

Department of Industrial Relations
Labor Commissioner's Office

Public Works-
Western States Trucking Association

July 8, 2017



DIR Organizational Structure

- Director's Office
 - Office of Policy, Research and Legislation, formerly known as the Division of Labor Statistics and Research
 - Legal Unit
- Labor Commissioner's Office, also known as the Division of Labor Standards Enforcement
- Division of Apprenticeship Standards
- Cal-OSHA, also known as the Division of Occupational Safety and Health
- Division of Workers' Compensation
- Other various offices, boards and commissions



Public Works Defined



Public Works Basic Definition

California Labor Code 1720(a)(1),

(1) **Construction, alteration, demolition, installation, or repair** work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, “construction” includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the post-construction phases of construction, including, but not limited to, all cleanup work at the jobsite...



Public Works Includes Maintenance

“Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed...”

“This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for **maintenance work.**” (Section 1771)

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The SB854 requirements apply to all public works, as defined by the Labor Code



Labor Code Section 1722.1

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

(Amended by Stats. 1982, Ch. 454, Sec. 132.)



Contractor/Subcontractor

Labor Code purposes:

Transportation companies may be deemed to be contractors or subcontractors and cannot pay less than prevailing wages (Teamster or on/off Haul Driver)



Case Law

Exception to definition of a contractor:

- O.G. Sansone v. Dept. of Transportation (1976) 55 Cal.App.3d 434, 127
- Williams v. SnSands Corporation (2007) 156 Cal.App.4th 742



O.G. Sansone v. Cal-Trans

Exception to definition of a contractor:

Bona Fide Material Supplier meets four criteria:

1. Material Supplier is selling to the general public;
2. Plant is not establish for a particular contract;
3. Plant is not located or adjacent to project;
4. Materials hauled may not be immediately incorporated into the project with no re-handling out of the flow of construction



Williams v. Sn Sands Corporation

Exception to definition of a contractor:

- Definition of “ in the execution of” under a public works contract in Labor Code Section 1772

Labor Code 1772:

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



Contractor Registration

Labor Code section 1725.5:

A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, “contractor” includes a subcontractor as defined by Section 1722.1.



SB 854 – Public Works Reforms



SB 854 - Public Works Reform Law

- Law went into **effect on June 20, 2014**
- Addresses the Underground Economy
 - Estimated between \$100-\$200 billion in California
- Requires contractors to be in good standing and register with DIR in order to bid or work on public works projects
- DLSE emphasis will be going after the bad acting contractor hurting the industry as a whole



2017 Budget Act- SB 96



Budgetary Amendment

- Increases Contractor Registration to \$400 per fiscal year (Begins July 1st each year and ends June 30th)
- Allows contractors to renew up to three years beginning July 1, 2019
- Small Project Exemption for smaller projects
- New Civil Penalties can be issued to non-registered contractors, contractors who hire non-registered contractors and awarding bodies who allow contractors to work on its public works project



Budgetary Amendment

- **Small Project Exemption:** Projects \$25,000 or less for construction, alteration, demolition, installation, repair and \$15,000 or less for maintenance
 - Contractor Registration is not Required
 - Electronic CPRs are not required



Budgetary Amendment

Small Project Exemption:

- Prevailing wage requirements are due on most projects since the threshold has not changed (over \$1,000) **LC 1771**
- CPRs are required to be kept but not submitted to DIR
- Retain for 3 years after project



Budgetary Amendment

- Stop Order may be issued for any unregistered contractors
- Increases the PWC 100 notice to DIR from 5 days to 30 days as long as notice is prior to work commencing
- Civil Penalties to public owners LC 1773.3
- Multiple willful violations in a 12 month period could result in loss of funding



Owner-Operator?



Owner- Operator

- Defined in the Motor Vehicle Code not in Labor Code
- All workers defined as contractors, including sole proprietors, partners, etc., must be paid at least the minimum prevailing wage rate **LC 1774**
- Labor Code section 1776 requires certified payroll records to be kept and retained for three years



Types of Owner Contracts

- Drivers can be paid straight hourly rate or by a piece rate (by the ton, mileage, etc.)
- All hours should be calculated for on/off hauling and on-site trucking
- The minimum rate of pay for an owner on a public works cannot be below the Teamster rate for onsite trucking or the on/off hauler rate for offsite hauling



Hauling Refuse

Labor Code section 1720.3(b) states:

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



Piece Rate Calculations

- Sole proprietor trucking company paid \$.99 per ton
- Trucking company estimates 30,000 tons will need to be transported for refuse
- Total amount due to trucking company \$29,700
- Driver worked Mon- Fri: 6 hours per day



Piece Rate Calculations

- Prevailing wage requires driver to earn at least \$25 per hour straight time, \$37.50/hour after 8 hours in a work day or 40 hours in a workweek

Assuming the driver ONLY works six hour days Monday through Friday:

How many hours can an owner operator sole proprietor with no employees work without violating prevailing wage law?



Answer

1,188 HOURS: (\$29,700 DIVIDED BY \$25 PER HOUR)

OR

198 DAYS WITHOUT OVERTIME:

(\$25/HOUR MULTIPLIED BY 6 HOURS PER DAY)

EQUALS \$150/DAY

\$29,700 DIVIDED BY \$150 PER DAY EQUALS

198 DAYS



Public Works Contractor Registration (PWCR)





Workers

- File a claim for unpaid wages
- Report unsafe work conditions
- Request benefits for a work injury
- Entertainment work permits
- Apply to be an apprentice
- Information for young workers
- Information for women in the workforce
- ➔ **More for Workers**

Employers

- Keep your workplace safe
- Workers' compensation requirements
- Help for small businesses
- Workplace postings
- Licensing, registrations, certifications & permits
- Public Works
- Set up an apprenticeship program
- ➔ **More for Employers**

 Public Works

 Paid Sick Leave


 Career Opportunities

Department of Industrial Relations

 Laws & Regulations

 Divisions, Boards and Commissions

 Public Participation

 Fraud Prevention

 Heat Illness Prevention

▶ Industrial Relations Databases

▶ Labor Statistics

▶ Legislative Reports

▶ Private Attorneys General Act

▶ About DIR

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DIR Leadership

Governor
Edmund G. Brown
[View his website](#)



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Public Works

Public works in general means:

- Construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds.
- It can include preconstruction and post-construction activities related to a public works project.
- For a full definition of public works refer to [Labor Code section 1720](#).

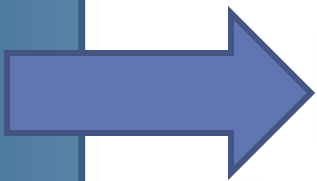
Anyone working on a public works project must be paid prevailing wages as determined by DIR. Projects of \$30,000 or more must meet DIR's apprenticeship requirements. Failure to comply with public works requirements can result in civil penalties, criminal prosecution, or both.

Resources

- [Apprenticeship Requirements](#)
- [Certified Payroll Reporting](#)
- [Enforcement of Public Works Law](#)
- [File a Public Works Complaint](#)
- [Labor Compliance Programs](#)
- [Prevailing Wage Requirements](#)
- [More Resources](#)

Search

- [Find Public Works Projects](#)
- [Find Public Works Contractors](#)
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Contractors,
and others who work on public
works projects

Awarding Bodies,
public agencies or project owners

What's **New**

[en Español](#)

[Registration](#)



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Public Works Contractors

Who Is a Public Works Contractor?

If you work or bid on a public works project, then you are considered a public works contractor. The term "public works contractor" includes subcontractors. All public works contractors must fulfill four key responsibilities.

Public Works Contractor Responsibilities

- ✓ Register as a public works contractor
- ✓ Pay prevailing wages
- ✓ Follow apprenticeship requirements
- ✓ Maintain and submit [certified payroll records](#)

Search

To view a list of public works contractors with an active registration, use:

[Public Works Contractor Registration Search](#)

For more information and to find exact legal definitions and language please see the [Public Works Chapter](#) of the [California Labor Code](#).

October 2016

Public Works

Links

- [Awarding Bodies](#)
- [Contractors](#)
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Contractor Registration

Who Is Eligible to Register?

Contractors must meet the following requirements to register:

- Have workers' compensation coverage for any employees and only use subcontractors who are registered public works contractors.
- Have Contractors State License Board license if applicable to trade.
- Not have any delinquent unpaid wage or penalty assessments owed to any employee or enforcement agency.
- Not be under federal or [state debarment](#).
- Not be in prior violation of this registration requirement once it becomes effective. However, for the first violation in a 12-month period, a contractor may still qualify for registration by paying an additional penalty.

Register or Renew

Registration costs \$300, covers one fiscal year (July 1-June 30), and must be renewed on an annual basis. Credit card payments can be processed within 24 hours, while other forms of payment may delay registration for up to eight weeks.*

Check to see if you have an active registration at: [Public Works Contractor Registration Search](#).

Renew your existing registration or create a new registration:

[Register or Renew](#)

Public Works

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