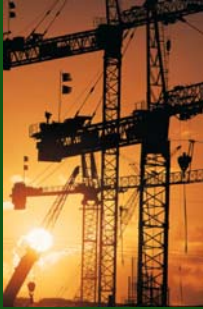


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The Challenge

Special Edition

Prevailing Wage Issue Use the law, but don't let it be used on you.

For years Union contractors that have gleaned the advantages of the level playing field that the Prevailing law have provided are now being prosecuted under the same laws that once sheltered them. This issue will provide tips on common pit falls. Contractors that pay the right wage should not be unfairly prosecuted.

Public Works Contractor Registration Act

The Public Works Contractor Registration Act was passed in an effort to give the New Jersey Department of Labor a tool to regulate contractors performing public work.

Be sure to fill out the answer to question 11 accurately and completely. Question 11 reads:

Within the past five (5) years, do any of the owners, partners or corporate officers or the contractor/ subcontractor have any pending, current or previous violations (regardless of outcome) or notice of violation of

any New Jersey or other state or federal government labor laws, including OSHA violations?

In order to facilitate this task, I suggest keeping a file of any and all notices of violations that come into the contractor's office and referencing said file when filling out the Registration form.

Answer this question truthfully and completely. If a contractor has old violations (such as OSHA violations), the Department has discretion whether or not to deny the registration application,

however if a contractor lies on a form, there are certain open shop watchdog groups that are pressuring the Department to debar the contractor because their members have been debarred for lying in the past.

The contractor should always require its subcontractors to submit proof of Public Works Contractor Registration *prior* to starting work on your job site as your subcontractor.

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• DISCLAIMER

These materials are intended to provide general information about the subject matter and are presented with the understanding that neither these materials nor the authors have, nor intend to, render any legal or other professional service or opinions. Anyone dealing with a specific legal matter should research any and all matters described generally herein and should not act upon this information without seeking professional counsel. Do not send us confidential information until you speak with one of our attorneys and get authorization to send that information.

Additional Tips

Regarding New Jersey Department of Labor audits and investigations, we recommend the following:

If a contractor is audited, it is only required by law to retain its payroll records *for the department of labor* for two (2) years. The contractor need only produce records two years prior to the date of the audit. For example if the contractor is audited April 12, 2006, it need not provide records (certified payrolls, etc) prior to April 12, 2004. If the project began prior to April 12, 2004, the contractor need only produce certified payrolls after that date, nothing before the date. The New Jersey Prevailing Wage Act provides.

Every contractor and subcontractor shall keep an accurate record showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by him in connection with a public work and such records shall be preserved for two years from date of payment. The record shall be open at all reasonable hours to the inspection of the public body awarding the contract, to any other party to the lease or agreement to lease pursuant to which the public work is done, and to the commissioner. *[emphasis added]*

N.J.S.A. 34:11-56.29

As with the IRS, the Department of Labor does not give bonus points for providing extra information.

Also, the contractor need only produce documents that fit the description above. “[T]he name, craft or trade, and actual hourly rate of wages paid to each worker employed by him in connection with a public work.”

The contractor must check certified payroll descriptions. If a worker is a “Journeyman Electrician”, describe him/her as such, but do not be “over descriptive.” For example, an “operator” is not a “plumber operator” even if he is operating equipment that may be used to transport plumbing material or dig a hole for plumbing work. Similarly if the contractor’s collective bargaining agreement permits a 50/50 crew in certain situations, make sure that the tradesperson is classified in his trade.

Be extremely careful to insure that the contractor and the contractor’s subcontractors are “in ratio” (Journeyman/apprentice). If the contractor has one Journeyman on a project with one apprentice and the journeyman leaves early on a particular day, the contractor has two options, it can either:

Make sure that the apprentice leaves the job site with the journeyman and does not log even one additional hour on site. Any time reported out of ratio is a violation; or

If an apprentice is on site without a journeyman, the contractor must pay the apprentice journeyman’s wages for the appropriate time period in his check and before the certified payroll is submitted. Be sure to record the appropriate wages paid to the workman on the certified payroll sheet.

This list is not meant to be exhaustive and the contractor should consult an attorney for specific advise on special issues.

As always, should you have any questions or comments, please feel free to contact our firm at 856-751-1860 or email Steve Berkowitz at sberkowitz@ContractorLawOffices.com.