

# SENATE BILL 96 AMENDMENTS TO CALIFORNIA PREVAILING WAGE LAW REQUIRES ADDITIONAL MEASURES BY PUBLIC AGENCIES, CONTRACTORS AND SUBCONTRACTORS

*By Patricia A. Meagher*

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## **Background**

California Labor Code, “public works” means (1) construction, alteration, demolition, installation, maintenance, or repair work, (2) done under contract, and (3) paid *for* in whole or in part out of public funds. It can include preconstruction and post-construction activities related to a public works project. All workers employed on public works projects must be paid the prevailing wage determined by the Department of Industrial Relations (DIR) according to the type of work and location of the project. Prevailing wage rates are usually, but not always, based on rates specified in collective bargaining agreements. All contractors and subcontractors working on public works projects (except for those listed below) must submit electronic certified payroll records to the Labor Commissioner. The Labor Commissioner has exempted the following projects from the requirement: (a) projects monitored by California Department of Transportation (Caltrans), City of Los Angeles, Los Angeles Unified School District, or County of Sacramento; (b) projects covered by a qualifying project labor agreement and (c) projects that do not exceed \$25,000 for new construction, alteration, installation, demolition or repair, or \$15,000 for maintenance.

## **Senate Bill 96**

Senate Bill 96 (SB 96) was enacted on June 27, 2017 and took immediate effect. It made several revisions to California prevailing wage law which are now found in the following Labor Code and Public Contract Code sections.

### Labor Code § 1725.5 – Contractor Registration

- Labor Code section 1725.5 requires that public works contractors and subcontractors at any tier register with the Department of Industrial Relations (DIR) as a precondition to bidding (prime contractor) or being listed (subcontractor) on a bid for a public works contract.
- SB 96 added subsection (f) to Labor Code section 1725.5 to limit the registration requirement to (i) prevailing wage projects of less than \$25,000 for construction, alteration, demolition, installation, or repair work, or (ii) prevailing wage projects of less than \$15,000 for maintenance work. Previously, the registration requirement applied to any project which was subject to prevailing wages (with limited exceptions).
- *Prior to submitting a bid for a public works contract in excess of threshold amount stated above, Contractors should confirm that their DIR registration and the registrations of subcontractors at any tier are current and have not expired. Registration covers one fiscal year (July 1–June 30), regardless of the date on which a contractor registers, and is renewable annually.*

### Public Contract Code § 4104 – Subcontractor Listing Requirements

- SB 96 amended Public Contract Code section 4104 of the Subletting and Subcontracting Fair Practices Act. Section 4104 governs subcontractor listing requirements for public works

contracts. As amended, Section 4104 now requires that bidders provide the DIR registration numbers for all subcontractors listed in their contract bid.

- *Contractors should ensure that they have a current and accurate DIR registration number for any and all subcontractors listed in their bid.*

#### Labor Code § 1771.1– Stop Orders for Unregistered Contractors

- Labor Code section 1725.5 requires that public works contractors and subcontractors at any tier maintain their registration with DIR while performing a public works project. Labor Code section 1771.1 addresses, among other things, the civil penalties and fines that may be imposed for violating the requirement that all public works contractors and subcontractors have valid DIR registrations.
- Labor Code section 1771.1 was amended by SB 96 in two different ways. First, subsection(j) was added to authorize the Labor Commissioner to issue a stop order to prohibit the use of an unregistered contractor on a public project. The stop order does not apply to work by registered contractors or subcontractors, so the project can continue albeit without the unregistered contractor. Second, subsection (n) was added to Section 1771.1 to limit the application of the section to projects of less than \$25,000 for construction, alteration, demolition, installation, or repair work, or projects of less than \$15,000 for maintenance work.
- *Contractors should include a provision in all subcontracts awarded for a public works project requiring the subcontractor to maintain its DIR registration in good standing, and to ensure that its lower-tier subcontractors are maintaining their DIR registrations in good standing, during the course of performance of the project.*

#### Labor Code § 1773.3 – DIR Notification of Award of Projects

- Labor Code section 1773.3 requires that public agencies notify the DIR when public works contracts are awarded. The form used by agencies is PWC-100.
- This section was amended by SB 96 to extend the time for a public agency to notify the DIR from five (5) to thirty (30) days. It also authorizes DIR to impose a fine on a public agency for failure to provide timely notice at a rate of \$100 per day, not to exceed \$10,000. In addition, subsection(i) was added to Section 1773.3 to limit the notice requirement to awards of projects greater than \$25,000 for construction, alteration, demolition, installation, or repair work, or projects greater than \$15,000 for maintenance work.
- DIR now has the authority to issue a fine to a public agency that enters a contract with an unregistered contractor or allows an unregistered contractor to perform work. The fine is a civil penalty of \$100 for each day in violation not to exceed an aggregate penalty of \$10,000 for each project. The Labor Commissioner may waive the penalty for a first time violation if unintentional and determine the amount of the fine, considering whether it was a good faith mistake, whether it was promptly and voluntarily corrected, and whether there is a prior history of noncompliance.
- *Contractors must be prepared for more diligent enforcement by state agencies of the requirement that contractors and subcontractors at any tier obtain and maintain their DIR registration.*

If you have questions on how this new law will affect you, please contact Patricia Meagher at [pmeagher@rjo.com](mailto:pmeagher@rjo.com) or the Rogers Joseph O'Donnell attorney with whom you regularly work.

*The content of this article is intended to provide a general guide to the subject matter and is not a substitute for legal advice.*