Case No. S253574

**IN THE SUPREME COURT OF CALIFORNIA**

LEOPOLDO PENA MENDOZA, ET AL.,

Plaintiffs and Appellants,
v.

FONSECA MCELROY GRINDING, INC. ET Al.,

Defendants and Respondents.

After Decision by the United States Court of Appeals for the
Ninth Circuit, Case No. 17-15221
Judge William H. Orrick, Case No. 3-15-CV-05143-WHO

# AMICUS CURIAE DIVISION OF LABOR STANDARDS ENFORCEMENT'S MOTION FOR JUDICIAL NOTICE

DIVISION OF LABOR STANDARDS ENFORCEMENT
State of California, Department of Industrial Relations

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Pursuant to rules 8.252 and 8.520(g) of the California Rules of Court and Evidence Code section 452 subidivisions ( c) and (h), *amicus curiae* Division of Labor Standards Enforcement moves for judicial notice of the documents attached hereto as Exhibits A through K, identified below, offered in support of its brief in support of Appellants. Exhibits A through K are documents issued by the Department of Industrial Relations (DIR) relating to the issues of compensable travel time and transport of construction equipment. These documents highlight the DIR's longstanding positions on these two issues. All exhibits, except Exhibit G (Public Works Manual), were not previously presented to the District Court or Ninth Circuit for this matter.

Judicial notice may be taken of "official acts of the ... executive ... departments of ... any state..." (Evid. Code, §452, subd. ( c). Exhibits A through K all come within the scope of subdivision (c). Furthermore, judicial notice may taken of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources or reasonably indisputable accuracy." (Evid. Code, §452, subd. (h).) Exhibits A through K are available under a Public Records Act request and thus not reasonably subject to dispute and are capable of immediate and accurate determination.

**Exhibit A** is a DIR letter dated February 19, 1989, finding that the transport of construction equipment from a storage/service yard and throughout the project location is subject to the prevailing wage law.

**Exhibit B** is a coverage determination in DIR Case No. 90-059 dated December 31, 1990, by DIR Director Ron Rinaldi, determining that prevailing wages are required for employees of a contractor or subcontractor for the delivery and removal of construction equipment and miscellaneous materials because it is integral to the contractor's overall obligation while working on a public works site.

**Exhibit C** is a coverage determination in DIR Case No. 90-015 dated September 21, 1999, by DIR Director Stephen J. Smith, determining that truck drivers employed by an onsite contractor must be paid prevailing wages while hauling equipment and materials to and from the public works sites.

**Exhibit D** is a coverage determination in DIR Case No. 2002-034 dated July 18, 2002, determining that a subcontractor's transport of cast iron elements between a public works project site and the contractor's shop is integral to the execution of the public works contract and must be paid the prevailing wage.

**Exhibit E** is a letter dated August 19, 2002, by DIR Acting Director, Chuck Cake, explaining the DIR's position on travel pay between a contractor's shop/yard and the public works project site.

**Exhibit F** is a final administrative decision of the DIR Director under Labor Code section 1742, *Kern Asphalt Paving & Sealing Co., Inc.* (March 28, 2008), Case No. 04-0117-PWH, finding that a contractor's truck drivers hauling materials and supplies to the public work site must be paid the prevailing wage and crew members reporting to the contractor's yard were also entitled to the prevailing wage.

**Exhibit G** is the May 2018 Public Works Manual published by the DIR's Office of the Labor Commissioner.

**Exhibit H** is the Prevailing Wage Determination NC-23-63-1-2012-1 for Operating Engineer (Heavy and Highway Work) issued on August 22, 2012 by the DIR Director.

**Exhibit I** is the Prevailing Wage Determination NC-23-63-1-2015-1 for Operating Engineer (Heavy and Highway Work) issued on February 22, 2015 by the DIR Director.

**Exhibit J** is the Travel and Subsistence Provision 23-63-1 for Operating Engineer (Heavy & Highway Work) published as part of the Prevailing Wage Determination NC-23-63-1-2012-1 for Operating Engineer (Heavy and Highway Work) issued on August 22, 2012 by the DIR Director.

**Exhibit K** is the Travel and Subsistence Provision 23-63-1 for Operating Engineer (Heavy & Highway Work) published as part of the Prevailing Wage Determination NC-23-63-1-2015-1 for Operating Engineer (Heavy and Highway Work) issued on February 22, 2015 for the DIR Director.

For the foregoing reasons, amicus curiae Division of Labor Standards Enforcement respectfully requests the Court grant this motion for judicial notice.

DATED: January 10, 2020

Respectfully submitted,

By _____ for SBN 123570

DAVID BALTER
LUONG CHAU
KRISTIN GARCÍA
LANCE GRUCELA
Attorneys for *Amicus Curiae*,
State of California, Department
of Industrial Relations,
Division of Labor Standards
Enforcement

## DECLARATION OF MILES E. LOCKER

I, Miles E. Locker, declare as follows:

1. I am an attorney duly licensed to practice law before the courts of the State of California, am employed by the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify thereto.
2. Attached hereto as **Exhibit A** is a true and correct copy of the DIR letter dated February 19, 1989, regarding the Redwood Park Bypass Project.
3. Attached hereto as **Exhibit B** is a true and correct copy of the coverage determination in DIR Case No. 90-059 dated December 31, 1990, by DIR Director Ron Rinaldi.
4. Attached hereto as **Exhibit C** is a true and correct copy of the coverage determination in DIR Case No. 90-015 dated September 21, 1999, by DIR Director Stephen J. Smith.
5. Attached hereto as **Exhibit D** is a true and correct copy of the coverage determination in DIR Case No. 2002-034 dated July 18, 2002.
6. Attached hereto as **Exhibit E** is a true and correct copy of the letter dated August 19, 2002, by DIR Acting Director, Chuck Cake, explaining the DIR's position on travel pay.
7. Attached hereto as **Exhibit F** is a true and correct copy of the final administrative decision of the DIR Director under Labor Code section 1742, *Kern Asphalt Paving & Sealing Co., Inc.* (March 28, 2008), Case No. 04-0117-PWH.

8. Attached hereto as **Exhibit G** is a true and correct copy of the May 2018 Public Works Manual published by the DIR's Office of the Labor Commissioner.
9. Attached hereto as **Exhibit H** is a true and correct copy of the Prevailing Wage Determination NC-23-63-1-2012-1 for Operating Engineer (Heavy and Highway Work) issued on August 22, 2012 by the DIR Director.
10. Attached hereto as **Exhibit I** is a true and correct copy of the Prevailing Wage Determination NC-23-63-1-2015-1 for Operating Engineer (Heavy and Highway Work) issued on February 22, 2015 by the DIR Director.
11. Attached hereto as **Exhibit J** is a true and correct copy of the Travel and Subsistence Provision 23-63-1 for Operating Engineer (Heavy & Highway Work) published as part of the Prevailing Wage Determination NC-23-63-1-2012-1 for Operating Engineer (Heavy and Highway Work) issued by August 22, 2012 by the DIR Director.
12. Attached hereto as **Exhibit K** is a true and correct copy of the Travel and Subsistence Provision 23-63-1 for Operating Engineer (Heavy & Highway Work) published as part of the Prevailing Wage Determination NC-23-63-1-2015-1 for Operating Engineer (Heavy and Highway Work) issued by February 22, 2015 by the DIR Director.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 10th day of January 2020, at San Francisco, California.

MILES E. LOCKER

## PROPOSED ORDER

Amicus curiae Division of Labor Standards Enforcement's motion for judicial notice is granted. The Court takes judicial notice of Exhibits A and F attached to the motion.

Date:_____

_____
Chief Justice of the
Supreme Court of California

## PROOF OF SERVICE

I, MaryAnn Galapon, am employed in the State of California, County of San Francisco. I am over the age of 18 years old and not a party to the within action. My business address is 455 Golden Gate Avenue, 9th Floor, San Francisco, California 94102.

On January 10, 2020, I served the foregoing document(s) described as:

1. **AMICUS CURIAE DIVISION OF LABOR STANDARDS ENFORCEMENT'S MOTION FOR JUDICIAL NOTICE**

on the interested parties to this action by delivering a copy thereof in a sealed envelope at the following addresses:

**SEE ATTACHED SERVICE LIST**

x (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our office address in San Francisco, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

x (STATE) I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.

I declare under penalty of perjury, under the laws of the State of California that the above is true and correct and that this declaration was executed on January 10, 2020 at San Francisco, California.

Mary Ann Galapon

MaryAnn Galapon

Declarant

**SERVICE LIST**

***Leopoldo Pena Mendoza, et al. v. Fonseca McElroy Grinding, et al.***
(S253574 | 17-15221)

| | |
|---|---|
| UNITED STATES COURT OF APPEALS<br>FOR THE NINTH CIRCUIT<br>The James R. Browning Courthouse<br>95 7th Street<br>San Francisco, CA 91403<br>Tel: (415) 355-8000 | ***Appellate Court***<br>Case No.: 17-15221 |
| Hon. William H. Orrick<br>District Judge<br>UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA<br>450 Golden Gate Avenue<br>San Francisco, CA 94102<br>Tel: (415) 522-2000 | ***Trial Court***<br>Case No.: 3:15-cv-05143-WHO |
| Hon. Xavier Becerra<br>Attorney General<br>California Department of Justice<br>P.O. Box 944255<br>Sacramento, CA 94244-2550<br>(Pursuant to CRC, Rule 8.548(f)(4) | ***Attorney General*** |
| Paul V. Simpson, Esq.<br>SIMPSON GARRITY & INNES, PC<br>601 Gateway Boulevard, Suite 950<br>South San Francisco, CA 94080<br>Email: psimpson@sgilaw.com | ***Attorneys for Defendant and Respondents***<br>Fonseca McElroy Grinding Co., Inc. and Granite Rock Company |
| Tomas E. Margain, Esq.<br>JUSTICE AT WORK LAW GROUP<br>84 West Santa Clara Street, Ste. 790<br>San Jose, California 95113<br>Tel: (408) 317-1100<br>E-mail: Tomas@jawlawaroup.com | ***Attorneys for Plaintiffs and Appellants***<br>Leopoldo Pena Mendoza, Elviz Sanchez and Jose Armando Cortes |
| Stuart B. Esner, Esq.<br>Holly N. Boyer, Esq.<br>ESNER, CHANG & BOYER<br>234 East Colorado Boulevard, Ste. 975<br>Pasadena, California 91101<br>Tel: (626) 535-9860<br>E-mail: sesner@echappeal.com;<br>hboyer@ecbappeal.com | ***Attorneys for Plaintiffs and Appellants***<br>Leopoldo Pena Mendoza, Elviz Sanchez and Jose Armando Cortes |

# Exhibit A

DEPARTMENT OF INDUSTRIAL RELATIONS
GOLDEN GATE AVENUE
FRANCISCO 94102 OD-LEGAL UNIT, RM. 610

ADDRESS REPLY TO:
P.O. BOX 603
SAN FRANCISCO 94101
(415) 557-1687

Feb. 14, 1989

Mr. David Comb, President
Redwood Employers Association
106 Wikiup Drive
Santa Rosa, CA 95403

Subject: Redwood Park Bypass Project

Dear Mr. Comb:

This is in response to your letter dated December 20, 1988, in which you request this Department's guidance as to whether or not the employees of Dutra Trucking are subject to the prevailing wage law while working on the above-referenced project.

Labor Code Section 1772 provides that workmen employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

Dutra Trucking is in effect a subcontractor on this project fulfilling an integral part of the contractor's overall obligations. The transport of construction equipment from a storage/service yard and throughout the project location is clearly work subject to the prevailing wage laws as this Department has consistently enforced and applied them. The employees in question should receive the prevailing wage for the work they perform in this job, and certified payroll records should be maintained and submitted as required by the general contractor, under Labor Code Section 1776.

I trust this fully answers your inquiry. If I can be of further assistance on this or any other public works question, please feel free to contact me.

Very truly yours,

James M. Robbins
Industrial Relations Counsel II

JMR/bmn

# Exhibit B

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
455 Oyster Point Blvd., 5th Fl., Wing A
So. San Francisco, Calif. 94080

ADDRESS REPLY TO:
P.O. BOX 603
SAN FRANCISCO, CA 9411

December 31, 1990

Colleen Provost
Ham Bros.
P.O. Box 848
Lakeside, Ca. 92040

RE: Coverage determination for routine maintenance and repair of equipment on a prevailing wage site and the hauling of equipment and materials on and off a public works job site. (Our REF: No.90-059).

Dear Ms. Provost:

In response to your letter of October 5, 1990, your questions will be answered in the order of your correspondence. The answer for questions one and two will be combined for simplicity.

Question 1 and 2: *Routine Maintenance of Equipment on a Prevailing Wage Site./ Repair of equipment on a Prevailing Wage Site.*

If the employees in question are employees of the construction contractor, they would be paid prevailing wages for their maintenance and repair work. If they are employed by an independent service firm such as the local Caterpillar dealer, Ford dealer or mechanical repair firm, they would not receive prevailing wages unless they were assigned to spend substantial amounts of time at the public works site.

Regarding the issue of whether the equipment when rented, leased or owned by Hams Brothers affects prevailing wage coverage: Prevailing wages are not required if the equipment is scheduled for routine maintenance. However, if the work is not scheduled for routine maintenance, the maintenance work on the job site is covered. The ownership of the equipment is not a decisive factor in determining if the work is covered under prevailing wages.

Question 3: *Deliveries to Prevailing wage job sites by Ham Bros. Employees in Ham Bros. owned trucks.*

Prevailing wages are required for employees of a contractor or subcontractor for the delivery and removal of construction equipment and miscellaneous materials. This work is an integral part of the contractor's overall obligation while working on a public works project.

However, it should be noted that if a trucking company is hired by a materials supplier who is an established vender, then the hauling of materials to the job site may not be covered under public works law. This must be considered on a case by case basis.

If you have further questions, please contact the Prevailing Wage Unit at the address above or call (415) 737-2794.

Sincerely,

Ron Rinaldi
Director

cc: R.W. Stranberg, Acting Chief Deputy Director
Jean Westgard, Chief--DLSR
John Rea, Chief Counsel, OD Legal
James H. Curry, Acting Labor Commissioner
Simon Reyes, Assistant Chief--DLSE
Maria Y. Robbins, Deputy Chief-- DLSR
James C. Roeckel, Research Manager--DLSR
Art Konrad, Research Analyst--DLSR
Alison L. Gates, Research Analyst--DLSR
Vanessa Holton, Counsel
Gary J. O'Mara, Counsel
Roger Miller, Regional Manager--DLSE-BOFE

# Exhibit C

STATE OF CALIFORNIA GRAY DAVIS, GOVERNOR

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050

September 21, 1999

Denny McIlvaine, Operations Manager
DECON Environmental Services, Inc.
23490 Connecticut Street
Hayward, CA 94545-1607

RE: Public Works Case No. 99-015
Hauling Equipment and Materials to and from Public Works Sites

Dear Mr. McIlvaine:

This constitutes the determination of the Director of the Department of Industrial Relations regarding coverage of the above-named project under the public works laws and is made pursuant to Title 8, California Code of Regulations section 16000(a). Based upon my review of the documents submitted and the applicable laws and regulations pertaining to public works, it is my determination that the work performed by the truck drivers of DECON Environmental Services, Inc. ("DECON") in this case is a "public works" within the meaning of Labor Code sections 1720(a) and 1772.

DECON is a licensed contractor that performs environmental services and, as in this case, sometimes performs these services on public works projects. For these projects, DECON's truck drivers haul equipment and materials from DECON's operations yard to the public works sites and from the public works sites to the operations yard. The truck drivers may make several round trips per day and may unload or load the equipment and materials at the public works sites. DECON requests a determination as to whether the truck drivers should be paid prevailing wages while hauling to the public works sites, while working at the sites and while hauling from the sites. Other DECON employees working at the public works sites are paid prevailing wage rates.

Labor Code section 1720(a) generally defines public works to mean "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds. . ." Labor Code section 1772 states: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." The subject case involves only public works projects. DECON pays

prevailing wages to the employees working at the public works sites. Therefore, there is no question that the truck drivers should also be paid prevailing wages while working at the public works sites. The question is whether the truck drivers should be paid prevailing wages while hauling equipment and materials to and from the public works sites.

As found in previous determinations,[1] and consistent with Sansone v. Dept. of Transportation (1976) 55 Cal.App.3d 434, 127 Cal.Rptr. 799, the hauling of materials to and from a public works site by employees of the contractor or sub-contractor is a public work. Therefore, consistent with these precedential decisions and in accordance with sections 1720(a) and 1772, the truck drivers in this case must be paid prevailing wages while hauling equipment and materials to the public works sites, while working at the public works sites and while hauling equipment and materials from the public works sites.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

Stephen J. Smith
Director

cc: Daniel M. Curtin, Chief Deputy Director and Acting Chief, DLSR
Marcy Vacura Saunders, Labor Commissioner
Henry P. Nunn, III, Chief, DAS
Vanessa L. Holton, Assistant Chief Counsel

[1] Precedential Public Work Determination No. 95-015, Nevada County Chip Seal Program, September 14, 1995; Precedential Public Work Determination No. 93-019, Off-Hauling of Excess Dirt from Caltrans Project - Carlsbad, October 4, 1993.

# Exhibit D

STATE OF CALIFORNIA GRAY DAVIS, GOVERNOR

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050



July 18, 2002

Gregory Jeffress
ABC Painting, Inc.
P.O. Box 2015
Vallejo, CA 94592

Re: Public Works Case No. 2002-034
Sacramento State Capitol Exterior Painting Project
Restoration and Hauling of Decorative Cast Iron Elements

Dear Mr. Jeffress:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the restoration and hauling of architectural decorative cast iron elements from the State Capitol in Sacramento is a public work subject to the payment of prevailing wages.

In December 2001, the California Department of General Services ("DGS") published in newspapers a notice titled, "Advertisement for Pre-qualification to Bid a Project, Capitol Exterior Painting." The notice stated in part:

> The Department of General Services, Real Estate Services Division, Project Management Branch, announces that it is pre-qualifying prime contractors to bid on the Capitol Exterior Painting project for construction.
>
> . . .
>
> The Project Management Branch will pre-qualify prime contractors to bid the project who respond to its Pre-qualification Form Package (PFP) and receive an "approved" on all items in the PFP. Qualifications to be evaluated will include the firm's experience in successfully completing historic renovation and/or painting projects similar to the California State Capitol. Note that the West Wing of the Capitol was constructed in 1869, and is listed in the Historic Registry. In particular, work will involve removal, treatment

> and reinstallation of cast iron decorative elements; application of multi-coat polyurethane and spray paint systems; and full scaffolding for access to work areas. The building will be occupied during project duration and is a high profile site, with sensitive security issues. Qualifications will also be evaluated based on licensing, bonding and financial ability, history of litigation and experience in performing public works projects of similar size and value.

Three potential bidders submitted pre-qualification packages, and DGS invited two of them to bid on the project. In February 2002, DGS published an Invitation to Bid, which described the project as follows:

> Project comprises labor, material and services necessary for: removal of column capitals, refurbishment and reinstallation; cleaning and painting of plaster and concrete surfaces; patching cement plaster and woodwork restoration; scaffolding as needed to access work areas; membrane walking surfaces and related work. Work also includes lead materials abatement in affected areas.

The Invitation to Bid also included the following statement:

> Pursuant to section 1770 of the Labor Code, the Department of Industrial Relations has ascertained general prevailing wages in the county in which the work is to be done, to be listed in the Real Estate Services Division's booklet entitled, "General Prevailing Wage Rates," dated as set forth on the Bid Form.

The successful bidder was River City Painting, Inc. ("River City"). The Bid Form submitted by River City sets forth the following statements immediately above the bid price:

> The undersigned hereby proposes and agrees to furnish all labor, materials and equipment, and to perform all work required for the above-named project in the manner and time prescribed in the Drawings and Project Manual dated February 2002 and such addenda thereto as may be issued prior to bid

> opening date and in accordance with prevailing wage rates ascertained by the Department of Industrial Relations and set forth in the Real Estate Services Division's booklet entitled, "General Prevailing Wage Rates," dated August 2001, available upon request. The Bid Price, set forth below in clear legible figures, includes the cost of bonds, insurance, sales tax and every other item of expense, direct or indirect, incidental to the Bid Price.

The Bid Form also included in Article 10 a requirement that the bidder list the name and location of each subcontractor who would perform work or labor or render service to the bidder in an amount in excess of one-half of one percent of the total bid. Vendors and "suppliers of materials only" were excluded from this requirement. River City listed five subcontractors. The first subcontractor listed was R&B Coatings ("R&B") of Linden, California. The "Kind of Work" indicated for R&B was "Cast Iron Restoration."

On or about April 8, 2002, DGS entered into a contract with River City. The work described in the contract includes work on architectural cast iron elements of the building, as detailed in section 05700 of the project specifications. The section includes:

A. Repair and clean architectural cast iron including but not limited to columns and capitols, pilaster capitals and bases, window surrounds, balustrades and cornice elements.

B. Catalog, remove, repair and reinstall selected cast iron elements as shown on drawings.

C. Coat or re-coat existing cast iron. (*Id.*, paragraph 1.01.)

The specifications include detailed requirements for samples and field testing (*Id.*, paragraph 1.03), contractor qualifications (*Id.*, paragraph 1.04), manufacturer of paint and patching compound (*Id.*, paragraph 2.01), brands and product specifications of materials to be used (*Ibid.*), sequence of work (*Id.*, paragraph 3.01) and methods of preparation, cleaning, and application and repair (*Id.*, paragraphs 3.02, 3.03, 3.04).

The contract calls for the cast iron elements to be removed from the Capitol and transported to a different location for the restoration work to be done. The original invitation for bids included an alternative for painting of the ironwork in place. However, DGS subsequently eliminated this alternative.

As indicated on its Bid Form, River City initially subcontracted the cast iron restoration work to R&B. However, shortly after the work began, ABC Painting, Inc. ("ABC") succeeded R&B as the subcontractor for this work. On May 3, 2002, DGS sent a letter to River City stating: "On May 1, 2002, the Project Management Branch approved your request to substitute ABC Company for the cast iron restoration portion of your contract in lieu of the current listed subcontractor, R&B Protective Coatings, Inc."

The cast iron elements consist of approximately 3,000 to 4,000 pieces. They are removed from the Capitol by ironworkers employed by River City's cast iron installation subcontractor. They are numbered and loaded onto trucks operated by employees of J's Trucking, Inc. ("J's Trucking"), who then transport the pieces to ABC's shop in Vallejo. ABC employees then strip, sandblast and repaint the pieces according to DGS's specifications. The finished pieces are then loaded back on J's trucks and transported back to the Capitol, where the ironworkers reinstall them.

Labor Code[1] section 1720(a)(1) defines "public works" to include: "Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds . . .." There are three elements to this definition, all of which are met in the larger State Capitol exterior painting project performed by River City. First, the work is being done under a contract awarded by DGS. Second, the work is being paid for out of state public funds. Third, the painting project is construction, alteration, demolition and/or repair work within the meaning of section 1720(a)(1). In fact, the DGS contract documents use the terms "construction," "alteration," "demolition," "installation" and "repair" with reference to the project.

Similarly, the restoration of the decorative cast iron elements falls within the definition of a public work under section 1720(a)(1). The work is done under a contract between River

[1] All statutory references are to the Labor Code.

City, ABC and J's Trucking.[2] It is paid for with state public funds. It also fits within the enumerated types of covered work of repair and alteration. Among the common definitions of "repair" is "to renew; restore; revive." (*Webster's New World Dictionary of American English* (3d College Ed. 1988) at 1137.) Here, the restoration of the cast iron elements is just that. In fact, section 05700 of the project specifications describes the work as "repair." Additionally, the term "alteration" is broad enough to encompass the work performed on the cast iron elements. (*See Priest v. Housing Authority* (1969) 275 Cal.App.2d 751, 756.)

DGS, however, contends that the work done by R&B, ABC and J's Trucking is not subject to prevailing wage requirements. Without specific analysis, DGS references several precedential public works coverage determinations of this Department that distinguish between subcontractors and material suppliers on the basis of factors similar to those discussed in *O.G. Sansone v. Department of Transportation* (1976) 55 Cal.App.3d 434.[3] (DGS letter of May 23, 2002, citing, *inter alia*, Precedential Public Works Coverage Determination Case No. 92-036, Imperial Prison II, South (April 5, 1994) ("Imperial II") and Precedential Public Works Coverage Determination Case No. 99-037, Alameda Corridor Project, A&A Ready Mix (April 10, 2000) ("Alameda Corridor").) In particular, DGS quotes the following excerpts from Imperial II:

> *Sansone* distinguished subcontractors from independent material men. The drivers held covered in *Sansone* were taking material from a "borrow pit" which was opened exclusively for and exclusively served the building of a road for the California Department of Transportation. The material was delivered to the site and positioned as needed. The exclusivity of the borrow pit as a second construction activity site, and transport between that and the road, was held sufficient, together with a close integration of the material delivered into the road, to make the drivers covered as working for a "subcontractor."
>
> . . .

---

[2] We understand that, while there may be no formal written subcontract between these parties, ABC and J's Trucking submit invoices for their work. Such an arrangement constitutes a contract for purposes of section 1720(a)(1).

[3] R&B also asserts that it is a material supplier and not a subcontractor.

> In line with *Sansone*, past coverage determinations have consistently held that off-site fabrication of materials for a public works site, is a public works itself.

As noted by DGS, the Alameda Corridor decision stated that the delivery of concrete mix to the construction site "is not, as a matter of law, an integrated aspect of and functionally related to the construction work on the project." Under the facts of that case, the workers in question were determined to be employed by a material supplier, rather than a subcontractor.

In this case, however, the facts do not support the characterization of ABC, R&B and J's Trucking as material suppliers. They are not supplying materials; they are supplying essential labor and services on cast iron pieces that are part and parcel of the architecture of the Capitol Building. Unlike newly manufactured products delivered to a construction site, the pieces have always been, and remain, public property. The restoration work is therefore performed in the execution of the contract between River City and DGS, and is "an integrated aspect of and functionally related to the construction work on the project."

Moreover, the contract documents allow for no doubt that ABC and R&B are subcontractors and not material suppliers. DGS's Advertisement for Pre-qualification to Bid a Project and Invitation to Bid both prominently mention the cast iron restoration as an integral part of the project. River City's completed Bid Form listed R&B as a subcontractor, while the form instructed that material suppliers did not need to be listed. DGS's letter of May 3, 2002, approved River City's request to substitute ABC "in lieu of the current listed subcontractor, R&B Protective Coatings, Inc." If ABC and R&B were merely material suppliers, there would be no need for DGS to approve the change, since material suppliers did not have to be listed.

Section 1772 provides that: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." Where the elements of section 1772 are met, there is no additional statutory requirement that the work be done "on-site." (See Precedential Public Works Coverage Determination Case No. 99-066, Oakley Union High School District/RGW Construction, Inc. (December 13, 1999) ("Oakley"); Precedential Public Works Coverage Determination Case

No. 91-017, Concrete Recycling Plant for Highway 12 Interchange at Stoney Point Project, City of Santa Rosa (November 26, 1994).)

For the foregoing reasons, and consistent with past determinations, the restoration of the cast iron elements is a public work in and of itself under section 1720(a)(1). In addition, it is covered under section 1772 because it is being done in the execution of the larger exterior painting public works contract. Accordingly, prevailing wages must be paid to the employees of R&B and ABC performing the restoration work.

For similar reasons, J's Trucking is also a subcontractor whose workers are employed in the execution of a public works contract within the meaning of section 1772. Unlike the truck drivers in *Alameda Corridor*, the drivers here are not employed by a material supplier to simply deliver construction materials to the work site. Therefore, J's Trucking does also not enjoy the material supplier exemption from prevailing wage obligations.

In *Sansone, supra*, the employees of a trucking company that hauled materials under a subcontract with the general contractor were deemed under section 1772 to be employed upon a public work. Here, J's Trucking is a subcontractor to River City, to whom it submits invoices for its services.[4] Its employees play an integral role in the execution of the public works contract by transporting the cast iron elements between the Capitol and ABC's shop. Essential performance of the public works contract occurs at both locations, and what are being transported are not simply construction materials, but existing pieces of the Capitol being restored. For these reasons, the J's Trucking workers are employed by a subcontractor in the execution of the contract for public work within the meaning of section 1772, and they must be paid prevailing wages. (*See Oakley, supra*.)

Finally, River City agreed in its bid, which was incorporated into its contract with DGS, to "perform all work required for the above-named project...in accordance with prevailing wage rates ascertained by the Department of Industrial Relations ... ." When a contractor and a public agency agree that employees of contractors will be paid prevailing wages, the employees are third-party beneficiaries and may maintain a breach of contract action if prevailing wages are not paid. *Tippett v. Terich* (1995) 37 Cal.Appp.4th 1517. Accordingly, the workers performing

[4] If J's Trucking were deemed to be a subcontractor to ABC, itself a subcontractor to River City, the result would be the same.

the restoration and hauling work may have a civil contract cause of action for the payment of prevailing wages.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

Stephen J. Smith
Director

# Exhibit E

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050

GRAY DAVIS, GOVERNOR



August 19, 2002

Ms. Darbi Griffin
Administrative Assistant
Foundation for Fair Contracting
3807 Pasadena Avenue, Suite 150
Sacramento, CA 95821

RE: **Department of Industrial Reaaltions's Position on Travel Pay Set Forth in IWC Wage Order 16**

Dear Ms. Griffin:

I am writing in response to your correspondence of January 8, 2002. Below please find your questions and DIR's responses:

**FFC's Questions Are:**

Q 1). On travel between public works projects, is the worker entitled to the prevailing wage? If so, would it be payable at the workers' last classification/rate of pay?

A 1). Yes. Prevailing rate based on worker's classification.

Q 2). On travel from a private job to a public works project, is the worker entitled to the prevailing wage? If so, would it be payable at the worker's last classification? If not, what rate would apply?

A 2). No. The worker should be paid his regular (non-prevailing wage) rate of pay for travel between a public works job and a private job.

Q 3). On travel from a public works project to a private job, is the worker entitled to the prevailing wage? If so, would it be payable at the worker's last classification/rate of pay? If not, what rate would apply?

A 3). Same as #2.

Q 4). On travel from a public works project to the contractor's shop/yard, is the worker entitled to the prevailing wage? If so, would it be payable at the worker's last classification/rate of pay? If not what rate would apply?

A 4). Prevailing rate based on worker's classification.

IWC order 16 applies to all on-site construction, including public works, but is superceded by the prevailing wage provisions found at Labor Code sections 1811-1815, if those provisions are more favorable to the worker. The rate required under Order 16 for travel is the "regular rate," which would be (1) the prevailing rate, if the worker is employed in the execution of a public work or (2) the rate the worker is being paid on the private construction site, unless the employer has pre-set a rate for travel (not less than the minimum wage), i.e., "travel rate." Also, Order 16 is the only IWC Order which applies the minimum wage provisions to apprentices.

I hope this satisfactorily answers your inquiry.

Sincerely,

Chuck Cake

Chuck Cake
Acting Director

# Exhibit F

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Kern Asphalt Paving & Sealing Co., Inc. Case No. 04-0117-PWH

From an Assessment issued by:

Division of Labor Standards Enforcement.

# DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor Kern Asphalt Paving & Sealing Company (hereinafter "Kern Asphalt") timely requested review of a civil wage and penalty assessment ("Assessment") issued by the Division of Labor Standards Enforcement ("Division") with respect to the New Tehachapi High School Project ("Project"). A hearing on the merits was conducted on October 13 and 14, 2004, and on June 15 and 16, 2005, in Bakersfield, California, before Hearing Officer John Cumming. Kern Asphalt appeared through attorney Ray T. Mullen. The Division appeared through attorneys Melanie V. Slaton and Thomas R. Fredericks. The parties presented evidence and arguments and filed post-hearing briefs. Now for the reasons set forth below the Director of Industrial Relations issues this decision modifying and affirming the Assessment in part and remanding it in part.

## FACTS AND PROCEDURAL HISTORY

This case arose out of the construction of a new high school in the City of Tehachapi in Kern County. The Tehachapi Unified School District contracted with Kern Asphalt to do paving on the Project, which involved grading the site and obtaining, applying, and grading paving materials at the site. Kern Asphalt used about 20 employees over the course of a year to perform this work. The Assessment concerns two groups of workers: truck drivers who picked up asphalt and base materials from a commercial supplier and delivered those materials to the Project site, and paving crew members who did grading and paving at the construction site. These groups raise two distinct sets of issues. For the truck drivers, the question presented is whether their

work was subject to prevailing wage requirements. For paving crew members, the questions presented are whether they are entitled to prevailing wages for travel time between Kern Asphalt's shop in Bakersfield and the Project site, and whether they are entitled to additional wages for time that management deducted from hours reported on time cards. Also at issue are the proper work classification and pay rates due to paving crew member Kenneth McLey and the propriety of penalties and liability for liquidated damages as to all assessed wages and violations.

Truck Drivers: The contract between the Tehachapi School District and Kern Asphalt required in part that Kern Asphalt provide the materials and transportation services for the paving work. Kern Asphalt originally intended to use its own base material made by company president C. J. Watson. However, because that material was not suitable for use on this Project, Kern Asphalt instead had to obtain asphalt and base materials from Granite Construction, a commercial supplier in Arvin who sold such materials to the general public. For the most part, Kern Asphalt used its own employees and trucks to pick up the materials from Granite Construction and deliver them to the job site.[1]

Kern Asphalt's drivers would pick up their trucks in the morning at Kern Asphalt's shop in Bakersfield and then drive to Granite Construction in Arvin to pick up asphalt or base materials. From there they drove to the Project site, a distance of about 26.5 miles that required between 45 minutes and 1.25 hours in driving time. The materials would be unloaded at the site and, most of the time, applied immediately rather than stockpiled for later use. In most instances, once a truck was unloaded, the driver would return to Granite Construction, repeating this cycle up to five or six times in a day.

Truck driver Wayne Caldwell testified that he customarily hauled the materials in a "belly dump" truck that opened from the bottom for unloading and could be adjusted to allow for a precise flow of materials as the truck moved over the area where those materials were being applied. Kern Asphalt's drivers occasionally got out of their trucks to assist paving crew members with the spreading and applying of materials. At times, material would be stockpiled (that is left in one pile) if there was no place ready for it to be applied. In those instances, one driver

[1] Kern Asphalt used other subcontract haulers to deliver materials to the site. The subcontract haulers were not covered in the Division's Assessment and, as seen below, would present a different analysis.

would remain at the site to operate a small dump truck to move the materials where needed by the paving crew, while other drivers returned to Arvin for additional loads. Kern Asphalt's daily time cards include some references to drivers spending time moving dirt or operating other equipment at the construction site.[2] However, there is no detailed or consistent pattern of reporting to show how much time drivers actually spent on the construction site or what they specifically did while there.

Kern Asphalt paid its own truck drivers their usual rate of $12.00 or $13.00 per hour for their on-haul work. Kern Asphalt did not regard this work as subject to prevailing wage and did not include the drivers who performed this work on the certified payroll records the company was required to prepare pursuant to Labor Code section 1776.[3] In its Assessment, the Division found that these drivers were entitled to the prevailing wage rate for Teamsters for all hours worked, at a total straight-time rate of $34.11 per hour through June 30, 2002, and $34.96 per hour thereafter.[4] Kern Asphalt presented no evidence that a different prevailing wage rate should apply. The Division used the hours shown on time cards and payroll journal entries in determining prevailing wage liabilities for the truck drivers.[5]

Reporting and Travel Time: The parties agree that paving crew members would, on most days, report first to Kern Asphalt's shop in Bakersfield, where they were required to punch in on a time clock and then were transported in company vehicles to the construction site. The parties dispute whether the company required the workers to report first to the shop or whether this was a voluntary accommodation for workers who did not want to drive to the construction site on their own.

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[2] A comparison of the time cards and Kern Asphalt's certified payroll records shows that at times truckers were paid prevailing wage rates for some but not all reported hours of on-site work.

[3] All statutory references hereinafter are to the Labor Code, unless otherwise indicated.

[4] Both total hourly rates include the training fund contribution required under section 1777.5(m), although no separate liability for training fund contributions is stated in the Division's audits.

[5] The records apparently did not include additional time that Caldwell said he spent inspecting his truck and sometimes loading equipment before the official start of the work day. The Division also accepted Kern Asphalt's regular deduction of one-half hour for lunch, even though individual trip records suggest that drivers did not always have time for a full half hour off-duty break. (*See*, §512(a) and Wage Order No. 9-2001, §11 [Cal.Code Regs., tit.8, §11090(11)(C)].)

It is undisputed, however, that employees were required to punch in on the time clock or have someone punch in for them. A sign posted above the time clock stated "No punch-in, no pay." Employees typically punched in upon arrival and then drank coffee and talked or did preliminary work activities such as loading equipment on trucks while waiting for the start of regular work day at 7:00 a.m. Company vice president Jayson Watson testified that workers would be briefed on the day's activities and then dispatched to their job sites at this time.

In addition to punching in, workers customarily would write in their starting work times (usually 7:00 a.m.) and later their stopping times on the front of their time cards. Kern Asphalt usually paid workers for the hours written on their time cards (rather than time clock punch-in and punch-out times). Kern Asphalt regularly deducted a half hour from the reported total for an unpaid lunch break and occasionally deducted other time based on some discrepancy between reported hours and what management believed an employee had actually worked. Kern Asphalt paid straight time prevailing rates for up to eight hours per day for work performed at the Project site. Any hours over eight in connection with the Project (whether before, after, or while on site) was regarded as travel time, which Kern Asphalt paid at the employees' regular, non-prevailing wage, overtime rates. According to Jayson Watson, Kern Asphalt did not regard the travel time as compensable work time but paid it as an additional benefit to workers.

The driving distance from Kern Asphalt's shop to the job site in Tehachapi was just over 46 miles; witnesses estimated the average round trip travel time was between 1.5 to 3 hours. While some time cards recorded up to 13 or more hours in a given day, all hours in excess of eight were designated as breaks or travel time for pay purposes. Jayson Watson testified that employees were not permitted to work overtime without prior authorization, and that very little overtime was required for the work on the Project.

Terry Ward and Kenneth McLey were the two-man crew that did most of the paving work. They rode together to the site in a company truck driven by Ward, who was also McLey's foreman. Ward testified that sometimes he would pick up McLey at his home on the way to the Project and, on those occasions, would punch in McLey's time card. Ward also testified that the two sometimes would stop for breakfast on their way to the site after they had reported and were on company time. However, McLey testified that he could not recall being picked up at home by

Ward, and said instead that it was he who would punch in Ward's card when Ward was late.[6] McLey testified that they were required to punch in at the yard and were supposed to be there and ready to leave for the job site at 7:00 a.m. McLey testified that he worked until Ward said it was time to stop work.

Kenneth McLey's Duties on the Project: Kern Asphalt classified McLey exclusively as a Laborer for all but one day of work, while it classified Ward as an Operating Engineer for all but three days. The Division classified both McLey and Ward as Operating Engineers for all work performed on the Project, with the exception of three days in late December 2002, for which it accepted the Laborer classification for both.

McLey characterized his own role as helping Ward. Ward more typically operated the heavy equipment with McLey doing laborer work on the ground. However, they agreed that McLey spent a considerable amount of time operating heavy equipment on the Tehachapi Project. McLey testified that he operated the same equipment used by Ward on the Project, with the exception of the motor grader.

Ward estimated that McLey spent about 25 percent of his time on the Project as an operating engineer and the other 75 percent as a laborer. However, Ward also estimated that McLey operated a skip loader about 25 percent of the time, without disputing that McLey may also have operated other equipment. McLey offered the opposite ratio as his estimate (*i.e.* that he spent about 75 percent of his time as an operating engineer and 25 percent as a laborer).[7] McLey testified in response to a specific question that he probably spent about 10 percent of his time with a shovel, noting that there was not a lot of "dirt work" on this Project. However, he gave no estimate of the time he spent checking grade while Ward operated the motor grader.

Caldwell testified that he saw McLey on equipment "every day" and also saw both Ward and McLey on the ground with a shovel. The time records offer no meaningful information

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[6] Ward acknowledged that the "No Punch-in No Pay" sign was probably for him.

[7] The same ratio is reflected in an Employee Questionnaire and in the Division's notes from a May 2004 telephone interview with McLey.

about the type of work being performed on any given day.[8]

Other Issues: On the fronts of their time cards, workers would write in the date, their starting and stopping times, and some notation about the jobs they were working on, which usually included a job number. Some cards included notations about time taken off for lunch while others did not. Most workers also totaled their hours for the day. Time cards later would be checked by someone in management, who would write a different total at or near the bottom of the card, usually with a circle around it. The worker then would be paid for the circled number of hours, which was often just the net total after deducting a half-hour for lunch from the worker's total. However, sometimes the circled total reflected a further deduction that could not be attributed to anything appearing on the face of the card.

Jayson Watson and company controller Sandra Eichenhorst testified that the hours shown on the cards would be reviewed with workers and adjusted if there was some clear discrepancy between what the worker wrote down and what was indicated by other information such as time clock punch times, what a co-worker reported for the same job, or what they understood the day's work should have entailed.[9] Kern Asphalt offered no clearer explanation for why any adjustment was made.

In auditing Kern Asphalt's compliance with prevailing wage requirements, the Division relied on the information shown on the fronts of daily time cards provided by Kern Asphalt.[10] The Division identified weekend and holiday work that was not reported as such on Kern Asphalt's certified payroll records or compensated at the required prevailing rates. The Division also identified work which it believed was performed on the Project but was not reported as such by Kern Asphalt. However, Kern Asphalt presented evidence that it had worked on another non-

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[8] A typical entry for McLey was "graded Tehachapi," while Ward's cards would typically say "grade by the hour" or sometimes "grade base on contract" or very occasionally state that they graded a specific part of the Project, such as tennis courts.

[9] Eichenhorst did not start working for Kern Asphalt until near the end of the Tehachapi Project.

[10] The hearing testimony establishes that employees were paid based on the information on the front of the cards, with the time-clock notations used to verify that employees were actually reporting to work by the scheduled start time. The company may have used the time-clock information to reduce hours recorded by a worker on the front of a card, but ultimately the Division based its audit on the time recorded on the front. Neither party offered the back of any card to rebut what was recorded on the front.

public works project in the town of Tehachapi, and it offered a reconciliation of dates and work erroneously attributed to the Project that was largely accepted by the Division.

The Assessment, Penalties, and the Parties' Contentions: The Division received complaints from Caldwell concerning his failure to receive prevailing wages and from McLey concerning his misclassification and failure to receive overtime or holiday pay for work performed on this Project. Following an investigation by Deputy Labor Commissioner Sherry Gentry, the Division issued its Assessment dated May 19, 2004, which found Kern Asphalt liable for back wages and penalties under sections 1775 and 1813. The Assessment was adjusted downward during the course of the hearing proceedings, primarily in response to additional information presented by Kern Asphalt.

The Division assessed penalties under section 1775 at the maximum rate of $50 per violation, citing the extent of hours "shaving (*i.e.* paying for less than reported by a worker), the failure to report and pay prevailing rates to the truck drivers, the amount of underpaid wages, and the apparent willfulness demonstrated by the travel time deductions. The Division did not consider any prior history of violations when setting the penalty amount, though it offered testimony regarding prior assessments during the hearing. Kern Asphalt acknowledged past experience with public works but did not admit any prior violations.

The Division also assessed penalties under section 1813 at the prescribed statutory rate of $25 per violation for all days in which workers failed to receive the prevailing overtime rates for overtime hours worked, which were most of the days covered in the Assessment.

Based on the Division's amendments and the parties' stipulations, the amounts at issue when this matter was submitted were as follows:

| Employee | Unpaid Wages | §1775 penalties | §1813 penalties |
|---|---|---|---|
| **Truck Drivers:** | | | |
| Black, Larry | $ 3,781.23 | $ 850 | $ 300 |
| Fenn II, Jeffrey | $ 324.87 | $ 250 | $ 125 |
| Pettit, Rodney | $ 5,601.25 | $ 2,550 | $ 750 |
| Wagner, Danny | $ 2,166.30 | $ 450 | $ 200 |
| Williams, Dwight | $ 4,243.13 | $ 1,000 | $ 400 |
| Caldwell, Wayne | $ 2,337.82 | $ 650 | $ 275 |

| | | | |
|---|---|---|---|
| Black, Don | $ 1,427.77 | $ 450 | $ 175 |
| Taylor, J. | $ 237.21 | $ 100 | $ 25 |
| *Truck Driver subtotals* | *$20,119.58* | *$6,300* | *$2,250* |
| **Paving Crew:** | | | |
| Black, Kevin | $ 180.76 | $ 100 | $ 50 |
| Brown, John | $ 286.45 | $ 250 | $ 125 |
| Cardona, Francisco | $ 1,271.76 | $ 550 | $ 225 |
| Cervantes, Carlos | $ 2,445.44 | $ 1,700 | $ 800 |
| Cuevas, Juan | $ 549.47 | $ 400 | $ 175 |
| Flores, Daniel | $ 227.49 | $ 250 | $ 125 |
| Frye, Duane | $ 3,531.08 | $ 1,850 | $ 900 |
| Harms, Marvin | $ 1,171.87 | $ 350 | $ 125 |
| Hiler, Danny | $ 992.45 | $ 450 | $ 225 |
| Hood, Alexander | $ 657.44 | $ 550 | $ 275 |
| McLey, Kenneth | $29,179.88 | $ 9,650 | $ 4,775 |
| Stevens, Larry | $ 566.98 | $ 450 | $ 200 |
| Ward, Terry | $10,236.52 | $ 9,850 | $ 4,900 |
| *Paving Crew subtotals* | *$51,297.59* | *$26,400* | *$12,900* |
| **TOTALS**[11] | **$70,417.17** | **$32,700** | **$15,150** |

Kern Asphalt's positions with respect to the violations were that (1) it was under no legal obligation to pay prevailing wages to its truck drivers who essentially were functioning as material suppliers; (2) Kern Asphalt was under no obligation to pay its other workers for travel time because they were not required to ride to the job site in company vehicles, (3) McLey was properly paid as a Laborer or at most spent 10 to 15 percent of his time performing work as an Operating Engineer; and (4) it had identified numerous specific errors in the Assessment, which the Division conceded. Kern Asphalt asserted that there was no evidence it either willfully or intentionally sought to evade prevailing wage requirements. Kern Asphalt also argued that there could be no separate penalty assessment under section 1813, since any overtime hours were for travel time, which it was not required to pay.

[11] These figures are based on the Revised Audit dated 6/17/05 that was attached as Appendix 1 to the Division's Opening Post-Hearing Brief as further modified with respect to Danny Wagner in footnote 1 of the Division's Reply Brief filed on March 3, 2006.

There is no evidence that any of the unpaid wages assessed by the Division have been paid by Kern Asphalt, making Kern Asphalt liable for liquidated damages in an amount equivalent to the back wages found due. No additional evidence or argument pertaining to the imposition or waiver of liquidated damages was offered by Kern Asphalt.

## DISCUSSION

Sections 1720 and following set forth a scheme for determining and requiring the payment of prevailing wages to workers employed on public works construction contracts.

> The overall purpose of the prevailing wage law ... is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees. (*Lusardi Construction Co. v. Aubry*, 1 Cal.4th 976 at 987 (1992) [citations omitted].)

The Division enforces prevailing wage requirements not only for the benefit of workers but also "to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards." (§90.5(a), and *see Lusardi, supra.*)

Section 1775(a) requires, among other things, that contractors and subcontractors pay the difference to workers who received less than the prevailing rate, and section 1775(a) also prescribes penalties for failing to pay the prevailing rate. Section 1742.1(a) provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if those wages are not paid within 60 days following service of a civil wage and penalty assessment under section 1741.

When the Division determines that a violation of the prevailing wage laws has occurred, a written civil wage and penalty assessment is issued pursuant to section 1741. An affected contractor or subcontractor may appeal the Assessment by filing a Request for Review under section 1742. Subdivision (b) of section 1742 provides in part that "[t]he contractor or subcontractor

shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect."

Kern Asphalt's Truck Drivers Are Entitled To Prevailing Wages For Work Performed On The Tehachapi Project.

In the recent decision, *Williams v. SnSands Corporation* (2007) 156 Cal.App.4th 742, the Court of Appeal said the right to be paid prevailing wages is governed by the plain meaning of sections 1771, 1772 and 1774. Section 1771 requires the prevailing wage be paid to "to all workers employed on public works." Section 1772 provides: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." A public works contractor shall ensure that all workers engaged in "the execution of the contract" receive the prevailing wage. (§1774.) *Williams* began its analysis by interpreting the statutory term "execution":

> In determining legislative intent, courts are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. [Citations and quotation marks omitted.] The familiar meaning of "execution" is "the action of carrying into effect (a plan, design, purpose, command, decree, task, etc.); accomplishment" (5 Oxford English Dict. (2d ed.1989) p. 521); "the act of carrying out or putting into effect," (Black's Law Dict. (8th ed.2004) p. 405, col. 1); "the act of carrying out fully or putting completely into effect, doing what is provided or required." (Webster's 10th New Collegiate Dict. (2001) p. 405.) Therefore, the use of "execution" in the phrase "in the execution of any contract for public work," plainly means the carrying out and completion of all provisions of the contract.
>
> (*Williams, supra,* 156 Cal.App.4th at 749-750.)

Critical to the determination of a right to receive the prevailing wage under sections 1771, 1772 and 1774 is the determination of whether a worker is employed by a contractor or subcontractor:

> The analysis in *O.G. Sansone Co. v. Department of Transportation, supra,* 55 Cal.App.3d 434 (*Sansone*) of who is, and who is not, a subcontractor obligated to comply with the state's prevailing wage law also informs our assessment of the intended reach of the prevailing wage law to "[w]orkers employed ... in the execution of any contract for public work." (§1772.)
>
> (*Ibid.*)

Here, the drivers subject to the Assessment were employed directly by the public works contractor, Kern Asphalt, to perform a function required by the contract, the delivery of acceptable road bed material to the job-site. As such, by the plain meaning of the statute the drivers are employees of a contractor or subcontractor obligated to comply with the state's prevailing wage law. Also, the drivers are performing work "in execution of" of the public works project because the "carrying out and completion of all provisions of the contract" includes the delivery of paving materials to the project site to be used by the paving contractor *Williams, supra.*

Kern Asphalt's challenge to the wages assessed for its truck drivers rests upon two key distinctions found in *Sansone*: (1) Kern Aphalt's drivers hauled materials from a commercial site that was not adjacent to the Tehachapi Project, which is undisputed; and (2) the principal function of Kern Asphalt's drivers was to deliver materials to the site, and they were not involved in the on-site application of those materials, which is disputed. Kern Asphalt argues that these distinctions made its drivers the functional equivalent of independent material suppliers who would not be covered by prevailing wage requirements under the rubric of *Sansone.*[12]

> Critical to *Sansone's* analysis of whether the truck drivers ... were employed "in the execution of [a] contract for public work" (§1772) was whether the trucking companies were bona fide material suppliers conducting an operation truly independent of the performance of the general contract for public work, as opposed to conducting work that was integral to the performance of that general contract. We conclude that what is important in determining the application of the prevailing wage law is not whether the truck driver carries materials *to* or *from* the public works project site. **What is determinative is the role the transport of the materials plays in the performance or "execution" of the public works contract.**
>
> (*Ibid,* 156 Cal.App.4th at 752 (emphasis added).)

Thus, *Sansone*, as interpreted by *Williams,* establishes a "delivery exemption" for employees of bona fide material suppliers. (*Ibid,* 156 Cal.App.4th at 752.) This exemption applies where the truck driver, employed by an independent trucking company, is hauling materials from a bona fide materials supplier and the hauled material is "not immediately and directly incorporate" into the ongoing public works project. If either of these conditions is not present, the ex-

[12] Kern Asphalt's supplemental brief also makes an argument about off-hauling work, that is, carrying dirt or refuse from the project site to some other location. However, the Assessment in this case did not involve any off-hauling.

emption does not apply, and on-haul driving is subject to coverage as performed by employees of a contractor or subcontractor obligated to comply with the state's prevailing wage law and as performed in "the execution of the public works contract" as that phrase was interpreted by *Williams*. (Lab. Code, §§1772, 1774.)

As *Williams* now makes clear, Kern Asphalt's truck drivers were entitled to prevailing wages, regardless of whether they assisted the paving crew or whether the materials were immediately used, because they were not employed by a truly independent materials supplier. They were employed directly by Kern Asphalt and they were performing work "in the execution of [Kern Asphalt's] contract for public work" with the Tehachapi Unified School District. (§1772.) There is no argument or evidence that Kern Asphalt itself was operating as a bona fide material supplier independent of its performance of this contract. That ends the inquiry in this case.

Kern Asphalt's Other Workers Were Entitled To Prevailing Wages For All Hours Worked Including Time Designated As Travel Time.

"'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." (Cal.Code Regs., tit. 8, §11160.2(J) [governing on-site construction work].) This definition includes "certain periods of time that may not ordinarily be thought of as work-time[.]" 1 Wilcox, *California Employment Law*, section 3.07[1][a][i] (p. 3-57).

In *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, an agricultural employer required employees to meet at designated assembly points from which they were bused in company vehicles to and from the actual work site. No work activity was required, and the bus trip to the fields where the work was performed was likened to an ordinary commute. A unanimous court held:

> When an employer requires its employees to meet at designated places to take its buses to work and prohibits them from taking their own transportation, these employees are "subject to the control of an employer," and their time spent traveling on the buses is compensable as "hours worked." (22 Cal.4th at 587.)

Kern Asphalt distinguishes *Morillon* based on the fact that its employees were free to use any means to get to the construction work site and could stop for breakfast along the way if they

chose, a point not disputed by the Division. This distinction misses the essential point of *Morillon*. The key factor is whether the workers are "subject to the control of [the] employer" rather than whether the employer does or does not require a particular means of transit.

Kern Asphalt's own policy and practice required employees to be at the shop by 7:00 a.m., and Kern Asphalt considered all time thereafter to be paid time. The company had a particular purpose for this requirement, which was to give the workers instructions and dispatch them to their jobs at that time. Thus, all of the time after 7:00 a.m. was subject to Kern Asphalt's control and was compensable. If Kern Asphalt had changed its requirements so that the workers only had to report to the construction site by a certain time, then the travel time might have constituted non-compensable commute time. (*See* §§510(b) ["Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, ..."].) However, those are not the facts here.[13]

The other question raised is what rate applies to the travel time. The relevant prevailing wage determinations contain no special rate for travel time. In the absence of any evidence to the contrary, the required travel time must be regarded as incidental to the workers' regular duties and payable at the same prevailing rates that apply to the classification associated with those duties.[14] Kern Asphalt has presented no argument or evidence supporting a different rate outside of its contention that it was not obligated to pay for the travel time at all.

Kenneth McLey's Back Pay Entitlement Must Be Reduced.

The Division had no reasonable basis for classifying McLey exclusively as an Operating Engineer for all but three days of work on the Techachapi Project. McLey never said that he worked only as an equipment operator, and no other evidence supports such a determination.

---

[13] An employer cannot legitimize its violations after the fact by showing how it could have altered the compensation or other employment conditions to make its pay scheme legal. (*See Hodgson v. Baker* (9th Cir. 1976) 544 F.2d 429, 432-3, *citing Overnight Motor Transportation Co. v. Missel* (1942) 316 U.S. 572, 577; and *see also Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 725-6 [employee's weekly salary compensated him for regular work hours and cannot be redefined after the fact to encompass additional overtime hours].)

[14] Because the workers were entitled to the same prevailing wage rates for travel time as for their other work, it is not necessary to determine which overtime hours at the construction site were improperly attributed to travel (as opposed to actual overtime work on-site) as a rationale for not paying the prevailing overtime rate.

The Division's attempt to defend its determination based on the burden shifting rule of *Hernandez v. Mendoza, supra*, overstates the scope of that holding and its applicability to this case.

The rule in *Hernandez* derives from an earlier U.S. Supreme Court decision in *Anderson v. Mt. Clemens Pottery Co.* (1945) 328 U.S. 680, in which the Court found that an employer's violation of its record keeping responsibility should not have the effect of preventing employees from proving a claim for unpaid wages. The Court then fashioned the following rule.

> In such a situation we hold that an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate. (*Id.* at 687-88.)

An aggrieved worker therefore may use imprecise evidence to prove the extent of unpaid wages when the employer fails to keep required records that would show the precise number of hours worked. However, there still must be "sufficient evidence to show the amount and extent of [uncompensated or under-compensated] work as a matter of just and reasonable inference." (*Andersen, supra*, 328 U.S. at 687.) Where a public works employer wants to pay an employee multiple rates based on the work performed, it is the employer's obligation to keep accurate time records. (Lab. Code, §1776(a).)

McLey estimated that he spent 75 percent of his time operating equipment in his original communications with the Division. He repeated this estimate at the hearing but seemed less certain in light of questions that attempted to break the estimate down further by particular work activity. His working partner, Ward, estimated 25 percent of McLey's time was spent operating heavy equipment and 75 percent was spent as a Laborer.

McLey and Ward were clearly the most percipient witnesses of how McLey spent his time, and there is no evidence to suggest that either was testifying dishonestly or trying to contradict the other. It appears far more likely that both offered honest but exaggerated estimates based on their own subjective perceptions and recollection of McLey's work. The same split of

opinion was reflected in McLey's and Ward's opposite estimates of the travel time from the shop to the Tehachapi Project.[15]

It is unlikely that either estimate is accurate. Rather it appears that the most reasonable estimate of McLey's time operating equipment (or of average travel time) lay in the middle between their extreme individual estimates. This leads to the inference and conclusion that McLey likely spent about 50 percent of his time operating heavy equipment on all but the three days in December 2002, when it is undisputed that McLay and Ward only worked as laborers. In light of this conclusion, McLey's back wage entitlement must be adjusted as follows:

| Half of total Operating Engineer 2 hours | Diff. between total hourly rates for Op.Eng. 2 and Laborer 1 | = (Reduction in entitlement) |
|---|---|---|
| Straight time: | | |
| 1325 ÷ 2 = 662.5 | X ($37.88 – 30.08) | = $ 5,167.50 |
| Overtime: | | |
| 453.25 ÷ 2 = 226.625 | X ($51.39 – 40.13) | = $ 2,551.80 |
| Double time: | | |
| 11.5 ÷ 2 = 5.75 | X ($65.49 – 50.18) | = $ 88.03 |
| | Total Reduction in Unpaid Wages | = $ 7,807.33[16] |

With this adjustment, the total of unpaid wages due to McLey is $21,376.55. All other wage issues were resolved by stipulation or were unchallenged by Kern Asphalt. Accordingly, the total wages due under the Assessment, as modified and affirmed by this Decision, is $62,609.84.

Kern Asphalt Is Liable For The Full Amount Of Section 1775 Penalties Assessed For Underpayments To Paving Crew Members; But The Division Must Reconsider Penalties Assessed For Underpayments To Truck Drivers.

[15] McLey seemed quite certain that they regularly covered the 46 mile distance (which included four miles of city streets and traffic lights on the Bakersfield end) in 45 minutes, while Ward, who drove the truck in which McLey rode, thought it took an hour and a half each way.

[16] Since credits for all compensation paid by Kern Asphalt were already reflected in the audit, this is the only adjustment required in McLey's wage entitlement. However, if any party believes a different adjustment is warranted, it may challenge this figure by way of a request for reconsideration under Rule 61 [Cal.Code Regs., tit. 8, §17261].

Section 1775(a) provides in relevant part as follows:

> (1) 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 fifty dollars ($50) 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 ....
>
> (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 ... 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 ... .
>
> (ii) Whether the contractor ... has a prior record of failing to meet its prevailing wage obligations.
>
> * * *
>
> (D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

Under Rule 50(c) [Cal.Code Regs. tit. 8 §17250(c)], the affected contractor has "the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty." Abuse of discretion is established if the Labor Commissioner "has not proceeded in the manner required by law, the [determination] is not supported by the findings, or the findings are not supported by the evidence." Code Civ. Proc. §1094.5(b). In reviewing for abuse of discretion, however, the Director is not free to substitute his own judgment "because in [his] own evaluation of the circumstances the punishment appears to be too harsh." *Pegues v. Civil Service Commission* (1998) 67 Cal.App.4th 95 at 107.

The final adjusted total of $32,700.00 in penalties under section 1775 is based on 654 violations assessed at the maximum rate of $50.00 per violation. One hundred twenty-six of the section 1775 violations concern the truck drivers for whom there is no basis to reduce the number of violations. Five hundred twenty-eight violations totaling $26,400.00 in penalties apply to the failure to pay travel time for the paving crew at the prevailing wage. The only change in the wages owed a member of the paving crew is the reduction of McLey's wage entitlement by

about one-fourth. This does not reduce the number of violations because McLey was still underpaid each day because of Kern Asphalt's failure to pay the prevailing wage rate for travel time. The remaining issue is whether the Division abused its discretion in setting the amount of each violation at $50.00. This must be discussed separately for the truck drivers and the paving crew members.

The question of the proper application of sections 1772 and 1774 to the on-haul work performed by Kern Asphalt's truck drivers was recently clarified in *Williams, supra*. The clarification does not excuse Kern Asphalt's failure to pay prevailing wages nor justify a determination by the Director to eliminate the section 1775 penalties altogether. While the failure to pay prevailing wage rates was a good faith mistake, it was not promptly corrected when brought to Kern Asphalt's attention by the Division, which has argued for the current interpretation from the time is served the Assessment. However, this recent clarification in *Williams* may justify a downward adjustment of the penalty amount by the Division. Therefore, the 126 penalties assessed for underpayments to truck drivers at the rate of $50.00 per violation are remanded to the Division for reconsideration and redetermination of the amount only. The Hearing Officer shall retain jurisdiction to hear any timely appeal of the redetermined amount.

The same reasoning does not apply to the remaining penalties, which were also assessed at the maximum rate of $50.00 per violation. In the Division's view, Kern Asphalt deliberately paid for less than all reported work hours, deliberately regarded all overtime hours as "travel" time, and deliberately paid far less than the prevailing rate for the so-called travel time, all with an intent to evade or limit its prevailing wage obligations rather than based on any good faith mistake. Aside from its arguments on the merits, Kern Asphalt challenges this penalty assessment based on the audit errors identified by Eichenhorst, which resulted in reductions of about $4,000.00 in the total wage assessment and another $1,000.00 in penalties prior to the hearing.

Substantial evidence supports the Division's determination, and Kern Asphalt has failed to carry its burden to show that the Division abused its discretion is setting the penalty amount. To the extent Eichenhorst's reconciliation resulted in a reduction in the number of violations, it also eliminated any penalties associated with those violations. However, the bulk of violations remains, and the aggregate numbers and types of violations provide grounds for concluding that

Kern Asphalt deliberately sought to evade some of its prevailing wage obligations at the expense of its workers. In particular, Kern Asphalt always paid prevailing wages at regular non-overtime rates, while paying reduced overtime rates for work performed both *before* and after the eight hours attributed to work on the Tehachapi Project. In all but a handful of instances Kern Asphalt also refused to recognize that workers worked more than eight hours at the Project site, automatically attributing any excess reported hours to travel time without any evidence that travel on a particular day was extended. This attribution appears to have been for the purpose of justifying the payment of lower rates. Kern Asphalt also offered no defense to the Division's determination that it under-reported work hours and failed to compensate workers properly for a number of instances of holiday and weekend work.

The assertion that the Division waived penalties when settling a companion case is not evidence of an abuse of discretion in this one. Whatever reasons the parties may have had for that settlement were not shown and, as a general rule, would not be relevant or admissible here. (*See* Evid. Code, §1152 and *Brown v. Pacific Electric Ry. Co.* (1942) 79 Cal.App.2d 613.)

Kern Asphalt Is Liable For All Penalties Assessed Under Section 1813.

Section 1813 states as follows:

> The contractor ... 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 ... contractor ... 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. ...

The term "provisions of this article" in section 1813 above refers specifically to sections 1810 through 1815, which pertain to working hours on public works projects. Section 1810 specifies that eight hours of labor is "a legal day's work," and section 1811 limits work to eight hours in a day or 40 hours in a week "except as ... provided ... under Section 1815." Section 1815 states as follows:

> 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 ex-

cess 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 1½ times the basic rate of pay.

The failure to pay required prevailing overtime rates constitutes a distinct violation under section 1813, even though the contractor may also have been penalized under section 1775 for paying less than the required prevailing rate. Overtime requirements serve a distinct purpose from minimum wage requirements. (*See Overnight Motor Transportation Co. v. Missel, supra,* 316 U.S. at 577-78; and *Monzon v. Schaefer Ambulance Service, Inc.* (1990) 224 Cal.App.3d 16, 37.)

Unlike penalties assessed under section 1775, the Division has no discretion to vary the amount of section 1813 penalties assessed for each violation of overtime requirements. Kern Asphalt's only defense to these penalties is its position on the merits with respect to travel time. However, that time was compensable under the facts of this case, and prevailing overtime rates were required at the point that workers crossed the eight-hour daily threshold regardless of what kind of work they were doing before or after.

There is no argument or evidence that the Division miscalculated the number of violations or amount of penalties assessed under section 1813. Accordingly, these penalties also must be affirmed.

Kern Asphalt Is Entitled To Waiver Of Some But Not All Liquidated Damages.

Section 1742.1(a) provides in pertinent part as follows:

After 60 days following the service of a civil wage and penalty assessment under Section 1741 ..., the affected contractor ... shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment ... subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor ... demonstrates to the satisfaction of the director that he or she had substantial grounds for believing the assessment ... to be in error, the director shall waive payment of the liquidated damages.

Rule 51(b) [Cal.Code Regs. tit. 8 §17251(b)] states as follows:

To demonstrate "substantial grounds for believing the Assessment ... to be in er-

> ror," the Affected Contractor ... must establish (1) that it had a reasonable subjective belief that the Assessment ... was in error; (2) that there is an objective basis in law and fact for the claimed error; and (3) that the claimed error is one that would have substantially reduced or eliminated any duty to pay additional wages under the Assessment ... .

In accordance with the statute, Kern Asphalt is liable for liquidated damages only on the wages found due in the Assessment as modified by this Decision, which with the reduction in McLey's entitlement, total $62,609.84. Since those wages remain unpaid, liquidated damages are due unless Kern Asphalt demonstrated substantial grounds for believing the Assessment to be in error.

As with the section 1775 penalties, the distinct issues raised in connection with the two groups of workers compel different results. In the case of the truck drivers, the proper application of *Sansone* to that work has been in dispute and in flux throughout this proceeding. Kern Asphalt had a reasonable subjective belief and objective basis for arguing that all or most of the truck driving work was not subject to prevailing wage requirements based on *Sansone* and public works coverage determinations issued by this Department. Had Kern Asphalt's position prevailed, it would have eliminated most of this portion of the wage assessment. Accordingly, liquidated damages are waived as to the $20,119.58 in wages due to the truck drivers.

Kern Asphalt has not established an objective basis in law or fact for failing to pay prevailing rates for travel or other overtime hours for the other workers nor for failing to pay McLey as an Operating Engineer for a substantial portion of his work. It is also doubtful that Kern Asphalt had a reasonable subjective belief that its practices were proper given its manipulation of time to avoid paying any overtime rates for work on this Project in all but a few instances. Thus there can be no waiver of the remaining liquidated damages totaling $43,490.26 in connection with these errors.

## FINDINGS

1. Affected contractor Kern Asphalt Paving & Sealing Co. filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement with respect to the New Tehachapi High School Project.

2. Kern Asphalt's truck drivers were entitled to be paid prevailing wages for all work performed on the Project. Kern Asphalt's paving crew members also were entitled to be paid prevailing wages for all work performed on the Project, including time designated as travel time between Kern Asphalt's shop and the construction site. Employee Kenneth McLey was entitled to be paid the prevailing rate for the classification of Operating Engineer 2 for some but not all of his work, as specified above in the body of this Decision. The amount of unpaid wages due to Mr. McLey is $21,376.55.

3. Kern Asphalt is liable for all wages due in accordance with Finding No. 2 above and for all other wages found due in the final amended and adjusted Assessment. In light of these findings, the net amount of wages due under the Assessment is $62,609.84.

4. The record establishes 654 violations under section 1775. The $6,300.00 in penalties assessed for 126 wage violations for underpayments to truck drivers is remanded to the Division for reconsideration of the penalty amount in light of the uncertainty of the law with respect to that work that was only recently clarified. The Division did not abuse its discretion in setting the penalty for the remaining 528 violations at the maximum rate of $50 per violation, and consequently Kern Asphalt is liable for those penalties in the total amount of $26,400.00.

5. The record establishes 606 violations under section 1813. Kern Asphalt is liable for penalties at the rate of $25 per violation for a total of $15,150.00 in penalties under section 1813.

6. In light of Finding No. 3 above, the potential liquidated damages due under the Assessment is $62,609.84. No part of these back wages was paid within 60 days following service of the Assessment. Kern Asphalt has demonstrated substantial grounds for believing the Assessment to be in error as to the $20,119.58 in wages assessed for the truck drivers, and accordingly liquidated damages are waived as to that amount. Kern Asphalt has not demonstrated substantial grounds for believing the balance of the Assessment to be in error, and accordingly is not entitled to waiver and remains liable for the remaining liquidated damages in the total amount of $42,490.26.

8. The amounts found due in the Assessment as modified and affirmed by this Deci-

sion are as follows:

| | |
|---|---|
| Wages Due: | $ 62,609.84 |
| Penalties under Labor Code §1775(a) | $ 26,400.00 |
| | *($6,300.00 remanded)* |
| Penalties under Labor Code §1813 | $ 15,150.00 |
| Liquidated Damages under Labor Code §1742.1 | $ 42,490.26 |
| TOTAL | $146,650.10 |

**ORDER**

The Civil Wage and Penalty Assessment is modified and affirmed in part and remanded in part as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

The Division shall have thirty (30) days from the date of service of this Decision to reconsider and redetermine the remanded portion of the penalty assessment under section 1775. Should the Division issue a new penalty assessment, Kern Asphalt shall have the right to request review in accordance with Labor Code section 1742, and may request such review directly with the Hearing Officer, who shall retain jurisdiction for this purpose.

Dated: 3/28/08

John C. Duncan
Director of Industrial Relations

# Exhibit G

State of California
Department of Industrial Relations

# OFFICE OF THE LABOR COMMISSIONER


# PUBLIC WORKS MANUAL

*California Labor Commissioner Julie A. Su*

**May 2018**

STATE OF CALIFORNIA — Edmund G. Brown Jr., *Governor*

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**Julie A. Su**
*California Labor Commissioner*
*Office of the Labor Commissioner*

May 2018

It is with great pride that the Office of the Labor Commissioner releases this updated Public Works Manual. This Manual has been revised to reflect the most recent changes in prevailing wage laws, including:

- Enhanced penalties for violations of Public Works Contractor Registration requirements, including penalties on awarding agencies who use unregistered contractors and the power of the Labor Commissioner to issue a stop order (SB 96); and

- Additional streamlining of investigative tools and processes to effectively combat prevailing wage theft while educating the public and law-abiding contractors to create a more level playing field and promote economic justice for the middle-class.

This Manual is designed to be used by the Labor Commissioner's Office to ensure consistent, timely, and accurate enforcement of the law statewide 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 updated Manual to fruition: Acting Assistant Chief Susan Nakagama and the Legal Unit's Tom Fredericks, Bill Snyder, Luong Chau, and Lance Grucela.

I hope you find this useful.

Julie A. Su
State Labor Commissioner

Table of Contents

## 1. Introduction

1.1

This Public Works Manual is designed as a training tool for the Division of Labor Standards Enforcement ("Labor Commissioner Office") staff to better understand the Labor Commissioner'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 Labor Commissioner's enforcement policies, with regard to prevailing wage compliance. Rather, the purpose of the Manual is to familiarize staff assigned to prevailing wage enforcement with 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 Labor Commissioner, 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:

Except for public works projects of one-thousand dollars ($1,000) or less, Labor Code § 1771 requires that "all workers employed on public works" be paid at not less than the "general prevailing rate of per diem wages." Labor Code § 1772 provides that workers employed "by contractors or subcontractors in the execution of any contract for public work" are deemed to be so employed. Labor Code § 1723 defines a worker as including "a laborer, worker, or mechanic." A standard dictionary definition of a "worker" is a "person engaged in a particular field or activity." (Random House Dictionary of the English Language) The issue presented in the prevailing wage context is the inclusiveness of the term "workers." In *Lusardi Construction Co. v. Aubry* (1992) 1 Cal. 4th 976, 987, the California Supreme Court interpreted section 1771 and found that "By its express terms, this statutory requirement is not limited to those workers whose employers have contractually agreed to pay the prevailing wage; it applies to 'all workers employed on public works.'" This interpretation is consistent with the U.S. Department of Labor's position (41 U.S. Op. Atty. Gen. 488) that any individual who personally performs skilled or unskilled labor in construction work is protected under the Davis-Bacon Act (40 U.S.C. § 276(a), the federal prevailing wage law) even though he or she is not an "employee." These authorities support the position that protected workers under Labor Code § 1771 include not only employees, but also extends to other workers performing work covered by the prevailing wage laws.

### 2.2 Statutory References To Workers "Employed" On Public Works, Explained:

Labor Code §§ 1771 and 1772 refer, respectively, to workers "employed" by contractors or subcontractors "in the execution of any contract for public work" or "employed" on public works. Courts long ago recognized that "employed" may

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

2.3 **Title or Status of Worker Irrelevant.**

A worker's title or status with the employer is not determinative of an individual's coverage by the prevailing wage laws. What is determinative is whether the duties performed by the individual on a public works project constitute covered work. An individual who performs skilled or unskilled labor on a public works project is entitled to be paid the applicable prevailing wage rate for the time the work is performed, regardless of whether the individual holds a particular status such as partner, owner, owner-operator, independent contractor or sole proprietor, or holds a particular title with the employer such as president, vice-president, superintendent or foreman. For example, a "working" foreman or a "working" superintendant – one who performs labor on the project in connection with supervisorial responsibilities – is entitled to compensation at not less than the prevailing rate for the type of work performed. Of course, if the person holding

the status or titles as listed above does not 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 the Labor Commissioner under Labor Code § 1741 cannot be used to recover unpaid wages or penalties authorized by the prevailing wage laws. It is therefore necessary for staff to determine at the earliest possible stage of assignment to an investigation whether the required facts and conditions appear to be present. The four separate statutory sections identify four somewhat different scenarios which comprise the public works model:

2.4.1

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

2.4.2

Labor Code § 1720.2 extends the public works definition to include construction work done under private contract if (1) the construction contract is between private persons, and (2) the property subject to the construction is privately owned, but more than 50 percent of the assignable square feet of the property is leased to the state or a political subdivision thereof, and either (1) the lease was entered into prior to the construction contract, or (2) the lease was entered into

before completion of the construction if the work was performed according to plans or criteria furnished by the state.

2.4.3

Labor Code § 1720.3 extends the public works definition to the hauling of refuse from a public works site to an outside disposal location. The Director has opined in a web-posted Public Works Coverage Determination (see Section 2.7 of this Manual) that "refuse" is defined as "the worthless or useless part of something," and that if, for example, dirt excavated from trenches dug for a public works contract is being put to a useful purpose, such as the covering of garbage at a landfill, it would not be considered "refuse" under those circumstances. (Public Works Case No. 2001-005 (Trash/Debris Removal from Railroad Rights-of-Way and Facilities, Blue and Green Lines).)

2.4.4

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

2.5 **"Public Funds" Defined**:

Labor Code § 1720(b) defines at some length what the statutory language "paid for in whole or in part out of public funds" means. The six examples of public funds are listed specifically at Labor Code § 1720(b), subdivisions (1)-(6), and are

not limited to the payment of money (subd. (b)(1)) by the state or a political subdivision directly to a public works contractor. The five other categories include work performed (subd. (b)(2)) by the state or political subdivision; transfer of an asset (subd. (b)(3)) for less than fair market price; fees or costs reduced, waived, or forgiven (subd. (b)(4)) by the state or political subdivision; money loaned (subd. (b)(5)) by the state or political subdivision to be repaid on a contingent basis; and credits applied (subd. (b)(6)) by the state or political subdivision against repayment obligations.

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

2.5.2 **Federally Funded or Assisted Projects.**

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

2.6 **Director's Authority To Determine Coverage.**

The California Code of Regulations authorizes the Director of the Department of Industrial Relations to determine coverage under the prevailing wage laws regarding either (1) a specific project or (2) type of work to be performed. (8 Cal. Code of Regs § 16001(a) (1).) The Director's authority to determine coverage of projects under the prevailing wage laws is quasi-legislative, and a final determination on any appeal is subject to judicial review pursuant to California Code of Civil Procedure section 1085. (8 Cal. Code Regs § 16002.5(c).) The Director's determination in any specific inquiry brought forth under the DIR's

regulatory coverage process (8 CCR §§ 16001-16002.5) is subject to judicial review. The Labor Commissioner 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 Labor Commissioner issues a Civil Wage and Penalty Assessment ("CWPA") before any coverage determination dealing with that same project has been requested, any affected contractor or subcontractor may timely request a review hearing to contest a CWPA under Labor Code § 1742, and a claim that either the project or the type of worked performed was not subject to the prevailing wage laws may be raised in the administrative review proceedings. (See Sections 4.7 – 4.9 for specifics on CWPAs.)

2.7 **Posted Public Works Coverage Determinations.**

The DIR posts on the DIR website, letters and decisions on administrative appeal issued by the Director in response to requests to determine coverage under the prevailing wage laws made pursuant to 8 CCR § 16000(a). The determinations are indexed by date and project, as compiled by DIR staff. The Director's Office of Policy, Research, and Legislation ("OPRL") maintains this portion of the website, and the determinations can be accessed by clicking on the topic Public works coverage determinations, which is listed on the OPRL homepage. The rates may also be accessed from the public works page on the Labor Commissioner's website. 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 Project-Specific.

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

2.8 Exclusions From Prevailing Wage Requirements.

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

2.8.1 Volunteers.

Labor Code § 1720.4 provides that the prevailing wage laws do not apply to work performed by a "volunteer." "Volunteer" is defined as "an individual who performs work for civic, charitable, or humanitarian reasons, for a public agency or

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

2.8.2 **Public Agency's Own Forces**.

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

2.8.3 **Janitorial Services**.

The definition of "maintenance" found at 8 CCR § 16000 requires payment of wages at the prevailing rate and includes a variety of specific examples of work

related to the "preservation, protection and keeping of publicly owned or publicly operated" facilities. The prevailing wage requirement does not apply, however, to "[j]anitorial services of a routine, recurring or usual nature." (8 CCR § 16000.) This exception to the prevailing wage requirements applies to routine and recurring janitorial services, such as washing, vacuuming, litter removal, etc. at a public facility. The exclusion does not apply to non-routine clean-up which, for example, might occur during, or at the conclusion of, a public works construction project.

2.8.4 **Guards.**

The "maintenance" definition also excludes from the prevailing wage requirements "[p]rotection of the sort provided by guards, watchmen, or other security forces." (8 CCR § 16000.)

2.8.5 **Landscape Maintenance Work At 'Sheltered Workshops.'**

The "maintenance" definition also excludes this particular and unique type of work from the prevailing wage requirements. "Sheltered workshop" is defined as a nonprofit organization, licensed by the Labor Commissioner, 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, the Labor Commissioner 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 Labor Commissioner will make a 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 Labor Commissioner 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 Labor Commissioner's Office. 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 Labor Commissioner or in a manner containing the same information as the forms provided by the Labor Commissioner. This form (DIR Form A-1-131) is available on the Labor Commissioner's 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 forms. The required certification language is also on the Labor Commissioner's 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 Labor Commissioner. Payroll records furnished to Labor Commissioner 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 Labor

Commissioner developed a form (see website for Form PW 26) to simplify both the preparation by contractors of the required information and the Labor Commissioner'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 Labor Commissioner may request a contractor to produce any such payroll records to assist the Labor Commissioner 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 the Labor Commissioner 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. 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 **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 the Labor Commissioner, upon the Labor Commissioner'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 Labor Commissioner developed a form letter entitled "Request For Certified Payroll Records" (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 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 **Contractors' Obligation To Electronically Submit Certified Payroll Records ("eCPRs").**

Labor Code Section 1771.4 was added to the Public Works Chapter by the Legislature as part of the Public Works Reforms contained in SB854 which became effective on June 20, 2014. Labor Code Section 1771.4(a)(3) requires each contractor and subcontractor to furnish "the records specified in Section 1776 directly to the Labor Commissioner." This obligation exists independently of

any written request from the Labor Commissioner. Rather, the legislation requires that the records shall be furnished at least "monthly or more frequently if specified in the contract with the awarding body" (Section 1771.4(a)(3)(A)), and in "a format prescribed by the Labor Commissioner" (Section 1771.4(3)(B)). The format prescribed by the Labor Commissioner is found on the Labor Commissioner's website, and specifies that contractors and subcontractors must electronically submit certain payroll information by following the specific on-line instructions. The legislation was designed to enhance the Labor Commissioner's ability to evaluate compliance with prevailing wage requirements. (Section 1771.4(a)(3)(4).) The Labor Commissioner is now able to monitor (on an ongoing basis and without the need for a written request for payroll records or a formal investigation) whether contractors and subcontractors at least appear to be in compliance with the prevailing wage laws, based solely upon the eCPRs submitted. Electronic submission of Certified Payroll Records ("eCPRs") was also designed to complement the on-line registration of public works contractors now required by SB854's Public Works Reforms. The on-line submission of eCPRs also enables contractors and subcontractors to provide this short format of payroll information with keystrokes, rather than preparing and delivering written documents. It is extremely important for contractors and subcontractors to understand that submission of certain payroll information electronically is a requirement separate and distinct from the obligation already found in Labor Code Section 1776(d) "to file a certified copy of the records with the entity that requested the records enumerated in subdivision (a) [of Section 1776] within 10 days after receipt of a written request" for such records. So there can be no confusion, all contractors must comply with both requirements. Thus, a contractor that has electronically furnished eCPRs is not excused from timely furnishing to the Labor Commissioner "a certified copy of all payroll records" within 10 days after receipt of such a written request.

Conversely, a contractor that provides payroll records in response to a written request from the Labor Commissioner is not excused from continuing to furnish eCPRs on an ongoing basis. There are at least two reasons why this is so. First, eCPRs do not contain, and were neither intended nor designed to contain, all of the payroll information and records which may be required for a contractor to comply with written requests by the Labor Commissioner for payroll records made pursuant to Labor Code Section 1776(d). According to the provisions of the California Code of Regulations (specifically, 8 CCR 16401(b)), "the format for reporting of payroll records requested pursuant to Labor Code Section 1776" is a form identified in the regulation as the "Public Works Payroll Reporting Form" (Form A-1-131) which is available at any of the Labor Commissioner's Offices throughout the state. Additionally, the Labor Commissioner includes Form A-1-131 in all written requests for certified payroll records. The regulation also provides: "Acceptance of any other format shall be conditioned upon the requirement that the alternate format contain all of the information required pursuant to Labor Code Section 1776." As noted above, the prescribed format for eCPRs does not include all of this information. The information not available in eCPRs but which is required in Form A-1-131 submissions includes: work classifications, gross amounts earned each week, itemized deductions or contributions for federal taxes, state taxes, state disability insurance, vacation or holiday pay, health and welfare benefits, pension, union dues, if any, travel and subsistence, and savings.

3.1.7 **Responses To Inspection Requests.**

While the Labor Commissioner 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)), investigators typically do not request inspection. Rather, copies of CPRs are routinely requested to be furnished instead.

3.1.8 Responses To Requests For Copies.

The deadline for contractors or subcontractors to furnish the requested copies of CPRs is within ten days after receipt of a written request. (Labor Code § 1776(d).) The statutory language does not specify "calendar" or "working" days, however, 8 CCR § 16000 defines "days" as calendar days unless otherwise specified. 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 Labor Commissioner, 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 day response period has expired. The last penalty day is the calendar date upon which the tardy CPRs are received by the Labor Commissioner. 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. In the event a contractor fails to timely comply with a request for CPRs, including any follow-up request for additional underlying payroll records listed in the definition of "payroll records" found at 8 CCR 16000 (i.e., "All 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"), the penalty will continue beyond the date of

service of the CWPA and "until strict compliance is effectuated." (See, Labor Code section 1776(h).)

3.1.9 **Costs. Limited Reimbursement To Contractors and Public Agencies.**

The Labor Commissioner 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 Labor Commissioner-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 the Labor Commissioner).

3.1.10 **CPR Privacy Concerns.**

Labor Code § 1776(e) mandates special handling of CPRs obtained by the Labor Commissioner 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 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.

3.1.11 **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' 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).)

3.1.12 **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 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 Labor Commissioner, and the Division of Apprenticeship Standards (DAS).

3.1.13 **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 Labor Commissioner's 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 the Labor Commissioner's 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 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 the Labor Commissioner's 2002 Enforcement Policies and Interpretations Manual, sections 49.2.5- 49.2.6.1, 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 projects. The requirements to employ apprentices do 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 involves less than thirty-thousand dollars ($30,000)." Labor Code § 1777.5(o).) 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.

3.3.1 **Three 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) 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)); (3) 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. The Labor Commissioner enforces 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 **Failure To Submit Contract Award Information / Violations.**

Labor Code section 1777.5(e) requires every contractor on a public works project "to submit contract award information" to an applicable DAS-approved apprenticeship program that can supply apprentices in a particular apprenticeable occupation to the public works site. The CAC regulation found at 8 CCR 230(a) explains and supplements that requirement. DAS Form 140 was created to allow contractors to fill-in-the-blanks on that form to provide all information required by either the statute or the regulation. Specifically, DAS Form 140 seeks the following: (1) The contractor's name, address, telephone number, and state license number; (2) Full name and address of the public work awarding body; (3) The exact location of the public work; (4) Date of the contract award; (5) Expected start date of the work; (6) Estimated journeymen hours; (7) Number of apprentices to be employed; and (8) Approximate dates apprentices will be employed. The form itself is available to the public on the DAS website, along with an interactive list of contact information for all of the approved apprenticeship programs in defined geographical areas throughout the state. Read together the statutory and regulatory provisions suggest three different deadlines to provide the DAS Form 140 information. The statutory deadline is "prior to commencing work" on the project, but the CAC regulation alternatively requires providing the information "to the applicable apprenticeship committee within ten days of execution" of the prime contract (or subcontract), "but in no event later than the first day" the contractor has workers employed upon the public work. For the Labor Commissioner's enforcement purposes the deadline for submission of DAS Form 140 information by each contractor (for each applicable craft) is the first day a journeyman in that craft works on the project for that contractor. Because neither the provisions of Labor Code 1777.5(e) nor the language in the

CAC regulation specify any particular method of submission, the Labor Commissioner relies upon the definition of acceptable "service" of documents found in the Director's regulations under Labor Code section 1742 (which by law apply to the review of the Labor Commissioner's penalty assessments for apprenticeship violations) as controlling. Under the Director's regulation found at 8 CCR 17210(b), DAS Form 140 information is deemed submitted to an approved apprenticeship program "at the time of personal delivery or mailing, or at the time of transmission by facsimile or other electronic means." It is the responsibility of the contractor to provide satisfactory evidence to the Labor Commissioner that DAS Form 140 information has been timely submitted / transmitted by one of these methods. It should be noted that while contractors using electronic means (fax or e-mail) to transmit a completed DAS Form 140 to an apprenticeship program will likely have easy access to documentary proof of the date of electronic transmission, no similarly reliable evidence may be available to contractors to establish the date of submission when first class mail is the only method used. In that situation, the date of mailing may be established by additional documents (such as a certified mail receipt, or a receipt for delivery of certified mail which reflects the date of mailing, or a proof of service by first class mail which accompanied the DAS Form 140) which would constitute reliable evidence that the DAS Form 140 was in fact mailed on or before the deadline.

The obligation to submit DAS Form 140 information is not identical for all contractors. The CAC regulation found at 8 CCR 230(a) explains that contractors who have been approved to train apprentices "in the area of the site of the public works project" in a particular apprenticeable craft need only submit DAS Form 140 information to those programs. Contractors who are <u>not</u> already approved by an apprenticeship program sponsor in the area must provide DAS Form 140 information to <u>all</u> of the applicable apprenticeship programs whose geographic area of operation "includes the area of the public works project."

3.3.1.2 **Failure to Submit Contract Award Information / Penalties.**

Penalties for violations of DAS Form 140 requirements are assessed in accordance with Labor Code section 1777.7(a)(1) for "each full calendar day of noncompliance." The first penalty day for failing to submit / transmit DAS Form 140 information for each apprenticeable craft is the calendar day after the deadline date has passed. A contractor's certified payroll records, if accurate, generally provide the most easily available evidence to establish the first penalty day. Thus, if a contractor first employed a journeyman carpenter on May 1, 2015, the first penalty day for failing to submit / transmit DAS Form 140 information would be May 2, 2015. The penalty continues to be assessed for each full calendar day thereafter until the calendar date upon which the DAS Form 140 is actually submitted / transmitted. If the DAS form 140 information is never submitted / transmitted, the penalty continues to be assessed for each calendar day thereafter until and including the last calendar date the contractor performed any work in any apprenticeable craft on the project. Investigators should include in their Penalty Review form a simple explanation of their calculation of the penalty days being assessed for DAS Form 140 violations, showing the first penalty date, the last penalty date, and the total number of penalty days. Two examples, again using May 1, 2015, as the date our contractor first employed a journeyman carpenter on the project:

**Example 1:** Failure to timely submit / transmit contract award information for craft of carpenter on or before May 1, 2015. First penalty day = 5/2/15; Last penalty day (based on the calendar date before submission, assuming

here that 6/3/15 is the date of submission) = 6/2/15. Total number of penalty days is 32.

**Example 2:** Failure to ever submit / transmit contract award information for the craft of carpenter; First penalty day = 5/2/15; Last penalty day (based on the last date the same contractor performed any work in any apprenticeable craft on the project, assuming here that 7/7/15 is the last date of work) = 7/7/15. Total number of penalty days is 67.

3.3.1.3 **Minimum Ratio Violations.**

Understanding the minimum ratio requirement ("one hour of apprentice work for every five hours of journeyman work") and the mathematical calculation of penalties when violations occur lends itself to a step-by-step approach: (1) To determine whether a violation has occurred, the investigator must first count the *total number of journeyman hours* worked in a particular craft by a specific contractor "before the end of the contract or, in the case of a subcontractor, before the end of the subcontract." (See, subdivision (h) of § 1777.5.) *Assume* the contractor in question has submitted certified payroll records ("CPRs") which reflect that *journeyman carpenters* worked a total of *750 straight-time hours* over the course of the contract. (Note that hours worked by journeymen in excess of 8 per day or 40 per week are *excluded* from this calculation, also pursuant to subdivision (h) of § 1777.5.) (2) Calculate 20% of 750 journeyman hours to determine the minimum number of apprentice hours required before the end of the contract. (750 x 0.20 = *150 minimum apprentice hours*.) (3) *Assume* that this contractor's CPRs only reflect a total of *40 apprentice hours worked* in the carpenter craft during the contract. That number is *less apprentice hours than the minimum required* under the statutory formula. *Violation* of the minimum ratio requirement has therefore been established. (4) The investigator must now

determine the penalty. The Legislature did *not* base the penalty upon the number of hours a contractor may have fallen short in providing apprentices with work on the project. Rather, § 1777.7(a)(1) provides that contractors who knowingly violate *any* of the apprenticeship standards found in § 1777.5 "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.

3.3.1.4 **Affirmative Defense to Minimum Ratio Violations.**

A contractor which fails to accumulate a sufficient number of apprentice hours before the end of the contract or subcontract may raise an affirmative defense to avoid minimum ratio penalties under the CAC regulation found at 8 CCR 230.1(a). The regulation explains that contractors not already employing sufficient apprentices to comply with the minimum one-to-five ratio "must request

dispatch of required apprentices" from DAS-approved apprenticeship committees providing training in the applicable craft or trade in the geographic area of the public work. That regulation served as the template for DAS Form 142, use of which enables contractors to be excused from the minimum ratio obligation even if the minimum ratio of apprentice hours is not actually achieved before the end of the contract or subcontract. To do so, it is the contractor's burden to establish that all of the regulation's request-to-dispatch requirements have been satisfied. The requirements may be summarized as follows: (1) Did the contractor request dispatch from each apprenticeship committee in the geographic area of the site of the public work? (2) Has the contractor provided the Labor Commissioner with a copy of each written request, with proof that it was sent by first class mail, facsimile or e-mail? (3) Did the request give the committee written notice of at least 72 hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices were required? (4) Was the request made in enough time to meet the above-stated ratio? (5) Did the contractor actually employ each of the apprentices dispatched? Failure of the contractor to establish that each of these requirements has been satisfied will be insufficient to establish an affirmative defense to a minimum ratio violation.

### 3.3.2 Apprenticeship Violations Which Also Result In Prevailing Wage Underpayments.

The Labor Commissioner'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 the Labor Commissioner 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 the Labor Commissioner would refer complaints alleging violations of this "journeyman on duty" rule (8 CCR 230.1(c)) to DAS for investigation. Because the Labor Commissioner 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 section 1777.5(b) and (c) authorize contractors to pay certain workers at "the prevailing rate of per diem wages for apprentices." If a prevailing rate for apprentices is included in the Director's published wage determinations for a particular craft or trade, it is always less than the journeymen rate. The lower apprentice rates serve as a monetary incentive for contractors to satisfy the required minimum ratio of apprentice hours to journeymen hours before the end of the contract. To be paid at the lower apprentice rates, a worker must be "registered" (i.e., be party to a written apprenticeship agreement confirming that the worker is "in training under apprenticeship standards that have been approved by the Chief" of the DAS). A worker's eligibility to be paid at an apprenticeship rate may be verified by referring to the online data base maintained on the DAS website for each particular craft or trade. However, investigators generally require the contractor to provide a copy of the worker's written apprenticeship agreement to establish eligibility. Regardless of the

perceived level of skills (or lack thereof) that a worker in a particular craft or trade may actually possess, he or she must be enrolled in a DAS-approved apprenticeship training program at the time the work was performed. If not, hours worked in that craft or trade must be paid at the higher journeymen rate.

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 Labor Commissioner 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 Labor Commissioner 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 Labor Commissioner'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, 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. The Labor Commissioner's Prevailing Wage Enforcement Process.

The Labor Commissioner 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 Labor Commissioner 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 Labor Commissioner 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. When such an issue arises, the Director has typically relied on the Scope of Work provisions published by the OPRL, along with that particular wage determination. It is therefore important that investigators review those Scope of Work provisions whenever this issue arises during an investigation. It is irrelevant from the Labor Commissioner'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, the Labor Commissioner 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, the Labor Commissioner 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 investigations by the Labor Commissioner. From a practical standpoint, the best approach for 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 pubic 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 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.

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 specifically 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).) Travel time required by an employer after a worker reports to the first place at which his or her presence is required by the employer is compensable travel time, and includes travel **to a public work site**, whether from the contractor's yard, shop, another public work site, or a private job site. All such compensable travel time must be paid at the same prevailing wage rate required for the work actually performed by the worker **at the public works site.** No additional facts, such as whether tools or supplies are being delivered by the worker to the site, need be present.

4.1.6 Calculation of Overtime and 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. Failure to pay the appropriate overtime rates subject the contractor to penalties pursuant to Labor Code § 1813. In addition to Labor Code § 1815, the Director's wage determinations generally designate specific premium rates for straight-time hours worked on Saturday and/or Sunday and Holiday work. The DIR website identifies the particular Holidays covered by the premium rate requirements under each wage determination. Saturday, Sunday, and Holiday premium rates apply for the hours worked on each of those days as specified in the applicable determination. If more than 8 hours per day are worked on the Saturday, Sunday and Holiday or

the hours worked, including Saturday, Sunday and Holiday exceeds 40 hours for the week, then overtime rates (calculated from the premium rate) also applies and the contractor is subject 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 16200(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 Labor Commissioner 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 statewide prevailing wage Determination (C-20-X-1-2017-1) for the Iron Worker (Ornamental, Reinforcing, Structural) classification for the craft of Iron Worker , reflects a Basic Hourly Rate of $36.00, with permissible Employer Payments of $9.55 per hour (Health and Welfare), $13.32 per hour (Pension), $4.00 per hour (Vacation/Holiday), $2.865 per hour (Other Payments), and one mandatory employer payment of $0.72 per hour (Training), which must be paid to the California Apprenticeship Council ("CAC") or an approved apprenticeship program. The Sum of all these components ($66.455) is the Total Hourly Straight-Time Rate listed on the Determination. The aggregate total of permissible Employer Payments (excluding the amount required for Training) is $29.735. 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 $29.735 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 $9.735 directly to the workers. The employer may take credit for the medical insurance or pension payments, and all of the payments added together ($45.735 paid to workers + $20.00 paid to medical or pension plan + $0.72 to CAC = $66.455), which would reflect compliance by this employer with the prevailing wage rate obligation. (*WSB Electric, Inc. v. Curry*

(9th Cir. 1996) 88 F.3d 788.) This credit may be taken only as to amounts which are actual payments. (8 Cal. Code of Regs. § 16200(a)(3)(I).) No credit may be taken for benefits required to be provided by other state or federal law. (Labor Code § 1773.1(c).) For instance, a contractor may not take a credit against its prevailing wage obligations for benefits such as workers' compensation, unemployment benefits, and social security and Medicare contributions.

4.2.2 **No Reduction of the Basic Hourly Rate.**

California law prohibits the use of credits for Employer Payments to reduce the obligation to pay the hourly straight time or overtime wages specified as the Basic Hourly Rate in the general prevailing wage determination. (Labor Code § 1773.1(c) and 8 Cal. Code of Regs. § 16200(a)(3)(I).) Two legislatively created exceptions to this general rule are now found at Labor Code section 1773.1(c) and section 1773.8. Both exceptions are extremely limited in scope and are only applicable to increases in employer payment contributions made pursuant to criteria set forth in a collective bargaining agreement ("CBA"), and only if the specific statutory conditions listed in the Labor Code have been met. 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. Investigators may encounter this issue when dealing with contractors on public works projects which have mixed funding (both federal and state) or federally funded projects which are controlled or carried out by California awarding bodies of any sort. In both of these situations, the application of state prevailing wage rates when higher is required. (See 8 CCR § 16001(b).)

4.2.3 **Application to All Hours Worked.**

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

4.2.3.1 **Example**:

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

The worker would be due.

| | |
|---|---|
| 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] |

[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.

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.

(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.**

A contractor may take credit for Employer Payments "if the employer regularly makes the contributions, or regularly pays the costs, for the plan, fund, or program on no less than a quarterly basis." (Labor Code § 1773.1(d).)

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 the Labor Commissioner'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)(l).)

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. Some crafts are not identified on the Director's wage determinations with a symbol (#) which indicates an apprenticeable craft. If that is the case, any training contribution listed in the general prevailing wage determination should be paid to the worker, or to the applicable training program, if the contractor is contractually obligated to make such payments under its collective bargaining agreement.

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(e).)

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 **Annualization Calculation**.

For enforcement purposes, the Labor Commissioner 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 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 x 12 months) divided by 2,080 hours = $2.31 per hour.

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(e)(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(e)(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 section 1773.1(e)(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 Labor Commissioner takes the position that the exemption from the annualization requirements under section 1773.1(e)(3) is limited to the training contribution amounts set forth in the applicable general prevailing wage determination. An employer may not claim credit against a worker's per diem wages for training

contribution amounts paid in excess of the amount set forth in the applicable general prevailing wage determination unless the worker actually benefits from the payment. (See Director's Decision *In the Matter of Request for Review of DBS Painting, Inc.* (December 10, 2007), Case No. 06-0168-PWH). Credit for contribution amounts which meet this requirement must be annualized unless otherwise exempt under section1773.1(e)(3).

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 Labor Commissioner 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 Labor Commissioner 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 Labor Commissioner 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 Labor Commissioner may assess not less than one hundred twenty dollars ($120.00) if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1. The Labor Commissioner's determination of the penalty amounts is reviewable for abuse of discretion. Any outstanding wages shall be satisfied before applying that amount to the penalties.

4.3.1.1 Limited Prime Contractor Safe Harbor.

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

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

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works

project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

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

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

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

Important. Even if a prime contractor avoids section 1775 penalties where the evidence presented to the Labor Commissioner 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.**

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 Labor Commissioner 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 Labor Commissioner 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 Labor Commissioner 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 ("CWPAs").**

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

4.7.1 **Service of the CWPA / Statute of Limitations / Tolling.**

Labor Code section 1741 provides that the CWPA shall be served not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in which the public work was performed, or not later than 18 months after acceptance of the public work, whichever occurs last. Labor Code section 1741 also provides that the period for service of assessments shall be tolled for three reasons: (1) For the period of time required by the Director of Industrial Relations to determine whether a project is a public work; (2) For the period of time that a contractor or subcontractor fails to provide in a timely manner certified

payroll records pursuant to a request from the Labor Commissioner; (3) For the period of time that an awarding body fails to timely furnish (upon written request) the Labor Commissioner with a copy of the valid notice of completion filed in the office of the county recorder, or a document evidencing the awarding body's acceptance of the public work, until the Labor Commissioner's actual receipt of those documents.

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 the Labor Commissioner 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 the Labor Commissioner 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 investigators: (1) No direct or indirect communication regarding any issue in the review proceeding is permitted between the investigator and the Hearing Officer without notice and the opportunity for all parties to participate in the communication. (8 CCR § 17207(a).) 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 the Labor Commissioner 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 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 investigator may handle the meeting with or without involvement by Legal, but it is always prudent to review the issues which might be discussed in the meeting with either a Senior Deputy or Legal. Either a Senior Deputy or Legal should be notified if settlement can be achieved. In the event a contractor requests that a written settlement agreement or release be signed by the Labor Commissioner, Legal 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 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 CWPA issued by the Labor Commissioner or a Notice To Withhold Contract Payments issued by a DIR-approved LCP. Liquidated damages are distributed to workers. 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 Labor Commissioner's CWPA form specifies that a check or money order in the full amount of the assessment 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, Legal 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).) Legal 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 **Debarment.**

Labor Code section 1777.1 authorizes the Labor Commissioner to seek an order of debarment against contractors, subcontractors and specific individuals identified in Labor Code section 1777.1(a) and (d). An order of debarment prohibits the named contractors and others named in the order from either bidding on or being awarded a contract for public work, or performing work as a subcontractor on any public works project. There are four separate bases for debarment: (1) Section 1777.1(a) - Violation of the Public Works Chapter with "intent to defraud" as that term is defined at 8 CCR 16800; (2) Section 1777.1(b) - The commission of two or more separate willful (defined at Labor Code section 1777.1(e)) violations within a three-year period; (3) Section 1777.1(c) - Failure to provide a timely response to a request to produce certified payroll records within 30 days after receipt of the specified written notice from the Labor Commissioner described in Section 1777.1(c), entitled "Notice Of Intent To

Debar"; (4) Section 1777.1(d) - Knowingly committing a serious violation of any provision of Labor Code section 1777.5. The period of debarment is from one to three years, except for debarments under Labor Code section 1777.1(d), which provides for debarment for a period of up to one year for the first violation of Labor Code section 1777.5, and for a period of up to three years for a second or subsequent serious violation of that section. The procedures the Labor Commissioner 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.

4.10.1 **Debarment Investigations.**

The Labor Commissioner 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 investigations which resulted in the issuance and service of CWPAs. However, the Labor Commissioner may also conduct debarment investigations resulting from complaints filed by any "person" as that term is defined at 8 CCR 16800.

4.10.2 **Posting of Debarment Orders.**

In accordance with Labor Code section 1777.1(f), a list of contractors, subcontractors or other entities or individuals ordered debarred by the Labor Commissioner, the periods of debarment, and the contractor's State License Board license number, are posted on the Commissioner's Internet Web site.

4.11 **The Labor Commissioner's Jurisdiction to Enforce California's Prevailing Wage Laws is Not Exclusive.**

The Labor Commissioner 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.

It should be noted that the availability of private rights of action to enforce the prevailing wage laws as specified in Sections 4.11.1, 4.11.2 and 4.11.3 below do not provide the much more favorable administrative procedures and burdens of proof which are set forth in Labor Code section 1741 - 1743, and the relevant Prevailing Wage Hearing Regulations found at 8 CCR 17221 - 17251. Thus, the likelihood of recovery in prevailing wage enforcement cases filed in state or federal courts under private rights of action should be carefully considered in comparison with the alternative approach of filing a complaint with the Labor Commissioner against contractors or subcontractors for investigation and enforcement by the Labor Commissioner on behalf of workers, as specified in Labor Code section 1741. It must also be recognized that in these private rights of action workers cannot recover liquidated damages (under Labor Code section 1742.1) otherwise available through the Labor Commissioner's enforcement. In addition, when the Labor Commissioner takes enforcement action, no portion of a workers' recovery of wages will be reduced by attorney fees or any other costs of litigation. All attorneys considering representing workers in private rights of action to seek recovery of unpaid prevailing wages are therefore encouraged to provide workers with the pros and cons of proceeding directly in court rather than simply filing a complaint with the Labor Commissioner.

4.11.1 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 18 months 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 18 months after acceptance of the public work, whichever last occurs.

4.11.2 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.)

4.11.3 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.)

4.12 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.)

4.12.1 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 Labor Commissioner's Office will bring in the 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 Labor Commissioner under Labor Code § 98.

5. The Labor Commissioner'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 the Labor Commissioner 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 the Labor Commissioner in LCP matters. This Manual will not attempt to explain any of the LCP regulations which do not directly involve the Labor Commissioner's Office staff. This Manual will highlight certain LCP regulations which require the Labor Commissioner's 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 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 Labor Commissioner's CWPA form. The method by which the LCP seeks the

Labor Commissioner's approval of the desired forfeiture is delivery of a written "request for approval of the forfeiture" for review by 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. 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 the Labor Commissioner's 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 Labor Commissioner'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. 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 Labor Commissioner's response to the request for approval. The deadline for Labor Commissioner'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 the Labor Commissioner 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, the Labor Commissioner has an additional 30 days (from the date of service of the Labor Commissioner'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, 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 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. The Labor Commissioner's staff will, of course, assist the Director in whatever manner is required in performing these functions.

6 **Public Works Reforms (SB854).**

The Legislature has made several changes to the laws governing how the Department of Industrial Relations (DIR) monitors compliance with the prevailing wage requirements on public works projects. New Labor Code section 1777.1 now requires that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of a contract for public work unless currently registered and qualified to perform work in the manner specified in new Labor Code section 1725.5. New Labor Code section 1773.3 now requires awarding bodies to electronically notify DIR of any public works contract within five days of the award using the online PWC-100 form. The Director of Industrial Relations is in the process of establishing rules and regulations for carrying out all of these new statutory provisions. In the interim, all public works contractors, awarding bodies and the general public should refer to two informational notices currently available online:

"Important Information for Awarding Bodies":

www.dir.ca.gov/public-works/SB854.html

"Precautionary Legal Notice to Awarding Bodies":

www.dir.ca.gov/DLSE/PrecautionaryLegalNoticetoAwardingBodies.html

6.1 **SB96.**

The Legislature created new enforcement mechanisms for the Labor Commissioner to enforce the Public Works Contractor Registration requirements through the passage of SB96. The bill also provided other minor changes to assist in public works enforcement generally. SB 96 creates penalties for contractors who fail to register and establishes new penalties and sanctions for

awarding bodies that hire or permit unregistered contractors to work on public works projects.

6.1.1 **Penalties Assessed Against Unregistered Contractors.**

Labor Code section 1771.1(g) provides that a contractor that is required to be registered in order to work on a public works contract and fails to do is subject to penalties of $100 per day for each day the unregistered contractor performs work in violation of the registration requirements, not to exceed a total penalty of $8,000. This $8,000 limit is *in addition to* the $2,000, which the contractor will be required to pay in order to become qualified to register. (Labor Code §1771.1(g).)

6.1.2 **Penalties Assessed Against Contractors That Employ Unregistered Subcontractors.**

Labor Code section 1771.1(h) provides that a higher-tiered public works contractor or subcontractor found to have entered into a subcontract with a lower-tiered unregistered contractor is subject to penalties of $100 per day for each day the unregistered lower-tier subcontractor performs work in violation of the registration requirements, not to exceed a total penalty of $10,000. The only exception to this liability for a higher tiered contractor is where a lower tiered subcontractor's performance violates the registration requirements because its registration was revoked. Higher-tiered contractors are prohibited from requiring subcontractors to indemnify them from liability for these penalties.

6.1.3 **Stop Orders Issued to Unregistered Contractors.**

Labor Code section 1771.1(j) provides that if an unregistered contractor or subcontractor is found performing on a public works project, the Labor Commissioner shall issue a stop order prohibiting the unregistered contractor or subcontractor from performing work on all public works until the unregistered

contractor or subcontractor become registered. A contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor who fails to observe a stop order issued and served upon him or her, is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars ($10,000), or both.

6.1.4 **Awarding Bodies Must Ensure that the Contractors Utilized on Public Works Projects Are Registered.**

Labor Code section 1773.3(c)(1) provides that an awarding agency is subject to penalties of $100 per day, up to $10,000 per project, for the following violations: (1) Failing to timely submit required notice of award pursuant to Labor Code section 1773.3(a); (2) Entering into a contract directly with an unregistered contractor; or (3) Allowing an unregistered contractor to perform work on a project it awarded. In addition, Labor Code section 1773.3(d) provides that where final payment has been made and it is later discovered that an unregistered contractor or subcontractor worked on the project, the awarding body is subject to penalties of $100 for each calendar day of noncompliance, for a period of up to 100 days, for each unregistered contractor or subcontractor.

6.1.5 **Awarding Body's Ineligibility to Receive State Funding or Financial Assistance.**

Labor Code §1773.3(f) provides that if the Labor Commissioner determines an awarding agency has committed two or more "willful violations" of public works laws within a one-year period, the awarding agency shall be ineligible to receive state funding or financial assistance for any construction project undertaken on behalf of the awarding agency for one year. These sanctions are enforced against the most problematic awarding bodies according to the same contractor debarment procedures found in Labor Code section 1777.1.

6.1.6 **"Small Project Exception".**

SB 96 created limited exemptions to some of the requirements created by SB 854 for contractors and awarding bodies for new construction, alteration, installation, demolition or repair projects that do not exceed $25,000 or maintenance projects that do not exceed $15,000. As of July 1, 2017, contractors or subcontractors who work or bid exclusively on small public works projects will not be required to register as a public works contractor or file eCPRs for those "small" projects. (Labor Code §§1771.1(n) and 1771.4(a)(4).) However, contractors are still required to maintain accurate certified payroll records, retain them for at least three years, and provide them to the Labor Commissioner's Office upon request pursuant to Labor Code §1776. Additionally, awarding bodies are not required to submit the notice of contract award through DIR's PWC-100 system on projects that fall within the "small project" exemption. (Labor Code §1773.3(i).)

# ADDENDUM 1

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 2

ABREVIATIONS 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

- Director's General Prevailing Wage Determinations
  - http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm
- Important Notices (Index 2001-1 to Present)
  - http://www.dir.ca.gov/OPRL/NoticeIndex.htm
- Public Works Coverage Determinations
  - http://www.dir.ca.gov/OPRL/pwdecision.asp
- Current Residential Prevailing Wage Determinations
  - http://www.dir.ca.gov/oprl/Residential/reslist.html
- 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

SB854 Requirements

- Certified Payroll Reporting
  - http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html
- Public Works Contractor Registration
  - http://www.dir.ca.gov/Public-Works/Contractors.html
- Awarding Body Information
  - http://www.dir.ca.gov/dlse/dlseform-pw26.pdf

Apprenticeship

- Apprenticeship Requirements
  - http://www.dir.ca.gov/Public-Works/Apprentices.html
- 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
- Public Works Apprentice Wage Determinations (2004 – 2012)
  - http://www.dir.ca.gov/DAS/PWAppWage/PWAppWageStart.asp

- Public Works Apprentice Wage Determinations (2012 – present)
  - http://www.dir.ca.gov/OPRL/pwappwage/PWAppWageStart.asp

Apprenticeship (continued)

- 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. 4/11))
  - http://www.dir.ca.gov/DAS/dasform142.pdf
- California Apprenticeship Council – Training Fund Contributions
  - https://www.dir.ca.gov/das/TF/CAC2.asp
- 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 (PW 1) (Rev. 9/12))
  - http://www.dir.ca.gov/dlse/Forms/PW/PW1_English.pdf
- Public Works Complaint Form – Spanish (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
- Debarments of Public Works Contractors
  - http://www.dir.ca.gov/dlse/debar.html
- 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

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

# Exhibit H

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: # OPERATING ENGINEER (HEAVY AND HIGHWAY WORK)**

**DETERMINATION:** NC-23-63-1-2012-1
**ISSUE DATE:** August 22, 2012
**EXPIRATION DATE OF DETERMINATION:** June 30, 2013* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director – Research Unit at (415) 703-4774 for the new rates after ten days after the expiration date if no subsequent determination is issued.

**LOCALITY:** All localities within Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba counties.

| Classification (Journeyperson) | Basic Hourly Rate | | Employer Payments: Health and Welfare | Pension | Vacation and Holiday[a] | Training | Other Payments | Straight-Time: Hours[f] | Total Hourly Rate | | Overtime Hourly Rate: Daily/ Saturday[d] 1 1/2X | | Sunday and Holiday 2X | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Classification Group[a] | Area 1[b] | Area 2[c] | | | | | | | Area 1[b] | Area 2[c] | Area 1[b] | Area 2[c] | Area 1[b] | Area 2[c] |
| Group 1 | $37.77 | $39.77 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $64.24 | $66.24 | $83.13 | $86.13 | $102.01 | $106.01 |
| Group 2 | $36.24 | $38.24 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $62.71 | $64.71 | $80.83 | $83.83 | $98.95 | $102.95 |
| Group 3 | $34.76 | $36.76 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $61.23 | $63.23 | $78.61 | $81.61 | $95.99 | $99.99 |
| Group 4 | $33.38 | $35.38 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $59.85 | $61.85 | $76.54 | $79.54 | $93.23 | $97.23 |
| Group 5 | $32.11 | $34.11 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $58.58 | $60.58 | $74.64 | $77.64 | $90.69 | $94.69 |
| Group 6 | $30.79 | $32.79 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $57.26 | $59.26 | $72.66 | $75.66 | $88.05 | $92.05 |
| Group 7 | $29.65 | $31.65 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $56.12 | $58.12 | $70.95 | $73.95 | $85.77 | $89.77 |
| Group 8 | $28.51 | $30.51 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $54.98 | $56.98 | $69.24 | $72.24 | $83.49 | $87.49 |
| Group 8-A | $26.30 | $28.30 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $52.77 | $54.77 | $65.92 | $68.92 | $79.07 | $83.07 |
| Group 1-A | $38.65 | $40.65 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $65.12 | $67.12 | $84.45 | $87.45 | $103.77 | $107.77 |
| Truck Crane Assistant to Engineer | $31.68 | $33.68 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $58.15 | $60.15 | $73.99 | $76.99 | $89.83 | $93.83 |
| Assistant to Engineer | $29.39 | $31.39 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $55.86 | $57.86 | $70.56 | $73.56 | $85.25 | $89.25 |
| Group 2-A | $36.89 | $38.89 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $63.36 | $65.36 | $81.81 | $84.81 | $100.25 | $104.25 |
| Truck Crane Assistant to Engineer | $31.42 | $33.42 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $57.89 | $59.89 | $73.60 | $76.60 | $89.31 | $93.31 |
| Assistant to Engineer | $29.18 | $31.18 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $55.65 | $57.65 | $70.24 | $73.24 | $84.83 | $88.83 |
| Group 3-A | $35.15 | $37.15 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $61.62 | $63.62 | $79.20 | $82.20 | $96.77 | $100.77 |
| Truck Crane Assistant to Engineer | $31.18 | $33.18 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $57.65 | $59.65 | $73.24 | $76.24 | $88.83 | $92.83 |
| Hydraulic | $30.79 | $32.79 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $57.26 | $59.26 | $72.66 | $75.66 | $88.05 | $92.05 |
| Assistant to Engineer | $28.90 | $30.90 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $55.37 | $57.37 | $69.82 | $72.82 | $84.27 | $88.27 |
| Group 4-A | $32.11 | $34.11 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $58.58 | $60.58 | $74.64 | $77.64 | $90.69 | $94.69 |

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

[a] For classifications within each group, see pages 39B-40.

[b] AREA 1 - Alameda, Contra Costa, Butte, Marin, Merced, Napa, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Stanislaus, Sutter, Yolo and Yuba counties; and portions of Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Monterey, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sonoma, Tehama, Tulare, Tuolumne and Trinity counties.

[c] AREA 2 - Del Norte and Modoc, and portions of Alpine, Amador, Calaveras, Colusa, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Mariposa, Mendocino, Monterey, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sonoma, Tehama, Tulare, Tuolumne and Trinity counties. (Portions of counties falling in each area detailed on page 41).

[d] Saturday in the same work week may be worked at straight-time if a job is shut down during the normal work week due to inclement weather.

[e] Includes an amount for supplemental dues.

[f] When three shifts are employed for five (5) or more consecutive days, seven and one-half (7 1/2) consecutive hours (exclusive of meal period), shall constitute a day of work, for which eight (8) times the straight time hourly rate shall be paid at the non-shift wage rate for the second shift. The third shift shall be seven (7) hours of work for eight (8) hours of pay at the non-shift wage rate.

**NOTE:** For Special Single and Second Shift rates, please see page 39A.

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

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

DETERMINATION: NC-23-63-1-2012-1

CLASSIFICATIONS

GROUP 1
Operator of Helicopter (when used in erection work)
Hydraulic Excavator 7 cu yds and over
Power Shovels, over 7 cu yds

GROUP 2
Highline Cableway
Hydraulic Excavator 3 1/2 cu yds up to 7 cu yds
Licensed Construction Work Boat Operator, On Site
Microtunneling Machine
Power Blade Operator (finish)
Power Shovels, (over 1 cu yd and up to and including 7 cu yds m.r.c.)

GROUP 3
Asphalt Milling Machine
Cable Backhoe
Combination Backhoe and Loader over ¾ cu yds
Continuous Flight Tie Back Machine
Crane Mounted Continuous Flight Tie Back Machine, tonnage to apply
Crane Mounted Drill Attachments, Tonnage to apply
Dozer, Slope Board
Gradall
Hydraulic Excavator up to 3 1/2 cu yds
Loader 4 cu yds and over
Long Reach Excavator
Multiple Engine Scrapers (when used as push pull)
Power Shovels, up to and including 1 cu yd
Pre-Stress Wire Wrapping machine
Side Boom Cat, 572 or larger
Track Loader 4 cu yds and over
Wheel Excavator (up to and including 750 cu yds per hour)

GROUP 4
Asphalt Plant Engineer/Boxman
Chicago Boom
Combination Backhoe and Loader up to and including ¾ cu yds
Concrete Batch Plants (wet or dry)
Dozer and/or Push Cat
Pull-Type Elevating Loader
Gradesetter, Grade Checker (GPS, mechanical or otherwise)
Grooving and Grinding Machine
Heading Shield Operator
Heavy Duty Drilling Equipment, Hughes, LDH, Watson 3000 or similar
Heavy Duty Repairman and/or Welder
Lime Spreader
Loader under 4 cu yds
Lubrication and Service Engineer (mobile and grease rack)
Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene and similar)
Miller Formless M-9000 Slope Paver or similar
Portable Crushing and Screening plants
Power Blade Support
Roller Operator, Asphalt
Rubber-Tired Scraper, Self-Loading (paddle-wheels, etc)
Rubber-Tired Earthmoving Equipment (Scrapers)
Slip Form Paver (concrete)
Small Tractor with Drag
Soil Stabilizer (P&H or equal)
Spider Plow and Spider Puller
Timber Skidder
Track Loader up to 4 yards
Tractor Drawn Scraper
Tractor, Compressor Drill Combination
Tubex Pile Rig
Unlicensed Construction Work Boat Operator, On Site
Welder
Woods-Mixer (and other similar Pugmill equipment)

GROUP 5
Cast-In Place Pipe Laying Machine
Combination Slusher and Motor Operator
Concrete Conveyor or Concrete Pump, Truck or Equipment Mounted
Concrete Conveyor, Building Site
Concrete Pump or Pumpcrete Guns
Drilling Equipment, Watson 2000, Texoma 700 or similar
Drilling and Boring Machinery, Horizontal (not to apply to waterlines, wagon drills or jackhammers)
Concrete Mixers/all
Man and/or Material Hoist
Mechanical Finishers (concrete) (Clary, Johnson, Bidwell Bridge Deck or similar types)
Mechanical Burm, Curb and/or Curb and Gutter Machine, Concrete or Asphalt
Mine or Shaft Hoist
Portable Crushers
Power Jumbo Operator (setting slip-forms, etc., in tunnels)
Screedman (automatic or manual)
Self Propelled Compactor with Dozer
Tractor with boom, D6 or smaller
Trenching Machine, maximum digging capacity over 5 ft. depth
Vermeer T-600B Rock Cutter or similar

GROUP 6
Armor-Coater (or similar)
Ballast Jack Tamper
Boom-Type Backfilling Machine
Asst. Plant Engineer
Bridge and/or Gantry Crane
Chemical Grouting Machine, truck mounted
Chip Spreading Machine Operator
Concrete Barrier Moving Machine
Concrete Saws (self-propelled unit on streets, highways, airports, and canals)
Deck Engineer
Drilling Equipment Texoma 600, Hughes 200 series or similar up to and including 30 ft. m.r.c.
Drill Doctor
Helicopter Radioman
Hydro-Hammer or similar
Line Master
Skidsteer Loader, Bobcat larger than 743 series or similar (with attachments)
Locomotive
Rotating Extendable Forklift, Lull Hi-Lift or similar
Assistant to Engineer, Truck Mounted Equipment
Pavement Breaker, Truck Mounted, with compressor combination
Paving Fabric Installation and/or Laying Machine
Pipe Bending Machine (pipelines only)
Pipe Wrapping Machine (Tractor propelled and supported)
Screedman, (except asphaltic concrete paving)
Self-Loading Chipper
Self Propelled Pipeline Wrapping Machine
Tractor

GROUP 7
Ballast Regulator
Cary Lift or similar
Combination Slurry Mixer and/or Cleaner
Drilling Equipment, 20 ft and under m.r.c.
Fireman Hot Plant
Grouting Machine Operator
Highline Cableway Signalman
Stationary Belt Loader (Kolman or similar)
Lift Slab Machine (Vagtborg and similar types)
Maginnes Internal Full Slab Vibrator
Material Hoist (1 Drum)
Mechanical Trench Shield
Partsman (heavy duty repair shop parts room)
Pavement Breaker with or without Compressor Combination
Pipe Cleaning Machine (tractor propelled and supported)
Post Driver
Roller (except Asphalt), Chip Seal
Self Propelled Automatically Applied Concrete Curing Machine (on streets, highways, airports and canals)
Self Propelled Compactor (without dozer)
Signalman
Slip-Form Pumps (lifting device for concrete forms)
Tie Spacer
Trenching Machine (maximum digging capacity up) to and including 5 ft depth
Truck-Mounted Rotating Telescopic Boom Type Lifting Device, Manitex or similar (Boom Truck) - Under 15 tons
Truck Type Loader

GROUP 8
Bit Sharpener
Boiler Tender
Box Operator
Brakeman
Combination Mixer and Compressor (shotcrete/gunite)
Compressor Operator
Deckhand
Fireman
Generators
Gunite/Shotcrete Equipment Operator
Heavy Duty Repairman Helper
Hydraulic Monitor
Ken Seal Machine (or similar)
Mast Type Forklift
Mixermobile
Assistant to Engineer
Pump Operator
Refrigerator Plant
Reservoir-Debris Tug (Self-Propelled Floating)
Ross Carrier (Construction site)
Rotomist Operator
Self Propelled Tape Machine
Shuttlecar
Self Propelled Power Sweeper Operator (Includes Vacuum Sweeper)
Slusher Operator
Surface Heater
Switchman
Tar Pot Fireman
Tugger Hoist, Single Drum
Vacuum Cooling Plant
Welding Machine (powered other than by electricity)

DETERMINATION: NC-23-63-1-2012-1

GROUP 8-A
Articulated Dump Truck Operator
Elevator Operator
Mini Excavator under 25 H.P. (Backhoe-Trencher)
Skidsteer Loader, Bobcat 743 series or
Smaller and similar (without attachments)

GROUP 1-A
Clamshells and Draglines over 7 cu yds
Cranes over 100 tons
Derrick, over 100 tons
Derrick Barge Pedestal mounted over 100 tons
Self Propelled Boom Type Lifting Device Over 100 tons

GROUP 2-A
Clamshells and Draglines over 1 cu yds up to and
Including 7 cu yds
Cranes over 45 tons up to and including 100 tons
Derrick Barge 100 tons and under
Mobile Self-Erecting Tower Crane (Potain) over 3 stories
Self Propelled Boom Type Lifting Device over 45 tons
Tower Cranes

GROUP 3-A
Clamshells and Draglines up to and including 1 cu yd
Cranes 45 tons and under
Mobile Self-Erecting Tower Crane (Potain), 3 stories
and under
Self Propelled Boom Type Lifting Device 45 tons
and under

GROUP 4-A
Boom Truck or dual-purpose A-Frame Truck,
Non-Rotating over 15 tons.
Truck Mounted Rotating Telescopic Boom
Type Lifting Device, Manitex or similar
(Boom Truck -over 15 tons)
Truck-Mounted Rotating Telescopic Boom Type
Lifting Device, Munitex or Similar (Boom Truck),
under 15 tons

DESCRIPTION FOR AREAS 1 AND 2:

Area 1 is all of Northern California within the following Township, State and/or county Boundaries:

Commencing in the Pacific Ocean on the extension of the Southerly line of Township 19S, of the Mount Diablo Base and Meridian,
Thence Easterly along the Southerly line of Township 19S, to the Northwest corner of Township 20S, Range 6E,
Thence Southerly to the Southwest corner of Township 20S, Range 6E,
Thence Easterly to the Northwest corner of Township 21S, Range 7E Thence Southerly to the Southwest corner of Township 21S, Range 7E
Thence Easterly to the Northwest corner of Township 22S, Range 9E,
Thence Southerly to the Southwest corner of Township 22S, Range 9E,
Thence Easterly to the Northwest corner of Township 23S, Range 10E,
Thence Southerly to the Southwest corner of Township 24S, Range 10E,
Thence Easterly to the Southwest corner of Township 24S, Range 31E,
Thence Northerly to the Northeast corner of Township 20S, Range 31E
Thence Westerly to the Southeast corner of Township 19S, Range 29E,
Thence Northerly to the Northeast corner of Township 17S, Range 29E,
Thence Westerly to the Southeast corner of Township 16S, Range 28E,
Thence Northerly to the Northeast corner of Township 13S, Range 28E,
Thence Westerly to the Southeast corner Township 12S, Range 27E,
Thence Northerly to the Northeast corner of Township 12S, Range 27E,
Thence Westerly to the Southeast corner of Township 11S, Range 26E,
Thence Northerly to the Northeast corner of Township 11S, Range 26E,
Thence Westerly to the Southeast corner of Township 10S, Range 25E,
Thence Northerly to the Northeast corner of Township 9S, Range 25E,
Thence Westerly to the Southeast corner of Township 8S, Range 24E,
Thence Northerly to the Northeast corner of Township 8S, Range 24E,
Thence Westerly to the Southeast corner of Township 7S, Range 23E,
Thence Northerly to the Northeast corner of Township 6S, Range 23E,
Thence Westerly to the Southeast corner of Township 5S, Range 20E,
Thence Northerly to the Northeast corner of Township 5S, Range 20E,
Thence Westerly to the Southeast corner of Township 4S, Range 19E,
Thence Northerly to the Northeast corner of Township 1S, Range 19E,
Thence Westerly to the Southeast corner of Township 1N, Range 18E,
Thence Northerly to the Northeast corner of Township 3N, Range 18E,
Thence Westerly to the Southeast corner of Township 4N, Range 17E,
Thence Northerly to the Northeast corner of Township 4N, Range 17E,
Thence Westerly to the Southeast corner of Township 5N, Range 15E,
Thence Northerly to the Northeast corner of Township 5N, Range 15E,
Thence Westerly to the Southeast corner of Township 6N, Range 14E,
Thence Northerly to the Northeast corner of Township 10N, Range 14E,
Thence Easterly along the Southern line of Township 11N, to the California / Nevada State Border,
Thence Northerly along the California / Nevada State Border to the Northerly line of Township 17N,
Thence Westerly to the Southeast corner of Township 18N, Range 10E,
Thence Northerly to the Northeast corner of Township 20N, Range 10E,
Thence Westerly to the Southeast corner of Township 21N, Range 9E,
Thence Northerly to the Northeast corner of Township 21N, Range 9E,
Thence Westerly to the Southeast corner of Township 22N, Range 8E,
Thence Northerly to the Northeast corner of Township 22N, Range 8E,
Thence Westerly to the Northwest corner of Township 22N, Range 8E,
Thence Northerly to the Southwest corner of Township 27N, Range 8E,
Thence Easterly to the Southeast corner of Township 27N, Range 8E,
Thence Northerly to the Northeast corner of Township 28N, Range 8E,
Thence Westerly to the Southeast corner of Township 29N, Range 6E,
Thence Northerly to the Northeast corner of Township 32N, Range 6E,
Thence Westerly to the Northwest corner of Township 32 N, Range 6E,
Thence Northerly to the Northeast corner of Township 35N, Range 5E,
Thence Westerly to the Southeast corner of Township 36N, Range 3E,
Thence Northerly to the Northeast corner of township 36N, Range 3E,
Thence Westerly to the Southeast corner of Township 37N, Range 1W,
Thence Northerly to the Northeast corner of Township 38N, Range 1W,
Thence Westerly to the Southeast corner of Township 39N, Range 2W,
Thence Northerly to the Northeast corner of Township 40N, Range 2W,
Thence Westerly to the Southeast corner of Township 41N, Range 4W,
Thence Northerly to the Northeast corner of Township 42N, Range 4W,
Thence Westerly to the Southeast corner of Township 43N, Range 5W,
Thence Northerly to the California / Oregon State Border,
Thence Westerly along the California / Oregon State Border to the Westerly Boundary of Township Range 8W,
Thence Southerly to the Southwest corner of Township 43N, Range 8W,
Thence Easterly to the Southeast corner of Township 43N, Range 8W,
Thence Southerly to the Southwest corner of Township 42N, Range 7W,
Thence Easterly to the Southeast corner of Township 42N, Range 7W,
Thence Southerly to the Southwest corner of Township 41N, Range 6W,
Thence Easterly to the Northwest corner of Township 40N, Range 5W,
Thence Southerly to the Southwest corner of Township 38N, Range 5W,
Thence Westerly to the Northwest corner of Township 37N, Range 6W,
Thence Southerly to the Southwest corner of Township 35N, Range 6W,
Thence Westerly to the Northwest corner of Township 34N, Range 10W,
Thence Southerly to the Southwest corner of Township 31N, Range 10W,
Thence Easterly to the Northwest corner of Township 30N, Range 9W,
Thence Southerly to the Southwest corner of Township 30N, Range 9W,
Thence Easterly to the Northwest corner of Township 29N, Range 8W,
Thence Southerly to the Southwest corner of Township 23N, Range 8W,
Thence Easterly to the Northwest corner of Township 22N, Range 6W,
Thence Southerly to the Southwest corner of Township 16N, Range 6W,
Thence Westerly to the Southeast corner of Township 16N, Range 9W,
Thence Northerly to the Northeast corner of Township 16N, Range 9W,
Thence Westerly to the Southeast. corner of Township 17N, Range 12W,
Thence Northerly to the Northeast corner of Township 18N, Range 12W,
Thence Westerly to the Northwest corner of Township 18N, Range 15W,
Thence Southerly to the Southwest corner of Township 14N, Range 15W,
Thence Easterly to the Northwest corner of Township 13N, Range 14W,
Thence Southerly to the Southwest corner of Township 13N, Range 14W,
Thence Easterly to the Northwest corner of Township 12N, Range 13W,
Thence Southerly to the Southwest corner of Township 12N, Range 13W,
Thence Easterly to the Northwest corner of Township 11N, Range 12W,
Thence Southerly into the Pacific Ocean
and Commencing in the Pacific Ocean on the extension of the Humboldt Base Line,
Thence Easterly to the Northwest corner of Township 1S, Range 2E,
Thence Southerly to the Southwest corner of Township 2S, Range 2E,
Thence Easterly to the Northwest corner of Township 3S, Range 3E,
Thence Southerly to the Southwest corner of Township 5S, Range 3E,
Thence Easterly to the Southeast corner of Township 5S, Range 4E,
Thence Northerly to the Northeast corner of Township 4S, Range 4E,
Thence Westerly to the Southeast corner of Township 3S, Range 3E,
Thence Northerly to the Northeast corner of Township 5N, Range 3E,
Thence Easterly to the Southeast corner of Township 6N, Range 5E,
Thence Northerly to the Northeast corner of Township 7N, Range 5E,
Thence Westerly to the Southeast corner of Township 8N, Range 3E,
Thence Northerly to the Northeast corner of Township 9N, Range 3E,
Thence Westerly to the Southeast corner of Township 10N, Range 1E,
Thence Northerly to the Northeast corner of Township 13N, Range 1E,
Thence Westerly into the Pacific Ocean,
excluding that portion of Northern California contained within the following lines:
Commencing at the Southwest corner of Township 12N, Range 11E, of the Mount Diablo Base and Meridian,
Thence Easterly to the Southeast corner of Township 12N, Range 16E,
Thence Northerly to the Northeast corner of Township 12N, Range 16E,
Thence Westerly to the Southeast corner of Township 13N, Range 15E,
Thence Northerly to the Northeast corner of Township 13N, Range 15E,
Thence Westerly to the Southeast corner of Township 14N, Range 14E,
Thence Northerly to the Northeast corner of Township 16N, Range 14E,
Thence Westerly to the Northwest corner of Township 16N, Range 12E,
Thence Southerly to the Southwest corner of Township 16N, Range 12E,
Thence Westerly to the Northwest corner of Township 15N, Range 11E,
Thence Southerly to the point of beginning at the Southwest corner of Township 12N, Range 11E,

Area 2 shall be all areas not part of Area 1 described above.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: # OPERATING ENGINEER (HEAVY AND HIGHWAY WORK)**
**(SPECIAL SINGLE AND SECOND SHIFT)**

**DETERMINATION:** NC-23-63-1-2012-1
**ISSUE DATE:** August 22, 2012
**EXPIRATION DATE OF DETERMINATION:** June 30, 2013* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director – Research Unit at (415) 703-4774 for the new rates after ten days after the expiration date if no subsequent determination is issued.

**LOCALITY:** All localities within Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba counties.

| Classification (Journeyperson) | Basic Hourly Rate | | Employer Payments: Health and Welfare | Pension | Vacation and Holiday* | Training | Other Payments | Straight-Time: Hours | Total Hourly Rate | | Overtime Hourly Rate: Daily/ Saturday[d] 1 1/2X | | Sunday and Holiday 2X | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Classification Group[a] | Area 1[b] | Area 2[c] | | | | | | | Area 1[b] | Area 2[c] | Area 1[b] | Area 2[c] | Area 1[b] | Area 2[c] |
| Group 1 | $42.10 | $44.10 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $68.57 | $70.57 | $89.62 | $92.62 | $110.67 | $114.67 |
| Group 2 | $40.37 | $42.37 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $66.84 | $68.84 | $87.03 | $90.03 | $107.21 | $111.21 |
| Group 3 | $38.71 | $40.71 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $65.18 | $67.18 | $84.54 | $87.54 | $103.89 | $107.89 |
| Group 4 | $37.15 | $39.15 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $63.62 | $65.62 | $82.20 | $85.20 | $100.77 | $104.77 |
| Group 5 | $35.73 | $37.73 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $62.20 | $64.20 | $80.07 | $83.07 | $97.93 | $101.93 |
| Group 6 | $34.23 | $36.23 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $60.70 | $62.70 | $77.82 | $80.82 | $94.93 | $98.93 |
| Group 7 | $32.95 | $34.95 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $59.42 | $61.42 | $75.90 | $78.90 | $92.37 | $96.37 |
| Group 8 | $31.68 | $33.68 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $58.15 | $60.15 | $73.99 | $76.99 | $89.83 | $93.83 |
| Group 8-A | $29.17 | $31.17 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $55.64 | $57.64 | $70.23 | $73.23 | $84.81 | $88.81 |
| Group 1-A | $43.08 | $45.08 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $69.55 | $71.55 | $91.09 | $94.09 | $112.63 | $116.63 |
| Truck Crane Assistant to Engineer | $35.25 | $37.25 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $61.72 | $63.72 | $79.35 | $82.35 | $96.97 | $100.97 |
| Assistant to Engineer | $32.66 | $34.66 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $59.13 | $61.13 | $75.46 | $78.46 | $91.79 | $95.79 |
| Group 2-A | $41.09 | $43.09 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $67.56 | $69.56 | $88.11 | $91.11 | $108.65 | $112.65 |
| Truck Crane Assistant to Engineer | $34.96 | $36.96 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $61.43 | $63.43 | $78.91 | $81.91 | $96.39 | $100.39 |
| Assistant to Engineer | $32.43 | $34.43 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $58.90 | $60.90 | $75.12 | $78.12 | $91.33 | $95.33 |
| Group 3-A | $39.13 | $41.13 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $65.60 | $67.60 | $85.17 | $88.17 | $104.73 | $108.73 |
| Truck Crane Assistant to Engineer | $34.69 | $36.69 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $61.16 | $63.16 | $78.51 | $81.51 | $95.85 | $99.85 |
| Hydraulic | $34.23 | $36.23 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $60.70 | $62.70 | $77.82 | $80.82 | $94.93 | $98.93 |
| Assistant to Engineer | $32.12 | $34.12 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $58.59 | $60.59 | $74.65 | $77.65 | $90.71 | $94.71 |
| Group 4-A | $35.73 | $37.73 | $12.53 | $8.89 | $3.70 | $0.62 | $0.73 | 8 | $62.20 | $64.20 | $80.07 | $83.07 | $97.93 | $101.93 |

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

[a] For classifications within each group, see pages 39B-40.

[b] AREA 1 - Alameda, Contra Costa, Butte, Marin, Merced, Napa, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Stanislaus, Sutter, Yolo and Yuba counties; and portions of Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Monterey, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sonoma, Tehama, Tulare, Tuolumne and Trinity counties.

[c] AREA 2 - Del Norte and Modoc, and portions of Alpine, Amador, Calaveras, Colusa, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Mariposa, Mendocino, Monterey, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sonoma, Tehama, Tulare, Tuolumne and Trinity counties. (Portions of counties falling in each area detailed on page 41).

[d] Saturday in the same work week may be worked at straight-time if a job is shut down during the normal work week due to inclement weather.

* Includes an amount for supplemental dues.

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

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

# Exhibit I

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: # OPERATING ENGINEER (HEAVY AND HIGHWAY WORK)**

**DETERMINATION:** NC-23-63-1-2015-1
**ISSUE DATE:** February 22, 2015
**EXPIRATION DATE OF DETERMINATION:** June 28, 2015** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba counties.

| | | | Employer Payments | | | | | Straight-Time | | | Overtime Hourly Rate | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Classification (Journeyperson) | Basic Hourly Rate | | Health and Welfare | Pension | Vacation and Holiday[g] | Training | Other Payments | Hours[f] | Total Hourly Rate | | Daily/ Saturday[d] 1 1/2X | | Sunday and Holiday 2X | |
| Classification Group[a] | Area 1[b] | Area 2[c] | | | | | | | Area 1[b] | Area 2[c] | Area 1[b] | Area 2[c] | Area 1[b] | Area 2[c] |
| Group 1 | $39.85 | $41.85 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $68.30 | $70.30 | $88.23 | $91.23 | $108.15 | $112.15 |
| Group 2 | $38.32 | $40.32 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $66.77 | $68.77 | $85.93 | $88.93 | $105.09 | $109.09 |
| Group 3 | $36.84 | $38.84 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $65.29 | $67.29 | $83.71 | $86.71 | $102.13 | $106.13 |
| Group 4 | $35.46 | $37.46 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $63.91 | $65.91 | $81.64 | $84.64 | $99.37 | $103.37 |
| Group 5 | $34.19 | $36.19 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $62.64 | $64.64 | $79.74 | $82.74 | $96.83 | $100.83 |
| Group 6 | $32.87 | $34.87 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $61.32 | $63.32 | $77.76 | $80.76 | $94.19 | $98.19 |
| Group 7 | $31.73 | $33.73 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $60.18 | $62.18 | $76.05 | $79.05 | $91.91 | $95.91 |
| Group 8 | $30.59 | $32.59 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $59.04 | $61.04 | $74.34 | $77.34 | $89.63 | $93.63 |
| Group 8-A | $28.38 | $30.38 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $56.83 | $58.83 | $71.02 | $74.02 | $85.21 | $89.21 |
| Group 1-A | $40.73 | $42.73 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $69.18 | $71.18 | $89.55 | $92.55 | $109.91 | $113.91 |
| Truck Crane Assistant to Engineer | $33.76 | $35.76 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $62.21 | $64.21 | $79.09 | $82.09 | $95.97 | $99.97 |
| Assistant to Engineer | $31.47 | $33.47 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $59.92 | $61.92 | $75.66 | $78.66 | $91.39 | $95.39 |
| Group 2-A | $38.97 | $40.97 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $67.42 | $69.42 | $86.91 | $89.91 | $106.39 | $110.39 |
| Truck Crane Assistant to Engineer | $33.50 | $35.50 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $61.95 | $63.95 | $78.70 | $81.70 | $95.45 | $99.45 |
| Assistant to Engineer | $31.26 | $33.26 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $59.71 | $61.71 | $75.34 | $78.34 | $90.97 | $94.97 |
| Group 3-A | $37.23 | $39.23 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $65.68 | $67.68 | $84.30 | $87.30 | $102.91 | $106.91 |
| Truck Crane Assistant to Engineer | $33.26 | $35.26 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $61.71 | $63.71 | $78.34 | $81.34 | $94.97 | $98.97 |
| Hydraulic Assistant to Engineer | $32.87 | $34.87 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $61.32 | $63.32 | $77.76 | $80.76 | $94.19 | $98.19 |
| Group 4-A | $30.98 | $32.98 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $59.43 | $61.43 | $74.92 | $77.92 | $90.41 | $94.41 |
| | $34.19 | $36.19 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $62.64 | $64.64 | $79.74 | $82.74 | $96.83 | $100.83 |

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

[a] For classifications within each group, see pages 39B-40.

[b] AREA 1 - Alameda, Butte, Contra Costa, Kings, Marin, Merced, Napa, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Stanislaus, Sutter, Yolo and Yuba counties; and portions of Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Mariposa, Mendocino, Monterey, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sonoma, Tehama, Tulare, Tuolumne and Trinity counties.

[c] AREA 2 - Modoc, and portions of Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Mariposa, Mendocino, Monterey, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sonoma, Tehama, Tulare, Tuolumne and Trinity counties. (Portions of counties falling in each area detailed on page 41).

[d] Saturday in the same work week may be worked at straight-time if a job is shut down during the normal work week due to inclement weather.

[e] Includes an amount for supplemental dues.

[f] When three shifts are employed for five (5) or more consecutive days, seven and one-half (7 1/2) consecutive hours (exclusive of meal period), shall constitute a day of work, for which eight (8) times the straight time hourly rate shall be paid at the non-shift wage rate for the second shift. The third shift shall be seven (7) hours of work for eight (8) hours of pay at the non-shift wage rate.

NOTE: For Special Single and Second Shift rates, please see page 39A.

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

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

DETERMINATION: NC-23-63-1-2015-1

CLASSIFICATIONS

GROUP 1
Drill Equipment, over 200,000 lbs
Operator of Helicopter (when used in erection work)
Hydraulic Excavator 7 cu yds and over
Power Shovels, over 7 cu yds

GROUP 2
Highline Cableway
Hydraulic Excavator 3 1/2 cu yds up to 7 cu yds
Licensed Construction Work Boat Operator, On Site
Microtunneling Machine
Power Blade Operator (finish)
Power Shovels, (over 1 cu yd and up to and including 7 cu yds m.r.c.)

GROUP 3
Asphalt Milling Machine
Cable Backhoe
Combination Backhoe and Loader over ¾ cu yds
Continuous Flight Tie Back Machine
Crane Mounted Continuous Flight Tie Back Machine, tonnage to apply
Crane Mounted Drill Attachments, Tonnage to apply
Dozer, Slope Board
Drill Equipment, over 100,000 lbs up to and including 200,000 lbs
Gradall
Hydraulic Excavator up to 3 1/2 cu yds
Loader 4 cu yds and over
Long Reach Excavator
Multiple Engine Scrapers (when used as push pull)
Power Shovels, up to and including 1 cu yd
Pre-Stress Wire Wrapping machine
Side Boom Cat, 572 or larger
Track Loader 4 cu yds and over
Wheel Excavator (up to and including 750 cu yds per hour)

GROUP 4
Asphalt Plant Engineer/Boxman
Chicago Boom
Combination Backhoe and Loader up to and including ¾ cu yds
Concrete Batch Plants (wet or dry)
Dozer and/or Push Cat
Drill Equipment, over 50,000 lbs up to and including 100,000 lbs
Pull-Type Elevating Loader
Gradesetter, Grade Checker (GPS, mechanical or otherwise)
Grooving and Grinding Machine
Heading Shield Operator
Heavy Duty Drilling Equipment, Hughes, LDH, Watson 3000 or similar
Heavy Duty Repairman and/or Welder
Lime Spreader
Loader under 4 cu yds
Lubrication and Service Engineer (mobile and grease rack)
Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene and similar)
Miller Formless M-9000 Slope Paver or similar
Portable Crushing and Screening plants
Power Blade Support
Roller Operator, Asphalt
Rubber-Tired Scraper, Self-Loading (paddle-wheels, etc)
Rubber-Tired Earthmoving Equipment (Scrapers)
Slip Form Paver (concrete)
Small Tractor with Drag
Soil Stabilizer (P&H or equal)
Spider Plow and Spider Puller
Timber Skidder
Track Loader up to 4 yards
Tractor Drawn Scraper
Tractor, Compressor Drill Combination
Tubex Pile Rig
Unlicensed Construction Work Boat Operator, On Site
Welder
Woods-Mixer (and other similar Pugmill equipment)

GROUP 5
Cast-In Place Pipe Laying Machine
Combination Slusher and Motor Operator
Concrete Conveyor or Concrete Pump, Truck or Equipment Mounted
Concrete Conveyor, Building Site
Concrete Pump or Pumpcrete Guns
Drilling Equipment, Watson 2000, Texoma 700 or similar
Drilling and Boring Machinery, Horizontal (not to apply to waterlines, wagon drills or jackhammers)
Concrete Mixers/all
Man and/or Material Hoist
Mechanical Finishers (concrete) (Clary, Johnson, Bidwell Bridge Deck or similar types)
Mechanical Burm, Curb and/or Curb and Gutter Machine, Concrete or Asphalt
Mine or Shaft Hoist
Portable Crushers
Power Jumbo Operator (setting slip-forms, etc., in tunnels)
Screedman (automatic or manual)
Self Propelled Compactor with Dozer
Tractor with boom, D6 or smaller
Trenching Machine, maximum digging capacity over 5 ft. depth
Vermeer T-600B Rock Cutter or similar

GROUP 6
Armor-Coater (or similar)
Ballast Jack Tamper
Boom-Type Backfilling Machine
Asst. Plant Engineer
Bridge and/or Gantry Crane
Chemical Grouting Machine, truck mounted
Chip Spreading Machine Operator
Concrete Barrier Moving Machine
Concrete Saws (self-propelled unit on streets, highways, airports, and canals)
Deck Engineer
Drill Doctor
Drill Equipment, over 25,000 lbs up to and including 50,000 lbs
Drilling Equipment Texoma 600, Hughes 200 series or similar up to and including 30 ft. m.r.c.
Helicopter Radioman
Hydro-Hammer or similar
Line Master
Skidsteer Loader, Bobcat larger than 743 series or similar (with attachments)
Locomotive
Rotating Extendable Forklift, Lull Hi-Lift or similar
Assistant to Engineer, Truck Mounted Equipment
Pavement Breaker, Truck Mounted, with compressor combination
Paving Fabric Installation and/or Laying Machine
Pipe Bending Machine (pipelines only)
Pipe Wrapping Machine (Tractor propelled and supported)
Screedman, (except asphaltic concrete paving)
Self-Loading Chipper
Self Propelled Pipeline Wrapping Machine
Tractor

GROUP 7
Ballast Regulator
Cary Lift or similar
Combination Slurry Mixer and/or Cleaner
Coolant/Slurry Tanker Operator (hooked to Grooving/Grinding Machine)
Drilling Equipment, 20 ft and under m.r.c.
Drill Equipment, over 1,000 lbs up to and including 25,000 lbs
Fireman Hot Plant
Grouting Machine Operator
Highline Cableway Signalman
Stationary Belt Loader (Kolman or similar)
Lift Slab Machine (Vagtborg and similar types)
Maginnes Internal Full Slab Vibrator
Material Hoist (1 Drum)
Mechanical Trench Shield
Partsman (heavy duty repair shop parts room)
Pavement Breaker with or without Compressor Combination
Pipe Cleaning Machine (tractor propelled and supported)
Post Driver
Roller (except Asphalt), Chip Seal
Self Propelled Automatically Applied Concrete Curing Machine (on streets, highways, airports and canals)
Self Propelled Compactor (without dozer)
Signalman
Slip-Form Pumps (lifting device for concrete forms)
Super Sucker Vacuum Truck
Tie Spacer
Trenching Machine (maximum digging capacity up) to and including 5 ft depth
Truck-Mounted Rotating Telescopic Boom Type Lifting Device, Manitex or similar (Boom Truck) - Under 15 tons
Truck Type Loader

GROUP 8
Bit Sharpener
Boiler Tender
Box Operator
Brakeman
Combination Mixer and Compressor (shotcrete/gunite)
Compressor Operator
Deckhand
Fireman
Generators
Gunite/Shotcrete Equipment Operator
Heavy Duty Repairman Helper
Hydraulic Monitor
Ken Seal Machine (or similar)
Mast Type Forklift
Mixermobile
Assistant to Engineer
Pump Operator
Refrigerator Plant
Reservoir-Debris Tug (Self-Propelled Floating)
Ross Carrier (Construction site)
Rotomist Operator
Self Propelled Tape Machine
Shuttlecar
Self Propelled Power Sweeper Operator (Includes Vacuum Sweeper)
Slusher Operator
Surface Heater
Switchman
Tar Pot Fireman
Tugger Hoist, Single Drum
Vacuum Cooling Plant
Welding Machine (powered other than by electricity)

GROUP 8-A
Articulated Dump Truck Operator
Elevator Operator
Mini Excavator under 25 H.P. (Backhoe-Trencher)
Skidsteer Loader, Bobcat 743 series or
Smaller and similar (without attachments)

GROUP 1-A
Clamshells and Draglines over 7 cu yds
Cranes over 100 tons
Derrick, over 100 tons
Derrick Barge Pedestal mounted over 100 tons
Self Propelled Boom Type Lifting Device Over 100 tons

GROUP 2-A
Clamshells and Draglines over 1 cu yds up to and including 7 cu yds
Cranes over 45 tons up to and including 100 tons
Derrick Barge 100 tons and under
Mobile Self-Erecting Tower Crane (Potain) over 3 stories
Self Propelled Boom Type Lifting Device over 45 tons
Tower Cranes

GROUP 3-A
Clamshells and Draglines up to and including 1 cu yd
Cranes 45 tons and under
Mobile Self-Erecting Tower Crane (Potain), 3 stories and under
Self Propelled Boom Type Lifting Device 45 tons and under

GROUP 4-A
Boom Truck or dual-purpose A-Frame Truck, Non-Rotating over 15 tons.
Truck Mounted Rotating Telescopic Boom Type Lifting Device, Manitex or similar (Boom Truck -over 15 tons)
Truck-Mounted Rotating Telescopic Boom Type Lifting Device, Manitex or Similar (Boom Truck), under 15 tons

DESCRIPTION FOR AREAS 1 AND 2:

Area 1 is all of Northern California within the following Township, State and/or county Boundaries:

Commencing in the Pacific Ocean on the extension of the Southerly line of Township 19S, of the Mount Diablo Base and Meridian,
Thence Easterly along the Southerly line of Township 19S, to the Northwest corner of Township 20S, Range 6E,
Thence Southerly to the Southwest corner of Township 20S, Range 6E,
Thence Easterly to the Northwest corner of Township 21S, Range 7E Thence Southerly to the Southwest corner of Township 21S, Range 7E
Thence Easterly to the Northwest corner of Township 22S, Range 9E,
Thence Southerly to the Southwest corner of Township 22S, Range 9E,
Thence Easterly to the Northwest corner of Township 23S, Range 10E,
Thence Southerly to the Southwest corner of Township 24S, Range 10E,
Thence Easterly to the Southwest corner of Township 24S, Range 31E,
Thence Northerly to the Northeast corner of Township 20S, Range 31E
Thence Westerly to the Southeast corner of Township 19S, Range 29E,
Thence Northerly to the Northeast corner of Township 17S, Range 29E,
Thence Westerly to the Southeast corner of Township 16S, Range 28E,
Thence Northerly to the Northeast corner of Township 13S, Range 28E,
Thence Westerly to the Southeast corner Township 12S, Range 27E,
Thence Northerly to the Northeast corner of Township 12S, Range 27E,
Thence Westerly to the Southeast corner of Township 11S, Range 26E,
Thence Northerly to the Northeast corner of Township 11S, Range 26E,
Thence Westerly to the Southeast corner of Township 10S, Range 25E,
Thence Northerly to the Northeast corner of Township 9S, Range 25E,
Thence Westerly to the Southeast corner of Township 8S, Range 24E,
Thence Northerly to the Northeast corner of Township 8S, Range 24E,
Thence Westerly to the Southeast corner of Township 7S, Range 23E,
Thence Northerly to the Northeast corner of Township 6S, Range 23E,
Thence Westerly to the Southeast corner of Township 5S, Range 20E,
Thence Northerly to the Northeast corner of Township 5S, Range 20E,
Thence Westerly to the Southeast corner of Township 4S, Range 19E,
Thence Northerly to the Northeast corner of Township 1S, Range 19E,
Thence Westerly to the Southeast corner of Township 1N, Range 18E,
Thence Northerly to the Northeast corner of Township 3N, Range 18E,
Thence Westerly to the Southeast corner of Township 4N, Range 17E,
Thence Northerly to the Northeast corner of Township 4N, Range 17E,
Thence Westerly to the Southeast corner of Township 5N, Range 15E,
Thence Northerly to the Northeast corner of Township 5N, Range 15E,
Thence Westerly to the Southeast corner of Township 6N, Range 14E,
Thence Northerly to the Northeast corner of Township 10N, Range 14E,
Thence Easterly along the Southern line of Township 11N, to the California / Nevada State Border,
Thence Northerly along the California / Nevada State Border to the Northerly line of Township 17N,
Thence Westerly to the Southeast corner of Township 18N, Range 10E,
Thence Northerly to the Northeast corner of Township 20N, Range 10E,
Thence Westerly to the Southeast corner of Township 21N, Range 9E,
Thence Northerly to the Northeast corner of Township 21N, Range 9E,
Thence Westerly to the Southeast corner of Township 22N, Range 8E,
Thence Northerly to the Northeast corner of Township 22N, Range 8E,
Thence Westerly to the Northwest corner of Township 22N, Range 8E,
Thence Northerly to the Southwest corner of Township 27N, Range 8E,
Thence Easterly to the Southeast corner of Township 27N, Range 8E,
Thence Northerly to the Northeast corner of Township 28N, Range 8E,
Thence Westerly to the Southeast corner of Township 29N, Range 6E,
Thence Northerly to the Northeast corner of Township 32N, Range 6E,
Thence Westerly to the Northwest corner of Township 32 N, Range 6E,
Thence Northerly to the Northeast corner of Township 35N, Range 5E,
Thence Westerly to the Southeast corner of Township 36N, Range 3E,
Thence Northerly to the Northeast corner of township 36N, Range 3E,
Thence Westerly to the Southeast corner of Township 37N, Range 1W,
Thence Northerly to the Northeast corner of Township 38N, Range 1W,
Thence Westerly to the Southeast corner of Township 39N, Range 2W,
Thence Northerly to the Northeast corner of Township 40N, Range 2W,
Thence Westerly to the Southeast corner of Township 41N, Range 4W,
Thence Northerly to the Northeast corner of Township 42N, Range 4W,
Thence Westerly to the Southeast corner of Township 43N, Range 5W,
Thence Northerly to the California / Oregon State Border,
Thence Westerly along the California / Oregon State Border to the Westerly Boundary of Township Range 8W,
Thence Southerly to the Southwest corner of Township 43N, Range 8W,
Thence Easterly to the Southeast corner of Township 43N, Range 8W,
Thence Southerly to the Southwest corner of Township 42N, Range 7W,
Thence Easterly to the Southeast corner of Township 42N, Range 7W,
Thence Southerly to the Southwest corner of Township 41N, Range 6W,
Thence Easterly to the Northwest corner of Township 40N, Range 5W,
Thence Southerly to the Southwest corner of Township 38N, Range 5W,
Thence Westerly to the Northwest corner of Township 37N, Range 6W,
Thence Southerly to the Southwest corner of Township 35N, Range 6W,
Thence Westerly to the Northwest corner of Township 34N, Range 10W,
Thence Southerly to the Southwest corner of Township 31N, Range 10W,
Thence Easterly to the Northwest corner of Township 30N, Range 9W,
Thence Southerly to the Southwest corner of Township 30N, Range 9W,
Thence Easterly to the Northwest corner of Township 29N, Range 8W,
Thence Southerly to the Southwest corner of Township 23N, Range 8W,
Thence Easterly to the Northwest corner of Township 22N, Range 6W,
Thence Southerly to the Southwest corner of Township 16N, Range 6W,
Thence Westerly to the Southeast corner of Township 16N, Range 9W,
Thence Northerly to the Northeast corner of Township 16N, Range 9W,
Thence Westerly to the Southeast corner of Township 17N, Range 12W,
Thence Northerly to the Northeast corner of Township 18N, Range 12W,
Thence Westerly to the Northwest corner of Township 18N, Range 15W,
Thence Southerly to the Southwest corner of Township 14N, Range 15W,
Thence Easterly to the Northwest corner of Township 13N, Range 14W,
Thence Southerly to the Southwest corner of Township 13N, Range 14W,
Thence Easterly to the Northwest corner of Township 12N, Range 13W,
Thence Southerly to the Southwest corner of Township 12N, Range 13W,
Thence Easterly to the Northwest corner of Township 11N, Range 12W,
Thence Southerly into the Pacific Ocean
and Commencing in the Pacific Ocean on the extension of the Humboldt Base Line,
Thence Easterly to the Northwest corner of Township 1S, Range 2E,
Thence Southerly to the Southwest corner of Township 2S, Range 2E,
Thence Easterly to the Northwest corner of Township 3S, Range 3E,
Thence Southerly to the Southwest corner of Township 5S, Range 3E,
Thence Easterly to the Southeast corner of Township 5S, Range 4E,
Thence Northerly to the Northeast corner of Township 4S, Range 4E,
Thence Westerly to the Southeast corner of Township 3S, Range 3E,
Thence Northerly to the Northeast corner of Township 5N, Range 3E,
Thence Easterly to the Southeast corner of Township 6N, Range 5E,
Thence Northerly to the Northeast corner of Township 7N, Range 5E,
Thence Westerly to the Southeast corner of Township 8N, Range 3E,
Thence Northerly to the Northeast corner of Township 9N, Range 3E,
Thence Westerly to the Southeast corner of Township 10N, Range 1E,
Thence Northerly to the Northeast corner of Township 13N, Range 1E,
Thence Westerly into the Pacific Ocean,
excluding that portion of Northern California contained within the following lines:
Commencing at the Southwest corner of Township 12N, Range 11E, of the Mount Diablo Base and Meridian,
Thence Easterly to the Southeast corner of Township 12N, Range 16E,
Thence Northerly to the Northeast corner of Township 12N, Range 16E,
Thence Westerly to the Southeast corner of Township 13N, Range 15E,
Thence Northerly to the Northeast corner of Township 13N, Range 15E,
Thence Westerly to the Southeast corner of Township 14N, Range 14E,
Thence Northerly to the Northeast corner of Township 16N, Range 14E,
Thence Westerly to the Northwest corner of Township 16N, Range 12E,
Thence Southerly to the Southwest corner of Township 16N, Range 12E,
Thence Westerly to the Northwest corner of Township 15N, Range 11E,
Thence Southerly to the point of beginning at the Southwest corner of Township 12N, Range 11E,

Area 2 shall be all areas not part of Area 1 described above.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: # OPERATING ENGINEER (HEAVY AND HIGHWAY WORK)**
**(SPECIAL SINGLE AND SECOND SHIFT)**

**DETERMINATION:** NC-23-63-1-2015-1
**ISSUE DATE:** February 22, 2015
**EXPIRATION DATE OF DETERMINATION:** June 28, 2015** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba counties.

| Classification (Journeyperson) | Basic Hourly Rate | | Employer Payments: Health and Welfare | Pension | Vacation and Holiday[a] | Training | Other Payments | Hours | Straight-Time: Total Hourly Rate | | Overtime Hourly Rate: Daily/ Saturday[d] 1 1/2X | | Sunday and Holiday 2X | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Classification Group[a] | Area 1[b] | Area 2[c] | | | | | | | Area 1[b] | Area 2[c] | Area 1[b] | Area 2[c] | Area 1[b] | Area 2[c] |
| Group 1 | $44.18 | $46.18 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $72.63 | $74.63 | $94.72 | $97.72 | $116.81 | $120.81 |
| Group 2 | $42.45 | $44.45 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $70.90 | $72.90 | $92.13 | $95.13 | $113.35 | $117.35 |
| Group 3 | $40.79 | $42.79 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $69.24 | $71.24 | $89.64 | $92.64 | $110.03 | $114.03 |
| Group 4 | $39.23 | $41.23 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $67.68 | $69.68 | $87.30 | $90.30 | $106.91 | $110.91 |
| Group 5 | $37.81 | $39.81 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $66.26 | $68.26 | $85.17 | $88.17 | $104.07 | $108.07 |
| Group 6 | $36.31 | $38.31 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $64.76 | $66.76 | $82.92 | $85.92 | $101.07 | $105.07 |
| Group 7 | $35.03 | $37.03 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $63.48 | $65.48 | $81.00 | $84.00 | $98.51 | $102.51 |
| Group 8 | $33.76 | $35.76 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $62.21 | $64.21 | $79.09 | $82.09 | $95.97 | $99.97 |
| Group 8-A | $31.25 | $33.25 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $59.70 | $61.70 | $75.33 | $78.33 | $90.95 | $94.95 |
| Group 1-A | $45.16 | $47.16 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $73.61 | $75.61 | $96.19 | $99.19 | $118.77 | $122.77 |
| Truck Crane Assistant to Engineer | $37.33 | $39.33 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $65.78 | $67.78 | $84.45 | $87.45 | $103.11 | $107.11 |
| Assistant to Engineer | $34.74 | $36.74 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $63.19 | $65.19 | $80.56 | $83.56 | $97.93 | $101.93 |
| Group 2-A | $43.17 | $45.17 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $71.62 | $73.62 | $93.21 | $96.21 | $114.79 | $118.79 |
| Truck Crane Assistant to Engineer | $37.04 | $39.04 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $65.49 | $67.49 | $84.01 | $87.01 | $102.53 | $106.53 |
| Assistant to Engineer | $34.51 | $36.51 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $62.96 | $64.96 | $80.22 | $83.22 | $97.47 | $101.47 |
| Group 3-A | $41.21 | $43.21 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $69.66 | $71.66 | $90.27 | $93.27 | $110.87 | $114.87 |
| Truck Crane Assistant to Engineer | $36.77 | $38.77 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $65.22 | $67.22 | $83.61 | $86.61 | $101.99 | $105.99 |
| Hydraulic | $36.31 | $38.31 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $64.76 | $66.76 | $82.92 | $85.92 | $101.07 | $105.07 |
| Assistant to Engineer | $34.20 | $36.20 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $62.65 | $64.65 | $79.75 | $82.75 | $96.85 | $100.85 |
| Group 4-A | $37.81 | $39.81 | $13.03 | $10.15 | $3.86 | $0.67 | $0.74 | 8 | $66.26 | $68.26 | $85.17 | $88.17 | $104.07 | $108.07 |

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

[a] For classifications within each group, see pages 39B-40.

[b] AREA 1 - Alameda, Butte, Contra Costa, Kings, Marin, Merced, Napa, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Stanislaus, Sutter, Yolo and Yuba counties; and portions of Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Mariposa, Mendocino, Monterey, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sonoma, Tehama, Tulare, Tuolumne and Trinity counties.

[c] AREA 2 - Modoc, and portions of Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Mariposa, Mendocino, Monterey, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sonoma, Tehama, Tulare, Tuolumne and Trinity counties. (Portions of counties falling in each area detailed on page 41).

[d] Saturday in the same work week may be worked at straight-time if a job is shut down during the normal work week due to inclement weather.

[e] Includes an amount for supplemental dues.

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

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

# Exhibit J

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
Office of the Director – Research Unit
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

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

# TRAVEL AND SUBSISTENCE PROVISION

# FOR

# OPERATING ENGINEER (HEAVY & HIGHWAY WORK), OPERATING ENGINEER (BUILDING CONSTRUCTION), STEEL ERECTOR & FABRICATOR (OPERATING ENGINEER - BUILDING CONSTRUCTION), STEEL ERECTOR AND FABRICATOR (OPERATING ENGINEER - HEAVY & HIGHWAY WORK), PILE DRIVER (OPERATING ENGINEER - HEAVY & HIGHWAY WORK), PILE DRIVER (OPERATING ENGINEER - BUILDING CONSTRUCTION), TUNNEL / UNDERGROUND (OPERATING ENGINEER - HEAVY & HIGHWAY WORK)

# IN

# ALAMEDA[1], ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, CONTRA COSTA[1], DEL NORTE, EL DORADO, FRESNO, GLENN, HUMBOLDT, KINGS, LAKE, LASSEN, MADERA, MARIN[1], MARIPOSA, MENDOCINO, MERCED, MODOC, MONTEREY, NAPA, NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN BENITO, SAN FRANCISCO[1], SAN JOAQUIN, SAN MATEO[1], SANTA CLARA[1], SANTA CRUZ, SHASTA, SIERRA, SISKIYOU, SOLANO[1], SONOMA, STANISLAUS, SUTTER, TEHAMA, TRINITY, TULARE, TUOLUMNE, YOLO AND YUBA COUNTIES

[1]County not covered by Operating Engineer (Building Construction), Steel Erector and Fabricator (Operating Engineer - Building Construction), and Pile Driver (Operating Engineer - Building Construction).

23-63-1

# 2010- 2013

# MASTER AGREEMENT

For NORTHERN CALIFORNIA

Between

OPERATING ENGINEERS LOCAL UNION NO. 3
of the International Union of Operating Engineers, AFL-CIO



and

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.

*11.03.00 Travel Expense.* Where the Employee is transported on the Individual Employer's equipment, travel expense shall not be due.

*11.03.01* Travel expense will be paid when moving cranes from yard to job, job to yard and job to job when crane is not returned to its original starting point at the end of the day, and when the Employee receives travel time under.

*11.03.02* Travel expense, when due an Employee furnishing his own transportation shall be paid at the rate of twenty-five cents ($.25) per mile and the Individual Employer shall also pay bridge, ferry or toll fares involved; provided that no Employee shall be required to furnish the means of transportation as a condition of employment.

*11.04.00 Travel Time.* On any day on which an Employee is required to report to the yard, the Employee's time will start at the yard. On any day on which the Individual Employer requires an Employee to return to the yard and when, absent a pre-arrangement to cover transportation under 11.03.01, an Employee is required to report to the yard on that date, an Employee's time will end at the yard.

*13.00.00 STEEL FABRICATING AND ERECTING WORK*

*13.06.00 Subsistence, Travel Time, Travel Expenses.* Employees covered by this Section 13.00.00 shall be compensated at the rate of twenty dollars ($20.00) per each workday as subsistence pay (in addition to their regular compensation) when employed on any job more than thirty-five (35) road miles by the shortest normally traveled route from the Employee's "basing point". The Employee's "basing point" shall be the Job Placement Center (i.e., which has historically been servicing the area where the job or project is located), provided that when an Employee is transferred to a job or project his "basing point" shall be the permanent yard or shop of the Individual Employer to which such Employee is regularly assigned, and provided further that when an Employee is terminated or quits from the employ of the Individual Employer and is rehired by letter in accordance with the Job Placement Regulations of this Agreement, within thirty (30) working days by the Individual Employer at another job or project, then the permanent yard or shop of the Individual Employer to which such Employee was regularly assigned when he was terminated or quit shall be considered such Employee's "basing point". Such compensation shall be paid for the duration of the job.

*13.06.01* Within thirty (30) days of the execution of this Agreement any Individual Employer having more than one (1) yard or shop within the area covered by this Section shall notify the Union in writing of which locations are to be deemed "permanent" under the foregoing, and similarly, upon establishing his first such yard or shop. Such locations can be changed once each year by giving written notice to the Union.

*13.06.02* It is understood that a day is a working day if the Employee is required by the Individual Employer to report to the jobsite and is prevented from working due to conditions beyond said Individual Employer's control. (Example: rainy days, or days when steel is not available, etc.)

*13.06.03* On Saturday, Sunday and holidays, when work is not performed on these days, no such expenses will be paid, except as provided in 13.06.02.

*13.06.04* When a job is of one (1) day's duration and the Employee is paid (or furnished) transportation and is paid his total travel time to and from the yard or shop and the job he shall not, in addition, be paid subsistence.

*13.06.05 Travel Time.* On jobs not subject to 13.06.00, an Employee shall not receive travel time unless he is engaged in equipment transportation. On such jobs, unless transportation is made available to the Employee or the Employee is paid travel expense for the first and last day, an Employee's time shall begin and end at the yard or shop.

*13.06.06* On jobs subject to 13.06.00, travel time, at the rate of thirty-five (35) miles per hour from the first day of employment there, and for returning from the job on the day employment there terminates, provided that all travel time, except equipment transportation, which by the direction of the Individual Employer is performed during overtime hours, shall be computed at straight time.

*13.06.07 Travel Expense.* Where the Employee is transported to and/or from the job on equipment furnished by the Individual Employer, travel expense shall not be due.

*13.06.08* On jobs subject to 13.06.00, Employees shall be paid travel expense from the yard or shop to job and return on the first and last days of employment there, respectively in accordance with the current IRS rate per mile, and the Individual Employer shall also pay any bridge, ferry or toll fares involved.

*13.06.09 Payment of Subsistence, Travel Time and Travel Expense.* An Employee shall be paid (when due under 13.06.00 of this Section 13.00.00) subsistence, travel time, and transportation expense on each separate job; provided that, in the cases of Employees who are "transferred" or "terminated or quit and rehired" by letter in accordance with the Job Placement Regulations of this Agreement, within thirty (30) working days by the Individual Employer at another job or project, the distances applicable in the case of travel time and travel expense shall be those from the last job to the next (rather than between yard or shop and job).

## *14.00.00 PILEDRIVING*

*14.02.08* On off-shore work, all time spent in travel from shore shall be portal to portal and compensated at an amount equal to the straight-time rate.

*14.03.00* *Subsistence, Travel Time, Travel Expenses.* Subsistence, travel time, and travel expenses shall be paid in accordance with applicable Section of the Master Labor Agreement between the Associated General Contractors of California, Inc., and the Piledrivers, Divers, Carpenters, Bridge, Wharf and Dock Builders, Local No. 34. In the event the Employer is unable to reach a new agreement or is no longer bound to an agreement with Local No. 34, subsistence, travel time and travel expenses shall be paid in accordance with the agreement between the Piledriving Contractors Association and Local No. 34.

*15.00.00* *SPECIAL WORKING RULES AND CONDITIONS FOR WORKING UNDERGROUND*

*15.04.00* *Compensation for Travel Underground.* The Individual Employer shall pay Employees covered by this Agreement working underground on a portal-to-portal basis as follows: The hours of employment of such Employees shall commence at the portal of the underground work at which he is directed by the Individual Employer to report for work on his shift and shall end at such portal, except as provided in 15.05.01.

*15.05.00* *Change House.* The Individual Employer shall establish and maintain a change house within a reasonable distance of each portal of the underground work. It shall be equipped with showers, toilet facilities, lockers and heating and drying facilities in accordance with the number of men in each crew. Each change house shall be constructed to provide that all clothing will dry between shifts. The Individual Employer will reimburse Employees for clothing or personal belongings in an amount up to one hundred fifty dollars ($150.00) in the event the change house is destroyed by fire, provided a claim form is filed as required by the applicable insurance company. This shall not apply to short dry

tunnels, such as under highways or railroad embankments.

*15.05.01* If the change house is located more than one thousand two hundred fifty (1,250) walkable feet from a portal, then the time of work shall start and end for pay purposes at the change house. This shall not affect the well established practice of Employees who are required to report before their regular starting time to fire up, grease, or maintain equipment, or are required to report early or remain after their regular shift. These Employees shall be paid at the applicable overtime rate which shall be reckoned by the hour and the half-hour.

# Exhibit K

TRAVEL AND SUBSISTENCE PROVISION

FOR

OPERATING ENGINEER (HEAVY & HIGHWAY WORK),
OPERATING ENGINEER (BUILDING CONSTRUCTION),
STEEL ERECTOR & FABRICATOR
(OPERATING ENGINEER - BUILDING CONSTRUCTION),
STEEL ERECTOR AND FABRICATOR
(OPERATING ENGINEER - HEAVY & HIGHWAY WORK),
PILE DRIVER
(OPERATING ENGINEER - HEAVY & HIGHWAY WORK),
PILE DRIVER
(OPERATING ENGINEER - BUILDING CONSTRUCTION),
TUNNEL / UNDERGROUND
(OPERATING ENGINEER - HEAVY & HIGHWAY WORK)

IN

ALAMEDA[1], ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, CONTRA COSTA[1], DEL NORTE, EL DORADO, FRESNO, GLENN, HUMBOLDT, KINGS, LAKE, LASSEN, MADERA, MARIN[1], MARIPOSA, MENDOCINO, MERCED, MODOC, MONTEREY, NAPA, NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN BENITO, SAN FRANCISCO[1], SAN JOAQUIN, SAN MATEO[1], SANTA CLARA[1], SANTA CRUZ, SHASTA, SIERRA, SISKIYOU, SOLANO[1], SONOMA, STANISLAUS, SUTTER, TEHAMA, TRINITY, TULARE, TUOLUMNE, YOLO AND YUBA COUNTIES

[1]County not covered by Operating Engineer (Building Construction), Steel Erector and Fabricator (Operating Engineer - Building Construction), and Pile Driver (Operating Engineer - Building Construction).

# 2013-2016 OPERATING ENGINEERS MASTER LABOR AGREEMENT

## MEMORANDUM OF AGREEMENT

By and between

UCON and OPERATING ENGINEERS LOCAL UNION NO. 3

This Memorandum of Agreement entered into this 1st day of Feb., 2013, provides the terms and conditions of the new 2013-2016 Master Labor Agreement between the Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO, ("Union") and United Contractors (UCON), ("Employer") and provides the following modifications to the 2010-2013 Master Labor Agreement.

✓ **(1) Term of Agreement**

3 years – Agreement shall be effective July 1, 2013 through June 30, 2016

*(15A) 14.03.00 Subsistence, Travel Time, Travel Expenses.* Subsistence, travel time, and travel expenses shall be paid in accordance with applicable Section of the Master Labor Agreement between (UCON, AGC, NAEC, UMIC, CEA and ACE), and all other Signatory Employers and the Piledrivers, Divers, Carpenters, Bridge, Wharf and Dock Builders, Local No. 34. In the event the Employer is unable to reach a new agreement or is no longer bound to an agreement with Local No. 34, subsistence, travel time and travel expenses shall be paid in accordance with the agreement between the Piledriving Contractors Association and Local No. 34.

# 2010-2013

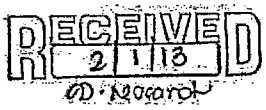
# MASTER AGREEMENT

For NORTHERN CALIFORNIA

Between

OPERATING ENGINEERS LOCAL UNION NO. 3

of the International Union of Operating Engineers, AFL-CIO




And

ENGINEERING AND UTILITY CONTRACTORS ASSOCIATION

*11.03.00 . Travel Expense.* Where the Employee is transported on the Individual Employer's equipment, travel expense shall not be due.

*11.03.01* Travel expense will be paid when moving cranes from yard to job, job to yard and job to job when crane is not returned to its original starting point at the end of the day, and when the Employee receives travel time under.

*11.03.02* Travel expense, when due an Employee furnishing his own transportation shall be paid at the rate of twenty-five cents ($.25) per mile and the Individual Employer shall also pay bridge, ferry or toll fares involved; provided that no Employee shall be required to furnish the means of transportation as a condition of employment.

*11.04.00 Travel Time.* On any day on which an Employee is required to report to the yard, the Employee's time will start at the yard. On any day on which the Individual Employer requires an Employee to return to the yard and when, absent a pre-arrangement to cover transportation under 11.03.01, an Employee is required to report to the yard on that date, an Employee's time will end at the yard.

*13.06.00 Subsistence, Travel Time, Travel Expenses.* Employees covered by this Section 13.00.00 shall be compensated at the rate of twenty dollars ($20.00) per each workday as subsistence pay (in addition to their regular compensation) when employed on any job more than thirty-five (35) road miles by the shortest normally traveled route from the Employee's "basing point". The Employee's "basing point" shall be the Job Placement Center (i.e., which has historically been servicing the area where the job or project is located), provided that when an Employee is transferred to a job or project his "basing point" shall be the permanent yard or shop of the Individual Employer to which such Employee is regularly assigned, and provided further that when an Employee is terminated or quits from the employ of the Individual Employer and is rehired by letter in accordance with the Job Placement Regulations of this Agreement, within thirty (30) working days by the Individual Employer at another job or project, then the permanent yard or shop of the Individual Employer to which such Employee was regularly assigned when he was terminated or quit shall be considered such Employee's "basing point". Such compensation shall be paid for the duration of the job.

*13.06.01* Within thirty (30) days of the execution of this Agreement any Individual Employer having more than one (1) yard or shop within the area covered by this Section shall notify the Union in writing of which locations are to

be deemed "permanent" under the foregoing, and similarly, upon establishing his first such yard or shop. Such locations can be changed once each year by giving written notice to the Union.

*13.06.02* It is understood that a day is a working day if the Employee is required by the Individual Employer to report to the jobsite and is prevented from working due to conditions beyond said Individual Employer's control. (Example: rainy days, or days when steel is not available, etc.)

*13.06.03* On Saturday, Sunday and holidays, when work is not performed on these days, no such expenses will be paid, except as provided in 13.06.02.

*13.06.04* When a job is of one (1) day's duration and the Employee is paid (or furnished) transportation and is paid his total travel time to and from the yard or shop and the job he shall not, in addition, be paid subsistence.

*13.06.05* *Travel Time.* On jobs not subject to 13.06.00, an Employee shall not receive travel time unless he is engaged in equipment transportation. On such jobs, unless transportation is made available to the Employee or the Employee is paid travel expense for the first and last day, an Employee's time shall begin and end at the yard or shop.

*13.06.06* On jobs subject to 13.06.00, travel time, at the rate of thirty-five (35) miles per hour from the first day of employment there, and for returning from the job on the day employment there terminates, provided that all travel time, except equipment transportation, which by the direction of the Individual Employer is performed during overtime hours, shall be computed at straight time.

*13.06.07* *Travel Expense.* Where the Employee is transported to and/or from the job on equipment furnished by the Individual Employer, travel expense shall not be due.

*13.06.08* On jobs subject to 13.06.00, Employees shall be paid travel expense from the yard or shop to job and return on the first and last days of employment there, respectively in accordance with the current IRS rate per mile, and the Individual Employer shall also pay any bridge, ferry or toll fares involved.

*13.06.09* *Payment of Subsistence, Travel Time and Travel Expense.* An Employee shall be paid (when due under 13.06.00 of this Section 13.00.00) subsistence, travel time, and transportation expense on each separate job; provided that, in the cases of Employees who are "transferred" or "terminated or quit and rehired" by letter in accordance with the Job Placement Regulations of this Agreement, within thirty (30) working days by the Individual Employer at another job or project, the distances applicable in the case of travel time and travel expense shall be those from the last job to the next (rather than between yard or shop and job).

## *14.00.00 PILEDRIVING*

*14.02.03* On off-shore work, all time spent in travel from shore shall be portal to portal and compensated at an amount equal to the straight-time rate.

*14.03.00* *Subsistence, Travel Time, Travel Expenses.* Subsistence, travel time, and travel expenses shall be paid in accordance with applicable Section of the Master Labor Agreement between the Associated General Contractors of California, Inc., and the Piledrivers, Divers, Carpenters, Bridge, Wharf and Dock Builders, Local No. 34. In the event the Employer is unable to reach a new agreement or is no longer bound to an agreement with Local No. 34, subsistence, travel time and travel expenses shall be paid in accordance with the agreement between the Piledriving Contractors Association and Local No. 34.

*15.00.00* *SPECIAL WORKING RULES AND CONDITIONS FOR WORKING UNDERGROUND*

*15.04.00 Compensation for Travel Underground.* The Individual Employer shall pay Employees covered by this Agreement working underground on a portal-to-portal basis as follows: The hours of employment of such Employees shall commence at the portal of the underground work at which he is directed by the Individual Employer to report for work on his shift and shall end at such portal, except as provided in 15.05.01.

*15.05.00 Change House.* The Individual Employer shall establish and maintain a change house within a reasonable distance of each portal of the underground work. It shall be equipped with showers, toilet facilities, lockers and heating and drying facilities in accordance with the number of men in each crew. Each change house shall be constructed to provide that all clothing will dry between shifts. The Individual Employer will reimburse Employees for clothing or personal belongings in an amount up to one hundred fifty dollars ($150.00) in the event the change house is destroyed by fire, provided a claim form is filed as required by the applicable insurance company. This shall not apply to short dry tunnels, such as under highways or railroad embankments.

*15.05.01* If the change house is located more than one thousand two hundred fifty (1,250) walkable feet from a portal, then the time of work shall start and end for pay purposes at the change house. This shall not affect the well established practice of Employees who are required to report before their regular starting time to fire up, grease, or maintain equipment, or are required to report early or remain after their regular shift. These Employees shall be paid at the applicable overtime rate which shall be reckoned by the hour and the half-hour.