 7 (commencing with Section 1720) of Division 2, until the wages are paid.

(c) (1) The Labor Commissioner shall maintain a public list of the names of each contractor and subcontractor who has been found to have committed a willful violation of Section 1775 or to whom a final order, which is no longer subject to judicial review, has been issued.

(2) The list shall include the date of each assessment, the amount of wages and penalties assessed, and the amount collected.

(3) The list shall be updated at least quarterly, and the contractor's or subcontractor's name shall remain on that list until the assessment is satisfied, or for a period of three years beginning from the date of the issuance of the assessment, whichever is later.

1742. (a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

(b) Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an

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administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. 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 receipt of the written request for a hearing. Any evidence obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor. The contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect. The assessment shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing. Within 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Labor Commissioner. Within 15 days of the issuance of the decision, the director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time. The director shall adopt regulations setting forth procedures for hearings under this subdivision.

(c) An affected contractor or subcontractor may obtain review of the decision of the director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(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.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

(f) An awarding body that has withheld funds in response to a civil wage and penalty assessment under this chapter shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(g) This section shall provide the exclusive method for review of a civil wage and penalty assessment by the Labor Commissioner under this chapter or the decision of an awarding body to withhold contract payments pursuant to Section 1771.5.

1742.1. (a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice 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. Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment or notice with respect to a portion of the unpaid wages covered by the assessment or notice, the director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages. Any liquidated damages shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) Notwithstanding subdivision (a), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department

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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.

(c) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, 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 without the need for formal proceedings. The awarding body shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. 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 administrative 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. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

(d) This section shall become operative on January 1, 2007.

1743. (a) The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon. The Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor.

(b) From the amount collected, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(c) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund.

(d) A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review.

**LABOR CODE
SECTION 1750**

1750. (a) (1) The second lowest bidder, and any person, firm, association, trust, partnership, labor organization, corporation, or other legal entity which has, prior to the letting of the bids on the public works project in question, entered into a contract with the second lowest bidder, that suffers damage as a proximate result of a competitive bid for a public works project, as defined in subdivision (b), not being accepted due to the successful bidder's violation, as evidenced by the conviction of the successful bidder therefor, of any provision of Division 4 (commencing with Section 3200) or of the Unemployment Insurance Code, may bring an action for damages in the appropriate state court against the violating person or legal entity.

(2) There shall be a rebuttable presumption that a successful bidder who has been convicted of a violation of any provision of Division 4 (commencing with Section 3200) of this code or of the Unemployment Insurance Code, or of both, was awarded the bid because that successful bidder was able to lower the bid due to this violation or these violations occurring on the contract for public work awarded by the public agency.

(b) For purposes of this article:

(1) "Public works project" means the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement, or renovation of a public building or structure.

(2) "Second lowest bidder" means the second lowest qualified bidder deemed responsive by the public agency awarding the contract for public work.

(3) The "second lowest bidder" and the "successful bidder" may include any person, firm, association, corporation, or other legal entity.

(c) In an action brought pursuant to this section, the court may award costs and reasonable attorney's fees, in an amount to be determined in the court's discretion, to the prevailing party.

(d) For purposes of an action brought pursuant to this section, employee status shall be determined pursuant to Division 4 (commencing with Section 3200) with respect to alleged violations of that division, pursuant to the Unemployment Insurance Code with respect to alleged violations of that code, and pursuant to Section 2750.5 with respect to alleged violations of either Division 4 (commencing with Section 3200) or of the Unemployment Insurance Code.

(e) The right of action established pursuant to this article shall not be construed to diminish rights of action established pursuant to Section 19102 of, and Article 1.8 (commencing with Section 20104.70) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code.

(f) A second lowest bidder who has been convicted of a violation of any provision of Division 4 (commencing with Section 3200) of the Labor Code or of the Unemployment Insurance Code, or both, within one year prior to filing the bid for public work, and who has failed to take affirmative steps to correct that violation or those violations, is prohibited from taking any action authorized by this section.

LABOR CODE
SECTION 1770-1781

1770. The Director of the Department of Industrial Relations shall determine the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773, and the director's determination in the matter shall be final except as provided in Section 1773.4. Nothing in this article, however, shall prohibit the payment of more than the general prevailing rate of wages to any workman employed on public work. Nothing in this act shall permit any overtime work in violation of Article 3 of this chapter.

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.

1771.2. A joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) may bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees, as required by this article. This action shall 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.

1771.3. (a) (1) The Department of Industrial Relations shall monitor and enforce compliance with applicable prevailing wage requirements for any public works project paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state, and shall charge each awarding body for the reasonable and directly related costs of monitoring and enforcing compliance with the prevailing wage requirements on each project.

(2) (A) The State Public Works Enforcement Fund is hereby created as a special fund in the State Treasury. All moneys received by the department pursuant to this section shall be deposited in the fund. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated to the Department of Industrial Relations, to monitor and enforce compliance with the applicable prevailing wage requirements on public works projects paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state and other projects for which the department provides prevailing wage monitoring and enforcement activities and for which it is to be reimbursed by the awarding body, and shall not be used or borrowed for any other purpose.

(B) Notwithstanding any other law, upon order of the Director of Finance, a loan in the amount of four million three hundred thousand dollars (\$4,300,000) shall be provided from the Uninsured Employers Benefit Trust Fund to the State Public Works Enforcement Fund to meet the startup needs of the Labor Compliance Monitoring Unit.

(3) The Director of Industrial Relations shall adopt regulations implementing this section, specifying the activities, including, but not limited to, monthly review, and audit if appropriate, of payroll records, which the department will undertake to monitor and enforce compliance with applicable prevailing wage requirements on public works projects paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state. The department, with the approval of the Director of Finance, shall determine

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the rate or rates, which the department may from time to time amend, that the department will charge to recover the reasonable and directly related costs of performing the monitoring and enforcement services for public works projects; provided, however, that the amount charged by the department shall not exceed one-fourth of 1 percent of the state bond proceeds used for the public works projects.

(4) The reasonable and directly related costs of monitoring and enforcing compliance with the prevailing wage requirements on a public works project incurred by the department in accordance with this section are payable by the awarding body of the public works project as a cost of construction. Notwithstanding any other provision of law, but subject to any limitations or restrictions of the bond act, the board, commission, department, agency, or official responsible for the allocation of bond proceeds from the bond funds shall consider and provide for amounts in support of the costs when allocating or approving expenditures of bond proceeds for the construction of the authorized project. The awarding body may elect not to receive or expend amounts from bond proceeds to pay the costs of the project; however, such election does not relieve the awarding body from reimbursing the Department of Industrial Relations for monitoring and enforcing prevailing wage requirements on the project pursuant to Section 1771.3 or any other applicable provision of law.

(b) Paragraph (1) of subdivision (a) shall not apply to any contract for a public works project paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state if the contract was awarded under any of the following conditions:

(1) The contract was awarded prior to the effective date of implementing regulations adopted by the department pursuant to paragraph (3) of subdivision (a).

(2) The contract was awarded on or after the effective date of the regulations described in paragraph (1), if the awarding body had previously initiated a labor compliance program approved by the department for some or all of its public works projects and had not contracted with a third party to conduct such program, and requests and receives approval from the department to continue to operate its existing labor compliance program for its public works projects paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state, in place of the department monitoring and enforcing compliance on projects pursuant to subdivision (a).

(3) The contract is awarded on or after the effective date of the regulations described in paragraph (1), if the awarding body has entered into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) This section shall not apply to public works projects subject to Section 75075 of the Public Resources Code.

1771.5. (a) Notwithstanding Section 1771, an awarding body may choose not to require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to either:

(1) Initiate and enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body as described in subdivision (e).

(2) Reimburse the Department of Industrial Relations for the cost of monitoring and enforcing compliance with prevailing wage requirements for every public works project of the awarding body as described in subdivision (f).

(b) For purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

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(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

(7) The awarding body shall comply with any other prevailing wage monitoring and enforcement activities that are required to be conducted by labor compliance programs by the Department of Industrial Relations.

(c) For purposes of this chapter, "labor compliance program" means a labor compliance program that is approved, as specified in state regulations, by the Director of Industrial Relations.

(d) For purposes of this chapter, the Director of Industrial Relations may revoke the approval of a labor compliance program in the manner specified in state regulations.

(e) An awarding body that elects to use a labor compliance program pursuant to subdivision (a) must use the labor compliance program for all contracts for public works projects awarded prior to the effective date of the regulations adopted by the department as specified in subdivision (g). For contracts for public works projects awarded on or after the effective date of regulations adopted by the department as specified in subdivision (g), the awarding body may also elect to continue operating an existing previously approved labor compliance program in lieu of reimbursing the Department of Industrial Relations for the cost of monitoring and enforcing compliance with prevailing wage requirements on the awarding body's public works projects if it has not contracted with a third party to conduct its labor compliance program and if it requests and receives approval from the department to continue its existing program.

(f) An awarding body that elects to reimburse the department for the cost of monitoring and enforcing compliance with prevailing wage requirements for public works projects of the awarding body, pursuant to subdivision (a), must, for all of its contracts for public works projects awarded on or after the effective date of the regulations adopted by the department as specified in subdivision (g):

(1) Ensure that all bid invitations and public works contracts contain appropriate language concerning the requirements of this chapter.

(2) Conduct a prejob conference with the contractor and subcontractor to discuss federal and state labor law requirements applicable to the contract.

(3) Enter into an agreement with the department to reimburse the department for its costs of performing the service of monitoring and enforcing compliance with applicable prevailing wage requirements on the awarding bodies' projects.

(g) The Department of Industrial Relations shall adopt regulations implementing this section specifying the activities which the department shall undertake to monitor and enforce compliance with the prevailing wage requirements on the public works projects, including, but not limited to, monthly review, and audit if appropriate, of payroll records.

(h) (1) The Department of Industrial Relations shall determine the rate or rates, which the department may from time to time amend, that the department will charge in obtaining reimbursement from awarding bodies for the reasonable and directly related costs of performing the specified monitoring and enforcement services, provided the amount charged by the department shall not exceed one-fourth of 1 percent of the total public works project costs.

(2) Notwithstanding paragraph (1), for public works projects paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state, the amount charged by the department shall not exceed one-fourth of 1 percent of the state bond proceeds used for the public works project.

(i) All amounts collected by the Department of Industrial Relations for its services pursuant to this section shall be deposited in the State Public Works Enforcement Fund.

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1771.6. (a) Any awarding body that enforces this chapter in accordance with Section 1726 or 1771.5 shall provide notice of the withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body.

(b) The withholding of contract payments in accordance with Section 1726 or 1771.5 shall be reviewable under Section 1742 in the same manner as if the notice of the withholding was a civil penalty order of the Labor Commissioner under this chapter. If review is requested, the Labor Commissioner may intervene to represent the awarding body.

(c) Pending a final order, or the expiration of the time period for seeking review of the notice of the withholding, the awarding body shall not disburse any contract payments withheld.

(d) From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(e) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the awarding body that has enforced this chapter pursuant to Section 1771.5.

1771.7. (a) (1) For contracts specified in subdivision (f), an awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.

(2) If an awarding body described in paragraph (1) chooses to contract with a third party to initiate and enforce a labor compliance program for a project described in paragraph (1), that third party shall not review the payroll records of its own employees or the employees of its subcontractors, and the awarding body or an independent third party shall review these payroll records for purposes of the labor compliance program.

(b) This section applies to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the "awarding body" is the Chancellor of the California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program, then in addition to the requirements described in subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program, then in addition to the requirements described in subdivision (b) of Section 1771.5, the payroll records shall be reviewed on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

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(d) (1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2) (A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board shall not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Because the reasonable costs directly related to monitoring and enforcing compliance with the prevailing wage requirements are necessary oversight activities, integral to the cost of construction of the public works projects, notwithstanding Section 17070.63 of the Education Code, the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code for the costs of a new construction or modernization project shall include the state's share of the reasonable and directly related costs of the labor compliance program used to monitor and enforce compliance with prevailing wage requirements.

(f) This section shall only apply to contracts awarded prior to the effective date of regulations adopted by the Department of Industrial Relations pursuant to paragraph (3) of subdivision (a) of Section 1771.3.

1772. Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

1773. 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. The holidays upon which those rates shall be paid need not be specified by the awarding body, but shall be all holidays recognized in the applicable collective bargaining agreement. 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. 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. If the director determines that the rate of prevailing wage for any craft, classification, or type of worker is the rate established by a collective bargaining agreement, the director may adopt that rate by reference as provided for in the collective bargaining

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agreement and that determination shall be effective for the life of the agreement or until the director determines that another rate should be adopted.

1773.1. (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.

(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, no credit shall be granted for benefits required to be provided by other state or federal law. Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing. However, an increased employer payment contribution that results in a lower hourly straight time or overtime wage shall not be considered a violation of the applicable prevailing wage determination so long as all of following conditions are met:

(1) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.

(2) The basic hourly rate and increased employer payment are no less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the director's general prevailing wage determination.

(3) The employer payment contribution is irrevocable unless made in error.

(d) The credit for employer payments shall 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, 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.

(3) The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.

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

(e) (1) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type of worker needed to execute contracts shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification, or type of work involved. The collective bargaining

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agreements shall be filed after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever filed 30 days prior to the call for bids. If the collective bargaining agreement has not been formalized, a typescript of the final draft may be filed temporarily, accompanied by a statement under penalty of perjury as to its effective date.

(2) Where a copy of the collective bargaining agreement has previously been filed, fully executed copies of all modifications and extensions of the agreement that affect per diem wages or holidays shall be filed.

(3) The failure to comply with filing requirements of this subdivision shall not be grounds for setting aside a prevailing wage determination if the information taken into consideration is correct.

1773.2. The body awarding any contract for public work, or otherwise undertaking any public work, shall specify in the call for bids for the contract, and in the bid specifications and in the contract itself, what the general rate of per diem wages is for each craft, classification, or type of worker needed to execute the contract. In lieu of specifying the rate of wages in the call for bids, and in the bid specifications and in the contract itself, the awarding body may, in the call for bids, bid specifications, and contract, include a statement that copies of the prevailing rate of per diem wages are on file at its principal office, which shall be made available to any interested party on request. The awarding body shall also cause a copy of the determination of the director of the prevailing rate of per diem wages to be posted at each job site.

1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section 1771.3, 1771.5, or 1777.5, or any other statute providing for the payment of fees to the Department of Industrial Relations for enforcing prevailing wage requirements on that project, shall, within five days of the award, send a copy of the award to the department. In lieu of responding to any specific request for contract award information, the department may make such information available for public review by posting on its Internet Web site. Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Labor Standards Enforcement.

1773.4. 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.

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1773.5. The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, including, but not limited to, the responsibilities and duties of awarding bodies under this chapter.

1773.6. If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality he shall make such change available to the awarding body and his determination shall be final. Such determination by the Director of Industrial Relations shall not be effective as to any contract for which the notice to bidders has been published.

1773.7. The provisions of Section 11250 of the Government Code shall not be applicable to Sections 1773, 1773.4, and 1773.6.

1773.8. An increased employer payment contribution that results in a lower taxable wage shall not be considered a violation of the applicable prevailing wage determination so long as all of the following conditions are met:

- (a) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.
- (b) The increased employer payment and hourly straight time and overtime wage combined are no less than the general prevailing rate of per diem wages.
- (c) The employer payment contribution is irrevocable unless made in error.

1773.9. (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.

(c) (1) If the director determines that the general prevailing rate of per diem wages is the rate established by a collective bargaining agreement, and that the collective bargaining agreement contains definite and predetermined changes during its term that will affect the rate adopted, the director shall incorporate those changes into the determination. Predetermined changes that are rescinded prior to their effective date shall not be enforced.

(2) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but has not published, at the time of the effective date of the predetermined change, the allocation of the predetermined

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change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section

1773.1, a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change to either the basic hourly wage or other employer payments included in per diem wages for up to 60 days following the director's publication of the specific allocation of the predetermined change.

(3) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but the allocation of that predetermined change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section 1773.1 is subsequently altered by the parties to a collective bargaining agreement described in paragraph (1), a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change in accordance with either the originally published allocation or the allocation as altered in the collective bargaining agreement.

1773.11. (a) Notwithstanding any other provision of law and except as otherwise provided by this section, if the state or a political subdivision thereof agrees by contract with a private entity that the private entity's employees receive, in performing that contract, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, the director shall, upon a request by the state or the political subdivision, do both of the following:

(1) Determine, as otherwise provided by law, the wage rates for each craft, classification, or type of worker that are needed to execute the contract.

(2) Provide these wage rates to the state or political subdivision that requests them.

(b) This section does not apply to a contract for a public work, as defined in this chapter.

(c) The director shall determine and provide the wage rates described in this section in the order in which the requests for these wage rates were received and regardless of the calendar year in which they were received. If there are more than 20 pending requests in a calendar year, the director shall respond only to the first 20 requests in the order in which they were received. If the director determines that funding is available in any calendar year to determine and provide these wage rates in response to more than 20 requests, the director shall respond to these requests in a manner consistent with this subdivision.

1774. The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) 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.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake

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and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, 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.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless 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 this section and Sections 1771, 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.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

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(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty

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to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

1777. Any officer, agent, or representative of the State or of any political subdivision who wilfully violates any provision of this article, and any contractor, or subcontractor, or agent or representative thereof, doing public work who neglects to comply with any provision of section 1776 is guilty of a misdemeanor.

1777.1. (a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

- (1) Bid on or be awarded a contract for a public works project.
- (2) Perform work as a subcontractor on a public works project.

(b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to have committed two or more separate willful violations of this chapter, except Section 1777.5, within a three-year period, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period up to three years to do either of the following:

- (1) Bid on or be awarded a contract for a public works project.
- (2) Perform work as a subcontractor on a public works project.

(c) Whenever a contractor or subcontractor performing a public works project has failed to provide a timely response to a request by the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards, or the awarding body to produce certified payroll records pursuant to Section 1776, the Labor Commissioner shall notify the contractor or subcontractor that, in addition to any other penalties provided by law, the contractor or subcontractor will be subject to debarment under this section if the certified payroll records are not produced within 30 days after receipt of the written notice. If the commissioner finds that the contractor or subcontractor has failed to comply with Section 1776 by that deadline, unless the commissioner finds that the failure to comply was due to circumstances outside the contractor's or subcontractor's control, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year and not more than three years to do either of the following:

- (1) Bid on or be awarded a contract for a public works project.
- (2) Perform work as a subcontractor on a public works project.

(d) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.

(e) The Labor Commissioner shall publish on the commissioner's Internet Web site a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this chapter. The list shall contain the

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name of the contractor, the Contractors' State License Board license number of the contractor, and the effective period of debarment of the contractor. Contractors shall be added to the list upon issuance of a debarment order and the commissioner shall also notify the Contractors' State License Board when the list is updated. At least annually, the commissioner shall notify awarding bodies of the availability of the list of debarred contractors. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each debarment of a contractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars (\$5,000). The amount paid to the commissioner for the advertisements shall be credited against the contractor's or subcontractor's obligation to pay civil fines or penalties for the same willful violation of this chapter.

(f) For purposes of this section, "contractor or subcontractor" means a firm, corporation, partnership, or association and its responsible managing officer, as well as any supervisors, managers, and officers found by the Labor Commissioner to be personally and substantially responsible for the willful violation of this chapter.

(g) For the purposes of this section, the term "any interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Any interest" does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

(h) For the purposes of this section, the term "entity" is defined as a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust, or organization.

(i) The Labor Commissioner shall adopt rules and regulations for the administration and enforcement of this section.

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

- (1) The apprenticeship standards and apprentice agreements under which he or she is training.
- (2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or

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programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

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(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

1777.6. An employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of this code and Section 12940 of the Government Code.

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1777.7. (a) (1) A contractor or subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed by the Labor Commissioner, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(2) In lieu of the penalty provided for in this subdivision, the Labor Commissioner may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d), order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(b) In the event a contractor or subcontractor is determined by the Labor Commissioner to have knowingly committed a serious violation of any provision of Section 1777.5, the Labor Commissioner may also deny to the contractor or subcontractor, and to its responsible officers, the right to bid on or be awarded or perform work as a subcontractor on any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.

(c) (1) An affected contractor, subcontractor, or responsible officer may obtain a review of the determination of the Labor Commissioner imposing the debarment or civil penalty by transmitting a written request to the office of the Labor Commissioner that appears on the determination within 60 days after service of the determination of debarment or civil penalty. If no hearing is requested within 60 days after service of the determination, the determination shall become final.

(2) The provisions of Section 1742 shall apply to the review of any determination issued pursuant to subdivision (a) or (b), subject to the following:

(A) The provisions of Section 1742 and any regulations implementing that section shall apply to a responsible officer who requests review of a determination under this section to the same extent as any affected contractor or subcontractor who requests review.

(B) In the review of a determination under this section, the affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5.

(3) For purposes of this section, a determination issued pursuant to subdivision (a) or (b) includes a determination that has been approved by the Labor Commissioner and issued by an awarding body that has been authorized to assist the director in the enforcement of Section 1777.5 pursuant to subdivision (p) of that section. The Labor Commissioner shall have the right to intervene in any proceeding for review of a determination issued by an awarding body. If the involvement of the Labor Commissioner in a labor compliance program enforcement action is limited to a review of the determination and the matter is resolved without litigation by or against the Labor Commissioner or the department, the awarding body shall enforce any applicable penalties, as specified in this section, and shall deposit any penalties and forfeitures collected in the General Fund.

(4) The Labor Commissioner may certify a copy of the final order of the Director of Industrial Relations and file it with 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. A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section. An awarding body that has withheld funds in response to a determination imposing a penalty under this section shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

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(d) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor or 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 continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f) (1) The Labor Commissioner shall consider, in setting the amount of a monetary penalty, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating this section, all of the following circumstances:

(A) Whether the violation was intentional.

(B) Whether the party has committed other violations of Section 1777.5.

(C) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

(D) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

(E) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

(2) If a party seeks review of a decision by the Labor Commissioner to impose a monetary penalty or period of debarment, the Director of Industrial Relations shall decide de novo the appropriate penalty, by considering the same factors set forth above.

(g) The interpretation of Section 1777.5 and the substantive requirements of this section, including the limitations period for issuing a determination under subdivision (a) or (b), shall be in accordance with the regulations of the California Apprenticeship Council. The Director of Industrial Relations may adopt regulations to establish guidelines for the imposition of monetary penalties and periods of debarment and may designate precedential decisions under Section 11425.60 of the Government Code.

1778. Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives, or conspires with another to take or receive, for his own use or the use of any other person any portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony.

1779. Any person or agent or officer thereof who charges, collects, or attempts to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person for public work, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in public work, whether the person is to work directly for the State, or any political subdivision or for a contractor or subcontractor doing public work is guilty of a misdemeanor.

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1780. Any person acting on behalf of the State or any political subdivision, or any contractor or subcontractor or agent or representative thereof, doing any public work who places any order for the employment of a workman on public work where the filling of the order for employment involves the charging of a fee, or the receiving of a valuable consideration from any applicant for employment is guilty of a misdemeanor.

1781. (a) (1) Notwithstanding any other provision of law, a contractor may, subject to paragraphs (2) and (3), bring an action in a court of competent jurisdiction to recover from the body awarding a contract for a public work or otherwise undertaking any public work any increased costs incurred by the contractor as a result of any decision by the body, the Department of Industrial Relations, or a court that classifies, after the time at which the body accepts the contractor's bid or awards the contractor a contract in circumstances where no bid is solicited, the work covered by the bid or contract as a "public work," as defined in this chapter, to which Section 1771 applies, if that body, before the bid opening or awarding of the contract, failed to identify as a "public work," as defined in this chapter, in the bid specification or in the contract documents that portion of the work that the decision classifies as a "public work."

(2) The body awarding a contract for a public work or otherwise undertaking any public work is not liable for increased costs in an action described in paragraph (1) if all of the following conditions are met:

(A) The contractor did not directly submit a bid to, or directly contract with, that body.

(B) The body stated in the contract, agreement, ordinance, or other written arrangement by which it undertook the public work that the work described in paragraph (1) was a "public work," as defined in this chapter, to which Section 1771 applies, and obligated the party with whom the body makes its written arrangement to cause the work described in paragraph (1) to be performed as a "public work."

(C) The body fulfilled all of its duties, if any, under the Civil Code or any other provision of law pertaining to the body providing and maintaining bonds to secure the payment of contractors, including the payment of wages to workers performing the work described in paragraph (1).

(3) If a contractor did not directly submit a bid to, or directly contract with a body awarding a contract for, or otherwise undertaking a public work, the liability of that body in an action commenced by the contractor under subdivision (a) is limited to that portion of a judgment, obtained by that contractor against the body that solicited the contractor's bid or awarded the contract to the contractor, that the contractor is unable to satisfy. For purposes of this paragraph, a contractor may not be deemed to be unable to satisfy any portion of a judgment unless, in addition to other collection measures, the contractor has made a good faith attempt to collect that portion of the judgment against a surety bond, guarantee, or some other form of assurance.

(b) When construction has not commenced at the time a final decision by the Department of Industrial Relations or a court classifies all or part of the work covered by the bid or contract as a "public work," as defined in this chapter, the body that solicited the bid or awarded the contract shall rebid the "public work" covered by the contract as a "public work," any bid that was submitted and any contract that was executed for this work are null and void, and the contractor may not be compensated for any nonconstruction work already performed unless the body soliciting the bid or awarding the contract has agreed to compensate the contractor for this work.

(c) For purposes of this section:

(1) "Awarding body" does not include the Department of General Services, the Department of Transportation, or the Department of Water Resources.

(2) "Increased costs" includes, but is not limited to:

(A) Labor cost increases required to be paid to workers who perform or performed work on the "public work" as a result of the events described in subdivision (a).

(B) Penalties for a violation of this article for which the contractor is liable, and which violation is the result of the events described in subdivision (a).

LABOR CODE
SECTION 1810-1815

1810. Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

1811. 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.

1812. Every contractor and subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the awarding body and to the Division of Labor Standards Enforcement.

1813. The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

1814. Any officer, agent, or representative of the State or any political subdivision who violates any provision of this article and any contractor or subcontractor or agent or representative thereof doing public work who neglects to comply with any provision of Section 1812 is guilty of a misdemeanor.

1815. 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.

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LABOR CODE
SECTION 1860-1861

1860. The awarding body shall cause to be inserted in every public works contract a clause providing that, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees.

1861. Each contractor to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

ADDENDUM 5

**INDUSTRIAL WELFARE COMMISSION
ORDER 16-2001**

1. Applicability of Order

This order shall apply to all persons employed in the on-site occupations of construction, including but not limited to work involving alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 *et seq.*; drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 *et seq.*), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis, except that:

(A) The provisions of Sections 3 through 11 shall not apply to persons employed in administrative, executive, or professional capacities. No person shall be considered to be employed in an administrative, executive, or professional capacity unless the person is primarily engaged in the duties which meet the test of the exemption, and earns a monthly salary equivalent to not less than (2) two times the state minimum wage for full-time employment. The duties that meet the test of the exemption are one of the following set of conditions:

(1) The employee is engaged in work which is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment; or

(2) The employee is licensed or certified by the State of California, and is engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting, or the employee is engaged in an occupation that is commonly recognized as a learned or artistic profession; provided, however, that pharmacists employed to engage in the practice of pharmacy, and registered nurses employed to engage in the practice of nursing, shall not be considered exempt professional employees, nor shall they be considered exempt from coverage for the purposes of this section unless they individually meet the criteria established for exemption as executive or administrative employees.

(3) To the extent that there is no conflict with California law (Labor Code Section 515(e) requires that an employee be "primarily" engaged in exempt work, which means more than one-half of the employee's work time. Thus the "primary duty" test set forth in federal regulations does not apply.), the duties that meet the test of the administrative and executive exemptions are defined as set forth in the following sections of the Code of Federal Regulations as they existed as of the date of this wage order: 29 C.F.R. Sections 541.1 (a)-(c), 541.102, 541.104, 541.105, 541.106, 541.108, 541.109, 541.111, 541.115, and 541.116 (defining executive duties); 29 C.F.R. Sections 541.2 (a)-(c), 541.201, 541.205, 541.208, and 541.210 (defining administrative duties).

(4) For the purposes of this section, "full-time employment" means employment in which an employee is employed for 40 hours per week.

(B) Except as provided in Sections 1, Applicability; 2, Definitions; 4, Minimum Wages; 9, Meals and Lodging; and 18, Penalties, the provisions of this order shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or special district.

(C) The provisions of this order shall not apply to outside salespersons.

(D) The provisions of this order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

(E) The provisions of this order shall not apply to any individual participating in a national service program, such as Ameri-Corps, carried out using assistance provided under Section 12571 of

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Title 42 of the United States Code. (See Stats. 2000, ch. 365, amending Labor Code Section 1171.)

(F) This order supersedes any industry or occupational order for those employees employed in occupations covered by this order.

2. Definitions

(A) "Alternative workweek schedule" means any regularly scheduled workweek proposed by an employer who has control over the wages, hours, and working conditions of the employees, and ratified by an employee work unit in a neutral secret ballot election, that requires an employee to work more than eight (8) hours in a 24-hour period.

(B) "Commission" means the Industrial Welfare Commission of the State of California.

(C) "Construction occupations" mean all job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 *et seq.*, and any other similar or related occupations or trades.

(D) "Division" means the Division of Labor Standards Enforcement of the State of California.

(E) "Drilling occupations" mean all job classifications associated with the exploration or extraction of oil, gas, or water resources work, including but not limited to the installation, establishment, reworking, maintenance or repair of wells and pumps by boring, drilling, excavating, casting, cementing and cleaning for the extraction or conveyance of fluids such as water, steam, gases, or petroleum.

(F) "Emergency" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.

(G) "Employ" means to engage, suffer, or permit to work.

(H) "Employee" means any person employed by an employer.

(I) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(J) "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

(K) "Logging occupations" mean any work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571-4586, including the cutting or removal or both of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the work that is incidental thereto, including but not limited to construction and maintenance of roads, fuel breaks, fire breaks, stream crossings, landings, skid trails, beds for the falling of trees, and fire hazard abatement.

(L) "Mining occupations" mean miners and other associated and related occupations (not covered by Labor Code Sections 750 *et seq.*) required to engage in excavation or operations above or below ground including work in mines, quarries, or open pits, used for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone, gravel, and rock, or other materials intended for manufacture or sale, whether paid on a time, piece rate, commission, or other basis.

(M) "Minor" means, for the purpose of this order, any person under the age of 18 years as defined by Labor Code Sections 1285-1312 and 1390-1399.

(N) "Outside salesperson" means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities. An "outside salesperson" does not include an employee who makes deliveries or service calls for the purpose of installing, replacing, repairing, removing, or servicing a product.

(O) "Primarily" means more than one-half the employee's work time.

(P) "Regularly scheduled workweek" means a schedule where the length of the shift and the number of days of work are predesignated pursuant to an alternative workweek schedule.

(Q) "Split shift" means a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.

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(R) "Wages" are as defined by California Labor Code Section 200.

(S) "Workday" and "day" mean any consecutive 24-hour period beginning at the same time each calendar day.

(T) "Workweek" and "week" mean any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

(U) "Work unit" means all nonexempt employees of a single employer within a given craft who share a common work site. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection are met.

3. Hours and Days of Work

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation to be paid to a nonexempt full-time salaried employee shall be computed by using one-fortieth (1/40) of the employee's weekly salary as the employee's regular hourly rate of pay.

(B) Alternative Workweek Schedules

(1) No employer, who has control over the wages, hours, and working conditions of employees, shall be deemed to have violated the provisions of Section 3, Hours and Days of Work, by instituting, pursuant to the election procedures set forth in this order, a regularly scheduled alternative workweek pursuant to the following conditions:

(a) The alternative workweek schedule shall provide for work by the affected employees of no longer than ten (10) hours per day within a 40 hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section.

(b) An affected employee working longer than eight (8) hours but no more than ten (10) hours in a day pursuant to an alternative workweek schedule adopted pursuant to this section shall be paid an overtime rate of compensation of not less than one and one-half (1 1/2) times the regular rate of pay of the employee for any work in excess of the regularly scheduled hours established by the alternative workweek agreement and for any work in excess of 40 hours per week.

(c) An overtime rate of compensation of not less than double the employee's regular rate of pay shall be paid for any work in excess of 12 hours per day and for any work in excess of eight (8) hours on those days worked beyond the regularly scheduled workdays established by the alternative workweek agreement.

(d) An employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule.

(e) An employer shall make a reasonable effort to find a work schedule not to exceed eight (8) hours in a workday to accommodate any affected employee who was eligible to vote in an election authorized by this section and who is unable to work the alternative schedule established as the result of that election. Employees affected by a change in work hours resulting from the adoption of an alternative workweek schedule shall not be required to work those new work hours for at least 30 days after the announcement of the final results of the election.

(f) An employer shall be permitted, but not required, to provide a work schedule not to exceed eight (8) hours in a workday to accommodate any employee who was hired after the date of the

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election and who is unable to work the alternative schedule established as the result of that election.

(g) An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by Government Code Section 12940(j).

(h) Notwithstanding paragraph (B)(1), subparagraphs (a)-(c), for employees working in offshore oil and gas production, drilling, and servicing occupations, as well as for employees working in onshore oil and gas separation occupations directly servicing offshore operations, an alternative workweek schedule may authorize work by the affected employees of no longer than 12 hours per day within a 40 hour workweek without the payment to the affected employees of an overtime rate of compensation. Employees working pursuant to an alternative workweek schedule adopted pursuant to this section shall be paid an overtime rate of compensation of no less than two (2) times their regular rate of pay in excess of the regularly scheduled hours established by the alternative workweek agreement, and for one and one-half (1 1/2) times their regular rate of pay for any work in excess of 40 hours per week. The other provisions of this section, including those governing elections, shall apply to these occupations.

(i) In no case shall an alternative workweek requiring more than eight (8) hours of work in a day be utilized on a public works contract in violation of Labor Code Sections 1810-1815.

(C) Election Procedures

Election procedures for the adoption and repeal of alternative workweek schedules require the following:

(1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer who has control over wages, hours, and working conditions of the affected employees, and adopted in a secret ballot election, held before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of work days and work hours are regularly recurring. The employer may propose a single work schedule that would become the standard schedule for workers in the unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another.

(2) The election shall be held during regular working hours at the employees' work site. Ballots shall be mailed to the last known address of all employees in the work unit who are not present at the work site on the day of the election but have been employed by the employer within the last 30 calendar days immediately preceding the day of the election.

(3) Prior to the secret ballot vote, any employer who proposes to institute an alternative workweek schedule shall make a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide the disclosure in a non-English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. Notices shall be mailed to the last known address of all employees in the work unit in accordance with provision (2) above. Failure to comply with this paragraph shall make the election null and void.

(4) Any election to establish or repeal an alternative workweek schedule shall be held during regular working hours at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the labor commissioner, the labor commissioner may require the employer to select a neutral third party to conduct the election.

(5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held, provided six (6) months have passed since the election authorizing the alternative workweek. A two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer.

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(6) If the number of employees who are employed for at least 30 days in the work unit that adopted an alternative workweek schedule increases by 50 percent above the number who voted to ratify the employer-proposed alternative workweek schedule, the employer must conduct a new ratification election pursuant to the rules contained in subsection (C).

(7) The results of any election conducted pursuant to this order shall be a public document and shall be reported by the employer to the Division of Labor Statistics and Research within 30 days after the results are final. The report of the election results shall also be posted at the job site in an area frequented by employees where it may easily be read during the workday. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer. Employees participating in the election shall be free from intimidation and coercion. However, nothing in this section shall prohibit an employer from expressing its position concerning that alternative workweek to the affected employees. No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. The labor commissioner shall investigate any alleged violation of this section and shall upon finding a serious violation render the alternative workweek schedule null and void.

(D) Combination of Overtime Rates. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

(E) Nondiscrimination. No employee shall be terminated, disciplined or otherwise discriminated against for refusing to work more than 72 hours in any workweek, except in an emergency as defined in Section 2 (F) above.

(F) Makeup Time. If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that makeup work time, if performed in the same workweek in which the work time was lost, may not be counted toward computing the total number of hours worked in a day for purposes of the overtime requirements, except for hours in excess of 11 hours of work in one (1) day or 40 hours of work in one (1) workweek. If an employee knows in advance that he/she will be requesting makeup time for a personal obligation that will recur at a fixed time over a succession of weeks, the employee may request to make up work time for up to four (4) weeks in advance; provided, however, that the makeup work must be performed in the same week that the work time was lost. An employee shall provide a signed written request for each occasion that the employee makes a request to make up work time pursuant to this subsection. While an employer may inform an employee of this makeup time option, the employer is prohibited from encouraging or otherwise soliciting an employee to request the employer's approval to take personal time off and make up the work hours within the same workweek pursuant to this subsection. (See Labor Code Section 513.)

(G) One Day's Rest in Seven. The provisions of Labor Code Sections 551 and 552 regarding one (1) day's rest in seven (7) shall not be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires the employee to work seven (7) or more consecutive days; provided, however, that in each calendar month, the employee shall receive the equivalent of one (1) day's rest in seven (7).

(H) Collective Bargaining Agreements

(1) Subsections (A), (B), (C), (D), and (E) of Section 3, Hours and Days of Work, shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage. (See Labor Code Section 514).

(2) Subsection (F) of Section 3, Hours and Days of Work, shall apply to any employee covered by a valid collective bargaining agreement unless the collective bargaining agreement expressly provides otherwise.

4. Minimum Wages

(A) Every employer shall pay to each employee wages not less than seven dollars and fifty cents (\$7.50) per hour for all hours worked, effective January 1, 2007, and not less than eight dollars (\$8.00) per hour for all hours worked, effective January 1, 2008.

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

5. Reporting Time Pay

(A) All employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate that may be required by the provisions of Labor Code Section 510 and Section 3, Hours and Days of Work, above.

(B) Each workday that an employee is required to report to the work site and does report, but is not put to work or is furnished less than half of his/her usual or scheduled day's work, the employer shall pay him/her for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

(1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or

(2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) Collective Bargaining Agreements. This section shall apply to any employees covered by a valid collective bargaining agreement unless the collective bargaining agreement expressly provides otherwise.

6. Records

(A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following:

(1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.) This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

(C) All required records shall be in the English language and in ink or other indelible form, dated properly, showing month, day and year. The employer who has control over wages, hours, or working conditions shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request.

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(D) Employers performing work on public works projects should refer to Labor Code Section 1776 for additional payroll reporting requirements.

7. Deductions from Pay

No employer shall collect or deduct from any employee any part of the wages that are paid unless such deductions are allowed by law. (See Labor Code Sections 220-226.) No fee shall be charged by the employer or agent of the employer for cashing a payroll check.

8. Uniforms and Equipment

(A) When the employer requires uniforms to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

(B) When the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

9. Meals and Lodging

(A) "Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

(B) "Lodging" means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to usual and customary standards.

Employees shall not be required to share a bed.

(C) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

(D) Meals evaluated as part of the minimum wage must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received or lodging not used.

(E) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

	Effective January 1, 2007	Effective January 1, 2008
Lodging:		
Room occupied alone	\$35.27 per week	\$37.63 per week
Room shared	\$29.11 per week	\$31.06 per week
Apartment—two-thirds (2/3) of the ordinary rental value, and in no event more than	\$423.51 per month	\$451.89 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than	\$626.49 per month	\$668.46 per month
Meals:		
Breakfast.....	\$2.72	\$2.90
Lunch.....	\$3.72	\$3.97
Dinner.....	\$5.00	\$5.34

10. Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee. (See Labor Code Section 512.)

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived. (See Labor Code Section 512.)

(C) In all places of employment the employer shall provide an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing.

(D) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to and complies with Labor Code Section 512.

(E) Collective Bargaining Agreements. Subsections (A), (B), and (D) of Section 10, Meal Periods, shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

(F) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. In cases where a valid collective bargaining agreement provides final and binding mechanism for resolving disputes regarding enforcement of the meal period provisions, the collective bargaining agreement will prevail.

11. Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. In cases where a valid collective bargaining agreement provides final and binding mechanism for resolving disputes regarding enforcement of the rest period provisions, the collective bargaining agreement will prevail.

(E) This section shall not apply to any employee covered by a valid collective bargaining agreement if the collective bargaining agreement provides equivalent protection.

12. Seats

Where practicable and consistent with applicable industry-wide standards, all working employees shall be provided with suitable seats when the nature of the process and the work performed reasonably permits the use of seats. This section shall not exceed regulations promulgated by the Occupational Safety and Health Standards Board.

13. Temperature

The temperature maintained in each interior work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. This section shall not exceed regulations promulgated by the Occupational Safety and Health Standards Board.

14. Elevators

Where practicable and consistent with applicable industry-wide standards, adequate elevators, escalators, or similar service consistent with industry-wide standards for the nature of the process and the work performed, shall be provided when employees are employed 60 feet or more above or below ground level. This section shall not exceed regulations promulgated by the Occupational Safety and Health Standards Board.

15. Exemptions

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 6, Records; Section 11, Rest Periods; Section 12, Seats; Section 13, Temperature; or Section 14, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the Division.

16. Filing Reports

(See California Labor Code, Section 1174(a))

17. Inspection

(See California Labor Code, Section 1174)

18. Penalties

(A) Penalties for Violations of the Provisions of this Order. Any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to civil and criminal penalties as provided by law. In addition, violation of any provision of this order shall be subject to a civil penalty as follows:

- (1) Initial Violation - \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.
- (2) Subsequent Violations - \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered. The labor commissioner may also issue citations pursuant to California Labor Code Section 1197.1 for non-payment of wages for overtime work in violation of this order.

(B) Penalties for Violations of Child Labor Laws. Any employer or other person acting on behalf of the employer is subject to civil penalties of from \$500 to \$10,000 as well as to criminal penalties for violation of child labor laws. (See Labor Code Sections 1285 to 1312 and 1390 to 1399 for additional restrictions on the employment of minors and for descriptions of criminal and civil penalties for violation of the child labor laws.) Employers should inquire at local school districts about any required work permits required for minors attending school. (In addition, see California Labor Code, Section 1199)

19. Separability

If the application of any provision of this order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected

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thereby, but shall continue to be given full force and effect as if the part is held to be invalid or unconstitutional had not been included herein.

20. Posting of Order

Every employer shall keep a copy of this order posted in an area frequented by employees where it may be easily read during the workday. Where the location of work or other conditions make impractical, every employer shall keep a copy of this order, and make it available to every employee upon request.

ADDENDUM 6

Statute:	Applies to:	Requires:
<p>Education Code §17250.30 -- sunsets on 1/1/2020</p> <p>[Stats. 2001, Chap. 412 (AB 1402); amended by Stats. 2002, c. 664 (AB 3034), §57; Stats. 2007, c. 471 (SB 614), §2; Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §2; Stats. 2011, c. 378 (AB 436), §2; and Stats. 2012, c. 736 (SB 1509), §5.]</p>	<p>School districts entering into design-build contract for construction of school facility costing over \$2.5 million.</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement binding all contractors performing work on the project.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or district has its own approved LCP for all projects.^{1,2}</i></p>
<p>Education Code §81704 -- sunsets on 1/1/2020</p> <p>[Stats. 2002, Chap. 637 (AB 1000); amended by Stats. 2007, c. 471 (SB 614), §8; Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §3; Stats. 2011, c. 378 (AB 436), §3; and Stats. 2012, c. 736 (SB 1509), §6.]</p>	<p>Community College Districts entering into design-build contract for construction of school facility costing over \$2.5 million.</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement binding all contractors performing work on the project.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or district has its own approved LCP for all projects.^{1,2}</i></p>

Statute:	Applies to:	Requires:
<p>Government Code §6531</p> <p>[Stats. 2002, Chap. 2002 (AB 2867); amended by Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §4; and Stats. 2011, c. 378 (AB 436), §4]</p>	<p>Model school construction project undertaken by San Diego Model School Development Agency within City Heights Project Redevelopment Area.</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement binding all contractors and subcontractors performing work on the project; however the JPA is not precluded from operating an LCP with respect to those projects.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or district has its own approved LCP for all projects.^{1,2}</i></p>
<p>Health and Safety Code §32132.5 by reference to Public Contract Code §20133</p> <p>[Stats. 2008, Chap. 415 (SB 1699)]</p>	<p>Design-build contracts for construction of building or improvements at Sonoma Valley Hospital.</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or district has its own approved LCP for all projects.^{1,2}</i></p>
<p>Labor Code §1771.3</p> <p>[Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §5; amended by Stats. 2010, c. 719 (SB 856), §47; and Stats. 2011, c. 378 (AB 436), §6]</p>	<p>Contracts for public works projects awarded on or after January 1, 2012 that use funds derived from any state-issued public works bond <i>unless</i> project is subject to Public Resources Code §75075 (<i>see below</i>).</p>	<p>Fee-based monitoring by CMU <i>unless</i> there is a collective bargaining agreement binding all contractors performing work on the project or awarding body has its own approved LCP for all projects.^{1,3}</p>

Statute:	Applies to:	Requires:
<p>Labor Code §1771.5</p> <p><i>[Stats.1989, Chap. 1224 (AB 114), § 2, amended by Stats. 1999, c. 83 (SB 966), § 132; Stats.2003, c. 834 (AB 324), § 1; Stats.2009-2010, 2d Ex. Sess., c. 7 (SBX2-9), § 6; and Stats.2010, c. 719 (S.B.856), § 48; repealed and replaced by Stats. 2011, c. 378 (AB 436), §§ 7, 8]</i></p>	<p>Application and requirements:</p> <p><i>Subdivisions (a), (e), and (f) provide higher prevailing wage exemptions for (1) Awarding bodies with previously approved LCPs (as of 1/1/2012) used for all projects, and (2) Awarding bodies that conduct prejob conferences and contract with DIR to use CMU on all projects.</i></p> <p><i>Subdivision (b) sets forth minimum performance requirements for all LCPs that are required or provided for by state statute. Subdivision (c) specifies that such LCPs must be approved by the Director of Industrial Relations in accordance with state regulations, and subdivision (d) provides that the Direction may revoke the approval of LCPs in the manner specified in the regulations.</i></p>	
<p>Labor Code §1771.7</p> <p><i>[Stats. 2002, Chap. 868 (AB 1506); amended by Stats. 2003, c. 834 (AB 324), Stats. 2005, c. 606 (AB 414); Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §8; Stats. 2010, c. 719 (SB 856), §49; and Stats. 2011, c. 378 (AB 436), §10]</i></p>	<p>Public works contracts awarded prior to January 1, 2012 that use funds derived from Kindergarten-University Public Education Facilities Bond Acts of 2002 (Prop. 47) and 2004 (Prop. 55).</p>	<p>Approved LCP. <i>[Additional requirements specified in statute for California State University and for University of California or any campus of that university.]</i></p>

Statute:	Applies to:	Requires:
<p>Public Contract Code §6804 -- <i>sunsets on 1/1/2014</i></p> <p>[Stats. 2009-2010 2d Ex. Sess., c. 2 (SBX2-4), §3; amended by Stats. 2011, c. 378 (AB 436), §15]</p>	<p>Up to 15 design-build demonstration projects (5 by local transportation entities and 10 by Caltrans) authorized by the California Transportation Commission</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or awarding body has its own approved LCP for all projects.^{1,2}</i></p>
<p>Public Contract Code §6953 -- <i>effective 1/1/2013</i></p> <p>[Stats. 2012, c. 767 (SB 1549), §1]</p>	<p>Public transit projects by San Diego Association of Governments using Construction Manager/General Contractor or design-sequencing procurement process</p>	<p>Fee-based monitoring by CMU <i>unless</i> there is a collective bargaining agreement binding all contractors performing work on the project or awarding body has its own approved LCP for all projects.¹</p> <p>[No LCP option.]</p>

Statute:	Applies to:	Requires:
<p>Public Contract Code §20133 -- sunsets on 7/1/2014</p> <p>[Stats. 2000, Chap. 594 (AB 2296); amended by Stats. 2005, c. 350 (AB 1511) and c. 376 (SB 287); Stats. 2006, c. 538 (SB 1852), § 541; Stats. 2007, c. 584 (SB 233), § 1; Stats. 2007, c. 585 (SB 416), § 1.5; Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §14; Stats. 2010, c. 629 (SB 879), §1; and Stats. 2011, c. 378 (AB 436), §16]</p>	<p>Counties for design-build contracts for buildings, directly related improvements, and wastewater treatment facility construction projects costing over \$2.5 million.</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or county has its own approved LCP for all projects.^{1, 2}</i></p>
<p>Public Contract Code §20175.2 -- sunsets on 1/1/2016</p> <p>[Stats. 2005, Chap. 228 (AB 1329); amended by Stats. 2006, c. 244 (SB 535), § 1; Stats. 2007, c. 473 (SB 645), § 1; Stats. 2008, c. 314 (AB 642), §1; and Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §15; and Stats. 2011, c. 378 (AB 436), §17]</p>	<p>Cities for design-build contracts for building construction projects (not including streets and highways, public rail transit, or water resources facilities and infrastructure) costing over \$1 million.</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or city has its own approved LCP for all projects.^{1, 2}</i></p>

Statute:	Applies to:	Requires:
<p>Public Contract Code §20193 -- sunsets on 1/1/2020</p> <p>[Stats. 2008, Chap. 314 (AB 642), §2; amended by Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §16; Stats. 2011, c. 378 (AB 436), §18]</p>	<p>Up to 20 design-build projects by qualified local entities for construction of wastewater treatment, solid waste, or water recycling facilities costing over \$2.5 million.</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or awarding body has its own approved LCP for all projects.^{1,2}</i></p>
<p>Public Contract Code §20209.7 -- sunsets on 1/1/2015</p> <p>[Stats. 2000, Chap. 541 (AB 958); amended by Stats. 2001, c. 159 (SB 662), § 167; Stats. 2004, c. 196 (SB 1130), §3; Stats. 2006, c. 262 (AB 372), §2; Stats. 2008, c. 185 (AB 387); and Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §17; and Stats. 2011, c. 378 (AB 436), §19]</p>	<p>Transit operators entering into design-build contracts for (1) non-rail transit projects exceeding \$2.5 million in cost, (2) capital maintenance or capacity-enhancing rail projects exceeding \$25 million in cost, or (3) acquisition and installation of items related to safety, disaster preparedness, or homeland security [with no cost threshold].</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or district has its own approved LCP for all projects.^{1,2}</i></p>

Statute:	Applies to:	Requires:
<p>Public Contract Code §20688.6 -- sunsets on 1/1/2016</p> <p>[Stats. 2009-2010 2d Ex.Sess., c. 2 (SBX2-4), §4; amended by Stats. 2011, c. 378 (AB 436), §20]</p>	<p>Up to 10 design-build community redevelopment infrastructure projects that cost in excess of \$1 million and are approved by the State Public works Board.</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or awarding body has its own approved LCP for all projects.^{1,2}</i></p>
<p>Public Contract Code §20919.3 -- sunsets on 12/31/2020</p> <p>[Stats. 2003, Chap. 889 (AB 14); amended by Stats. 2009-2010 2d Ex. Sess., c. 7 (SBX2-9), §19; and Stats. 2011, c. 378 (AB 436), §21; and Stats. 2012, c. 825 (AB 2580), §3]</p>	<p>Los Angeles Unified School District for job order construction contracts of \$1 million or less.</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or district has its own approved LCP for all projects.^{1,2,4}</i></p>

Statute:	Applies to:	Requires:
<p>Public Contract Code §21162 by reference to Public Contract Code §20133</p> <p>[Stats. 2001, Chap. 847 (A.B.674), § 2]</p>	<p>Santa Clara Valley Water District for design-build contracts for building construction</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or district has its own approved LCP for all projects.^{1,2}</i></p>
<p>Public Resources Code §75075</p> <p>[Initiative Measure (Prop. 84, §1, approved Nov. 7, 2006)]</p>	<p>Public works projects financed in any part by the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006)</p>	<p>Approved LCP.³</p>
<p>Streets and Highways Code §143(e) by reference to Chapter 6.5 (commencing with section 6800) of Part 1 of Division 2 of the Public Contract Code</p> <p>[As amended by Stats. 2009-2010 2d Ex. Sess., c. 2 (SBX2-4), §5]</p>	<p>Specified transportation projects that are authorized by the California Transportation Commission and use design-build procurement process</p>	<p><i>Contract for public works project awarded prior to January 1, 2012: Approved LCP unless there is a collective bargaining agreement or agreements that bind all contractors performing work on the project.</i></p> <p><i>Contract for public works project awarded on or after January 1, 2012: Fee-based monitoring by CMU unless there is a collective bargaining agreement binding all contractors performing work on the project or awarding body has its own approved LCP for all projects.^{1,2}</i></p>

Notes:

1. Collective bargaining agreement must include a mechanism for resolving disputes about the payment of wages.
2. Awarding body must (1) operate LCP on all projects under its authority that are not subject to collective bargaining agreement exception and otherwise would be subject to CMU; and (2) cannot contract with third party to operate LCP.
3. Projects that receive funding from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 [Proposition 84] are subject to the LCP requirement in Public Resources Code §75075 and not to the CMU requirements in Labor Code §1771.3 or exceptions to those requirements, notwithstanding the receipt of any other state bond funding.
4. Los Angeles Unified School has operated an approved LCP on all of its projects since prior to adoption of statute through the present.