

# Prevailing Wage Changes for 2018

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## Disclaimer

- *The information provided in this presentation is of a general nature and is not intended to be legal advice.*
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## Introduction

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- SB 854
  - Requires Contractor Registration on all PW projects
  - Requires Agencies register all projects with DIR through a PWC-100 (5 days after award)
  - Contractors must submit CPRs electronically to DIR through the eCPR system



## SB 96

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- Raises threshold for Contractor Registration
- Raises threshold for filing PWC-100
- Imposes penalties on contractors and subcontractors who do not register
- Imposes penalties on Agencies who employ non-registered contractors and/or fail to file PWC-100 forms.



## SB 96 - Effective Immediately

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- Changes effective immediately upon signature of the Governor
- June 27, 2017



## Raises Threshold for Contractor Registration

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- Contractors only have to register as a “public works contractor” with the DIR if the total value of the project exceeds:
  - \$15,000 for maintenance work
  - \$25,000 for new construction, alteration remodel, demolition or repair work,



## Contractor Registration

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- Fee increased to:
  - \$400 per fiscal year July 1- June 30.
- Contractor must be registered **at the time of bid.**
- Penalty of \$2,000 if contractor registers AFTER they have submitted a bid to a Public Agency.



## Awarding Agency and Unregistered Contractors

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- If a contractor or listed subcontractor is not registered as a public works contractor at time of bid, the Agency may:
  - Declare the bidder unresponsive; or,
  - Give the bidder 24 hours to "cure" (register) the unregistered contractors- cost is \$2,400. (\$400 fee + \$2,000 penalty)



## New Penalties- Contractors

- Additional penalty applies to allowing unregistered contactors:
  - \$100 a day for each day worked to maximum of \$8,000.
  - \$100 a day to the prime contractor and the public agency for allowing an unlicensed subcontractor to work on the project up to a maximum of \$10,000.

Corrective language proposed to the legislature giving the Public Agency 15 days after receipt of CPRS to address the issue without fine.



## eCPR and Certified Payrolls

Must be filed on a monthly basis by all contractors and subcontractors on projects is excess of:

- \$15,000 for maintenance work
- \$25,000 for new construction, remodel, demolition or repair work



## SB 96- PWC-100

- Raises the threshold of filing a PWC-100 by Agencies to projects which exceed:
  - \$15,000 for maintenance work
  - \$25,000 for new construction, alteration, remodel, demolition or repair work
- PWC-100 MUST be filed for ALL public works contracts (including maintenance and service work) OVER these amounts.



## New PWC-100 Filing Deadlines

- Must be filed within 30 days of contract award, but
- NOT LATER THAN the first day worked on the project.

Note: Some proposed corrective language pending before legislature addressing Emergency Work



## Mandated Contract Clauses

Effective January 1, 2015, the call for bids and contract documents (including purchase orders) must include the following:

- No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.



## Mandated Contact Clauses

The awarding body shall cause to be inserted in every public works contract a clause providing that:

- Every contractor will be required to secure the payment of workers compensation to his or her employees. Labor Code Section 1860.
- The contractor shall post the applicable prevailing wage rate on the project site. Labor Code Section 1771.4
- The project is subject to prevailing wages. The applicable the wage rates are available at [www.dir.ca.gov](http://www.dir.ca.gov) and the agency also has access to the applicable prevailing wage rate at XXXXXXXX



## Monetary Penalties Imposed on Awarding Agencies

- Penalties of \$100 per day will be assessed by the DIR against an awarding agencies for either of the following violations:
- Failure to file a timely PWC-100 form;
- Allowing unregistered contractors/ subcontractors to work on a public works project



## Additional Penalties

- Two or more willful violations within 12 months makes the Agency ineligible for State funding for construction projects for 1 year.
  - Failure to timely file PWC-100
  - Allowing unregistered contractors/ subcontractors to work on a public works project.





## Prevailing Wage Still Applies

- \$1,000 of public funds (state, local or federal) used for “public works”
- Public Work includes:
  - New construction
  - Remodel, alteration repair,
  - Maintenance and service work
  - Emergency Work
  - Warranty Work

Whether contracted by public bid, negotiated bid, task order, purchase order or through an informal invoicing process



## eCPR and Certified Payrolls

- eCPRs currently do not collect the following forms and information:
  - Fringe benefits (PW 26)
  - Training contributions (CAC2)
  - Apprenticeship Project Registration (DAS-140)
  - Apprenticeship Requests (DAS-142)

DIR has stated that they are NOT reviewing the eCPR information submitted. The DIR is still complaint driven and will only review this information if a complaint is filed.



## Public Agency's Ongoing Obligation to Monitor PW

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- ***All awarding bodies continue to share responsibility to monitor and enforce compliance on public works and should review the Labor Commissioner's precautionary notice.***

**[www.dir.ca.gov/DLSE/PrecautionaryLegalNoticetoAwardingBodies.html](http://www.dir.ca.gov/DLSE/PrecautionaryLegalNoticetoAwardingBodies.html)**



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- LC 1726: The body awarding shall take cognizance of violations of this chapter committed in the course of the execution of the contract and either:
  - Promptly report such violations to the DIR for further investigation; or,
  - Conducts its own independent investigation and proceed with appropriate action. (i.e. demand for restitution, Notice of Withhold, etc.)



## Labor Code Section 1777

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



## Concrete Deliveries

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- For all contracts AWARDED after July 1, 2016, prevailing wage rates apply to concrete deliveries
  - Wage rates are from the County in which the batch plant is located until the truck returns to that or another batch plant.
  - If concrete is delivered throughout the day using batch plants in more than one county then the PW will change based on the county in which each batch plant is located.

Litigation pending- stay tuned



## Credentials- Deborah Wilder

- 35+ years as a practicing attorney
- Author of *What Every Contractor Should Know About Prevailing Wages* © 2<sup>nd</sup> Edition 2015
- Author of *AGC of America's Davis Bacon Compliance Manual* 3<sup>rd</sup> and 4<sup>th</sup> Edition; 5<sup>th</sup> Edition© April 2018
- Author of *Davis Bacon Handbook for Public Agencies* © 2<sup>nd</sup> Edition © 2016
- Nationally recognized speaker on the subject of state and federal prevailing wage compliance:
  - Workshops, Webinars, and presentations before World of Concrete, APWA-American Public Works Association, CLE Workshops for Continuing Legal Education, Webinars with AGC, ABC, Builders Exchanges, ACWA, CSDA and more.



## Questions?

**Thank You**

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