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DEPARTMENT OF TRANSPORTATION

ARNOLD SCHWARZENEGGER
Governor

Labor Compliance Manual

First Edition

*Issued by
Division of Construction*



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Labor Compliance Manual, First Edition

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Without these people the manual would probably not have been written. They have more than 100 years of combined experience in enforcing both state and federal labor laws for the Department of Transportation.

Each individual added their unique experience to the manual with the hope that it would enhance the ability of labor compliance officers to enforce prevailing wages and apprenticeship standards and maintain an excellent labor compliance program in their district or region.

Preface

This Labor Compliance Manual provides guidance and direction for all Department of Transportation (Caltrans) labor compliance officers working throughout the State of California. It covers the procedures and practices from the preconstruction conference through payroll analysis and the investigation of possible violations of federal and state prevailing wage requirements and apprenticeship standards.

Caltrans labor compliance program has been approved by the Director of the Department of Industrial Relations (DIR). Caltrans labor compliance program is conducted in accordance with the California Labor Code Sections 1720 through 1815 and 2750.5, and California Code of Regulations Title 8, Division 1, Chapter 8, Sections 16000 through 16802 and 17201 through 17270. Simultaneously, it is conducted in accordance with the federal requirements as established in the Davis-Bacon and Related Acts, the Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act.

Enforcement of other labor and contract laws applicable to Caltrans public works contracts which are outside the enforcement authority of the labor compliance staff are not addressed in detail in this manual. Oversight of Caltrans labor compliance program is provided by the Federal Highway Administration, the United States Department of Labor, and the Division of Labor Standards Enforcement within the DIR.

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Chapter 1

Labor Compliance Procedures

Section 1 Roles and Responsibilities

1-101 General

In 1965, the California Department of Transportation (Caltrans) directed that each district assign labor compliance duties to a responsible party. In 1968, the first statewide labor compliance officer was appointed to set policy and procedures for the districts to increase efficiency and reduce duplication of effort. Today, the deputy district director for construction in each district determines whether the district labor compliance office centralizes its processes with documents coming into one location, or decentralizes its processes with documents going directly to the resident engineer's office.

1-102 Resident Engineer

The resident engineer is responsible for the enforcement of the labor contract provisions at the project level. The resident engineer and support staff must have a working knowledge of the contract labor standards. The resident engineer may delegate the responsibilities regarding labor compliance to the labor compliance officer. The labor compliance responsibilities of the resident engineer are summarized in Section 8-102, "Employment Practices," of the *Construction Manual*. The *Construction Manual* is available via the Division of Construction web site:

<http://www.dot.ca.gov/hq/construc/>

1-103 Division of Construction Labor Compliance Officer

The Division of Construction labor compliance officer:

- Establishes general policy and procedures;
- Has overall labor compliance program responsibility;
- Trains and develops labor compliance program staff;
- Tracks, monitors, controls, and reports program performance;
- Works directly with the Federal Highway Administration (FHWA), United States Department of Labor (DOL), and the California Department of Industrial Relations (DIR) to enforce labor law;
- Provides districts and regions with support and oversight for labor compliance issues;
- Assists district or regional labor compliance officers (LCOs) when they have exhausted their resources or request assistance in the complex interpretation of labor laws and procedures;
- Processes district requests for clarification of whether work is covered or non-covered by prevailing wage law;
- Processes district requests for wage rate and labor classification determinations;
- Processes labor compliance violation cases for districts, and submits them to the appropriate regulatory agency for final determination and possible legal action.

1-104 District or Regional Labor Compliance Officer

The district or regional labor compliance officer (LCO) administers and monitors the labor compliance program and enforces the contract special provisions for all major and minor construction contracts. The LCO interprets and enforces all public works contract provisions related to labor including prevailing wages, equal opportunity, Disadvantaged Business Enterprise, Subletting and Subcontracting Fair Practices Act, and apprenticeship programs. Some LCOs provide these services for other Caltrans divisions and local agencies.

LCOs assist the resident engineer with contract interpretation and enforcement of labor laws. LCOs use certified payrolls, fringe benefit statements, federal and state prevailing wages, employee interviews, external inquiries and complaints, engineer's daily reports, and other evidence to monitor the contractor's compliance with labor laws.

LCOs investigate possible contractor violations by reviewing wage rates on payrolls, crosschecking hours and classifications paid to actual hours and classifications worked, and checking on approved Division of Apprenticeship Standards (DAS) apprentice agreements.

When a possible labor compliance violation is identified, such as an employee complaint or a certified payroll showing underpayments to employees, LCOs conduct a source document review, interview employees, and determine if it is appropriate to initiate formal action against an offending contractor. If formal action is considered necessary, write up a labor compliance case and submit it to the Division of Construction labor compliance officer. Contractors may request an administrative hearing and appeal process for alleged violations.

The LCO handles wage violation cases, contractor source document reviews and complaints for contracts outside of the Division of Construction. For more information on this subject, see Chapter 7 of this manual, "Other Public Works Contracts ." The contract managers outside of the Division of Construction are responsible for conducting the preconstruction conference and monitoring payroll documents for service, maintenance, right-of-way, Architectural and Engineering (A&E), on-call hazardous material clean up, foundation drilling, and soil testing contracts.

Chapter 1

Labor Compliance Procedures

Section 2 Office Procedures

1-201 General

This section outlines labor compliance office procedures including how the work is distributed and filed, and the work that must be performed. The details of these procedures may vary depending on the district or regional location.

1-202 Labor Compliance activities

Typical LCO activities include:

- Provide technical assistance to the Local Agencies as well as departments other than Construction
- Provide oversight of apprenticeship programs and confirm contractor compliance with contract mandated apprentice ratios.
- Review interviews conduct investigations of possible prevailing wage rate violations and audit the contractor's source documents (SDR) to verify the accuracy of payrolls when necessary. Work with contractors for restitution of wages due.
- Investigate complaints by contractors, employees, labor unions, and joint labor management committees.
- Review employee interviews for possible wage violations.
- Prepare and submit wage violation cases to the Division of Construction labor compliance unit.
- Compile federally mandated reports.
- Coordinate the substitution process spelled out in the Subletting and Subcontracting Fair Practices Act with the resident engineer.
- Assist the resident engineer with DBE/DVBE substitutions and documenting Good Faith Efforts.
- Schedule and attend substitution hearings.
- Respond within ten days to requests for documents.

1-203 Work Distribution

The LCO is responsible for the distribution of work among the labor compliance personnel. Suggested methods to consider for distribution are:

- Federal versus state projects
- North versus south projects (for Central Region only)
- Local agency projects versus Caltrans projects
- Types of contracts: right-of-way, minors, service, or maintenance
- Districts, (for regions only)
- Routes

- Seniors or resident engineers
- Rotational as received
- Contract numbers

Any method must take into consideration the size, dollar value, duration, type of work, and number of subcontractors. The chosen method must result in a fair and equitable distribution among the LCO staff.

1-204 Filing System

File labor compliance files in accordance with Section 5-102, “Organization of Project Documents,” of the *Construction Manual*. File records and documents chronologically, with the most recent date in front. Resident engineers and contractors often staple records from different projects together. Separate and read dates, contract numbers, and contractors, before checking documents and filing each record in the labor compliance files. Misfiling can result in erroneous deductions against the contractors or other consequences.

1-204A Categories

State forms are numbered based on categories. For instance, all construction forms start with CEM (Construction Engineering Management), which is followed by the category number plus a two-digit number referencing that unique form. For example: Form CEM-2501, “Fringe Benefit Statement,” would be located in Category 25, Labor Compliance and Equal Employment Opportunity (EEO). State forms are located in the Appendix of the *Construction Manual*.

Federal form numbers start with FHWA designating the Federal Highway Administration. The labor compliance staff should file these forms with other forms according to content.

Labor compliance files are organized into four categories:

1. Category 12, “Contractors”
Category 12 should contain Form CEM-1201, “Subcontracting Request,” and the subletting subcontracting Fair Practices Act list of contractors.
2. Category 24, “Disadvantaged Business Enterprises and Disabled Veteran Business Enterprises”
3. Category 25, “Labor Compliance and Equal Employment Opportunity”
Category 25 may contain the following subcategories:
 - 25.1 Correspondence between contractors and labor compliance and resident engineers
 - 25.12 Employee Interviews
 - 25.13 Documentation or Poster Reviews
 - 25.2 Preconstruction Conferences
 - 25.3 Apprentice Agreements (can be in separate file for all projects)



- 25.4 Formal cases sent to Division of Construction
 - 25.41 Source Document Reviews
 - 25.5 Posting sheet log
 - 25.51 Estimate Deductions
 - 25.6 Payrolls – file prime first with subcontractors following in alphabetical order
 - 25.61 Fringe Benefit Statements
 - 25.7 EEO
 - 25.71 Reports
 - 25.72 Discrimination complaints
 - 25.73 Interviews showing discrimination and subsequently sent to Civil Rights
4. Category 46, “Assistant Resident Engineers’ Daily Reports”
Category 46 may contain the following subcategories:
- 46.1 Assistant resident engineer daily reports
 - 46.2 Weekly Status Reports from resident engineer

File contract special provisions and the contract and proposals in front.

1-204B Purging

The labor compliance staff should merge the files with the resident engineer’s project files at the completion of the project and when all the payroll documents are in and correct. Try to avoid any duplication of documents when incorporating them with the project files such as diaries. This would include certified payroll records and prevailing wage rates applicable to the specific project plus any other documentation that may not be in the resident engineers’ file. Keep your backup labor compliance case files in your file. A copy of a formal case sent to Division of Construction should be in the resident engineers project files as they would have received a copy at the time it was written. The completed project files including payrolls are maintained for three years in accordance with Section 7, of the *Standard Specifications*, “Legal Relations and Responsibility.”

1-205 Mail Distribution

Mail is distributed to staff in accordance with district procedures. A document without a Department of Transportation contract number usually contains a contractor job number or reference. Call the contractor for the Caltrans contract number instead of returning it to the contractor.

Date stamp payroll documents when received to ensure that contractors are not unjustly penalized for late submittal. Date stamps provide backup documentation when contract progress pay deductions are taken for late or missing payrolls. Never return original payrolls to the contractor unless they are for projects other than Caltrans. If the payrolls are incomplete, request a supplemental payroll or a corrected payroll from the contractor.

1-206 Assistant Resident Engineer's Daily Report (Diary)

The field office engineer uses their knowledge and experience of fieldwork to complete Form CEM-4601, "Assistant Resident Engineer's Daily Report." The assistant resident engineer's daily reports contain the name of the contractor and subcontractors performing work and all pertinent information including hours, classifications, employee names, equipment used and who used it as well as items of work performed on the job site. The diary should also indicate if inclement weather or any work stoppage occurred during the week, or if only a partial inspection was performed. Shift hours found in the upper right hand corner of the form relate to the contractor's hours, not the inspector's hours. It may be necessary to contact the resident engineer or the inspector filling out the diary if any of the information is unclear. An example of Form CEM-4601, "Assistant Resident Engineer's Daily Report," can be found at the end of this section.

1-207 Weekly Status Reports

The resident engineer prepares the weekly status report. A copy of the weekly status report is sent to the prime contractor, without the diaries, and the original is sent to the labor compliance office, with diaries. The weekly status report is a list of all contractors, regardless of tier, and owner-operators performing work on the project for the week. It should only list work covered by prevailing wages. The labor compliance staff must verify the accuracy of the weekly status report by checking it against the attached diaries. If there is a discrepancy, contact the resident engineer. The resident engineer sends a corrected copy to the prime contractor. The weekly status reports notify the prime contractor and the labor compliance office which contractors are working for the week.

1-208 Labor Compliance Database or Posting Log

Maintain a database on all projects. This can be a handwritten sheet, electronic spreadsheet, or the Microsoft Access database used in most of the districts. This database is a tracking device to determine which documents are missing or delinquent. The database has been developed to generate reports, queries, contractor mailing lists, contractor missing document faxes, plus maintaining data on all contractors, resident engineers, labor compliance officers, and federal funded status. Use the weekly status reports and assistant resident engineer's daily reports to record the names of working contractors. Maintain and log the following information:

- Payrolls and fringe benefit statements due.
- Payrolls and fringe benefit statement received.
- Interviews

In addition, determine if any payrolls or documents are missing.

1-209 Certified Payroll Submittal

The prime contractor and all subcontractors working on the project must furnish weekly certified payrolls to the resident engineer or the district labor compliance office, depending on district policy. Since the prime contractor is ultimately responsible for submittal of all documents, subcontractors should submit payrolls through the prime contractor to the state.

Certified payrolls are due weekly and become delinquent if not received by the 15th of the month for work performed in the preceding month in accordance with Section 7-1.01A(3), “Payroll Records,” of the *Standard Specifications*. The LCO holds ten percent of the monthly progress pay estimate, not less than \$1,000 or more than \$10,000, for non-submittal of payroll documents. This withhold is called a labor compliance violation (LCV) and should not be confused with an actual labor compliance case withhold, which is held as an administrative deduction (ADM). For more information on various ways to withhold money see Section 1-3 “Deductions and Withholds,” of this manual or refer to Section 8-103, “Certified Payroll Requirements,” of the *Construction Manual*.

1-209A Processing Certified Payrolls

Possible payroll wage violations may be found by analyzing and comparing payrolls to diaries or other documentation. The labor compliance staff should look for shorting of hours, using incorrect classifications, the appearance of excess apprentices, missing employees, and unauthorized deductions while comparing documents. Review fringe benefit statements and union trust fund contributions for compliance. A more in depth discussion of payroll review can be found in Section 2-1, “Payroll Analysis,” of this manual.

Process payrolls as follows:

- Log the payroll into the labor compliance database or posting log for the appropriate week ending. Not all contractors use the same calendar days to compute their workweek beginnings and endings. For example, some contractors may list their workweek beginning on Wednesday and ending on the following Tuesday, while other contractors may begin their workweek on Sunday and end it the following Saturday.
- Verify the workweek before deciding to take a deduction for a missing payroll.
- Verify that the signed statement of compliance on Form CEM-2503, “Statement of Compliance,” is complete and the week ending date corresponds with the attached payroll. The statement of compliance can be part of a computerized payroll and does not need to be attached.
- Initial the payroll in the upper right-hand corner and file in Category 25, “Labor Compliance and Equal Employment Opportunity,” of the project files.

1-210 Progress Pay Estimate Deductions

Work with the progress pay estimates section regarding administrative deductions for wage cases, LCO retention and release of funds for missing payroll documents. When determining monthly progress pay deductions, see Section 1-3, “Deductions and Withholds,” of this manual.

1-211 Completion of projects

After receipt of the Form CEM-6301, “Contract Acceptance,” the following should be done:

- Determine if all the assistant resident engineer’s daily reports and the weekly status reports have been received through the completion date. If not, contact the resident engineer and ask that they be submitted immediately.

- Notify the prime contractor and the resident engineer of missing payroll documents.
- Set up a source document review for any contractor that has missing payrolls for the second month in a row or you think may not have paid prevailing wages. This must be done before the project is complete.
- The after acceptance pay estimate is usually run 30 days after the completion date. Any monies due for labor compliance purposes need to be held on this estimate. Money to cover labor compliance violations (not missing documents and payrolls – retentions) cannot be held until the case has been approved by DIR and the LCO has issued a Notice of Withhold of contract payments. A case that is prepared at this stage can be approved, but recovery of money due may require an offset or accounts receivable transaction. It is most important to hold money at this time.
- The Proposed Final Estimate (PFE) is sent to the contractor for review and the prime contractor has 30 days to return it to Caltrans with any disagreements. No money is paid on the PFE.
- The semifinal is the next estimate that is processed and money can be released on the semifinal. It can also be run more than once.
- The final estimate is run when all claims, hearings, and disputes are settled and the project is closed out.

1-212 Extra Work Bills

The resident engineer's staff or the labor compliance staff should verify the extra work bills and compare them to the certified payrolls and the assistant resident engineer's diaries. When discrepancies are discovered, they can be due to either an overcharge on the extra work bill or a labor violation. For example:

1. If the hours on the extra work bill match the hours on the diary but the payroll shows fewer hours, then there is a labor compliance problem to investigate.
2. If the information in the diary and certified payroll match, and the extra work bill has more hours or a higher wage, then the resident engineer deals with the contractor on an extra work overcharge.

1-213 Resident Engineers Meeting

Attend the annual resident engineer's meeting to present any pertinent changes to labor compliance enforcement. Discuss problem areas such as frequency of interviews, concise and accurate diaries, and timely submittal of weekly status reports. Before that meeting, contact the Division of Construction labor compliance unit for any new information that should be disseminated at the meeting. Areas of interest to the resident engineers might be:

- New legislation affecting labor compliance, DBE, DVBE, EEO or subcontracting
- Caltrans concerns with incomplete diaries or frequency of interviews.
- DIR precedential decisions
- Covered work changes
- New construction division policy changes for labor compliance

1-214 Labor Compliance Enforcement Report

The “Semi-annual Labor Compliance Enforcement Report,” Form FHWA-1494, covers the period of either April 1 through September 30 or October 1 through March 31. Submit reports to the Division of Construction labor compliance unit for federally funded projects only also include federally funded local agency projects.

- Capture the Form 1494 information as listed below:

Item 1. Reporting Period,

Item 2. Number of Prime Contracts Awarded,

Any explanation or comment considered necessary to a proper understanding of the report. A separate sheet may list the number of contracts awarded

Item 3. Total dollar amount of prime contracts awarded

Item 4. Number of contractors and subcontractors against whom complaints were received. This includes verbal, written or interviews.

Item 5. Number of investigations completed.

This is a full-scale investigation and includes a complete and detailed investigation into the administration of labor standards provisions. Routine payroll checks should not be included.

Item 6. Number of contractors and subcontractors found to be in violation

This is because of the investigations reported in Item 5. A contractor and subcontractor should not be counted more than once in a single investigation because they have violated more than one act or because more than one contract is included in the investigation.

Item 7. Amount of wages found due

Wages due employees of the contractors and subcontractors reported in Item 6 of Form FHWA-1494. Separate the dollar amounts by:

a. Violations of the Davis-Bacon and Related Acts (straight time).

b. Violations of the Contract Work Hours and Safety Standards Act (overtime).

Item 8. Amount of back wages paid

Back wages paid to employees of the contractor and subcontractor reported in item 6. Separate the dollar amount by:

a. Violations of the Davis-Bacon and Related Acts, straight time

b. Violations of the Contract Work Hours and Safety Standards Act, overtime.

Item 9. Number of employees due wage restitution under Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act

Number of employees to whom the wages were paid in Item 8. This figure is the unduplicated count; that is, an employee paid wages as a result of an investigation is counted only once regardless that it may have been paid under both Davis-Bacon and Related Acts and the Contract Work Hours and Safety Standards Act.

Item 10. Amount of liquidated damages assessed under the Contract Work Hours and Safety Standards Act. This is the federal overtime penalty.

If the labor compliance Access database is in use, query for federal projects awarded between the dates and get the number and the amount of money involved. It is important to have the data collected promptly. The LCO needs accurate and updated tools to track the number of contracts, investigations, cases, and money involved for gathering statistics for annual reporting.

1-214A Federal-Aid Highway Construction Contractor's Annual EEO Report

The prime contractor and all subcontractors that perform work in excess of \$10,000 during the last full week of July on federally financed projects must submit "Federal-Aid Highway Construction Contractors Annual EEO Report," Form FHWA-1391. This form must be completed and returned to the labor compliance office. If the LCO does not receive these forms by that date an Equal Employment Opportunity (EEO) deduction must be taken on the August progress pay estimate for missing documents and the deduction should be held until the forms are received. This form is located at

http://www.dot.ca.gov/hq/construc/A&E_Guidelines/FHWA1391constructionfinal42604.xls

Instructions for filling out this form are located at:

http://www.dot.ca.gov/hq/construc/A&E_Guidelines/FHWAInstructionsFinal42304.doc

1-214A (1) Department of Transportation Projects that must file FHWA-1391:

Notify all prime contractors by letter around July 1, of each year for federally financed projects under construction during the last full week of July. Attach a copy of form FHWA-1391 with the contract number, federal aid number and the week ending on the form before mailing. Refer to the sample letter provided in the back of this section, and to the labor compliance database (posting log), or the weekly status reports to determine which contractors are working the last full week in July.

1-214A (2) Local Agency Projects that must file FHWA-1391:

Contact the Division of Local Assistance to determine which local agencies have federally financed projects under construction during the last full week of July.

Request in writing, approximately July 1 of each year, that all contractors working the last full week in July, which have contracts over \$10,000 on local agency projects must submit FHWA-1391. The local agency must check the forms for accuracy and completeness before submitting them back to the Division of Local Assistance.

The LCO should make sure the forms are complete and accurate before submittal to the Division of Civil Rights.



Section 3 Deductions and Withholds

1-301 General

The California Code of Regulations (CCR), Title 8, Division 1, Chapter 8, Subchapter 3, Article 7, Sections 16435 and 16435.5 provide legal authority to withhold funds from contractors. A withhold of funds is a deduction of monies retained on a temporary basis to get the contractor to conform to the requirements established in the contract special provisions. Wage case violations or Disadvantaged Business Enterprise (DBE) violations withholds are permanent. Notify contractors of the reasons for the deduction or withhold in writing, before a deduction or a withhold is taken.

1-302 Progress Pay Estimate Deductions

The resident engineer is responsible for taking progress pay estimate deductions when there are missing documents. In some districts, the resident engineer has given the responsibility for the deductions involving labor compliance to the LCO. The LCO provides recommendations to the resident engineer regarding deductions from progress pay or after acceptance pay estimates. The labor compliance office must give their recommendations to the resident engineer.

Payroll documents are due by the 15th of the month for all work performed in the previous month. Missing payrolls and related documents for the previous month are considered delinquent when they are not received by the 15th of the following month.

The Division of Construction progress pay coordinator processes the monthly construction progress pay estimates beginning on approximately the 20th of each month on all on-going contracts. These progress pay estimates authorize payment for the amount due to the contractor for work performed and materials purchased.

1-302 A Labor Compliance Violation Deduction

A labor compliance violation (LCV) is a deduction for missing payroll documents and is returned to the contractor as soon as the missing documents are received. Regardless of the number of delinquent payroll documents, an amount equal to 10 percent of the estimated value of the work performed for the estimate period, a minimum of \$1,000 and a maximum of \$10,000, is withheld from the progress pay estimate. Any uncertainty or questionable circumstances should be decided in favor of the contractor. It is unreasonable to hold a \$10,000 deduction from a contractor for one missing payroll amounting to a few hundred dollars.

When taking deductions, consider the following:

- The number of missing payrolls.
- The amount of time a payroll is missing.
- The history of the contractor.
- The project completion date.

Payroll documents include:

- Complete certified payrolls
- Apprenticeship Agreements
- Form CEM-2501, “Fringe Benefit Statements,”

The labor compliance officer should take the following steps if the payroll documents have not been received by the 15th of the month:

- Notify the resident engineer and the contractor of the missing documents or discrepancies before the district progress pay coordinator processes the monthly progress pay estimate.
- Notify the district progress pay coordinator of the deduction status of each contract. If a contract requires a deduction for missing payroll documents, request that the district progress pay coordinator do one or more of the following:
 1. Hold an LCV – Payrolls are delinquent for the previous month. Hold another LCV if more payrolls are delinquent the following month.
 2. Continue to hold the LCV – Delinquent payrolls have not been received.
 3. Release the LCV held on Pay Estimate No. _ – Payrolls have been received for the month in which you held the deduction. Keep track of the estimate numbers and the amounts of the “withhold” since not all withholds are the same (\$1,000 - \$10,000). When a “withhold” is released, it must be for the amount that was held for that specific withhold.

1-302A(1) Examples of Labor Compliance Violation Deductions

Withholds are made separately for each estimate period in which a new delinquency appears. When all delinquencies for a period have been corrected, the deduction covering that period is released on the next progress pay estimate.

The following examples illustrate the process for making and releasing deductions on the progress pay estimate. For each of the following examples, one or more certified payroll documents are missing and the resident engineer must deduct monies the contractor is due. The withholds are taken as an LCV.

Estimate Number One

Value of the deduction is 10 percent of \$9,500, which equals \$950.
The minimum amount of \$1,000 is deducted.

Estimate Number Two

One or more pay documents are still delinquent under previous month’s deduction plus one or more new delinquencies for this period.

Value of the deduction is 10 percent of \$49,000, which equals \$4,900. Last months deduction was a total of \$1,000. Therefore, a total deduction of \$5,900 is held from the current progress payments the contractor is due.

Estimate Number Three

The delinquencies are all cleared up for estimates one and two, but new delinquencies have originated during this period.

The resident engineer should return the previously held \$5,900. Value of the deduction is 10 percent of \$55,000, which equals \$5,500.

Estimate Number Four

The contractor has not corrected the problems with the payrolls in question during progress pay estimate number three. No new delinquencies have occurred. No additional deduction is warranted. Make no change to the amount of money deducted from the contractor for this period, and continue to hold \$5,500.

Estimate Number Five

The contractor has not corrected the problems with the payrolls in question during the previous progress pay estimate number three and a value of \$5,500 is still held.

Value of the current deduction is 10 percent of \$120,000, which equals \$12,000. Use the maximum allowable deduction for missing labor compliance documents, a total deduction of \$10,000. The total value held for labor compliance withhold is $\$10,000 + \$5,500 = \$15,500$.

1-302A(2) Inadequate Payrolls

When payroll records are incomplete, payrolls are considered inadequate until corrections have been made and proof of restitution has been provided, if applicable.

Section 7-1.01A (3), "Payroll Records," of the *Standard Specifications* and the contract special provisions require that contractors submit weekly payrolls with the accompanying statement of compliance to the resident engineer or the labor compliance office. Payroll records include fringe benefit statements, apprentice agreements, or other documents as required. The contractor is also responsible for submitting payroll records for all subcontractors' working on the project, regardless of tier.

1-302A(3) Refusal to Provide Payrolls

Make every effort to get the missing payroll documents from the prime contractor or the subcontractor. Verify that the employees were paid the correct wages via telephone or letters sent to the employees before the end of the project. Letters must request that employees substantiate the wages. Additional information is provided in Chapter 6, "Labor Cases."

- If payrolls are not received, the delinquent contractor must be scheduled for a source document review (SDR) as soon as possible but definitely before the end of the project.
- If the contractor does not send the payrolls and avoids the SDR and every documented effort has been made to obtain the payroll records; the LCO has the option of proceeding with a wage case or using one of the alternatives listed in Section 1-302A(3a), "Alternatives Available," in this manual.

1-302A(3a) Section 1776(g) of the California Labor Code

The labor compliance officer can request payrolls under Section 1776(g), of the California Labor Code. Penalties start accruing 10 days after receipt of the request by the offending contractor.

- If this option is taken, a letter must be sent to notify the contractor that payrolls have not been received. The letter should advise that the contractor is in violation of the contract, and that if payrolls are not submitted within 10 days of the letter, penalties are assessed in accordance with labor code section 1776(g). It provides for a penalty amount of \$25.00 per worker for each calendar day beyond the 10 day deadline, the payroll has not been submitted.
- If the payrolls have not been turned in after 30 days of the date of the letter, the labor compliance officer requests help from the Division of Construction labor compliance unit to subpoena these documents. An administrative deduction in the full amount of labor compliance penalties should be processed on a monthly basis. These penalties are not refundable to the contractor, regardless of the method used to obtain the payrolls.

1-302A(3b) State Agency with Authority

Division of Construction labor compliance should contact the local California Department of Industrial Relations, Division of Labor Standards Enforcement office, for assistance. Their presence may be sufficient to encourage contractor compliance informally. If a case has been approved, Caltrans can request that the Department of Industrial Relations issue a subpoena to compel release of documents by the contractor. DLSE staff, if available, may assist by personally serving the subpoena and accompanying the LCO on a source document review.

1-302 B Administrative Deduction

Administrative (ADM) deductions for specific amounts of money are taken for the following:

- A Disadvantaged Business Enterprise (DBE) substitution violation for amount of monies listed by the prime contractor as a DBE commitment. Deduction could be up to 100 percent of the DBE or Disabled Veterans Business Enterprises (DVBE) commitment. The resident engineer should consult with the LCO.
- An LCV deduction with a minimum of \$1000 and a maximum of \$10,000 could be taken as an ADM deduction, if contract items are not paid that month.
- Wage Cases (wages, penalties, and liquidated damages)

Wage case violation procedures are presented in Section 6-1, “Wage Case Submittal,” of this manual.

1-302 C Equal Employment Opportunity Deduction

Equal Employment Opportunity (EEO) deductions are taken for failure to submit FHWA 1391 reports and failure to post required federal posters and training plans.

1-303 After Acceptance Pay Estimate Deductions

1-303 A Other Outstanding Documents Deduction

Take an Other Outstanding Documents (OOD) deduction for any missing documents on the after acceptance estimate. The deduction amount, regardless of the number of

outstanding items, is calculated automatically and is the lesser of 5 percent of the “Subtotal Amount Earned Without Mobilization,” or \$10,000. Outstanding documents may include:

- Form CEM-2403(F), “Disadvantaged Business Enterprises (DBE) Certification Status Change,” if required
- Form CEM-2404(F), “Monthly DBE Trucking Verification
- Form FHWA-47, “Materials Certificate,”

1-303B Final Report – Utilization of Disadvantaged Business Enterprises /Disabled Veterans Business Enterprise, Form CEM-2402 (F) or (S)

This final report is due within 90 days of contract acceptance. There is a \$10,000 Equal Employment Opportunity (EEO) deduction held for non-submittal of this form over and above the OOD. When the final DBE or DVBE form is received, the \$10,000 is released. If the final DBE or DVBE form is not received, the \$10,000 is held permanently.

1-304 Deductions by Prime Contractors from Subcontractors

Section 1729 of the California Labor Code, holds the subcontractor liable for failure to comply with the prevailing wage requirement. “It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the subcontractor’s failure to comply with the terms of this chapter¹, and if payment has already been made to the subcontractor the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.” That is providing the prime has notified the subcontractor of the contract labor requirements in accordance with Section 1775 of the California Labor Code.

¹ CHAPTER 1 “PUBLIC WORKS” UNDER PART 7 “PUBLIC WORKS AND PUBLIC AGENCIES”, DIV 2 “EMPLOYMENT REGULATION AND SUPERVISION” IN THE CALIFORNIA LABOR CODE

Section 4 Document Requests

1-401 General

Section 1776 (a), (b3), (e) and (i) of the California Labor Code establishes that Caltrans has the legal obligation to supply a certified copy of an employee's payroll record to any party who requests the record. The labor code also authorizes that Caltrans be paid before providing the record. The California Public Records Act (CPRA), Government Code Sections 6250-6276.48 contains the legal requirement to provide a written response to requests within ten calendar days following the receipt of the request. More information about public access to information can be found at the following web site:

<http://www.leginfo.ca.gov/calaw.html>

The Division of Construction labor compliance unit answers questions about written determinations, document requests, and the legal ramifications of providing records. The Division of Construction labor compliance unit may forward requests to the Legal Division for advice regarding privacy and legal rights based on the facts and circumstances presented.

1- 402 Certified Payroll Requests

Certified payrolls refer to weekly payroll reports prepared by a contractor. This includes the contractor's weekly work force for each day of that workweek, together with the schedule of direct wage payments, fringe benefit payments, and all other withholdings authorized by law.

Copies of certified payrolls are marked or obliterated so that the name, address, social security number, and other private information about each employee cannot be identified. Do not obliterate other information, including the identification of the contractor.

Any copies of records made available for inspection by, or furnished to, a joint labor-management committee established in accordance with the federal Labor Management Cooperation Act of 1978 (29 U.S.C. 175a), and Section 1776(e) of the California Labor Code, must be marked or obliterated only to prevent disclosure of an individual's name and social security number.

The LCO can handle payroll requests directly. The LCO sends copies of the request to the district Public Records Act coordinator if the CPRA is specifically cited in the written request for records.

The LCO or resident engineer must review requests for certified payrolls before furnishing copies to a requesting party. Review payroll records for compliance and initiate corrective action, before submittal to a requesting party. Only provide those documents specifically requested in writing. A copy of Form ADM-3003, "Public Records Act Request," is not required, but may be faxed when requested. The form is available via the following web site:

<http://cefs.dot.ca.gov/>

Written requests must include, the following information:

1. A contract number or description,
2. The particular job location, and if more than one job location, the name of the contractor performing the work and the regular business address, if known,
3. Any request for records of more than one contractor or subcontractor must clearly define the responsibilities regarding each individual contractor, regardless if all requests pertain to the same public works project.

If any of the information listed above is missing the LCO should attempt to obtain the missing information by telephone. Ensure a reasonable effort to obtain missing information is made before returning a request.

The LCO must acknowledge written requests within 10 calendar days. The response to the requestor should include: (see sample at end of this section)

- Contract number and location
- Cost of reproduction
- Make check payable to the California Department of Transportation
- District Address

If necessary, explain that payrolls have not been received in the labor compliance office, and provide an anticipated date of receipt.

Send the receipt of payment to the Division of Accounting cashiering with a copy of the acknowledgement letter regarding the cost.

Send the copies of payroll documents with a transmittal letter to the requesting party. File copies of correspondence in Category 25.1 with a copy of the check.

1- 402A Payroll Reproduction Cost

CCR 16402 mandates the charging of a reasonable fee to copy payroll records. The costs are \$1 for the face sheet of each weekly-certified payroll document, and \$0.25 for each subsequent page. For example, records for three successive weeks are requested from a given contractor's payroll documents, \$1 is charged for the face sheet of each of the three separate weekly reports and \$0.25 for each of the following subsequent pages contained in each of those weekly reports.

Copy statements of compliance or fringe benefit statements when specifically requested.

1-403 Requests for Documents other than Certified Payrolls

The following documents are considered public information and are provided upon receipt of the required CPRA request:

- Award documents including summary, and list of subcontractors
- DBE list
- Subcontracting request



- Bonding information

Forward requests for documents such as resident engineer reports, or assistant resident engineer reports (diaries), to the district Public Records Act coordinator.

DEPARTMENT OF TRANSPORTATION
 YOUR DIVISION HERE
 YOUR BRANCH HERE
 YOUR MAILING ADDRESS HERE
 CITY, CA ZIP CODE
 PHONE (YOUR) PHONE-HERE
 FAX (YOUR) FAX-HERE



*Flex your power!
 Be energy efficient!*

Date

Requesting Entity
Contract No. XX-XXXXXX
Address
City, CA Zip Code

Dear Requestor:

In response to your letter dated, (*whatever date*), per the California Code of Regulations, Title 8, Section 16402, the cost of copying certified payrolls shall be provided in advance by the person seeking the payroll record. Such cost shall be \$1 for the first page of the payroll record and 25 cents for each page thereafter.

The cost of reproduction is as follows:

<i>(Sample:)</i>	First page(s)	4	Copies @ \$1.00 per page	\$ 4.00
	Other page(s)	7	Copies @ \$.025 per page	\$ 1.75
	TOTAL			\$ 5.75

Please remit check for \$5.75 (*whatever your total is*) to the above address with (Contract Number) on check (*ATTN: Whoever*), to the California Department of Transportation. Upon receipt of payment, copies of certified payrolls will be forwarded as per your request. Thank you.

Sincerely,

YOUR NAME HERE
 YOUR TITLE HERE

Section 5 Employee Interviews

1-501 General

Legal authorization for conducting employee interviews can be found in the Federal Copeland Anti-Kickback Act, which requires that employee interviews be taken on all public works construction projects containing federal funds. Federal regulations do not establish a minimum frequency of interviews, only a “representative sample” of interviews.

The employee interview is used to check the validity of information shown on the payroll records. Sufficient information is obtained during the interview to verify that compliance with the contract labor standards has been met. The employee is asked questions regarding wage rates, hours of work, and type of work performed, in addition to Equal Employment Opportunity (EEO) and discrimination questions. Employee interviews are treated confidentially, but can be disclosed in a court of law. Do not disclose to the employer the identity of the employee without the employee’s consent. If an employee does not want to be interviewed, the inspector should stop the interview, document it in the diary, and notify the LCO.

The resident engineer’s field inspector must use the Form CEM-2504, “Employee Interview: Labor Compliance / EEO,” or the Spanish version, to take interviews. The resident engineer is responsible for ensuring that an appropriate number of interviews are taken. At least two employee interviews per month per contract, until all the contractor’s employees have been interviewed at least once during the life of a contract in accordance with CPB 03-7, “Civil Rights Act of 1964, Title 7 Equal Employment Opportunity Complaints and Reporting.” CPB 03-7 is available via the following web site:

<http://www.dot.ca.gov/hq/construc/manual2001/CPBindex.HTM>

After reviewing the completed interview form, the resident engineer submits it to the district labor compliance office. Any deficiencies, unwritten complaints, or comments are brought to the attention of the LCO.

When an interview indicates a reporting deficiency or labor compliance violation, the labor compliance officer must then conduct a full investigation. See Chapter 5, “Source Document Review Process,” of this manual for more information.

Ensure inspectors are taking at least the required number of employee interviews. If the minimum number of interviews are not taken, remind the resident engineer of legal requirements and Caltrans policy. It may be necessary to request assistance from the deputy district director of construction in the form of a memo reiterating the interview frequency.

If the resident engineer submits an employee interview form showing discriminations, the LCO must forward a copy of the form to the Division of Construction labor compliance unit. See Section 1-6, “Employee Complaints,” of this manual for instructions.

1-502 Labor Compliance Procedures

Log the interview forms into the labor compliance database or posting log. After logging them in, review the following item on the form:

- Form Item #1 - To be filled in by interviewer
 1. Verify name and classification of the employee by crosschecking against the employer’s payroll for the day worked
 2. Insert a wage rate for the contract and the payroll for both base rate and fringe benefits
 3. Verify that the work is consistent with the classification. If not, the contractor may be working the employee out of class, and additional wages may be due.
- Form Item #2 - Questions to be asked of employee
 1. A, B, C, and D - Compare the interview form to the certified payroll. Note any discrepancies.
 2. E and F - If the inspector gets a “No” response, the resident engineer should talk to the contractor’s EEO officer and notify them that the posters are not available to the employees and to correct the problem. A few days later, the inspector should take another interview to see if corrective action has been taken.
 3. E, F, and G - If any of these responses are negative, send a copy of form to the Division of Construction labor compliance unit for processing.
- Form Item #3 - Additional questions for owner-operators

Verify and compare to owner operator listings or certified payrolls. For more information on owner operators, see Section 3-2 “Owner-Operators,” of this manual.
- Form Item #4 - Employee comments

Take note of comments.
- Form Item #5 - Interviewer’s comments

Take note of comments.

1-503 Owner-Operator Interviews

In addition to conducting the usual employee interviews, truck and equipment operators designated, as “owner-operator” should also be interviewed to determine the correctness of this classification. Employee interviews must be taken from the owner-operator on the Form CEM-2504, “Employee Interview: Labor Compliance / EEO,” and can be used to validate that the owner-operator is an owner-operator and not an employee. If review of an owner-operator listing or payroll record shows that deductions for social security taxes or state unemployment insurance taxes are withheld for the owner-operator, it is an indication that the operator is an employee and not an independent contractor.



Chapter 1

Labor Compliance Procedures

Section 6 Employee Complaints

1-601 General

The resident engineer or district labor compliance officer must discuss the equal opportunity and fair practices provisions of the contract at the preconstruction meeting and advise the contractor of the requirements as stated in Title 6 of the Civil Rights Act of 1964.

1-602 Complaints by Individuals other than Caltrans Employees

Any complaint that implicates the contractor's employment practice is generally a Title 7 EEO complaint. Equal employment opportunity (EEO) complaints may originate from contractor's employees because of either a direct complaint or as a result of a contractor employee interview. All EEO complaints are documented in a diary, letter to the project files, or on Form CEM 2504, "Employee Interview: Labor Compliance / EEO." These complaints may be presented by the public, contractors, suppliers, vendors, or employees. Complaints regarding EEO are directed to the resident engineer. The original complaint is filed in the project records. A copy of the complaint is directed to the LCO.

The LCO sends the complainant a letter notifying them of their rights under the Civil Rights Act of 1964. The letter also provides a complete list of resolution options. Resolution options include:

- Use of the employer's internal EEO program for investigation and resolution.
- Filing a complaint directly with the California Department of Fair Employment and Housing (DFEH).
- Filing a complaint directly with the United States Equal Employment Opportunity Commission (EEOC).

A copy of the following brochures should be included in the letter to the complainant:

- DFEH brochure, "A guide for Complainants." The document is available via the internet at:

<http://www.dfeh.ca.gov>

- EEOC brochure, "Filing a Charge." The document is available via the internet at:

<http://www.eeoc.gov>

In addition, the LCO will prepare and send a notification letter to the prime contractor that an employee has alleged discrimination and that the employee was given notice of their proper recourse. The employee's name shall not be divulged. It should include a reminder to the contractor of their contractual obligations to conduct an investigation. This letter should also advise the contractor that this issue was forwarded to the Caltrans Division of Construction labor compliance unit and Civil Rights office for initiation of a contract compliance oversight investigation.

The LCO refers the issue to the Division of Construction labor compliance unit. Copies of the letter sent to the complainant, contractor notification letter, and the employee

interview form accompany the LCO notification. Sample letters are included at the end of this section.

The Division of Construction labor compliance unit ensures that a proper investigation is conducted. If Caltrans is the respondent for a Title 7 EEO complaint, the Caltrans office of Equal Employment Opportunity, Discrimination Complaint Investigations Unit conducts the investigation of the complaint. If the contractor is the respondent for a Title 7 EEO complaint, the contractor is required to conduct an investigation in accordance with Section 7-1.01A (4) of the *Standard Specifications*. Additional investigation requirements are included in all federal-aid contracts, under Section 14 of the standard special provisions.

Caltrans has no statutory or regulatory authority to conduct investigations of Title 7 complaints between contractors and their employees. Caltrans has no authority to gather evidence, subpoena documents, depose witnesses, or file EEO cases on the behalf of an employee of a contractor. Caltrans ensures that the contractor conducts an EEO investigation to provide contract compliance oversight of the contractor's EEO investigation, and to document oversight activities in the project records.

Civil Rights reports Title 7 complaints and contract data annually to the Federal Highway Administration. The Division of Construction labor compliance unit submits contract data, complaint statistics, complaint analysis, and reports of corrective measures to Civil Rights for inclusion in the annual report. The Division of Construction labor compliance unit collects contract data including number of active contracts, payments, percent complete, progress schedule, and contract changes orders. If there is a significant increase in the number of complaints, the Division of Construction labor compliance unit conducts field investigations and concurrent process reviews to determine appropriate corrective action. The absence of complaints is sufficient to demonstrate nondiscrimination.

1-603 Complaints Against Caltrans

Any complaint that implicates the practices of Caltrans or any Caltrans employee that have the effect of discrimination is considered a Title 6 complaint. Title 6 complaints may originate from a direct complaint made by the public, a contractor, or a Caltrans employee. Title 6 complaints that occur during construction should be referred to the LCO. The LCO refers the issue to the Division of Construction labor compliance unit. The Division of Construction labor compliance unit ensures that proper evaluation or investigation is conducted. Since Caltrans is the respondent for all Title 6 complaints, the Civil Rights, Title 6 unit conducts the investigation of Title 6 complaints. The reported findings may result in contract amendments made by contract change orders.

DEPARTMENT OF TRANSPORTATION
DIVISION OF CONSTRUCTION
1120 N STREET
P. O. BOX 942873
SACRAMENTO, CA 94273-0001
PHONE (916) XXX-XXXX
FAX (916) 654-6345
TTY (916) 654-4086



*Flex your power!
Be energy efficient!*

Date

Address

Dear (Employee Name):

This letter confirms our discussion on (date) informing us that you believe you have experienced discrimination and allege (company name) discriminated against you based on (race, color, national origin, sex, age, disability).

The district labor compliance office reviewed the charges and notified (company name) in writing, that you have been provided a complete list of resolution options, including the use of the employer's internal equal employment opportunity program for investigation and resolution.

The California Department of Transportation (Department) monitors discrimination complaints against sub-recipients of state/federal financial assistance. However, Caltrans has no statutory or regulatory authority to conduct investigations of alleged discrimination complaints between the contractor and a contractor's employee. The Department has no authority to gather evidence, subpoena documents, depose witnesses, or file equal employment opportunity cases on the behalf of a contractor's employee. The Department ensures that the contractor conducts an equal employment opportunity investigation, provides contract compliance oversight of the contractor's equal employment opportunity investigation, and documents oversight activities in the project records.

You are advised that filing a complaint with the California Department of Fair Employment and Housing, or the United States Equal Employment Opportunity Commission must be filed within specific statutory deadlines from the date of the alleged discriminatory act.

If you have any questions, relating to the information referenced above, please contact (labor compliance officer name), at (labor compliance officer telephone #).

Sincerely,

(SIGNATURE)

District labor compliance officer

District (#) Construction

c: Division of Construction

bc: XXX

Author's Initial in Upper Case/Typist's Initial in Lower Case

DEPARTMENT OF TRANSPORTATION
DIVISION OF CONSTRUCTION
1120 N STREET
P. O. BOX 942873
SACRAMENTO, CA 94273-0001
PHONE (916) XXX-XXXX
FAX (916) 654-6345
TTY (916) 654-4086



*Flex your power!
Be energy efficient!*

Date

Address

Dear (Company Name):

The California Department of Transportation (Department) has been notified that a current or former employee of (company name) (filed) (plans to file) a formal complaint of discrimination. The current or former employee is alleging discrimination based on (race, color, national origin, sex, age, disability).

The district labor compliance officer reviewed the charges and provided the complainant a complete list of resolution options, including the use of the employer's internal equal employment opportunity program for investigation and resolution.

The Department complies with nondiscrimination laws and regulations, including Title 7 of the Civil Rights Act of 1964. Title 7 of the Civil Rights Act of 1964 states, "It shall be an unlawful employment practice for an employer: (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." The Department ensures that its activities or programs are nondiscriminatory.

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the nondiscrimination statutes. Any individual alleging such harassment, retaliation, or intimidation may file a complaint with the

California Department of Fair Employment and Housing, United States Equal Employment Opportunity Commission.

If you have any questions about your responsibilities relating to the information referenced above, please contact the Department Civil Rights office at (916) 227-2207.

Sincerely,

(SIGNATURE)
District labor compliance officer
District (#) Construction

c: Division of Construction

Section 1 Payroll Analysis

2-101 General

Payroll analysis is one of the methods used to ensure compliance with contract special provisions and with federal and state labor laws. Even though a contractor correctly fills in payroll documents with all the proper prevailing wages, correct classifications and hours that match the diaries, this does not necessarily mean that the contractor is in compliance. Cross checking employee interviews, complaints, or source document reviews may show that a contractor has falsified records. For details on conducting a source document review, see Section 5-1, “Source Document Review Process,” of this manual.

2-102 Certified Payroll

A certified payroll is a record of payments a contractor makes to employees working on the project. A signed statement of compliance indicating that payrolls and payment procedures comply with the applicable provisions must accompany each payroll or owner-operator listing. Form CEM-2503, “Statement of Compliance,” certifies under penalty of perjury, that the information contained on the payroll is correct, that all hours worked by the employees are reported, and that the employees have been paid in full.

2-102A Certified Payroll Format

The contractor may submit certified payrolls on Form CEM-2502, “Contractor/Subcontractor Payroll,” or on an alternative form. The alternative form must contain the following information:

- State contract number
- Name of contractor or subcontractor performing the work.
- Week ending date
- The employee’s full name, address, and social security number must appear on the first payroll in which the employee works. Subsequent payrolls require only the name of the employee unless there is a change of address.
- If a contractor uses an employee’s classification, including craft and group number, as an identification number instead of the classification description, it should include a letter of explanation. The labor classification used must describe the work actually performed.
- The daily and weekly hours worked in each classification, including overtime hours.
- The employee’s hourly wage rate and the overtime-hourly wage rate.
- Gross wages earned for this project and all projects, itemized deductions, withholds, and net wages paid including payroll check number.

The certified payroll must list every person employed at the job site that performs a part of the contract work. For a further description of contract work see Section 3-1, “Covered versus Non-Covered Work,” of this manual.

2-102B Checking Certified Payrolls

The labor compliance staff should check the first few certified payrolls submitted by the contractor or subcontractor. If no errors are found, spot check subsequent payrolls. Sign and date all certified payroll documents that are checked.

The labor compliance staff should follow these steps when checking certified payrolls:

- Gather the resident engineer diaries, fringe benefit statements, apprentice agreements, weekly listings, and any interviews that may have been taken. Verify that the diaries and weekly status reports match. Notify the resident engineer when the diaries and weekly status reports do not match. The resident engineer or the inspector can answer questions concerning the diaries. The resident engineer will send a revised weekly listing to the contractor.
- Check the diaries for accuracy and completeness. The diary must contain:
 1. Name of contractor with name of employee
 2. For each item of work involving equipment, list the name of the operator with equipment operated, and name of the operator’s employer
 3. Classifications of employees
 4. Hours worked
- Compare the diary against the payroll record
 1. Names should agree on both documents
 2. Verify the number of people represented on both documents
 3. Compare classifications to type of work listed in the diary
 4. Verify that the number of hours listed on the payroll meet or exceed the hours listed on the diary
- Check the payroll
 1. Ensure that the wage rate is correct for the proper classification
 2. Ensure that the contractor paid overtime when employees worked more than 8 hours in a day and 40 hours in a week
 3. Verify that apprentice agreements are on file for apprentices listed
 4. Ensure that the contractor’s fringe benefits were paid to a third party trust, an approved private plan or in cash. Ensure that the fringe benefit statement shows to whom and where they were paid.
 5. Verify that subsistence was paid if the project is located in a subsistence area.
 6. Investigate all unexplained deductions.
 7. Ensure that the Form CEM-2503, “Statement of Compliance,” has an original signature.



2-102B (1) Experience Test

Historically, labor cases are approved for about 5 percent of the active contracts in any given year. The first step in the process is for the labor compliance officer (LCO) to consult the Division of Construction labor case database to determine if any labor cases have been approved during the previous 60-months.

If the contractor has performed past work and completed at least three projects in the district, then the contractor passes the experience test.

2-102B (2) Audit Process

The LCO must consult the contract to determine the number of working days estimated for the project.

The number of working days is divided by five and multiplied by the sample frequency percentage.

The result is then rounded up to determine the total number of weeks to be sampled.

Next, the weeks in which payrolls are to be sampled must be picked randomly using a random number generator in Excel, drawing random slips of paper out of a hard hat, throwing fair dice, or some other random method. The weeks are selected only once, at the beginning of the project.

Audit certified payrolls, from all contractors regardless of tier and all owner operators performing work during the week, using the assistant resident engineers' reports. .

If the audit process reveals a possible wage violation, a full audit of all payrolls for the individual contractor or owner operator must be conducted. If a complaint is received, then an audit of payrolls during the period in question should be audited.

This audit process allows the LCO to plan the work ahead. When evaluating the over all work load for the office, it is permissible to adjust the sample weeks to smooth out work load by moving some sample dates ahead or back, depending on the operational needs and judgment of the labor compliance officer.

This audit approach establishes the minimum frequency for checking certified payrolls. The LCO may increase the frequency at their discretion, often basing this decision on experience, judgment, and intuition.

2-103 Classifications

Verify that the classification listed by the inspector is the proper classification for the work performed. Consult the inspector or resident engineer, when there is a conflict between the diary and payroll records, or clarification is needed.

2-103A How to determine classifications:

1. Go to the Department of Industrial Relations (DIR), Division of Labor Statistics and Research web site:

http://www.dir.ca.gov/dlsr/statistics_research.html

2. Click on General Prevailing Wage Determinations Menu (Journeyman).

3. Follow steps one through five to find the location of the classification. It could be statewide, Northern California, Southern California, San Diego County or in the county sub trades.
4. Locate the classification and click on Scope of Work. The results are a description of the type of work done by that classification. Classification descriptions are obtained from DIR approved collective bargaining agreements and DIR surveys.

Contact the Division of Construction labor compliance unit or another more experienced LCO for assistance. Never guess at a classification.

2-103B Multiple classifications for the same type of work

There may be multiple classifications for the same type of work. For example, the diary may state, “Pilot Car Driver,” and the payroll lists the employee as a “Laborer.” Since both the teamsters and the laborers claim a pilot car driver, the contractor may use either of the two classifications.

2-103C Owners, Partnerships, and Corporate Officers

California labor code requires that anyone performing work on a project must be paid the hourly prevailing wage rates established for that classification or type of work regardless of title or any employment relationship. The exception is owners, corporate officers or partners acting in a supervisory capacity and not performing the function of a worker or laborer.

2-103D Supervisory and Managerial Personnel

- Those employees whose work is supervisory or non-manual in nature are not considered as “laborers” or “mechanics”. The fact that an employee is salaried or is called a “foreman” does not mean that the person may not be a “laborer” or “mechanic.”
- If that employee or a supervisor performs journeyman work for a significant part of the day, the employee is considered a journeyman for that portion of the day
- If the supervisor performs the work of a journeyman for less than 20 percent of the work day, the time is considered incidental. In this case, consider a person’s entire employment as that of a supervisor, and not subject to prevailing wage requirements.

2-104 Prevailing Wage Rates

The next step after determining the correct craft or classification is to determine the appropriate prevailing wage rate. There are state prevailing wage rates and federal wage rates. On projects with only state funding, only the state rates apply. When a project contains any federal funds, it is necessary to view both the state rates and federal rates. The contractor must pay whichever rate is the highest.

An employee may work at more than one classification per day. Employees must be paid the prevailing wage for the type of work they perform. If the employee drives a three-axle dump truck four hours, and works as a laborer four hours, the wage rates would reflect four hours as a truck driver teamster and four hours as a laborer. If an employee works a minor amount of time in another classification during the workday, it is possible for the contractor to pay the employee at the classification worked most during that day.



Sometimes employers use workers in classifications other than those shown in the prevailing wage determinations. The type of work being performed is matched to an existing classification. If no classification exists, match the type of work with the classification closest to an existing classification for which a prevailing wage determination has been issued. Check with the Division of Construction labor compliance unit at the beginning of a project to verify if a particular wage rate can be used. Refer to Section 2-2, "Wage Rate Determinations," of this manual for obtaining additional wage rate determinations.

The contractor must submit an apprenticeship certification to the district labor compliance office for any apprentice listed on the certified payroll report. If proof of certification is not provided, the contractor must pay the employee at the journeyman rate. Refer to Section 2-3, "Apprentices." You may also check the Division of Apprenticeship Standards web site to verify apprentice status at:

<http://www.dir.ca.gov/das/appcertpw/AppCertSearch.asp>

2-104A State Prevailing Wage Rates

The director of the Department of Industrial Relations (DIR), Division of Labor Statistics and Research (DLSR) determines and publishes the state prevailing wage rates. Take the following steps to find the proper wage rate for a particular classification:

2-104A (1) How to find the proper state prevailing wage rate for a classification:

- Go to the DIR web site:

http://www.dir.ca.gov/dlsr/statistics_research.html

- Click on General Prevailing Wage Determinations Menu (Journeyman)
- Follow steps one through five to find the location of the classification. It could be statewide, Northern California, Southern California, San Diego County, or in the subtrades by county
- Choose a classification. From the selected classification, it is possible to access information on holidays, scope of work and travel
- Be sure to look at step 6 for Important Notices. This should be checked frequently for changes.

Follow the same steps to determine the prevailing wage rates for apprentices. The General Prevailing Apprentice Schedules Menu for determining the wage rates for apprentices is found at the same web site. This schedule gives the rates as percentages of the journeyman rates.

To receive the DIR mailing list for the state general prevailing wage rates, all LCOs should input their name in the DIR mailing list. The LCOs are responsible for distributing these wage rates.

2-104A(2) How to determine the correct wage rate:

The labor compliance staff can locate the prevailing wage rate by finding the classification of the worker listed in the first column and reading across to the "Total

Hourly Rate” column. The prevailing wage rate consists of the basic hourly rate and the employer payments for employee benefits. Begin by reading across the columns, adding the basic rate, health and welfare, pension vacation or holiday, training and any other to arrive at the total hourly rate. The appropriate overtime hourly rate, broken down as Daily, Saturday, Sunday and Holiday, must be paid as indicated in the overtime column.

2-104B State Overtime

The California Labor Code Section 1815 and the state constitution requires overtime to be paid for all hours over eight in a day on public works projects. The overtime rate is one and one-half times the hourly rate of pay excluding the fringe benefits. State penalties of \$25 per day, per employee apply for overtime violations in excess of 8 hours in a day and 40 hours in a week. Federal overtime penalties apply for overtime violations only in excess of 40 hours in a week. Check the prevailing wage rates for each classification and area to see if Saturday and Sunday overtime rates apply.

Payrolls are acceptable if they are prepared in accordance with either of the methods shown below. These examples illustrate a situation where an employee worked 10 hours on a given day with basic pay rate of \$14.00 per hour, \$2.00 per hour subsistence, and fringe benefits amounting to \$6.00 per hour. The over time premium is one and one-half times the basic rate of pay.

Method One: Basic reported hours of work approach

Straight Time = 8 hours @ \$22.00 (\$14+\$6+\$2) per hour = \$176.00

Overtime = 2 hours @ \$29.00 [(1.5*\$14) +\$6+\$2] per hour = \$ 58.00

Total Pay for the day = \$234.00

Method Two: Adjusted rate of pay approach

Straight Time = 10 hours @ \$22.00 (\$14+\$6+\$2) per hour = \$220.00

Overtime on top of S.T. = 2 hours @ \$ 7.00 (.5 x \$14) per hour = \$ 14.00

Total Pay for the day = \$234.00

2-104C Saturday and Sunday Overtime Rate Exceptions

Examine the special provisions for Saturday and Sunday overtime exceptions such as:

1. When there are constraints in the contract, such as lane charts with shift and weekend restrictions which force a contractor to work other than a normal Monday through Friday, it is permissible to work Sunday night through Thursday night and pay the straight time rate on Sunday night. The contractor must submit a request for this exception in writing to the resident engineer.
2. Some classifications have overtime exceptions and may be paid straight time on Saturday if the job work stoppage is due to inclement weather that occurred during that week. This weather information should be on the diaries.

However, if employees work more than eight hours a day or 40 hours a week, employers must pay overtime.



Further clarification of exceptions to Saturday and Sunday overtime rates are found in the CCR 16200.

On the following page is an example of how to read a State Wage Determination.

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

Issue date + 10 days =

CRAFT: BUILDING/CONSTRUCTION INSPECTOR AND FIELD SOILS AND MATERIAL TESTER

Double Asterisk = Rates will increase on March 1, 2004

DETERMINATION: NC-63-3-9-2003-2

ISSUE DATE: February 22, 2003

EXPIRATION DATE OF DETERMINATION: February 29, 2004** 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 Division of Labor Statistics and Research 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 ¹ (JOURNEYPERSON)	Employer Payments					Straight-Time		Overtime Hourly Rate		
	Basic Hourly Rate ^a	Health and Welfare ^b	Pension	Vacation and Holiday	Training	Hours	Total Hourly Rate	Daily ^g 1 1/2X	Saturday ^g 1 1/2X	Sunday/Holiday ^j 2X
Trainee (max 12 months)	\$11.62	5.01	3.24	0.36 ^c	.28	8	20.51	26.32	26.32	32.13 ^h
Technician I (max 18 months)	16.05	5.75	3.24	1.11	.28	8	26.43	34.455	34.455	42.48
Technician II (max 18 months)	19.62	5.92	3.24	1.36	.28	8	30.42	40.23	40.23	50.04
Engineering Tech (thereafter)	22.64	6.05	3.24	1.57 ^d	.28	8	33.78	45.10	45.10	56.42
Senior Engineering Tech I	24.77	6.15	3.24	1.71 ^e	.28	8	36.15	48.535	48.535	60.92
Senior Engineering Tech II	26.78	6.25	3.24	1.85 ^f	.28	8	38.40	51.79	51.79	65.18

^a Includes an amount withheld for Supplemental Dues.

^b Includes an amount (\$0.30) for Pensioned Health and Welfare, which shall be paid per hour worked up to 170 per month; An amount (\$4.71) for Health and Welfare shall be paid for all hours worked up to 167 hours per month (effective March 1, 2004, Health and Welfare shall be paid for all hours worked up to 173); The remaining amount is for the sick leave benefit, which shall be paid until 50 sick leave workdays are accumulated (no sick leave during first 12 months).

^c No Vacation and Holiday contribution during first thirty days of service.

^d \$2.00 after 5 years of service.

^e \$2.19 after 5 years of service.

^f \$2.37 after 5 years of service.

^g Rate applies to the first 4 daily overtime hours, Monday through Friday, and the first 8 hours on Saturday. All other overtime is paid at the Sunday/Holiday overtime rate.

^h \$37.58 shall be paid for any holidays worked during the first thirty days of service.

ⁱ The first employee on the job must be a Senior Engineering Tech (SET) I or II. Thereafter, up to four Engineering Techs may be employed for each SET I/II. There shall never be more SET I's than SET II's on the job. One Trainee, Tech I or Tech II is allowed for every three workers classified as SET I, SET II or Engineering Tech.

^j Does not include any additional amount that may be required for vacation, sick leave, or other benefits.

Cannot go below Basic Hourly and Total Hourly Rates

SAMPLE

RECOGNIZED HOLIDAYS: Holidays upon which the prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 7700 of the Government Code. Holiday provisions for current or superseded determinations may be obtained by contacting the Prevailing Wage 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. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Prevailing Wage Unit at (415) 703-4774.



2-105 Federal Wage Determinations

When a contract contains federal funds, it is called a federal aid project and has a federal aid number on the cover sheet of the contract special provisions. The classifications and rates of pay for that project are referenced in the special provisions of the contract.

2-105A How to Find Federal Wage Determinations

Federal Wage Rates may be found at the following web site:

<http://www.access.gpo.gov/davisbacon/ca.html>

It opens to the General Decision County Index. Scroll to the county in which the project is located and click on the determinations under “Heavy”. The wage decision under “Highway” is also found under “Heavy”.

If the federal wage rates and the state DIR wage rates differ, the contractor must pay the higher of the two.

2-105B Federal Overtime

There is no overtime rate listed in the federal wage rates. Federal overtime is calculated at 1 and 1/2 times the base rate plus fringe benefits. This can sometimes calculate out higher than the state overtime rate but since federal overtime rates do not apply until the employee has worked over 40 hours in a week, the higher rate would not take effect until such time. Overtime penalties only apply when the employee works more than 40 hours per week at lower than the calculated federal overtime rate.

To use a classification it must be listed in the federal wage rates. If the classification is not in the federal rates, such as a trainee tied to hours, the wage rate must be paid at the journeyman level. The contractor must pay the higher of the state and federal determinations when they differ. See the following comparison of state and federal overtime rates.

Heavy & Highway Construction North

	Base	FB	Total	OT
<u>Federal - CA020029 01/03/2003</u>				
Operating Engineer Group 4 (Backhoe-Up to 3/4 cu yards)	30.08	13.51	43.59	58.63

<u>State</u>	Base	FB	Total	OT
Operating Engineer - NC-23-63-1-2003-1 pg. 39 Heavy and Highway Group 4 (Backhoe - Up to 3/4 cu yards)	29.53	14.06	43.59	58.355

The federal overtime rates are not listed in the federal determinations but by calculation the rate would be 58.63. So if the contractor worked their employees over 40 hours in a workweek, the overtime rate you would enforce would be 58.63 but only after 40 hours.

In contrast, if the contractor worked their employees over 8 hours in a day and paid the overtime rate of 58.355, then there would not be a violation.

2-106 Fringe Benefits

The contractor must pay fringe benefits in addition to the basic hourly wage rates. Typical fringe benefits include vacation, health benefits, pension funds, and training funds listed in the prevailing wage rates. Fringe benefits must be made to a third party trustee pursuant to a fund, plan, or program. Fringe benefits must be for the benefit of employees, their families and dependents, or retirees and for apprenticeship or other training programs. They may also be paid in cash to the worker. Sometimes employers have their own benefit plans to which they contribute for employees in satisfaction of the prevailing wage determinations.

Form CEM-2501, "Fringe Benefit Statement," must provide sufficient information to satisfy questions regarding the adequacy of payments to any third party administrator such as a union trust fund or other deductions. For example, court ordered deductions that the contractor pays in addition to the basic hourly wage rates. The fringe benefit statement should also indicate to whom the fringe benefits have been paid for each classification, such as a trust fund or as a cash payment made directly to the employee. The signed Form CEM-2501, or equivalent, must be included with the first submitted payroll and each time a change is made in any fringe benefit schedule. Employers may use any method to indicate payment of fringe benefits as long as the amount of each payment can be verified from an examination of the payroll form or a fringe benefit statement. The Division of Construction labor compliance unit can respond to any questions on the acceptability of a private pension plan.

2-107 Travel and Subsistence

Travel and subsistence requirements are found on the DIR, DLSR web site in the prevailing wages. When you find the correct classification, navigate to the right to the drop down arrow and select travel. It will show you the page from the collective bargaining agreement and give all the subsistence information. The location of the project usually determines if subsistence is required. If the project is in a location designated as a subsistence area, contractors are required to pay their employees subsistence. The subsistence payment must be shown on the certified payroll.

Certified maps of the subsistence areas are published by the Association of General Contractors (AGC) and are available from the local AGC office for a nominal fee. A legal description is also available on the web site and is found on the actual wage rate sheet.

When the project covers two or more subsistence areas or crafts, the contractor may choose to pay the higher rate for both areas and crafts.

Subsistence payments for some crafts are based on the employee's residence and location of the project. The LCO should check each collective bargaining agreement.



Subsistence may be paid as a lump sum daily payment or as an increased hourly wage rate, depending on the craft, classification, and group for each employee as listed in the collective bargaining agreement.

2-108 Extra Work Bills

All extra work bills must be checked for the proper use of labor classifications, hours worked, and rates of pay against diaries and certified payrolls provided by the contractor. The resident engineer or labor compliance officer does this, depending on district procedures. Two scenarios may arise from discrepancies when crosschecking these documents.

2-108A Example 1

The contractor has overcharged on the extra work bill. This would occur when:

- The contractor has listed wages higher than what was shown on the payroll
- Listed more hours than the employee worked
- Used classifications that require a higher rate of pay than the classification for the work that was actually performed
- Listed an employee, that did not work

If a discrepancy is noted, contact the resident engineer.

2-108B Example 2

The resident engineer has validated that the extra work bill has the correct hours, wages, and classifications but one of the following has occurred:

- An employee on the extra work bill who worked is not listed on the payroll.
- The hours on the payroll are less than the extra work hours and those hours shown on the diary.
- The wages shown on the payroll are less than the minimum wages due and less than those shown on the extra work bill.

The labor compliance officer must schedule a source document review to investigate payroll deficiencies. The extra work bill can be paid since the problem is not with the billing.

2-109 Additional Information

- The LCO should notify the contractor, in writing, of missing documents or discrepancies noted on the payrolls, and send a copy to the resident engineer.
- Never return certified payrolls to the contractor for revision. The resident engineer or labor compliance officer must request that the contractor submit a supplemental payroll to include the omitted or incorrectly reported items. The contractor may make corrections to certified payrolls if those corrections are written in ink and the contractor initials each correction in the presence of state personnel. The contractor must make the corresponding correction to their payroll records and provide proof of restitution for all effected employees.
- The labor compliance staff should document payroll discrepancies and the contractor's required course of action with the established timeframes.

Section 2 Wage Rate Determinations

2-201 General

Both state and federal wage rates are used on contracts involving federal funds. If a difference exists between the state and the federal wage rates, the contractor must pay the higher of the two. For example, the “Helper” classification, based on hours worked, is not listed in the federal wage rates; therefore, the contractor must pay the higher journeyman rate.

2-202 State Wage Rate Determinations

Labor Code Sections 1773 et seq. and California Code of Regulations (CCR), Title 8, Div. 1, Chapter 8, Subchapter 3, Sections 16001 through 16205 provides legal authority for requesting wage determinations for state wages.

Workers must be classified and paid according to the work they actually perform, regardless of union affiliation, other titles, or designations. To meet these standards, the contractor and persons or firms performing the work on the project must:

- Use classifications that are accurately descriptive of the work being performed. For example, if carpenters are used to place reinforcing steel, they should be shown as “ironworkers” and paid accordingly.
- Reclassify workers to conform to changes in duties in order to provide accurate and proper classification when duties or work tasks have been changed.
- Maintain an accurate record of the time spent in each work classification and show this time by means of separate entries in the payroll records and on the certified payroll.

A worker may be paid at the highest rate all day for all classifications in which they worked for any part of that day. If the higher wage rate is paid, separate entries in the payroll records are not required.

Most construction work is performed by recognized craft classifications; prevailing practice in the industry along with union jurisdiction over the workers can determine the proper classification. In case of a jurisdictional dispute between unions, where the scope of work is covered by more than one craft or classification, Caltrans permits the contractor to pay the lower wage rate until the dispute is resolved. Caltrans does not get involved in these disputes.

The following table shows that depending on the scope of the work, more than one union may claim the same work. Provided both unions have collective bargaining agreements on file with DIR contractors may use either classification.

Table 2-2.1

Scope Of Work	Laborer	Electrician
Trenching for Electrical	>35 H.P. Trencher must be Operator	Yes
Putting conduit in trench	Yes	Yes
Pulling wire in conduit	No	Yes
Connecting wire	No	Yes
Installing Cable for Loops	No	Yes
Saw cutting for loops	Yes	Yes
Clean up	Yes	Yes

2-202A Request for Special State Wage Determinations

The processing and submittal procedures are outlined in Section 8-105B, “Special Wage Determinations,” of the *Construction Manual*.

The state “General Prevailing Wage Determinations,” issued by the Department of Industrial Relations (DIR), Division of Labor Statistics and Research (DLSR), contain most crafts and classifications of workers needed to perform construction tasks required on Caltrans projects. The list can be found at:

http://www.dir.ca.gov/DLSR/statistics_research

Some of the classifications are not found in the state “General Prevailing Wage Determinations,” such as:

- Overhead Door Repair Technician
- Gasoline/Diesel Pump Repair Technician
- Truck Scale Repair Technician
- Traffic Control Service Technician

If a wage rate for a particular craft, or classification is not published in the state “General Prevailing Wage Determinations,” the awarding body (Caltrans) requests that DIR make a determination for the craft or classification.

The LCO should submit the request to the Division of Construction. The following written information must be provided in the determination request:

- Contract Number
- Location (County) where the work is performed
- Anticipated advertisement and bid opening dates, at least 45 days before the bid advertisement date
- Nature of the work
- Description of the duties to be performed



- The most recent determination number of a prior request, if applicable
- A list of contractors or employers (including complete addresses and telephone numbers) who perform work of a similar nature within the same geographical area
- The resident engineer's previous experience with similar work, if applicable

The Division of Construction labor compliance officer must submit the request to DIR at least 45 days before the bid advertisement date. Any interested party may request that DIR make a special state wage determination.

The Division of Construction labor compliance unit reviews the documentation and will either, forward the determination to the Legal Division for a written determination or send it to:

Chief, Division of Labor Statistics and Research
 P.O. Box 420603
 San Francisco, CA 94142

Once DLSR has the necessary information to establish the prevailing wage rate for the requested classification(s), a special wage determination is prepared. To determine the general prevailing wage rate for the classifications above, DLSR may:

- Conduct a wage survey in the areas within and adjacent to the project
- Use collective bargaining agreements
- Consider local prevailing practice

DLSR submits the special state wage determination to the Division of Construction labor compliance unit. The Division of Construction labor compliance unit sends the special state wage determination by cover memo to LCO for handling.

If the contract has already been advertised, a worker should be reclassified, if possible, to a comparable classification. The contractor, resident engineer and the LCO should jointly determine a description and a wage rate for the type of work being performed.

The contractor should be notified at the time of the initial determination, and should the decision support the payment of the higher wage rate, the contractor is required to make up back wages due and pay the higher wage rate from the determination date forward.

Sample letters are located at the end of this section.

2-203 Federal Wage Rate Decisions

The Davis-Bacon General wage decisions are referenced in the contract special provisions.

The Davis-Bacon General wage decisions are available at the following web site:

<http://www.access.gpo.gov/davisbacon/>

Federal wage rates can be issued by addendum up to 10 days before the contract bid opening. The addendum must be included in the preconstruction handout. This means the last change within the 10 days before bid opening is the wage rate used for the entire project. The federal rate used on the project will not increase with any subsequent rate

changes. State prevailing wage rates may continue to escalate. See Section 2-1, “Payroll Analysis,” in this manual for further information.

General decision numbers can be found on Table 2-2.2. The general decision number remains the same and only the modification number and publication date changes throughout the year. General decision numbers are used when writing a labor violation case. The first two characters represent the state and the next two characters represent the year.

Table 2-2.2 GENERAL DECISIONS for Building, Heavy, Highway Work include:

GENERAL DECISION	Exceptions	Counties
CA040001		San Diego
CA040002		Imperial County
CA040003	Water Well Drilling	Statewide
CA040004	Heavy, Highway Only	Del Norte, Humboldt, Lake, Mendocino
CA040005	Building Only	Del Norte, Humboldt, Lake, Mendocino
CA040006	Hopper Dredge Work	Statewide
CA040009		Alpine, Butte, Colusa, El Dorado, Glenn, Lassen, Marin, Modoc, Napa, Nevada, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Sutter, Solano, Trinity, Tehama, Yolo, Yuba,
CA040015	Oil Well Drilling	Kern
CA040019		San Luis Obispo
CA040023		Santa Barbara
CA040025		Ventura
CA040027	Building Only	Tulare
CA040029		Alameda, Amador, Calaveras, Contra Costa, Fresno, Kings, Madera, Mariposa, Merced, Monterey, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Tuolumne
CA040031		Inyo, Kern, Mono
CA040032	Heavy, Highway Only	Tulare
CA040033		Los Angeles
CA040034	Building Only	Amador
CA040035		Orange
CA040036		Riverside
CA040037		San Bernardino
ASBE0408B	Hazardous Material Handler	Kern and Inyo

Identifier codes are used to reference various craft unions. For example, an “SU” identifier code means that rates listed do not reflect collective bargaining wage and fringe benefit rates. For example, SUCA5004A under “Water Well Drilling.”

The United States Department of Labor (USDOL) web site provides information and descriptions of the construction trades and related workers:

<http://www.bls.gov/oco/oco1009.htm>

2-203A Requests for Federal Wage Rate Decisions

The processing and submittal procedures are outlined in Chapter 8-105, “Classification of Labor and Wage Rate Determinations,” of the *Construction Manual*.

On federal aid contracts 48 CFR 52.222-6 provides legal authority for requesting federal wage determinations. Wage rate determinations can be requested before advertisement on Form SF-308 USDOL, “Request for Wage Determination and Response to Request.” After the project has been advertised, wage rate determinations are requested on Form SF-1444, “Request for Authorization of Additional Classification and Rate.” These forms are available via the following web site:

<http://www.gsa.gov/>

Click on “Policies, Guidelines, Regulations and Best Practices,” then click “Forms, Standard, Optional and GSA,” then click “U.S. Government Forms, GSA, Standard and Optional,” click on “Access Forms Library,” then click on “Standard Forms.”

The contractor completes the upper portion of Form SF-1444. The contractor enters the labor classification, wage rate, fringe benefits, and effective date, and obtains the signature of the worker’s labor representative if the worker is a member of a collective bargaining group. If the worker does not belong to any labor organization, the worker signs the form. Item 16 of Form 1444 must be signed by the prime contractor and returned to the resident engineer.

The LCO forwards the completed forms to the Division of Construction labor compliance unit. The Division of Construction labor compliance unit submits the forms for approval to:

United States Department of Labor
Employment Standards Administration
Wage and Hour Division
Branch of Construction Contract Wage Determinations
Washington, D.C. 20210

The United States Department of Labor (USDOL) should respond within 30 days of receipt of a request so that bid opening can occur as scheduled.

A construction contract is not considered effectively amended until a response is received from the Department of Labor indicating approval of the proposed classification or reclassification requests.

2-203B Previous Federal Wage Rate Decisions

You may obtain previous federal wage decisions at the following web site:

<http://www.wdol.gov/>

Click on “Archived WDs.”

Input the general decision number in lower case letters, for example, “ca33,” for Los Angeles. The first two characters will always be “ca” for California. The next two characters represent the county. County numbers are listed in the General Decision County Index at:

<http://www.access.gpo.gov/davisbacon/ca.html>

County numbers are also listed in Table 2-2.2 Obtain both current and previous federal wage rate decisions at this web site.

2-203C Erroneous Federal Wage Decision

When an erroneous federal wage decision has been issued, the USDOL administrator may upon their own initiative or at the request of an agency (Department of Transportation), correct any wage determination whenever a wage determination contains clerical errors. These corrections are included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

Caltrans may terminate the contract and reopen the bid process with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through a change order. The contractor should be compensated for any increases in wages resulting from a wage determination change. For further information, refer to Title 29, Code of Federal Regulation (CFR) Part1, Section 6.

2-203D Wage Determination Appeals Process

An appeal to add an unlisted classification may be submitted to the United States Department of Labor, Wage and Hour Regional Office after award only as provided in the labor standards contract clauses 29 CFR 5.5(a)(1)(v).

The appeals process is placed in this manual for reference only. The Division of Construction labor compliance unit processes any appeal request and determines if an initial decision exists. An initial decision can be:

1. An existing published wage determination
2. A survey underlying a wage determination
3. A Wage and Hour Division letter setting forth a position on a wage determination matter
4. A conformance (additional classification and rate ruling)

On survey related matters, initial contact, including requests for summaries of surveys, should be with the United States Department of Labor, Wage and Hour Regional Office for the area in which the survey was conducted. These regional offices have responsibility for the Davis-Bacon survey program.

In situations where these procedures do not cover all the possibilities, initial contact should be with the United States Department of Labor, Branch of Construction Wage Determinations by writing to:

Branch of Construction Wage Determinations
Wage and Hour Division
United States Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

If an initial decision exists, an interested party can request review and reconsideration (See 29 CFR 1.8 and 29 CFR 7) from the Wage and Hour administrator by writing to:

Wage and Hour Administrator
United States Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

Requests should be accompanied by a full statement of the interested party's position and by any information such as wage payment data, project description, area practice material, and any other information that the requestor considers relevant to the issue.

Unfavorable decisions by the administrator may be appealed directly to:

Administrative Review Board
United States Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

ALL DECISIONS BY THE ADMINISTRATIVE REVIEW BOARD ARE FINAL.

DEPARTMENT OF TRANSPORTATION
DIVISION OF CONSTRUCTION
1120 N STREET
P. O. BOX 942874
SACRAMENTO, CA 94274-0001
PHONE (916) 654-2157
FAX (916) 654-6345
TTY (916) 653-4086



*Flex your power!
Be energy efficient!*

Date

Contract No.
ACBHSTP-ACSTP-P070(074)E

Mr. David Aroner, Acting Chief
Division of Labor Statistics and Research
P.O. Box 420603
San Francisco, CA 94142-0603

Dear Mr. Aroner:

Subject: Request of Special Wage Determination

In accordance with Labor Code Section 1773, please conduct a wage survey and provide us with a special wage determination for tow truck drivers for large vehicle tow trucks capable of moving a fully loaded California legal truck.

The work consists of being stationed at either end of the bridges in order to be able to tow any vehicles, including trucks that have broken down in the construction zones located in Butte, Plumas and Lassen counties.

The requested special wage determination will be incorporated into the above-referenced contract, which was scheduled to be bid September 5, 2001. An addendum request will postpone the bid date pending the wage rate determination.

In the event travel and subsistence payments are required for this type of work within these counties, please provide us with a supplement, listing the applicable travel and subsistence amounts. This data is requested pursuant to Section 16203(e) of the California Code of Regulations.

As a courtesy, we have enclosed a pre-addressed envelope for your response. If you have any questions or need additional information regarding this request, please do not hesitate to give me a call at (916) 654-4347.

Thank you for your assistance.

Sincerely,

(name of Labor Compliance Officer)
Labor Compliance Officer
Division of Construction

"Caltrans improves mobility across California"



General Decision Number CA030003 06/13/2003 CA3

Superseded General Decision No. CA020003

State: California

Construction Type:
WATER WELL DRILLING

County(ies):
STATEWIDE

WATER WELL DRILLING

Modification Number Publication Date
0 06/13/2003

COUNTY(ies):
STATEWIDE

SUCA5004A 01/01/1989

	Rates	Fringes
DRILLER:		
Alameda	10.00	.36
Alpine	9.60	
Amador	9.60	
Butte	7.00	
Calaveras	7.50	
Colusa	11.07	2.03
Contra Costa	9.50	
Del Norte	8.00	.31
El Dorado	9.60	
Fresno	13.37	1.45
Glenn	7.00	
Humboldt	8.00	.31
Imperial	8.70	.36
Inyo	7.29	1.13
Kern	7.05	.06
Kings	7.03	1.21
Lake	11.07	2.03
Lassen	5.50	.43
Los Angeles	9.65	
Madera	7.50	.72
Marin	11.07	2.03
Mariposa	7.50	.72
Mendocino	11.07	2.03
Merced	7.00	.13
Modoc	10.50	

Mono	10.00	
Monterey	12.50	
Napa	8.00	.81
Nevada	7.00	.13
Orange	11.00	1.48
Placer	9.60	
Plumas	10.00	
Riverside	7.00	.36
Sacramento	10.00	
San Benito	8.39	2.65
San Bernardino	10.20	.37
San Diego	8.18	
San Francisco	10.00	
San Joaquin	7.00	.13
San Luis Obispo	6.85	1.02
San Mateo	10.00	.81
Santa Barbara	7.98	
Santa Clara	8.39	2.65
Santa Cruz	8.39	2.65
Shasta	6.95	
Sierra	7.00	.13
Siskiyou	8.00	.31
Solano	9.15	
Sonoma	10.07	1.70
Stanislaus	7.00	.13
Sutter	7.00	
Tehama	10.00	
Trinity	6.95	
Tulare	7.29	1.13
Tuolumne	7.50	.72
Ventura	11.00	1.48
Yolo	10.36	1.65
Yuba	7.00	.13

PUMP INSTALLER:

Alameda	7.50	
Alpine	8.00	
Amador	8.00	
Colusa	10.57	2.03
Contra Costa	7.50	
El Dorado	8.00	
Fresno	6.38	1.04
Imperial	8.50	
Kern	5.50	.43
Lake	10.57	2.03
Los Angeles	9.76	.57
Madera	7.50	.72



Marin	10.57	2.03
Mariposa	7.50	.72
Mendocino	10.57	2.03
Monterey	12.50	
Napa	13.00	.81
Placer	8.00	
Plumas	10.36	1.65
Riverside	6.50	.34
Sacramento	9.43	.83
San Benito	8.39	2.65
San Bernardino	10.30	.77
San Diego	7.85	
San Joaquin	11.39	3.82
San Luis Obispo	6.58	
San Mateo	10.36	1.65
Santa Barbara	7.57	
Santa Clara	8.39	2.65
Santa Cruz	8.39	2.65
Shasta	9.63	1.36
Sonoma	10.57	2.03
Tehama	10.36	1.65
Trinity	9.63	1.36
Tuolumne	7.50	.72
Ventura	11.00	1.48

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling



On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
United States Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR 1.8 and 29 CFR 7). Write to:

Wage and Hour Administrator
United States Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
United States Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.
END OF GENERAL DECISION



Section 3 Apprentices

2-301 General

The California Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE) has joint responsibility with the Division of Apprenticeship Standards (DAS) to enforce the provisions of Section 1777.5 of the California Labor Code.

Under the CCR 230.1, and the California Apprenticeship Council (CAC), apprentices are required at all times to work with or under the direct supervision of a journeyman.

Section 1777.5(c) of the California Labor Code also states that apprentices can only be assigned to perform work of the craft or trade to which the apprentice is registered. For example, in LA County under “Electrician,” an apprentice “Inside Wireman” cannot be used with a journeyman “Transportation Systems Electrician” and visa versa. Work of the craft or trade consists of job duties normally assigned to journeymen in the apprenticeship occupation. For additional references see Section 7-1.01A(5) “Apprentices,” in the Standard Specifications and Section 8-105E, “Employment of Apprentices,” of the *Construction Manual*.

2-302 Labor Compliance Officer Responsibilities

- Verify that apprentices employed on the project are in a bona fide DAS apprenticeship program or that they are paid journeyman rates. You may verify apprentice certification via the following DAS web site:

<http://www.dir.ca.gov/DAS/appcertpw/AppCertSearch.asp>

- Ensure that the training fund portion of the wage package is paid to either the union Joint Apprenticeship Council (JAC) or to the state DAS. The training funds come from the employees’ wage portion and not from the employer. When reviewing payrolls if the total rate is being paid to the employee, including training, it is not a prevailing wage problem, but could be an underpayment of the training fund to the state DAS.
- Discuss the apprenticeship requirements in the preconstruction conference. Requirements should include the \$0.80 per hour paid to the contractor for all apprentices furnished on the project when a training goal is stated in the special provisions. Include the requirement for the resident engineer to write a contract change order to pay for it.

The handout, DAS10, “Excerpts from the California Labor Code relating to apprentices on public works,” must be provided to the prime contractor and subcontractors. This document and other DAS forms are available at the following web site:

<http://www.dir.ca.gov/DAS/PublicWorksForms.htm>

The contractor must submit an Extra Work Bill listing apprentice hours in order to obtain reimbursement.

Verify the apprentice hours on the payroll against the hours listed on the Extra Work Bill. For more information, see the Section 2-305, “Federal Requirement Training Special Provisions,” of this manual

- Verify that the non-signatory contractors have an approved Division of Apprenticeship Standards (DAS) training program via the following DAS web site:

<http://www.dir.ca.gov/database/das/pwaddrstart.asp>

2-303 Contractor Requirements

CCR 230 and Section 1777.5 of the California Labor Code require general contractors and subcontractors to apply for and employ apprentices on public works projects. The contractors must:

- Submit contract award information on DAS Form 140, to the Apprenticeship Programs for each trade providing training in California. This information includes an estimate of the journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. The contractor must file DAS Form 140 within 10 days of the agreement date or contract award, but no later than the first day in which the contractor has workers employed. This form, located in the back of this chapter, can be found at the following web site:

<http://www.dir.ca.gov/DAS/DASForm140.pdf>

- Apply to the Joint Apprenticeship Committee to dispatch apprentices. The program must be given actual notice of at least 48 hours (excluding Saturdays, Sundays, and holidays) before the date on which one or more apprentices are required.
- Employ apprentices in the ratio to journeyman of no less than one hour of apprentice work for every five hours performed by a journeyman, provided by statute or stated in the agreement. Ratios may vary with craft.
- Contribute to the Training Fund for the apprenticeship in California in the amount identified in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who choose not to contribute to an apprenticeship fund must submit their contributions to the California Apprenticeship Council. on Form CAC 2. Form CAC 2 can be found in the back of this section and at the following web site:

<http://www.dir.ca.gov/DAS/DASCAC2.pdf>

Training contributions to the council are due and payable on the 15th day of the month for work performed during the preceding month.



2-303A Apprenticeship Certification

The Division of Apprenticeship Standards (DAS) verification must be submitted when an apprentice appears on a payroll for the first time. The contractor is required to furnish evidence of its apprentices' registration for each contract. If no verification exists that the employee is registered as an apprentice, the employee must be paid at the journeyman rate for the work performed.

The DIR General Wage Apprentice Schedules indicate the proper step at which apprentices are paid.

2-304 Ratios

The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on public works projects may be no greater than the ratio stated in the apprenticeship standards.

The ratios designated in the agreements relate to hours between journeymen and apprentices. These hours are for the total public works project and are not totaled on a daily basis. These hours can be attained at any time during the project. An apprentice must work one hour for every five hours that a journeyman works on the contract.

When the ratio of apprentices to journeyman is questionable, notify the Division of Apprenticeship Standards of the apparent violation, in writing.

2-305 Federal Requirement Training Special Provisions

“Trainee” is federal terminology for a registered apprentice in a state approved apprenticeship program.

Review the last page of Section 14 in the contract special provisions on federally funded contracts for a trainee goal. If a goal is stated, the contractor must submit a training plan to the resident engineer before the start of work. In order for a contractor to be reimbursed the \$0.80 per hour for each trainee, the resident engineer must write a change order for the hours claimed. The trainees, (state approved apprentices) can be on the prime or subcontractor's payroll.

Reimbursement can be made for all apprentices used on the projects without regard to the number of apprentices listed for the goal or the amount of hours used. The trainees must be registered in a bona fide state apprenticeship program.

The contractor must provide periodic reports documenting their performance under this training special provision to the resident engineer.

Verify the apprentice hours on the payroll against the hours listed on the extra work bill. The contractor can submit one extra work bill at the end of the project for reimbursement or submit the extra work bills semi-annually.

Section 1 Covered Versus Non-Covered Work

3-101 General

Caltrans is responsible for enforcement of both federal and state labor laws on all public works projects subject to the payment of specified wages for work performed on the project. Any work subject to the payment of prevailing wages is considered covered work.

Every laborer or mechanic employed at the job site who performs a part of the contract work is subject to the labor provisions of the contract. The laborer or mechanic may either be an employee of the prime contractor, an employee of an approved or listed subcontractor, or some other person or firm who furnishes on-site labor, including specialists, owners, corporate officers, partners, and rental companies furnishing fully operated equipment.

The terms “job site” or “site of the work” as applied to labor compliance are not limited to the actual geographic location or limits of the project. In addition, these terms include any location or facility established for the sole or primary purpose of contributing to the specific project. Typical examples of these types of locations or facilities include non-commercial material sites, processing plants, fabrication yards, garages, or staging sites. Essential criteria for determining covered work at a job site or off-site work is whether these facilities have been operating on a commercial basis before the award of the contract or whether that site performs a commercially useful function exclusively for the project.

This section can change readily with new legislation, precedential decisions by the Department of Industrial Relations (DIR), and court decisions forming case law. Federal and state laws do not always agree, and Caltrans must enforce the most stringent law. When the distinction between covered and non-covered is not clear, contact the Division of Construction labor compliance unit for assistance.

3-102 State versus Federal

As stated in Section 3-1, “Covered versus Non-Covered,” when federal and state law differ, enforce the more stringent law.

3-102A State Law

Public works, as defined in California Labor Code Section 1720(a), “means the 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.”

New California State law and DIR precedential decisions have made changes that have determined more work to be covered than federal law requires. Since the work is being performed in the state of California, state law takes precedence over federal law when state law is more stringent.

3-102A(1) Materials Sites

For labor compliance purposes, materials sites used exclusively for the project are considered covered work. Employees at these sites must be paid prevailing wages.

A materials site is covered if:

- The nature of the operation is noncommercial.
- The materials site is not controlled by the supplier
- The material site is exclusive to the project
- The materials loading operation is controlled by the contractor

Typical situations for coverage determinations requiring the payment of prevailing wages include:

- A commercial source outside the project limits where the prime contractor loads a trucking company's trucks.
- An imported borrow pit not open to the public, located outside the project limits used exclusively by the contractor for a specific project.
- A pit established by the contractor exclusively for a project to supply materials.

In all three of the above cases, the work is covered and the contractor is required to pay prevailing wages to employees.

3-102A(2) Material Plants

Materials, including aggregates, produced with any kind of portable, semi-portable, temporary crushing, screening, proportioning, batching or mixing plant are considered to have originated at a materials plant. Roadside production of materials produced by other than the contractor's forces is considered as "subcontracted" with respect to the contract labor standards.

When a materials plant has been established or reopened exclusively or nearly exclusively for supplying materials to a specific contractor for specific projects, and when these plants are not generally operated commercially, they are considered a site of the work and therefore covered for the payment of prevailing wages. Work involved in the establishment, reopening, and general operation of material plants will likely be covered by the contract labor standards. Use the following guidelines to determine if a plant is commercial and therefore not covered by contract labor provisions:

- The operator has obtained a permit to operate as a commercial plant
- A business license has been obtained for the operation of the plant.
- A public weigh master operates scales at the materials plant.
- The plant provides proof of sales to other agencies and the public.
- The plant is in operation before the project begins and remains in operation after the



project is completed.

The prime contractor must demonstrate that the primary purpose of this materials plant is for general commercial operations. The contractor must provide proof that more than token sales have originated at this material plant.

3-102A(3) Vendors, Suppliers, and Fabricators

Suppliers and fabricators of materials who are not subcontractors and who do no work at the job site other than delivering materials are not subject to the contract labor requirements. However, a supplier or fabricator is a subcontractor subject to the labor provisions for that portion of the work performed at the job site. For example:

- Shop work during fabrication of structural steel is not subject to the contract labor requirements. The contract labor provisions cover any structural steel work performed subsequent to delivery of material to the job site even though shop personnel may perform it. This includes repair of damaged or defective work, in addition to normal installation or erection.
- A fabrication site is set up exclusively for the project, either near the project or in the commercial plant.

Oil spreading by employees of asphalt suppliers is subject to prevailing wages in certain conditions. Only the time spent on-site spreading the material is covered work. Standby time is not. Coverage applies to oil spreading only when the employee, during one work week, has actually spent at least 20 percent of the total time worked spreading material on the specific project. Once a particular employee qualifies for coverage, all the actual spreading time that week is retroactively covered. Staggering employees to avoid coverage is permissible. Determine coverage of work for spreading of pavement reinforcing fabric in the same way.

At the job site, installation of any manufactured products such as mechanical and electrical equipment, bridge deck expansion and bearing assemblies, sign frames, precast or precast-prestressed concrete beams, and all similar fabricated items is covered work and subject to the contract labor provisions.

3-102A(4) Engineering Consultants, Materials Testers, and Land Surveyors

All firms that furnish engineering services such as construction inspection, materials testing, and land surveying, at the job site, regardless of whether that firm is hired by the contractor or Caltrans, are subject to California labor code prevailing wage requirements. This is also true of a site set up solely to serve the project regardless of its location. The payment of prevailing wage rates is mandatory.

Consultants who work on material testing are paid prevailing wage rates whether the work is done on the job site or on state owned facilities. In addition, travel time to and from one public work site to another to do material testing such as travel time from a Department of Transportation project to a Caltrans lab is covered.

Employees performing lab work or doing calculations at a consultant's commercial facility, lab, or a surveyor's office would not be covered.

3-102A(5) Specialists

An independent firm that furnishes a special service or performs work of a specialized nature is considered a “subcontractor” with respect to the labor provisions and is subject to all contract labor requirements, regardless of the nature of the work, service, or method of payment.

3-102A(6) Equipment Rental Firms

Equipment is often rented or leased by contractors from established commercial equipment rental firms. The prevailing wage rate provisions of the contract do not cover drop off, pick up, and incidental repair of this equipment. When rented equipment used in the work, including extra work, is operated and maintained by employees of the equipment rental firm, the equipment rental firm is considered a “subcontractor” only with respect to labor compliance. The employees of the rental firm are, in this situation, covered by the labor compliance requirements of the contract.

3-102A(7) Repair of Equipment

General repair of equipment used on the job site or located at the site of work, including installing, overhauling, assembling, repairing, reconditioning, or other work on machinery, equipment, or tools used in or upon the work are a part of the work to be performed under the contract.

The contract labor provisions cover mechanics and other employees working on machinery, equipment, or tools. These employees must be listed on the contractor’s or subcontractor’s certified payroll records.

Established, independent commercial repair shops that have operated for a period of at least two months before the advertisement of the contract are not covered.

3-102B Federal Law

The following sections describe how to apply the Davis-Bacon Act to specific types of work. If the federal Davis-Bacon Act does not apply, the work is not covered.

3-102B(1) Force Account Work by Public Agencies

In some circumstances, the State Transportation Agency or local public agency may perform the construction work using their own forces. The Davis-Bacon Act provisions do not apply to governmental agencies and states. Public agencies are not considered “contractors” or “subcontractors” within the meaning of the Davis-Bacon Act.

3-102B(2) Exploratory Drilling Services

Subsurface utility engineering is considered to be exploratory drilling services for federal contracts. These contracts provide the location of utilities for engineering or planning purposes. The Davis-Bacon Act does not cover them.

3-102B(3) Railroad and Utility Adjustments

The Davis-Bacon Act provisions do not apply to the following:

- 1) The relocation work done by a public utility or railroad forces, or
- 2) The relocation done by a contractor engaged by the utility or railroad.

This has been a long-standing FHWA policy and has a basis in a May 15, 1985 legal opinion from FHWA's Chief Counsel. However, Davis-Bacon provisions apply when



utility relocation work is part of a highway construction project to be performed by the highway construction contractor or subcontractor.

3-102B(4) Helpers

Helpers are permitted under the federal Davis-Bacon Act if the helper classifications are specified in the applicable federal wage rate decisions.

3-102B(5) Project Engineers

The contractor's project engineers generally do not perform the work of a laborer or mechanic, and are not covered.

3-102B(6) Flaggers

The United States Department of Labor has determined that the duties of flaggers are manual or physical in nature and are covered by the Davis-Bacon Act.

Employees of traffic service companies, which rent equipment and perform only incidental functions at the work site in conjunction with the delivery of equipment, are not covered.

3-102B(7) Inspectors

The contractor's employees who make inspections for quality and contract compliance, including quality control or quality assurance, do not perform the work of a laborer or mechanic, and are not covered.

3-102B(8) Survey Crews

Consider the actual duties of the survey crewmembers. Instrument persons, party chiefs and rod persons are not considered laborers or mechanics, and are not covered. However, a crewmember that primarily does manual work, for example, clearing brush or setting grade is covered for the time spent.

3-102B(9) Materialmen and Suppliers

The Davis-Bacon Act does not cover the manufacturing and delivery of supply items such as sand, gravel, and ready-mixed concrete at the work site when performed by commercial companies.

3-102B(10) Owner-operators of Trucks and Other Hauling Equipment

The United States Department of Labor exempts truck owner-operators that are independent contractors from the Davis-Bacon Act coverage. For more information about owner-operators, see Section 3-2, "Owner-Operators," of this manual.

3-102B(11) Truck Drivers (not truck owner-operators)

After 10 years in the courts, in May 1991, the Court of Appeals for the District of Columbia reached a final decision in the case of the Building and Construction Trades Department versus Midway.

29 CFR 5.2(j), included the "transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor" in the definition of work covered by the Davis-Bacon Act. The court ruled that this regulation is inconsistent with the act and that it conflicts with the statutory

objective of the act. In the court's view, the act covers only mechanics and laborers who work on the site of the federally funded projects and does not cover those employed off-site, such as suppliers and material delivery truck drivers.

In its review of the legislative history of the act, the court concluded that Congress clearly intended the act to apply only to on-site workers. Thus, the court ruled that truck drivers who come onto the site of the work to drop off construction materials are not covered by the act, even if the contractor employs them. For additional guidance concerning truck drivers, see the FHWA's memorandums dated October 3 and December 24, 1991.

3-102B(12) Transportation Enhancement Projects

The Davis-Bacon Act only applies to projects located on highways functionally classified as federal aid highways, not local roads, rural minor collectors, or projects not located on a highway system. The Davis-Bacon Act does not apply to transportation enhancement projects, which are not on federal aid highways unless they are tied to a federal aid highway project.

3-102B(13) Off-Site Work

The prevailing wage rate is required for all labor performed "on the site of the work" and may include the area set aside for storage yards, quarry or borrow pits, batch pits or plants, and similar facilities if they are set up to serve exclusively the particular public works project or projects. Fabrication of materials, delivery of materials and supplies are not covered work, however; any installation "directly on site of the work" of after delivery of these materials would be covered.

3-102B(14) Supervisors or Foremen

Employees whose work is supervisory or non-manual in nature are not considered to be "laborers" or "mechanics" under the public works law, however; if an employee is called a superintendent or foreman that does not exclude that worker from the prevailing wage requirement. The work must be in a non-manual supervisory capacity for a substantial period of each workday. A "foreman" who regularly works with tools must be paid the prevailing wage for the craft worked.

Section 2 Owner-Operators

3-201 General

Owner-operators are independent contractors who own their own equipment and therefore, by definition, are not employees of the contractor. They are normally paid by the hour without employment taxes taken out of their payment.

Owner-operators are generally divided into two groups, truckers and owner-operated equipment other than trucks.

3-202 Differentiating owner-operators from contractors' employees

If a review of payroll records shows that deductions for social security taxes or state unemployment insurance taxes are withheld for the owner-operator, it is an indication that the operator is an employee rather than an independent contractor.

An employee interview can be taken from the owner-operator on the Form CEM-2504, "Employee Interview: Labor Compliance / EEO." If it is apparent that an owner-operator is in fact an employee, then all of the information required by interview Form CEM-2504, including the equal employment opportunity portion, is to be filled out completely and brought to the attention of the LCO.

3-203 Owner-Operator Listing Form

Contractors are required to list all owner-operators used on covered work by completing the front and back of Form CEM-2505, "Owner Operator Listing. Certification is accepted only from the contractor employing the owner-operator.

If the owner-operator is a licensed contractor, an approved subcontractor, or recognized lower tier subcontractor, the owner-operator may submit a certified payroll on Form CEM-2502.

3-203A Certifying Owner-Operator Listing

The following information is used to certify owner-operator status:

- Operator's name as shown on all payrolls.
- Business address of the owner-operator
- The owner-operator's social security number.
- Operator work classification
- A contractor provided description of the equipment.
- The truck CHP CA identification number or the tractor license number.
- Hours worked by the owner-operator as reported on a daily basis.

- Hourly rate of pay, for the owner-operated equipment other than trucks, should equal hourly rental rate plus prevailing wage rate,. This can sometimes be lower if by canvassing rental companies, you determine the rates to be lower in your area.
- Gross payment earned.

3-204 Truck Owner-Operators

This section deals with truck owner-operators, who are independent contractors, owning their own tractor rigs.

Owner-operators of haul trucks, water trucks, or bitumen trucks are considered independent contractors not directly associated with the project under federal law and are not subject to the prevailing wage rate requirements of the contract. However, under state law these trucks would be covered if the haul is covered work.

To verify owner-operator status, either the truck owner-operator must report hours worked on a certified payroll or the contractor must list the owner-operator on a certified owner-operator listing. Owner-operators must have a California Highway Patrol (CHP) CA identification number on file in the Department Motor Vehicle (DMV) database. Check the validity of the owner-operator status via the DMV database

3-204A Verification of Owner-Operator status

The labor compliance officer should use the following criteria to determine if the trucker is an owner-operator or an employee:

- The operator should be the registered owner of the vehicle. The name of the driver should match the name of the registered owner on the Department of Motor Vehicles' registration.
- If the legal owner is a firm or corporation, and the firm or corporate name is shown on the vehicle registration slip, request that the driver furnish evidence that they are leasing or purchasing the vehicle. It is common for the name of the finance or leasing company to be listed on the registration. If the owner-operator is leasing or financing the vehicle, then the operator should be able to furnish such evidence. If the owner operator is unable to substantiate purchase or lease of the equipment, the resident engineer should not allow use of the owner-operator classification for this truck.
- Insurance for the vehicle should be carried in the driver's name. Further checking is required if the name on the policy does not match the name of the driver.
- The California Highway Patrol (CHP) CA identification number in the Department of Motor Vehicles (DMV) database should be in the driver's name. If the name on the CA number does not match the name of the driver, further investigation is warranted. The contractor must establish proof of ownership in cases where there is doubt of the validity of the owner-operator designation.
- If the ownership of a vehicle cannot be determined from the insurance, registration, or title, check the CHP CA identification number in the DMV database via the following web site:

<http://www.dmv.ca.gov/vehindustry/mcp/mcpinfo.htm>



Table 3-2.1 Trucking Coverage

Scope of Work	State Law	Federal Law
Hauling materials from a commercial source	Covered only if contractor hires drivers	Not Covered
Hauling to or from a site set up exclusively for the project	Covered	Covered
Hauling grindings off-site to a refuse disposal	Covered	Not Covered
Hauling roadway excavations off-site	Covered	Not Covered
Hauling material to a site designated by the contract	Covered	Covered
Hauling on job site	Covered	Covered
Contractors' drivers for the time spent loading or unloading materials and supplies on the site of work	Covered	Covered
Recycle company pays the truckers to pick up grindings	Not Covered	Not Covered

3-205 Owner of equipment other than trucks

Owner-operators of general construction equipment other than trucks such as graders, cranes, backhoes, excavators, and other equipment, are considered covered by both state and federal law. Workers must be paid at least the minimum prevailing wage rate in effect for the specific contract plus the appropriate equipment rental rate.

3-205A Calculating Owner-Operator Equipment Payment Breakdown

The labor compliance staff can determine the hourly wage rate due by deducting the prevailing equipment rental rate for the area from the gross hourly rate shown on the owner-operator listing. The contract rental rate (without markup) may be used as a guide. Since this may not be the local prevailing rate, it may be necessary to contact local rental agencies or other sources to determine the actual prevailing equipment rental rate. Compare the hourly wage rate so determined to the applicable basic wage plus fringe benefits to determine compliance.

Chapter 4

Preconstruction Conference

Section 1 Preconstruction Conference

4-101 General

After the contract approval, the resident engineer arranges a preconstruction conference, frequently referred to as a pre-job, with the prime contractor and their subcontractors to discuss all pertinent aspects of the project. The preconstruction conference may be the most important contact made between the labor compliance unit and the contractor. The preconstruction conference provides the labor compliance unit an opportunity to explain the correct payroll procedures and clear up any misinformation the contractor may have received in the past. The labor compliance officer should inform the contractors of any recent labor law changes. Resolve contractor or resident engineer questions, as soon as possible to avoid any wage violations later. A representative from the district labor compliance office should make every effort to attend the preconstruction conference meeting with a contractor if the following applies:

- An inexperienced resident engineer conducts the conference
- There are new contractors, either prime or subcontractors involved
- The contractor or the subcontractor has a history of labor compliance violations
- There are recent labor law changes

The resident engineer or labor compliance officer must obtain the contractor's signature on the preconstruction conference checklist upon receipt of the labor compliance package. This signature indicates that the contractor received the labor compliance package. The contractor's signature may be used as evidence if a labor case is necessary and an administrative hearing is conducted by the Department of Industrial Relations.

4-102 Before the Preconstruction Conference

The labor compliance staff must ensure that preliminary work is organized properly before the preconstruction conference.

4-102A Review the Contract Special Provisions

- Review the cover page to determine:
 1. The location of the project
 2. Whether federal aid funds are involved
 3. The advertised date that is noted as "Dated" in the lower left-hand corner. Use this date to determining the proper state wage rates.
- Review "Important Special Notices" which may affect this contract (first page in contract)
- Review "Notice to Contractors" letter for a general work description in order to determine what classifications may be used on this contract and for any special changes that may affect this job.

- Check any addendums to see if federal wage rates have changed.
- Check for bidders questions regarding labor compliance, wages, lane closure restrictions, and other questions.
- Review Section 2-1.02 through 2-1.02B of the special provisions for Disadvantaged Business Enterprise (DBE), or Disabled Veterans Business Enterprise (DVBE) goals and requirements. Section 2 of the special provisions defines the requirements that a contractor must meet before bid opening in order to be awarded the contract.
- Review Section 5 of the contract special provisions that list requirements for the contractor during the project, and the consequences for noncompliance.
- Check for the “Federal Requirement Training Special Provisions,” which may be included as the last page in the contract special provisions on federally funded projects. This requirement lists training goals for the project when required.

4-102B Review the Contract Award Summary

Review the contract award summary for prime contractor information, the contractor’s bid amount, federal or state funding, location, number of working days, and DBE or DVBE commitment. Attached to the contract award summary is the “List of Subcontractors” and the DBE related correspondence. The DBE list should have the Civil Rights evaluation attached to clarify the work that the DBE is performing. If anything on these documents is questionable or they appear to contradict each other, resolve the problem before the preconstruction conference.

4-102C Compile a preconstruction package to include the following:

- Checklist

Cover all items on the checklist that apply to your contract. The prime contractor’s representative should sign the checklist. When the labor compliance staff is unable to attend, the signature serves as proof that the contractor received the required information. Provide three copies of the signed checklist; one for the resident engineer, one for the contractor, and the original signed copy remains in the labor compliance office.

- Posters to be placed at the job site and the home office
 1. All projects:
 - Form DFEH-162, “Discrimination in Employment,” (English) and Form DFEH-162(S)(Spanish)

<http://www.dfeh.ca.gov/Publications/posters.asp>
 2. On federal projects, also include the following additional posters
 - a.) NOTICE – False Notice Statement Poster, Form FHWA-1022
 - b.) Form FHWA-1495 (English) and Form FHWA-1495A (Spanish) “Wage Rate Information,”
 - c.) Form EEOC-P/E-1 (English) and Form EEOC-P/S-1(Spanish), “Equal Employment is the Law.”

Poster ordering and requirements are available via the following web sites:

<http://www.fhwa.dot.gov/programadmin/contracts/poster.htm>

<http://www.dol.gov/osbp/sbrefa/poster/main.htm>

- State and Federal wage rate determinations
- Labor Compliance address labels for the contractor's convenience. The address labels help ensure that payroll records are sent to the correct location.
- Forms - Samples of the forms are found at the end of this chapter.

Forms used on both state and federal projects:

Form CEM-2401, "Substitution Report for Disadvantaged Business Enterprise/Disabled Veteran Business Enterprise,"

Form CEM-2501, "Fringe Benefit Statement,"

Form CEM-2501 is normally required from all subcontractors and prime contractors. The fringe benefit statement is not required when the total wage package is paid to the employee. Form CEM-2501 is due with the issuance of the first payroll or whenever a benefit change occurs. The forms should indicate both the name and address of where contributions are paid, Form CEM-2502, "Certified Payroll Report,"

The prime contractor and each subcontractor must submit weekly certified payrolls. Although it is good practice for the contractors to submit the payrolls weekly, the contractor must submit them by the 15th of the month for work performed in the previous month to avoid becoming delinquent. Any computer generated payroll report must include all necessary information.

Form CEM-2503, "Statement of Compliance," is required with every payroll and owner operator listing. The contractor must check the box indicating if fringe benefits are paid to an approved fund or to employee in cash. An original signature is required.

Form CEM-2504, "Employee Interview: Labor Compliance/EEO"

At least two employee interviews per month per contract are taken by field inspectors, until all the contractor's employees have been interviewed at least once during the life of a contract or on an as needed basis.

Form CEM-2505, "Owner-Operator Listing"

Used for equipment owner-operators, not employees or company owners.

Describe equipment and list the CHP CA identification number for truckers.

The owner-operator completes and signs the form.

Form DAS-140, “Public Works Contract Award Information”

The contractor must complete and send Form DAS-140, “Public Works Contract Award Information,” to the appropriate Joint Apprenticeship Committee (JAC) for the craft or classification that is used on the project.

Weekly status report

This form is completed by the resident engineer each week and sent to the labor compliance office. This form lists all contractors and owner-operators providing job site labor that are required to submit certified payrolls for the week. The resident engineer sends the original weekly status report to the labor compliance office with diaries attached, and sends a copy of only the weekly status report to the prime contractor.

Additional Form to use on State Funded Projects Only

Form CEM-2402(S), “Final Report – Utilization of Disabled Veteran Business Enterprises (DVBE)”

Additional Forms to use on Federal Funded Projects Only

Form FHWA-1391, “Federal-Aid Highway Construction Contractors Annual EEO Report,” for work done during the last full week of July. Submitted by the prime contractor and all subcontractors doing work in excess of \$10,000.

Form CEM-2402(F), “Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors.”

Form CEM-2403(F), “Disadvantaged Business Enterprises (DBE) Certification Status Change.”

Form CEM-2404(F), “Monthly DBE Trucking Verification,” used on projects when the prime contractor lists trucking to meet DBE goals.

4-103 During the Preconstruction Conference

The following topics must be covered during the preconstruction conference, but the order is left to the discretion of the labor compliance officer:

- Use the preconstruction conference checklist and check each box after it has been reviewed. Ensure that the prime contractor’s representative signs the checklist.
- Make copies of the checklist and sign-in sheet for the prime contractor, resident engineer, and keep the original of the checklist in the labor compliance files.

4-103A Labor Law Information

Federal and California Labor laws apply to all public works contracts. The prime contractor should be familiar with the following applicable federal labor acts, federal Davis-Bacon Act, and related acts. These may also be accessed through the following web site:

<http://www.dol.gov/esa/programs/dbra/index.htm>



4-103A (1) Applicable Federal Labor Acts

4 -103A (1a) Copeland Anti-KickBack Act

Full wages earned must be paid.

Deductions from wages must be authorized. This does not mean employment taxes.

Proper payroll records must be kept for a period of three years after project completion.

Form CEM-2503, "Statement of Compliance," must be submitted with the weekly payroll by the prime contractor and all subcontractors.

4-103A (1b) Minimum Wage Provisions of the Davis-Bacon Act

Wages paid to laborers and mechanics must not be less than the determined hourly rates, including fringe benefits, shown in the minimum wage schedule. State prevailing wage rates apply if they are greater than federal.

Laborers and mechanics must be properly classified and paid according to the work actually performed.

Laborers and mechanics must be paid at least once a week.

The federal minimum wage schedule, including fringe benefits and supplements and the minimum wage poster FHWA 1495 must be posted in a prominent place at the project site.

4-103A (1c) Work-Hours Act of 1962

Forty-hours is the standard workweek.

Work in excess of 40 hours a week must be paid at one and one-half times the basic hourly rate of pay, exclusive of fringe benefit payments.

The contractor, or responsible subcontractor is liable to his employees for unpaid wages. The contractor, or responsible subcontractor, is liable to the federal government for liquidated damages of \$10 per day per person for each violation of the provisions of this act.

When violations of the provisions of this Act occur, the state may withhold from progress and final pay estimates sufficient money to guarantee unpaid wages and liquidated damages.

The Controller General is authorized to pay workers directly from withholdings. Submit appeals to the Federal Highway Administrator, Secretary of Labor, and Court of Claims within 60 days of receipt of Notice of Assessment.

Intentional violations are a federal misdemeanor and carry a \$1,000 fine, or six months in prison, or both.

4-103A (1d) False Information Act

The making or use of false statements is a felony and carries a \$10,000 fine, or five years imprisonment, or both.

False statement poster, FHWA 1022, must be posted at the project site.

4-103A (1e) Sanctions

Violations of federal labor acts may result in withholding of funds, termination of the contract, administrative debarment, and criminal prosecution.

Violations of the federal labor acts are also violations of the California Labor Code.

California Law may be accessed via the following web site:

<http://www.leginfo.ca.gov/>

4-103B Payrolls

- Payroll documents are due by the 15th of the month for work performed in the previous month. Retention for failure to submit satisfactory payrolls is up to 10 percent of the estimated value of the work performed for the estimate period with a minimum of \$1,000; and a maximum of \$10,000. Refer to Chapter 2, “Payrolls,” of this manual for further information.
- Even though the payrolls become delinquent on the 15th of the month, it is advisable to inform the contractor that payrolls should be submitted weekly to discover payroll discrepancies early.
- The prime contractor is ultimately responsible for reviewing and sending in certified payrolls on behalf of all subcontractors. Request the name and phone number of the contractor’s payroll person, and inform the prime contractor of the labor compliance staff working on their contract.
- All payroll documents should contain the Department of Transportation’s contract number.

4-103C Wage Rates

The contractor must post the wage rates at the job site and at the home office. If federal funds are involved, both state and federal wage rates must be posted.

4-103C(1) State Prevailing Wage Rates

State rates are referenced in the contract and can be found at:

http://www.dir.ca.gov/DLSR/statistics_research.html

Either a single or a double asterisk follows the “Expiration Date of Determination” and has the following meaning:

** Double asterisk at time of advertisement means the wage rate will increase

* Single asterisk at time of advertisement means the wage rate is frozen for the life of the contract

4-103C(2) Federal Minimum Wages

- Federal-aid contracts use both federal and state wage rates and the contractor must pay whichever is the greater wage rate. “Federal Minimum Wages” are referenced in the contract special provisions and are available via the following web site:

<http://www.access.gpo.gov/davisbacon/>

Federal wage rates remain in effect for the life of the contract.

- “State General Prevailing Wage Rates” issued by the Division of Industrial Relations can be found at the following web site:

<http://www.dir.ca.gov/DLSR/PWD/>

4-103D Overtime

A contractor must pay overtime if employees work more than eight hours a day and more than 40 hours a week.

The overtime rate is one and one-half times the basic hourly rate of pay, excluding fringe benefits. Penalties apply for overtime violations. Overtime, Saturday, and Sunday rates apply on state wage rates.

4-103D(1) Exceptions to Overtime

If there are questions regarding overtime exceptions during the preconstruction conference, refer to the California Code of Regulations Section 16200 which lists exceptions to payment of overtime and Saturday rates. See Section 2-1, “Payroll Analysis,” of this manual for additional details. The contractor must submit a written request for exception to the resident engineer for approval.

4-103E State Apprenticeship Provisions

- Any apprentice not registered in a state approved apprenticeship program is paid the journeyman rate for the classification of work actually performed. A copy of the registration and the period of apprenticeship must be on file in the labor compliance office.
- The contractor must complete and send Form DAS-140, “Public Works Contract Award Information,” to the appropriate Joint Apprenticeship Committee (JAC) for the craft or classification that is used on the project.
- The contractor must contribute training funds to the JAC or to the California Apprenticeship Council (CAC).

- Section 1777.5(o), “Employment of Apprentices on Public Works,” of the California Labor Code does not apply to contracts under \$30,000. All other requirements of Section 1777.5 of the California Labor Code, regarding the utilization of apprentices on public works projects are applicable.

4-103E(1) Federal Trainee Provision

If there is a trainee goal, the contractor must submit a training plan to the resident engineer before the start of work. For a contractor to be reimbursed the \$0.80 per hour for each trainee, the resident engineer must write a contract change order for the hours claimed. The contract change order does not need to be written if the contractor does not plan to request reimbursement. The trainees or apprentices can be on the prime or subcontractor’s payroll.

4-103F Travel and Subsistence

To determine if a project is located in a geographic area designated as a subsistence area, locate the project on the Associated General Contractors (AGC) maps. Pay travel and subsistence in accordance with collective bargaining agreements.

4-103G Covered versus Non-covered

Prevailing wage is paid to anyone performing work on a public works contract, including corporate officers, owners and partners.

Trucking presents the biggest challenge in determining covered versus non-covered work. Review the contract to see if hauling is a major part of the contract. The description of work performed determines whether the hauling is subject to prevailing wage rates or not. Any off-site hauling is subject to prevailing wages when it is part of the contract work. Truck deliveries from commercial sources are usually not covered. If, however, the truck driver is placing the material on the job site or moving it around, to accommodate the contractor, this would be considered covered work and subject to prevailing wages requiring payrolls or owner-operating listings.

4-103H Bulletin Boards

The prime contractor must maintain a bulletin board at both the home office and the work site at all times. It may not be feasible to place a bulletin board at the work site, however; the poster information must be accessible to all employees. It should include the following:

- State and federal wage rates
- Company EEO Policy – Notify the resident engineer of the name of the EEO officer
- Notice advising employees and applicants of available training programs and entrance requirements
- Form DFEH-162 (English) and Form DFEH-162(S) (Spanish), “Discrimination in Employment”

4-103H(1) Additional Caltrans provided posters for federal projects

The labor compliance office furnishes the contractor with the following additional posters to be posted at the job site.

- “Equal Employment Opportunity is the Law,” Form EEOC-P/E-1 (English) and EEOC-P/S-1 (Spanish),
- Form FHWA-1022, “False Notice Statement”
- Form FHWA-1495 (English), Form FHWA-1495-A (Spanish), “Wage Rate Information,” with minimum wage schedule from the special provisions.

4-103I Minor or Miscellaneous Contracts

It may be necessary to attend a preconstruction conference for a contract other than a major construction project. Minor or miscellaneous contracts include right-of-way demolition, architectural and engineering, maintenance emergency or minor B contracts.

These contracts are usually paid for with a receiving record. The resident engineer or contract manager should forward invoices, payrolls, diaries, and the receiving records to the LCO for review. The labor compliance officer should check all payrolls to ensure contractor compliance and if no labor compliance violations are detected the LCO should recommend approval for payment.

Depending on the duration of the project, payrolls records may be submitted to the resident engineer, contract manager, or the LCO. If the duration of a minor contract is greater than a few weeks, the LCO and the resident engineer may agree to have the contractor submit payrolls directly to the labor compliance office. See the payment process for these contracts under Section 6-1, “Minor and Miscellaneous Contracts.” Also see the state preconstruction conference checklist, in Section 4-2, of this manual.

4-103J Subletting and Subcontracting Fair Practices Act

The Subletting and Subcontracting Fair Practices Act requires bidders to list the names and addresses of all subcontractors whose work is one-half of one percent of the total bid or \$10,000, whichever is greater. This prevents bid shopping. The prime contractor must use the subcontractors listed on the “List of Subcontractors.”

On building contracts, the Subletting and Subcontracting Fair Practices Act requires bidders to list the names and addresses of all subcontractors whose work is one half of one percent of the total bid.

If the prime contractor must substitute one of the original listed subcontractors for one of the nine reasons listed in Section 4107 of the Public Contract Code, the prime contractor must make the request in writing to the resident engineer. Substitution or deletion of subcontractors without prior written approval from the resident engineer results in a penalty of up to 10 percent of the item amount of the subcontract.

Substitutions under the one-half of one-percent threshold do not fall under the Fair Practices Act and do not require a substitution request, unless the subcontractor is a DBE or DVBE. Additional information regarding the Subletting and Subcontracting Fair

Practices Act can be found in the Section 3-801C, “The Subletting and Subcontracting Fair Practices Act,” of the *Construction Manual*.

4-103K Disadvantaged Business Enterprise Requirements

- The LCO should review the list of DBEs with the resident engineer, the inspector, and the contractor and cover the items of work DBEs will perform. Discuss the work items a DBE subcontractor might be performing, supplies a DBE will be delivering, and whether the trucking is performed by employees of a DBE trucker or a DBE truck broker using owner-operators.
- The inspector should note when work is performed by a DBE on the assistant resident engineer’s diaries to monitor DBE usage and detect possible violations before a deduction is necessary.
- Emphasize that the Form CEM-2402F, “Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors,” should match the contractor’s original DBE information sheet submitted at the time of bid.

4-103K(1) Disadvantaged Business Enterprise Subcontractor Substitutions

If it is necessary to replace a DBE on a contract, it must be substituted with another DBE. The process for substituting a DBE is established in Section 8-304, “Adding, Removing, or Substituting DBE or DVBE Subcontractors,” of the *Construction Manual*. For help with DBE substitutions on federal jobs, the contractor may be directed to contact the consultant firm listed in Section 2-1.03, “DBE Goal for this Project” of the contract special provisions, or the labor compliance office.

- The contractor must make every effort to replace the DBE with another DBE or show a “good faith effort” to do so.
- When an unapproved substitution has taken place, the resident engineer withholds an amount equal to the amount listed on the contractor’s DBE commitment.
- Form CEM-2401, “Substitution Report for Disadvantaged Business Enterprise/Disabled Veteran Business Enterprise,” is completed by the resident engineer and a copy is provided to the contractor.

4-103K(2) Disabled Veteran Business Enterprise

Replacements of a Disabled Veteran Business Enterprise on a contract parallels the DBE process.

4-103L EEO Discrimination

The contractor must ensure that every effort has been made to meet the goals listed in Section 14, “Federal Aid Female and Minority Goals,” of the contract special provisions. List these goals on the checklist. The Department of Transportation’s Civil Rights Program conducts civil rights reviews to ensure there is no discrimination in the



employment practices of the contractor. For more information about employee complaints, see Section 1-6, “Employee Complaints,” of this manual.



Chapter 4

Preconstruction Conference

Section 2 Preconstruction Checklists

**FEDERAL CONTRACT
LABOR COMPLIANCE PRECONSTRUCTION
CHECKLIST**
District-County-Route
Description from Front of the Contract Special Provisions

Contract No:	Date:
Federal Aid No:	Bid Advertisement Date:
Resident Engineer:	Contractor:
No. of Working Days:	Contact Person:

Labor Compliance:

- All workers employed in the execution of the contract on a public works project must be paid not less than the specified prevailing wage rates. A sole proprietor, partner, or corporate officer performing covered work on a public works project is also subject to prevailing wage rates and would have to be paid at the appropriate rate for the work performed.

Reference: State Labor Code 1774

- State General Prevailing Wage Rates – Determined by the California, Director of Industrial Relations contain an expiration date with either a single or double asterisk:
 **Double asterisk at time of advertisement means wage rate increases
 * Single asterisk at time of advertisement means that wage rate can be used for the life of the contract.

- Prevailing Wage Rates Determinations for this project are as follows:
 State Index #: _____ - ____ (Sample 2004-1)
 Federal #: CA _____ with first 2 characters denoting the year.
 These rates can be accessed at the following web sites:

State: <http://www.dir.ca.gov/DLSR/PWD/>

Federal: <http://www.access.gpo.gov/davisbacon/ca.html>.

Click on the CA# under Highway for the county where the work project is located.

- If there is a difference between the federal minimum wage rates predetermined by the Secretary of Labor and the state general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the contractor and subcontractors must pay the higher wage rate.

Reference: special provisions page 2



- The Department of Transportation will not accept state wage rates that are lower and not specifically included in the Federal minimum wage determinations. This includes “helper” or other classifications based on hours of experience or any other classification not appearing in the Federal wage determinations.

Reference: special provisions page 2.

- Eight hours of labor constitutes a legal day’s work. Overtime must be paid for all hours over eight hours in a calendar day or 40 hours in a week. The contractor is also subject to a state penalty of an additional \$25 per day and federal penalty of an additional \$10 per day per worker paid less than prevailing wages for overtime work. Saturday and Sunday rates apply.

References: Standard Specifications Section 7-1.01A(1), Federal Work Hours Act, Labor Code Section 1815

- Trucking and Owner-Operators, if applicable.

- Interviews will be taken at the job site.

- The contractor shall make applicable travel and subsistence payments as are on file with the Director of Industrial Relations and can be found on the DIR web site:

<http://www.dir.ca.gov/dlsr/PWD/index.htm>

(Proof of payment required)

Reference: Labor Code Section 1773.8.

- Subsistence rates if the project is located in a subsistence area.

- Contractors violating prevailing wage requirements by paying less than the prevailing wage are subject to a penalty of up to \$50 per day per worker, paid in addition to the wage underpayments plus liquidated damages in the amount of the wage underpayments.

Payroll Requirements:

- Complete and accurate payroll documents from the prime, subcontractors and owner-operators performing work on the job site must be submitted weekly by the prime contractor. The prime contractor must submit the subcontractor payrolls.

- List classification on payrolls, for example, Laborer-Group 1, Plumber, Pipefitter. Payrolls must show clearly gross wages, deductions and check number. All deductions must be specifically identified such as garnishments, tools, or others. Payroll records must be preserved for three years after completion of the project.

- When work classification is not shown, we will determine the wage.

- Failure of the prime to submit the required reports or documents from any contractors on the project, due on or before the 15th of the month for the payrolls, week ending on or before the first of the month, results in a 10 percent withhold on the progress payment for the month, with a minimum \$1000 and a maximum \$10,000.
- Form CEM-2502, “Contractor Payroll,” is available but any form may be used as long as it contains all the information that is included on Form CEM-2502.
- The contract number is required on all payroll documents.
- A signed Form CEM-2503, “Statement of Compliance,” with original signature, must be completed and submitted with all payroll reports or incorporated into computer generated payroll forms.
- Fringe benefits (health and welfare, pension, and vacation) must be included as part of an employee’s hourly wage rate.
- A Form CEM-2501, “Fringe Benefit Statement,” must be completed showing hourly rates and name and address of plan(s) whenever any portion of the fringe benefits are paid to a health and welfare, pension, and vacation plan. This should be submitted with the first payroll and thereafter whenever fringe benefit rates change. If fringe benefits are paid in cash to the employee, then no fringe benefit statement is required.
- Any “other” deductions must be identified on the payroll or the fringe benefit statement and may need employee’s approval.

Apprentices: *This section does not apply to contracts under \$30,000*

- Hand out the Apprenticeship Standards Award Package Information including Form DAS-140, “Public works Contract Award Information.” The contractor must file this form within 10 days of agreement date or contract award, but in no event later than the first day in which the contractor has workers employed upon the public work.
- Proof of registration in an approved apprenticeship program is required and must be attached to the first payroll on which any apprentices or trainees working on public works projects appear.
- Every apprentice employed upon a public works project shall be paid the standard wage rate paid to apprentices under the regulations of the craft or trade to which he or she is registered and employed.
- Contractors performing work under the contract in an apprenticeable craft shall send the training fund payments to the California Apprenticeship Council or an approved apprenticeship program. The training fund payment is part of the employee benefits.

Reference: State Labor Code 1777.5

- All other requirements of the California Labor Code, Section 1777.5 regarding the utilization of apprentices on public works projects are applicable.
- Federal Requirement Training Special Provisions, “The goal for the number of trainees or apprentices to be trained under the requirements of this special provision is _____. The contractor shall submit to the resident engineer for approval the approximate start date and the number of trainees or apprentices to be trained in each selected classification....” before commencing work.
Reference: Special Provisions page 245.

Bulletin Board Requirements

The following must be posted on a bulletin board located at the job site and at the home office:

- Form DFEH-162 “State Discrimination in Employment” in English and Form DFEH-162(s) in Spanish,
- State wage rates at job site only
- Contractor’s EEO Policy and name of the contractor’s EEO officer, which should also be given to the resident engineer.
- Notice advising employees and applicants of available training programs and entrance exams.
- Form EEOC-P-1, Equal Employment is the Law, in English and Form EEOC-P/S-1 in Spanish
- Form FHWA-1022, NOTICE – False Notice Statement Poster,
- Form FHWA-1495, “Wage Rate Information,” in English and Form FHWA-1495A in Spanish. Federal Wage Rates must be attached to the bottom of the Wage Rate Information poster.
- Payday Notice
- Training entrance requirements, verify with union offices

Subcontractors

- Prime is responsible for the compliance of all subcontractors working at the job site.
- Subletting and Subcontracting Fair Practices Act. Bidders are required to list the names and addresses of all subcontractors whose work is one-half of one percent of the total bid or \$10,000 whichever is greater. No Bid shopping-must use subs on “List of Subcontractors”

Reference Section 2, "General" of the special provisions and Public Contract Code 4100-4114

- The resident engineer must approve all first tier subcontractors before they begin work at the job site on a Form CEM-1201, "Subcontracting Request," in order to make sure the prime does not subcontract more than 50 percent of the work.
- Subcontractor substitution requests must be in writing and approved by the resident engineer before substitution.
- The prime must include (Section 14) "Federal Requirements for Federal-Aid Construction Contracts" found in the Contract Special Provisions in every written subcontract agreement and it shall be incorporated into any lower tier subcontracts.

Disadvantaged Business Enterprise Participation

- Disadvantage Business Enterprise (DBE) Goals:
Contract goal: _____ percent as specified in the contract special provisions.
Contractor committed goal: _____ percent.
- List of DBEs and any conflicts or problems that may occur.
- If a DBE substitution is needed, the DBE must be replaced with another DBE or a Good Faith Effort (GFE) must be shown. For DBE substitutions contact the consultant firm listed in Section 2, 103, "DBE Goal for this Project," in the contract special provisions. All requests for substitutions must be in writing and must be approved by the resident engineer before the substitution takes place. A GFE must be approved by the hearing officer.
- Substitution or deletion without prior written approval from the resident engineer results in a penalty up to 100 percent of the amount listed on the contractor's listed DBE commitment.
- Form CEM-2404, "Substitution Report for Disadvantaged Business Enterprise/Disabled Veteran Business Enterprise."
- Form CEM-2402(F), "Final Report—Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" - Submitted at end of job even when there is no DBE goal. "\$10,000 is withheld from the after acceptance payment and not released until the Form CEM-2402 (F) is submitted."
Reference Section 5-1.15, "Subcontractor and DBE Records" of the special provisions.
- Form CEM-2403(F), "Disadvantaged Business Enterprises (DBE) Certification Status Change," this certified form shall be furnished to the resident engineer within 90 days from the date of contract acceptance whether there is a change or not.

Reference: Section 5-1.152, "DBE Certification Status" of the special provisions.

- Form CEM-2404(F), "Monthly DBE Trucking Verification," the contractor shall submit the trucking verification to the resident engineer showing the amount paid to DBE trucking companies or DBE truckers when trucking is listed in the contractor's DBE information submittal. This form is due before the fifteenth of each month.

Reference: Section 5-1.15, "Subcontractor and DBE Records" of the contract special provisions.

EEO/Discrimination

- Minority Manpower Utilization: Female - 6.9 percent; Minority - _____ percent
Copy of Affirmative Action Plan in job file. Subject to reviews by FHWA, Office of Contract Compliance, or Department of Transportation Civil Rights
- Discrimination Complaint Procedures (DFEH-151 Brochure). Resident engineer would distribute to the complainant if this becomes necessary.
- Per part "II. NONDISCRIMINATION" of Section 14 Federal Requirements for Federal - Aid construction projects, the name of the Equal Employment Opportunity Officer for this project is: _____.
- Form FHWA-1391, "Federal-Aid Highway Construction Contractors Annual EEO report," required by any contractor or lower tier subcontractor who performs work the last full week of July and has a contract in excess of \$10,000.00..

PRIME CONTRACTOR'S SIGNATURE:

Name

Title



**STATE Only Funded CONTRACT
LABOR COMPLIANCE PRECONSTRUCTION
CHECKLIST
District-County-Route
Description from Front of Contract Special Provisions**

Contract No:	Date:
Resident Engineer:	Bid Advertisement Date:
Contractor:	Contact Person:

Labor Compliance:

- All workers employed in the execution of the contract on a public works project must be paid not less than the specified prevailing wage rates. A sole proprietor, partner, or corporate officer performing work on a public works project is also subject to prevailing wage rates and would have to be paid at the appropriate rate for the work performed.

Reference: State Labor Code 1774

- State General Prevailing Wage Rates – Determined by the California Director of Industrial Relations; contains an expiration date with either a single or a double asterisk:

** Double asterisk at time of advertisement means wage rate increases

* Single asterisk at time of advertisement means that wage rate can be used for the life of the contract.

- Wage Rate Determinations for this project are as follows:

State Index #: ____ - (Sample 2 0 04-1).

These rates can be accessed at the following can be accessed at the following web site:

<http://www.dir.ca.gov//DLSR/PWD/>

- Eight hours of labor constitutes a legal day's work. Overtime must be paid for all hours over eight hours in a calendar day or 40 hours in a week. The contractor is also subject to a state penalty of an additional \$25 per day per worker when an overtime violation occurs. Saturday and Sunday rates apply.

Reference: Section 7-1.01A of the special provisions.

- Interviews will be taken at the job site

- The contractor shall make applicable travel and subsistence payments as defined in the applicable collective bargaining agreement, under each classification, filed with the Director of Industrial Relations and can be found on the DIR web site:

<http://www.dir.ca.gov/dlsr/PWD/index.htm>

(Proof of payment required).

Reference: Labor Code Section 1773.8.

- Subsistence rates if the project is located in a subsistence area.

Contractors violating prevailing wage requirements by paying less than the prevailing wage rate are subject to a penalty of up to \$50 per day per worker, paid in addition to the wage underpayments plus liquidated damages in the amount of the wage underpayments.

- Trucking and Owner-Operators, if applicable.

Payroll Requirements:

- Complete and accurate payroll documents from the prime, subcontractors and for owner-operators performing work on the job site are due weekly from the prime contractor. The prime contractor is responsible for submitting the subcontractor payrolls. Payroll records must be preserved for three years after completion of the project.
- List classification on payrolls, for example, Laborer-Group 1, Plumber-Pipefitter. Payrolls must show clearly gross wages, deductions and check number. All deductions must be specifically identified, such as garnishments, or tools. When work classification is not shown, we will determine the wage.
- Failure of the prime to submit the required payrolls, reports or documents from any contractors on the project, on or before the 15th of the month for the previous month, results in a 10 percent withhold on the progress payment for the month, with a minimum of \$1000 and a maximum of \$10,000.
- Form CEM-2502, “Contract Payroll,” is available but any form may be used as long as it contains all the information that is included on Form CEM-2502.
- The Contract number is required on all payroll documents.
- A signed Form CEM-2503, “Statement of Compliance,” with the original signature must be completed and submitted with all payroll reports or can be incorporated into a computer generated payroll form.
- Fringe benefits, health and welfare, pension, and vacation, must be included as part of an employee’s hourly wage rate. A Form CEM-2501, “Fringe Benefit Statement,” must be completed showing hourly rates and name and address of plans whenever any portion of the fringe benefits are paid to a health and welfare, pension, or vacation plan. This should be submitted with the first payroll and thereafter whenever fringe benefit rates change.

If fringe benefits are paid in cash to the employee, no fringe benefit statement is required.

- Any “other” deductions must be explained on the payroll or the fringe benefit statement and may need employee’s approval.

Apprentices: This section does not apply to contracts under \$30,000.

- Hand out the Apprenticeship Standards Award Package Information including Form DAS-140, "Public works Contract Award Information." The contractor must file this form within 10 days of agreement date or contract award, but in no event later than the first day in which the contractor has workers employed upon the public work.
- Proof of registration in an approved apprenticeship program is required and must be attached to the first payroll on which any apprentices or trainees working on public works projects appear.
- Every apprentice employed on a public works project shall be paid the standard wage rate paid to apprentices under the regulations of the craft or trade to which he or she is registered and employed.
- Contractors performing work under the contract in an apprenticeable craft shall send the training fund payments to the California Apprenticeship Council or an approved apprenticeship program. The training fund payment is part of the employee benefits.
Reference: State Labor Code 1777.5
- All other requirements of the California Labor Code, Section 1777.5 regarding the utilization of apprentices on public works projects are applicable.

Bulletin Board Requirements

The following must be posted on a bulletin board located at the job site and at the home office:

- Form DFEH-162, "State Discrimination in Employment," in English and Form DFEH-162(S) in Spanish
- State Wage Rates at job site only
- Contractor's EEO Policy and name of the contractor's EEO Officer, which should also be given to the contract manager.
- Notice advising employees and applicants of available training programs and entrance exams.
- Payday Notice

Subcontractors

- Prime is responsible for the compliance of all subcontractors working at the job site.
- Subletting and Subcontracting Fair Practices Act. Bidders are required to list the names and addresses of all first tier subcontractors whose work is one-half of one percent of the total bid or \$10,000 whichever is greater. No bid shopping-must use subs on "List of Subcontractors"

Reference Section 2-1.01, "General" of the Special Provisions and Public Contract Code 4100-4114

- The resident engineer must approve all first tier subcontractors before they begin work at the job site on Form CEM-1201, "Subcontracting Request," in order to make sure the prime does not subcontract more than 50 percent of the work.
- Subcontractor substitution requests must be in writing and approved by the resident engineer before a substitution.

Disabled Veteran Business Enterprise Participation

- Disabled Veteran Business Enterprise (DVBE) Goals:
Contract goal: Three percent as specified in the contract special provisions Section 2-1.02A.
Contractor committed goal: _____ percent.
- List of DVBEs and any conflicts or problems that may occur.
- If a DVBE substitution is needed, the DVBE must be replaced with another DVBE or a Good Faith Effort must be shown. All requests for substitutions must be in writing and must be approved by the resident engineer before the substitution takes place. The hearing officer must approve a GFE, if required.
- Substitution or deletion without prior written approval from the resident engineer results in a penalty up to 100 percent of the amount listed on the contractor's listed DVBE commitment.
- Form CEM-2401, "Substitution Report for Disadvantaged Business Enterprise/Disabled Veteran Business Enterprise,"
- Form CEM-2402(S), "Final Report–Utilization of Disabled Veteran Business Enterprises (DVBE) State Funded Projects," submitted at end of job whether DVBE used or not. "\$10,000 is withheld from the after acceptance payment and not released until the Form CEM-2402(S) is submitted."
Reference Section 5-1.086 of the Special Provisions.

EEO/Discrimination

- Department of Transportation Civil Rights review of hiring procedures and "good faith" efforts in employment of minorities.
- Discrimination Complaint Procedures (DFEH-151 Brochure). Resident engineer would distribute to the complainant if this becomes necessary.
- Contractors EEO Officer

PRIME CONTRACTOR'S SIGNATURE:



Name _____



**MINOR/MISCELLANEOUS CONTRACT
LABOR COMPLIANCE PRECONSTRUCTION CHECKLIST
District-County-Route
Description from Front of Contract Special Provisions**

Contract No:	Date:
Resident Engineer:	Bid Advertisement Date:
Contractor:	Contact Person:

Labor Compliance:

- All workers employed in the execution of the contract on a public works project must be paid not less than the specified prevailing wage rates. A sole proprietor, partner or corporate officer performing work on a public works project is also subject to prevailing wage rates and would have to be paid at the appropriate rate for the work performed.

Reference: California Labor Code 1774

- State General Prevailing Wage Rates – Determined by the California Director of Industrial Relations contains an expiration date with either a single or a double asterisk:

**Double asterisk at time of advertisement means wage rate increases

*Single asterisk at time of advertisement means that wage rate can be used for the life of the contract. The wage rate determination for this contract is:

State Index #: : _ _ _ _ - _ (Sample 2 0 0 4-1) These rates can be accessed at the following web site:

<http://www.dir.ca.gov//DLSR/PWD/>

- Eight hours of labor constitutes a legal day’s work. Overtime must be paid for all hours over eight hours in a calendar day or 40 hours in a week. The contractor is also subject to a state penalty of an additional \$25 per day per worker when an overtime violation occurs. Saturday and Sunday rates apply.

Reference: Special Provisions Section 7-1.01A(1).

- Trucking and Owner-Operators, if applicable. Interviews are taken at the job site

- The Contractor shall make applicable travel and subsistence payments as are on file with the Director of Industrial Relations and can be found on the DIR web site:

<http://www.dir.ca.gov/dlsr/PWD/index.htm>

(Proof of payment required).

Reference: Labor Code Section 1773.8.

- Subsistence Rates if the project is located in a subsistence area.

- Contractors violating prevailing wage requirements by paying less than the prevailing wage rate are subject to a penalty of up to \$50 per day per worker, paid in addition to the wage underpayments plus liquidated damages in the amount of the wage underpayments.

Payroll Requirements:

- Complete and accurate payroll documents from the prime, subcontractors and for owner-operators performing work on the job site are due no later than completion of the contract. Submission weekly is a better practice but not required. Payroll records must be preserved for 3 years after completion of the project.
- List classification on payrolls, for example, Laborer-Group 1, Plumber-Pipefitter and others. Payrolls must show clearly gross wages, deductions and check number. All deductions must be specifically identified, such as garnishments or tools. When a work classification is not shown, Caltrans will determine the wage.
- Failure of the prime to submit the required payrolls, reports or documents from any contractors on the project results in non-payment of the invoice until payrolls are submitted or discrepancies are corrected.
- Form CEM-2502, "Contract Payroll," is available but any form may be used as long as it contains all the information that is included on Form CEM-2502.
- The Contract number is required on all payroll documents.
- Form CEM-2503, "Statement of Compliance," with original signature, must be completed and submitted with all payroll reports or can be incorporated in a computer generated payroll form.
- Fringe benefits which include health and welfare, pension, and vacation must be included as part of an employee's hourly wage rate.
- Form CEM-2501, A fringe benefit statement , must be completed showing hourly rates and name and address of plan(s) whenever any portion of the fringe benefits are paid to a health and welfare, pension, or vacation plan. This should be submitted with the first payroll and thereafter whenever fringe benefit rates change. If fringe benefits are paid in cash to the employee, no fringe benefit statement is required.
- Any "other" deductions must be explained on the payroll or the fringe benefit statement and may need employee's approval.

Apprentices: This section does not apply to contracts under \$30,000.

- Hand out the Apprenticeship Standards Award Package Information including Form DAS-140, "Public works Contract Award Information." The contractor must file this form within 10 days of agreement date or contract award, but in no event later than the first day in which the contractor has workers employed upon the public work.
- Proof of registration in an approved apprenticeship program is required and must be attached to the first payroll on which any apprentices or trainees are working on public works projects appear.

- Every apprentice employed upon a public works project is paid the standard wage rate paid to apprentices under the regulations of the craft or trade to which he or she is registered and employed.
- Contractors performing work under the contract in an apprenticeable craft shall send the training fund payments to the California Apprenticeship Council or an approved apprenticeship program. The training fund payment is part of the employee benefits.
Reference: California Labor Code 1777.5
- All other requirements of the California Labor Code, Section 1777.5 regarding the utilization of apprentices on public works projects are applicable.

Bulletin Board Requirements

The following must be posted on a bulletin board located at the job site and the home office:

- Form DFEH-162, State Discrimination in Employment, in English and Form DFEH-162(S) in Spanish
- State Wage Rates at job site only
- Contractor’s EEO Policy and name of the contractor’s EEO Officer, which should also be given to the resident engineer.
Notice advising employees and applicants of available training programs and entrance exams.
- Payday Notice

Subcontractors

- The prime contractor is responsible for the compliance of all subcontractors working at the job site.
- Subletting and Subcontracting Fair Practices Act. Bidders are required to list the names and addresses of all first tier subcontractors whose work is one-half of one percent of the total bid or \$10,000 whichever is greater. No Bid shopping; must use subs on “List of Subcontractors.”
Reference Section 2-1.01, “General” of the Special Provisions and Public Contract Code 4100-4114
- The resident engineer must approve all first tier subcontractors before they begin work at the job site on a Form CEM-1201, Subcontracting Request in order to make sure the prime does not subcontract more than 50 percent of the work.
- Subcontractor substitution requests must be in writing and approved by the resident engineer before substitution.

Disabled Veteran Business Enterprise Participation

- Disabled Veteran Business Enterprise (DVBE) Goals:



Contract goal: 3 percent as specified in the contract
Contractor committed goal: _____ percent.

- List of DVBEs and any conflicts or problems that may occur.
- If a DVBE substitution is needed, the DVBE must be replaced with another DVBE or a Good Faith Effort must be shown. All requests for substitutions must be in writing and must be approved by the resident engineer before the substitution takes place. The hearing officer must approve the GFE, if required.
- Substitution or deletion without prior written approval from the resident engineer results in a penalty up to 100 percent of the amount listed on the contractor's listed DVBE commitment.
- Form CEM-2401, "Substitution Report for Disadvantaged Business Enterprise/Disabled Veteran Business Enterprise"
- Form CEM-2402(S), "Final Report—Utilization of Disabled Veteran Business Enterprises (DVBE) State Funded Projects", Submitted at end of job even when there is no DVBE goal on the contract. "\$10,000 is withheld from the contractor's payment and not released until the Form CEM-2402 (S) is submitted."
Reference Section 5-1.086 of the Special Provisions.

EEO/Discrimination

- Department of Transportation Civil Rights review of hiring procedures and "good faith" efforts in employment of minorities.
- Discrimination Complaint Procedures, DFEH-151 Brochure. Resident engineer would distribute to the complainant if this becomes necessary.
- Contractors EEO Officer _____

PRIME CONTRACTOR'S SIGNATURE:

Name

Title



**STATE BUILDING CONTRACT
LABOR COMPLIANCE PRECONSTRUCTION CHECKLIST
District-County-Route
Description from the Front of the Contract Special Provisions**

Contract No:	Date:
Resident Engineer:	Bid Advertisement Date:
Contractor:	Contact Person:

Labor Compliance:

- All workers employed in the execution of the contract on a public works project must be paid not less than the specified prevailing wage rates. A sole proprietor, partner or corporate officer, performing work on a public works project is also subject to prevailing wage rates and would have to be paid at the appropriate rate for the work performed.

Reference: California Labor Code 1774

- State General Prevailing Wage Rates – Determined by the California Director of Industrial Relations; contains an expiration date with either a single or a double asterisk:

**Double asterisk at time of advertisement means wage rate increases

*Single asterisk at time of advertisement means that wage rate can be used for the life of the contract.

The wage rate determination for this contract is:

State Index #: __ __ __ - __ . (Sample 2 0 0 4-1). These rates can be accessed at the following web site:

<http://www.dir.ca.gov//DLSR/PWD/>

- Eight hours of labor constitutes a legal day's work. Overtime must be paid for all hours over eight hours in a calendar day or 40 hours in a week. The contractor is also subject to a state penalty of an additional \$25 per day per worker when an overtime violation occurs. Saturday and Sunday rates apply.

Reference: Special Provisions Section 7-1.01A (1).

- Trucking and Owner-Operator, if applicable.

- Interviews are taken at the job site.

- The contractor shall make applicable travel and subsistence payments as are on file with the Director of Industrial Relations can be found on the DIR web site at:

<http://www.dir.ca.gov/dlsr/PWD/index.htm>.

(Proof of payment required).

Reference: Labor Code Section 1773.8.

- Subsistence Rates if the project is located in a subsistence area.



- Contractors violating prevailing wage requirements by paying less than the prevailing wage rate are subject to a penalty of up to \$50 per day per worker, paid in addition to the wage underpayments plus liquidated damages in the amount of the wage underpayments.

Payroll Requirements:

- Complete and accurate payroll documents from the prime, subcontractors and for owner-operators performing work on the job site are due no later than completion of the contract. Submission weekly is a better practice but not required. Payroll records must be preserved for 3 years after completion of the project.
- List classification on payrolls, for example, Laborer-Group 1, Plumber-Pipefitter. Payrolls must show clearly gross wages, deductions and check number. All deductions must be specifically identified, such as garnishments or tools. When a work classification is not shown, Caltrans will determine the wage.
- Failure of the prime to submit the required payrolls, reports or documents from any contractors on the project results in a 10 percent withhold on the progress payment for the month with a minimum of \$1000 and a maximum \$10,000.
- Form CEM-2502, Contract Payroll, is available but any form may be used as long as it contains all the information that is included on Form CEM-2502.
- The Contract number is required on all payroll documents.
- Form CEM-2503, A signed Statement of Compliance, (original signature) must be completed and submitted with all payroll reports.
- Fringe benefits which include health and welfare, pension, and vacation must be included as part of an employee's hourly wage rate.
- Form CEM-2501, A fringe benefit statement , must be completed showing hourly rates and name and address of plan(s) whenever any portion of the fringe benefits are paid to a health and welfare, pension, or vacation plan. This should be submitted with the first payroll and thereafter whenever fringe benefit rates change. If fringe benefits are paid in cash to the employee, no fringe benefit statement is required.
- Any "other" deductions must be explained on the payroll or the fringe benefit statement and may need employee's approval.

Apprentices: This section does not apply to contracts under \$30,000.

- Hand out the Apprenticeship Standards Award Package Information including Form DAS-140, "Public works Contract Award Information." The contractor must file this form within 10 days of agreement date or contract award, but in no event later than the first day in which the contractor has workers employed upon the public work.

- Proof of registration in an approved apprenticeship program is required and must be attached to the first payroll on which they appear for all apprentices or trainees working on public works projects.
- Every apprentice employed upon a public works project shall be paid the standard wage rate paid to apprentices under the regulations of the craft or trade to which he or she is registered and employed.
- Contractors performing work under the contract in an apprenticeable craft shall send the training fund payments to the California Apprenticeship Council or an approved apprenticeship program. The training fund payment is part of the employee benefits.
Reference: California Labor Code 1777.5
- All other requirements of the California Labor Code, Section 1777.5 regarding the utilization of apprentices on public works projects are applicable.

Bulletin Board Requirements

- The following must be posted on a bulletin board located at the job site and the home office:
 - State Discrimination in Employment, Form DFEH-162 in English and Form DFEH-162(S) in Spanish
 - State Wage Rates at job site only
 - Contractor's EEO Policy and name of the contractor's EEO Officer, which should also be given to the resident engineer.
 - Notice advising employees and applicants of available training programs and entrance exams.
 - Payday Notice

Subcontractors

- Prime is responsible for the compliance of all subcontractors working at the job site.
- Subletting and Subcontracting Fair Practices Act. Bidders are required to list the names and addresses of all first tier subcontractors whose work is one-half of one percent of the total. No Bid shopping; must use subs on "List of Subcontractors"
Reference Section 2-1.01, "General" of the Special Provisions and Public Contract Code 4100-4114.
- The resident engineer must approve all first tier subcontractors before they begin work at the job site on a Form CEM-1201, "Subcontracting Request," in order to make sure the prime does not subcontract more than 50 percent of the work..



- Subcontractor substitution requests must be in writing and approved by the resident engineer before substitution.
- The resident engineer must approve all first tier subcontractors before they begin work at the job site.

Disabled Veteran Business Enterprise Participation

- Disabled Veteran Business Enterprise (DVBE) Goals:
Contract goal: 3 percent as specified in the contract .
Contractor committed goal: _____ percent.
- List of DVBEs and any conflicts or problems that may occur.
- If a DVBE substitution is needed, the DVBE must be replaced with another DVBE or a Good Faith Effort must be shown. All requests for substitutions must be in writing and must be approved by the resident engineer before the substitution takes place. The hearing officer must approve the GFE if required.
- Substitution or deletion without prior written approval from the resident engineer results in a penalty up to 100 percent of the amount listed on the contractor’s listed DVBE commitment.
- Form CEM-2401, “Substitution Report for Disadvantaged Business Enterprise/Disabled Veteran Business Enterprise,” Form CEM-2401
- Form CEM-2402(S), “Final Report–Utilization of Disabled Veteran Business Enterprises (DVBE) State Funded Projects”, submitted at the end of a job even when there is no DVBE goal on the contract. “\$10,000 is withheld from the after acceptance payment and not released until the Form CEM-2402(S) is submitted.”
Reference Section 5-1.086 of the Special Provisions.

EEO/Discrimination

- Department of Transportation Civil Rights review of hiring procedures and “good faith” efforts in employment of minorities.
- Discrimination Complaint Procedures (DFEH-151 Brochure). The resident engineer would distribute if this becomes necessary.
- Contractors EEO Officer _____

PRIME CONTRACTOR’S SIGNATURE:



Name

Title



**ARCHITECTURAL AND ENGINEERING CONTRACT
LABOR COMPLIANCE PRECONSTRUCTION CHECKLIST**

District-County-Route

Description from Front of Contract Special Provisions

Contract No:	Date:
Resident Engineer:	Bid Advertisement Date:
Contractor:	Contact Person:

Labor Compliance:

- All workers employed in the execution of the contract on a public works project must be paid not less than the specified prevailing wage rates. A sole proprietor, partner or corporate officer, performing work on a public works project is also subject to prevailing wage rates and would have to be paid at the appropriate rate for the work performed.
Reference: California Labor Code 1774

- State General Prevailing Wage Rates – Determined by the California Director of Industrial Relations contains an expiration date with either a single or a double asterisk:
 **Double asterisk at time of advertisement means wage rate increases
 *Single asterisk at time of advertisement means that wage rate can be used for the life of the contract .The wage rate determination for this contract is:
 State Index: __ __ __ - __ . (Sample 2 0 0 4-1). These rates can be accessed at the following web site:
<http://www.dir.ca.gov//DLSR/PWD>

- Eight hours of labor constitutes a legal day’s work. Overtime must be paid for all hours over eight hours in a calendar day or 40 hours in a week. The contractor is also subject to a state penalty of an additional \$25 per day per worker when an overtime violation occurs. Saturday and Sunday rates apply.
Reference: Special Provisions Section 7-1.01A(1).

- Interviews are taken at the job site

- The contractor shall make applicable travel and subsistence payments as are on file with the Director of Industrial Relations and can be found on the DIR web site:
<http://www.dir.ca.gov/dlsr/PWD/index.htm>
(Proof of payment required).
Reference: Labor Code Section 1773.8.

- Subsistence Rates if the project is located in a subsistence area.

- Contractors violating prevailing wage requirements by paying less than the prevailing wage rate are subject to a penalty of up to \$50 per day per worker, paid



in addition to the wage underpayments plus liquidated damages in the amount of the wage underpayments.

- Trucking and Owner-Operators, if applicable.

Payroll Requirements:

- Complete and accurate payroll documents from the prime, subcontractors and for owner-operators performing work on the job site are due within 10 days of submitting final invoice. For monthly progress invoices, payrolls are required invoices. Submission weekly is a better practice, but not required. Payroll records must be preserved for 3 years after completion of the project.
- List classification on payrolls, for example Laborer-Group 1, Plumber-Pipefitter. Payrolls must show clearly gross wages, deductions and check number. All deductions must be specifically identified, such as garnishments or tools. When a work classification is not shown, Caltrans will determine the wage.
- Failure of the prime to submit the required reports or documents from any contractors on the project results in non-payment of the invoice until payrolls are submitted or discrepancies are corrected.
- Form CEM-2502, Contract Payroll, is available but any form may be used as long as it contains all the information that is included on Form CEM-2502.
- The Contract number is required on all payroll documents.
- Form CEM-2503, “Statement of Compliance,” with original signature, must be completed and submitted with all payroll reports or can be incorporated into a computer generated payroll form.
- Fringe benefits which include health and welfare, pension, and vacation must be included as part of an employee’s hourly wage rate.
- Form CEM-2501, “Fringe Benefit Statement,” must be completed showing hourly rates and name and address of plan(s) whenever any portion of the fringe benefits are paid to a health and welfare, pension, or vacation plan. This should be submitted with the first payroll and thereafter whenever fringe benefit rates change. If fringe benefits are paid in cash to the employee, no fringe benefit statement is required.
- Any “other” deductions must be explained on the payroll or the fringe benefit statement and may need employee’s approval.

Apprentices: This section does not apply to contracts under \$30,000

- Hand out the Apprenticeship Standards Award Package Information including first day in which the contractor has workers employed upon the public works. Proof of registration in an approved apprenticeship program is required and must

be attached to the first payroll on which any apprentices or trainers are working on public works projects.

- Every apprentice employed upon a public works project shall be paid the standard wage rate paid to apprentices under the regulations of the craft or trade to which he or she is registered and employed.
- Contractors performing work under the contract must send the training fund payments to the California Apprenticeship Council or an approved apprenticeship program. The training fund payment is part of the employee benefits.
Reference: California Labor Code 1777.5

Bulletin Board Requirements

The following must be posted on a bulletin board located at the job site and the home office:

- State Discrimination in Employment, Form DFEH-162 in English and Form DFEH-162(S) in Spanish
- State Wage Rates at job site only
- Contractor's EEO Policy and name of the contractor's EEO Officer, which should also be given to the resident engineer.
- Notice advising employees and applicants of available training programs and entrance exams.

Subcontractors

- The prime contractor is responsible for the compliance of all subcontractors working at the job site.
- Subletting and Subcontracting Fair Practices Act. Bidders are required to list the names and addresses of all first tier subcontractors whose work is one-half of one percent of the total bid or \$10,000 whichever is greater. No Bid shopping-must use subs on "List of Subcontractors"
Reference Section 2-1.01, "General" of the Special Provisions and Public Contract Code 4100-4114
- The resident engineer must approve all first tier subcontractors before they begin work at the job site. on a Form CEM-1201, "Subcontracting Request," in order to make sure the prime does not subcontract more than 50 percent of the work
- Subcontractor substitution requests must be in writing and approved by the resident engineer before substitution.

Disabled Veteran Business Enterprise Participation

- Disabled Veteran Business Enterprise (DVBE) Goals:
Contract goal: 3 percent as specified in the contract
Contractor committed goal: _____ percent.

- List of DVBEs and any conflicts or problems that may occur.
- If a DVBE substitution is needed, the DVBE must be replaced with another DVBE or a Good Faith Effort must be shown. All requests for substitutions must be in writing and must be approved by the project manager before the substitution takes place. The hearing officer must approve the GFE, if required.
- Substitution or deletion without prior written approval from the project manager results in a penalty up to 100 percent of the amount listed on the contractor's listed DVBE commitment.
- Form CEM-2401, "Substitution Report for Disadvantaged Business Enterprise/Disabled Veteran Business Enterprise,"
- Form CEM-2402(S), "Final Report—Utilization of Disabled Veteran Business Enterprises (DVBE) State Funded Projects," submitted at the end of the job even when there is no DVBE goal. "\$10,000 is withheld from the after acceptance payment and not released until the Form CEM-2402 (S) is submitted."
Reference Section 5-1.086 of the Special Provisions.

EEO/Discrimination

- Department of Transportation Civil Rights review of hiring procedures and "good faith" efforts in employment of minorities.
- Discrimination Complaint Procedures (DFEH-151 Brochure). The project manager would distribute if this becomes necessary.
- Contractor's EEO Officer _____

PRIME CONTRACTOR'S SIGNATURE:

Name

Title

Section 1 Source Document Review Process

5-101 General

Source document reviews are audits of a contractor's payroll records. Source document reviews are conducted on a random basis as resources allow. Source document reviews are conducted to determine if the wage rates and hours reported on the certified payrolls are true and correct, and that the classifications of workers employed on the project are supported by factual evidence provided by the contractor. The evidence gathered at the source document review is used to calculate wage restitution due workers and any penalties for wage underpayment. This evidence often takes the form of cancelled checks, accounting records, bank statements, time cards, trust fund statements, and similar support documents. Each district or region is responsible for performing the source document review for each specific contract regardless of whether the contractor's home office is within the geographic boundaries of the specific district or region where the work is performed.

A source document review enables the LCO to determine compliance with the requirements of the California State Labor Code and the Federal Davis-Bacon Act requirements. The LCO reviews the total workforce on the project, not just the complainant.

5-102 Conditions that may Warrant a Source Document Review

The labor compliance office may wish to conduct a source document review (SDR) when any of the following conditions exist:

- Discrepancies between the certified payrolls and assistant resident engineer's diaries, fringe benefit statements, or apprentice agreements.
- Failure to submit payrolls.
- Evidence of falsified payroll records.
- Employee complaints are received (See Section 1-6, "Employee Complaints," of this manual).
- Discrepancies are found on employee interviews.
- Notification of contractor employee statements of possible wage violations are received from the resident engineer's offices.
- Discrepancies between extra work bills and the certified payrolls are found.
- Complaints from unions or joint labor management groups, such as the Foundation for Fair Contracting and the Center for Contract Compliance are made.
- Complaints from other contractors are made.
- Contractor has a history of violations.

CONDITION	ACTION	IF	THEN
Underpayment of Wages	Call the contractor with questions on wages paid. Make no assumptions, seek more information or confirm before proceeding.	A jurisdictional dispute between unions is claimed Workers are incorrectly classified	Identify the scope of duties on the DIR, DLSR web site Call the affected unions Check the Collective Bargaining Agreement Request a determination from the Division of Construction labor compliance unit. Notify the contractor and have them make up the underpayment or if they do not: Begin case history of events and schedule an SDR
Falsification of payroll records	Notify the contractor of missing or incorrect information.	Supplemental payroll comes in with requested hours added but check number & net pay is the same	Begin case history of events and schedule an SDR
Failure to submit payrolls	Hold LCV on monthly pay estimate	When a payroll for a new or unknown contractor has been missing for 2+ estimate periods	Contact resident engineer for information, have the resident engineer take employee interviews, and encourage the employees to keep track of their hours. Begin case history of events and schedule an SDR Invoke 1776(g) penalties
Employee Complaint	See Section 1-6, "Employee Complaints," of this manual		Begin case history of events and schedule an SDR



5-103 Case History of Events

The history of events is the foundation of any future wage case. Document the history of events chronologically. Document discussions and correspondence with the contractor, employees, resident engineers, good faith efforts to resolve disputes, and anything that could be related to a possible wage case. The history of events should contain all contacts such as phone conversations, letters sent or received, meetings, witness statements taken, or any other contacts.

5-104 Notification to Prime when Violations Occur

Contact the prime contractor when a violation is discovered. The LCO must provide the opportunity to resolve a wage underpayment to the prime contractor or offending subcontractor. Request that the contractor make restitution within ten working days or submit additional evidence to refute the findings. When requested, provide further information to the contractor.

Notify the prime by certified mail, return receipt requested, with a copy to the offending subcontractor, if applicable. Include copies of the completed Form CEM-2506, "Labor Compliance – Wage Violation," for each underpaid employee in the letter as attachments showing the wage underpayment calculations. Reference applicable sections of the labor code, contract, law, statute, or act.

If the contractor or subcontractor refuses to make restitution to the employees, or if the contractor or subcontractor is non-responsive to the written request for additional support information, schedule a source document review at the contractor's home office.

If the LCO is unable to perform the SDR due to the offending contractor's refusal to meet, the LCO must document all attempts at reaching the offending subcontractor by mail, phone calls, discussions with prime contractor, or letters to employees. Do not write a zero wage case without making every attempt to conduct the SDR. The LCO cannot write a case showing a zero payment.

The LCO may request that the Legal Division obtain an inspection warrant or writ from a court ordering the contractor to provide the information requested and permit the performance of duties as mandated by law. Submit this request through the Division of Construction labor compliance unit at the time of the occurrence. Include the facts and statements made by the contractor or others, and a list of witnesses if applicable.

If interviews are not possible due to completion of that item of work, write to the employees directly to verify payment of specified prevailing wages. Include a self-addressed stamped envelope. If necessary, send copies of letters in Spanish and English.
(See Example 1 and 1A)

5-105 Scheduling the Source Document Review

When a complaint is received or a potential violation is suspected, check the estimated completion date of the project. Depending on the estimated contract completion date, the LCO may have to rearrange date priorities to accommodate projects that are ending soon. Assign a priority to each investigation.

Request that the Division of Construction labor compliance unit determine if another district labor compliance office has completed a source document review with this



contractor recently, and request information regarding the outcome. If another district or region is in the process of scheduling an SDR, the LCO should contact that district and coordinate the reviews.

5-105A Scheduling Letter

Send the prime contractor by certified mail, return receipt requested, the scheduled date, time, and location of the source document review. Direct all correspondence to the prime contractor, even in cases involving the subcontractor. The LCO should mail the scheduling letter early enough to allow no more than ten working days between the anticipated receipt of the letter and the SDR. If the contractor refuses to accept certified mail, send a copy of the SDR scheduling letter by first class mail showing service of process by mail.

Send a copy of the scheduling letter to the Division of Construction labor compliance unit.

The certified scheduling letter should request that the contractor have payroll records available for review at the SDR, including the following but not limited to:

- Time Cards for all work
- Cancelled Checks
- Bank Statements
- Payroll Journals
- Accounting Records
- Payroll Vouchers
- Trust Fund Statements
- Other Related Payroll Records
- Document Subsistence and Travel payments if applicable.
- Form DE-6, Quarterly Wage and Withholding Report.
- Federal Form 941, Employer's Quarterly Federal Tax Return for the Period of the Project
- W2's for the year

5-106 Source Document Review Preparation

Before conducting the SDR, complete the following forms as much as possible:

- Form CEM-2508, "Contractor's Payroll Source Document Review,"
- Form CEM-2509, "Checklist - Source Document Review,"

Take all the applicable state prevailing wage rates to the SDR. Use the date of advertisement on the lower left-hand corner below the bid opening date on the contract special provisions to determine the correct prevailing wages in effect at the time of advertisement. Copy the state prevailing wage pages that were in effect at the time of advertisement for the crafts or classifications that are to be used on this project. Copy any subsequent state prevailing wage rate pages on any of these wage rates that have a double

asterisk**. When federal funds are involved, check federal rates referred to in the contract special provisions and any existing addendum against the state rates and use the higher of the two.

Check the AGC Subsistence Map by classification to see if the project is in a subsistence area.

Check in the DIR, DLSR web site for travel requirements by classification.

5-106A Contract records used for Source Document Review

The labor compliance officer should gather all the documents needed to take to the contractor's office, which should include at a minimum the following:

- Form CEM-2501, "Fringe Benefit Statement,"
- Form CEM-2502, "Contractor Certified Payrolls,"
- Form CEM-2503, "Statement of Compliance,"
- Form CEM-2504, "Employee Interview," if available, do not show interviews to contractor
- Form CEM-2505, "Owner-Operator Listing," , if involved in work
- Form CEM-2506, "Labor Compliance – Wage Violation," if any documents have been completed.
- Form CEM-2508, "Contractor's Payroll Source Document Review,"
- Form CEM-2509, "Checklist - Source Document Review,"
- Apprentice agreements,
- Form CEM-4601, "Assistant Resident Engineer's Daily Report,"

Take a calculator to the SDR. You may take a laptop and a portable scanner, if available. Use of a scanner is less intrusive than asking to use the contractor's equipment and supplies. If required, ask the contractor for copies as needed.

5-107 The Source Document Review at the Contractor's Office

The labor compliance officers should introduce themselves, hand out business cards, and explain the reason for the visit. Employee complaints are treated as confidential unless the employee has given their permission for their name to be used. For more information on employee complaints, see Section 1-6, "Employee Complaints," in this manual. If the reason for the visit is discrepancies in payrolls, explain the discrepancies. Remain impartial while investigating what may be a bogus complaint by a disgruntled employee or an honest mistake on the contractor's part.

The following forms must be filled out at the contractor's office and submitted to the Division of Construction labor compliance unit when a SDR is conducted.

- Form CEM-2508, "Contractor's Payroll Source Document Review,"
- Form CEM-2509, "Checklist - Source Document Review,"



5-107A Check All Payroll Records

Payroll records include all time cards, cancelled checks, payroll journals, cash receipts, trust fund statements, books, documents, schedules, forms, reports, ledgers, receipts, or other evidences which reflect job assignments, and work schedules by days and hours. This also includes the disbursement by way of cash, check, EDD quarterly reports, or in whatever form or manner of funds to a person by job classification and skills for work performed. If the payrolls do not match any of the payroll records, a broader investigation must be done. Follow the paperwork trail chronologically from the field, time cards, through to the cancelled checks. Follow the flow of the money.

5-107A(1) Time Cards

Determine if time cards are originals, written in different hands, at different times, or appear to be written by the same person.

Review any notations written on the cards such as:

1. The type of work performed
2. “No lunch”
3. “Plus other jobs”
4. “Minus expenses” or similar notations

Determine who signed the time cards, and if the time cards contain hours for more than one project. Verify that the time cards match the payrolls. If time cards do not show hours for all projects worked for the week, ask for those records. If an employee only works part of the week on the project, the LCO cannot verify payment of prevailing wages without seeing all the hours for the week.

5-107A(2) Payroll Journals

Request payroll journals to verify how the contractor calculated the wage rate.

The contractor transfers hours from the time cards to payroll journals (individual employee records), in order to:

- Calculate the employee’s wages
- Track project breakdown for cost of project
- Keep individual employee records for the year to send out the W-2s

5-107A(3) Trust Fund Statements

Trust fund statements show the monthly payments a signatory contractor makes to the union and can be used to verify hours that were paid on behalf of the employee. If a contractor is shorting hours or wages, it is advisable to review trust fund statements for similar violations. Ask to see cancelled checks for trust fund deposits.

Non-signatory contractors may have private pension plans or health insurance. Verify payments to these funds. If they are monthly payments, hourly rates should be calculated by dividing the amount paid by the working hours. For full time employees, use 2080 hours per year or 40 hours per week. They should never cut into the basic hourly rate.

5-107A(4) Deductions

If deductions are taken out of the employee's check for something other than employment taxes, ask to see proof of payment to the third party such as checks made out for court ordered alimony payments or 401K plans. Training funds are paid to the local training trust fund of an approved apprenticeship program, or to the California Apprenticeship Council (CAC) submitted on Form CAC 2, "Training Fund Contributions." Verify that the training funds were sent to one of the above entities. Training funds are deducted from the employee's wages, not the employers.

5-107A(5) Taxes

Payroll records are used for calculating employment taxes such as federal Social Security, Medicare and state EDD payments. Review Form DE-6, "Quarterly Wage and Withholding Report." The form shows employee names, weeks worked, and wages paid.

Federal Insurance Contributions Act (FICA) is made up of Social Security retirement, disability and survivor's benefits, and the Medicare program.

Social Security taxes are withheld at the rate of 12.4 percent (6.2 percent contributed by the employer and 6.2 percent contributed by the employee). However, it is withheld from wages and tips only within a set maximum amount. For 2004, the wage base subject to the Social Security tax is \$87,900.

Medicare taxes are withheld on all wages and tips. The rate is 2.9 percent (1.45 percent contributed by employer and 1.45 percent contributed by employee).

Verify the current rates with the state EDD office and the Internal Revenue Service (IRS).

5-107A(6) Verify Travel and Subsistence

If travel and subsistence is required on the project, review travel and subsistence payments. Travel and subsistence should be shown on the certified payroll or fringe benefit statement. Otherwise, verify by checking motel receipts and cancelled checks.

5-107A(7) Cancelled Checks

Examine cancelled checks for:

- Signature – Determine if the signature on the back of the check is consistent each week, or if it may have been made by someone other than the employee.
- Bank account number – Determine if the check goes into the same account each week. Ensure it is not deposited back into the employer's account.
- Cashed checks have a computer-generated number showing the amount of cashed check located in the lower right hand corner of the check. Ensure that the computer-generated number matches the amount the check was written for.
- If a check is stamped "insufficient funds," ask to see the replacement check. Ensure the replacement check is for that work and not work done later or for another project.
- Compare checks against the certified payrolls. If the certified payrolls are fraudulent, and do not represent the actual payroll records, use the certified checks to determine what was actually paid.

- Check-stubs should show the hours worked and the wages paid for the week. The LCO should compare the payroll records and cancelled checks with check-stubs that an employee has furnished to them if they are available.
- If cancelled checks cannot be located, look at bank statements to compare against the checkbook.

Give the contractor a list of everything that is missing and what deficiencies the contractor must correct. If you need to confer with the resident engineer or follow up on any information, inform the contractor and estimate a response date. Establish deadlines for any actions that the contractor must take.

5-108 Source Document Review Findings

At the completion of the SDR, the SDR findings should be substantiated and verified with the evidence, resulting in either the closure of the investigation or submittal of a formal written labor violation case.

Notify the prime contractor of the results of the SDR, in writing, whether there is a wage violation or not. See Example 4. If federal overtime penalties are involved, add the wording in Example 5.

Send completed Forms CEM-2508 and CEM-2509 with a copy of the SDR findings that were sent to the contractor to the Division of Construction labor compliance unit.

If the problems found were unintentional and this is the contractor's first offense, allow the contractor to make restitution to the employees, furnish copies of the cancelled checks, copied both front and back, and submit supplemental payrolls showing the wage restitution. If the project is nearing completion and there is not enough time to wait for the checks to clear the bank, request that the contractor send certified checks, cashier's checks, or money orders to the labor compliance office for disbursement to the employees.

When the prime contractor or subcontractor fails to make wage restitution, the LCO must write and submit a formal labor compliance case to the Division of Construction labor compliance unit.

If the certified payrolls do not match the payroll records, they should be considered fraudulent. The contractor may pay the employees the wages due but a formal labor compliance wage violation case must be written up with the appropriate penalties assessed.

Verify that there is enough money in the contract needed for the wage case.

Governor

DEPARTMENT OF TRANSPORTATION
 DIVISION OF CONSTRUCTION
 1120 N STREET
 P. O. BOX 942873
 SACRAMENTO, CA 94273-0001
 PHONE (916) XXX-XXXX
 FAX (916) 654-6345
 TTY (916) 654-4086



*Flex your power!
 Be energy efficient!*

**CERTIFIED MAIL XXXX
 RETURN RECEIPT REQUESTED**

Date

*Employee
 Address
 City, CA zip code
 Contractor*

Contract No.
 County- Route
 Federal Aid No.
 Prime
 Subcontractor

Dear *(employee)*

As the *(District/Region)* Labor Compliance Officer for the California Department of Transportation, I am investigating complaints of underpayment of wages by *(contractor)* for work performed in the County of *(county)* on Route *(route)*. The work consisted of *brief description of work*.

I am writing to you to verify payment of Contract Specified Prevailing Wages. The rate of pay you should have received is not less than *(rate of pay per hour)* as a *(classification)*.

If you were not paid the prevailing wage rate, or if you returned any portion of your wages to your employer while working on this project, you may be entitled to reimbursement for underpayment of back wages.

Please complete the attached form and return it in the enclosed self-addressed stamped envelope. If you have any questions, please do not hesitate to call me, collect, at *(phone number)*. All inquiries will be confidential and your name will not be revealed to your employer. I will be more than happy to talk with you and you will not be under any obligation.



Name
Date
Page 2

If I do not hear from you by *(date)*, I will assume you have been paid in full.

Sincerely,

NAME
(District) Labor Compliance Officer

Attachment

EXAMPLE 1

ATTACHMENT
CONFIDENTIAL

Hourly Wage Rate Received: \$ _____

Dates and Hours worked on Project:

Signature of Worker

Telephone Number (Optional) Days: () _____
Evenings: () _____

COMMENTS:

Please retain a copy of this letter for your records.

EXAMPLE 1A



DEPARTMENT OF TRANSPORTATION
ADDRESS
CITY, CA ZIP CODE
PHONE (XXX) XXX-XXXX
FAX (XXX) XXX-XXXX
TTY (XXX) XXX-XXXX



*Flex your power!
Be energy efficient!*

**CERTIFIED MAIL XXX
RETURN RECEIPT REQUESTED**

Date

*Contractor
Address
City, CA zip code*

Contract No.
County - Route
Federal Aid No.

Gentlemen:

According to Section 7-1.01A(3) of the *Standard Specifications* dated July 1999, the contractor's payroll records shall be made available to authorized representatives of the State of California, Department of Transportation upon request for inspection.

It is hereby requested that the records be made available for a home office review on day of the week, date and time in your company office address.

The records to be reviewed are those related to contract number including, but not limited to:

1. All payroll records, time cards, payroll journals, payroll vouchers, cancelled checks, etc.
2. Trust Fund Statements, if applicable
3. Documentation of Travel and Subsistence payments, if applicable.
4. State Form DE-6, Quarterly Wage and Withholding Report.

Please have a company representative available to answer questions pertaining to the above-mentioned documentation.

"Caltrans improves mobility across California"



Addressee
Date
Page No.

Please notify this office at telephone number regarding this appointment as soon as possible.

Sincerely,

NAME
(District) Labor Compliance Officer

c: Resident Engineer
Division of Construction Labor Compliance Officer
Project File
Case File

Attachment

EXAMPLE 2

"Caltrans improves mobility across California"

DEPARTMENT OF TRANSPORTATION

ADDRESS
CITY, CA ZIP CODE
PHONE (XXX) XXX-XXXX
FAX (XXX) XXX-XXXX
TTY (XXX) XXX-XXXX



*Flex your power!
Be energy efficient!*

**CERTIFIED MAIL XXX
RETURN RECEIPT REQUESTED**

Date

*Contractor
Address
City, CA zip code*

Contract No.
County - Route
Federal Aid No.

Gentlemen:

In accordance with Section 7-1.01A(3) of the *Standard Specifications* dated July 1999, the contractor's payroll records shall be made available to authorized representatives of the State of California, Department of Transportation upon request for inspection.

It is hereby requested that the records of your subcontractor, name of subcontractor, be made available for a home office review on day of the week, date and time in your company office address.

The records to be reviewed are those related to contract number including, but not limited to:

1. All payroll records, time cards, payroll journals, payroll vouchers, cancelled checks, etc.
2. Trust Fund Statements, if applicable
3. Documentation of Travel and Subsistence payments, if applicable.
4. State Form DE-6, Quarterly Wage and Withholding Report.

Please instruct your subcontractor to have a company representative available to answer questions pertaining to the above mentioned documentation.

"Caltrans improves mobility across California"



Addressee
Date
Page No.

Please notify this office at telephone number regarding this appointment as soon as possible.

Sincerely,

NAME
(District Labor Compliance Officer)

c: Subcontractor
Resident Engineer
Division of Construction, Labor Compliance Officer
Project File
Case File

Attachment

EXAMPLE 3

"Caltrans improves mobility across California"

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION
DIVISION OF CONSTRUCTION
1120 N STREET
P. O. BOX 942873
SACRAMENTO, CA 94273-0001
PHONE (916) XXX-XXXX
FAX (916) 654-6345
TTY (916) 654-4086

ARNOLD SCHWARZENEGGER, Governor



*Flex your power!
Be energy efficient!*

**CERTIFIED MAIL XXXX
RETURN RECEIPT REQUESTED**

Date

Contract No.
County - Route
Federal Aid No.

CONTRACTOR
ADDRESS
CITY, STATE ZIP CODE

Gentlemen:

A payroll source document review of the records of your subcontractor, subcontractor, was conducted on date, for work performed on the above-referenced contract.

The results of this review show that four employees were paid at less than the minimum specified prevailing wage rates as outlined or referenced in your contract.

Attached are work sheets showing the correct straight time and overtime wage rates. Supplemental certified payrolls must be provided together with proof of wage restitution to the employees involved. Proof in the form of copies of cancelled payroll checks, copied both front and back will be acceptable.

In the event this wage restitution is not made up a formal wage case will be written and you will be notified of the amount of withhold to cover wages, liquidated damages and assessed penalties.



Name
Date
Page 2

If you would like to discuss this matter further, disagree with the findings or have any questions, please call me at telephone.

Sincerely,

NAME
District Labor Compliance Officer

c: Subcontractor
Resident Engineer
Division of Construction, Labor Compliance Officer
Project File
Case File

DEPARTMENT OF TRANSPORTATION

ADDRESS

CITY, CA ZIP CODE

PHONE (XXX) XXX-XXXX

FAX (XXX) XXX-XXXX

TTY (XXX) XXX-XXXX

*Flex your power!
Be energy efficient!***INSERT:****THIS SHOULD BE ADDED WHEN FEDERAL OVERTIME
PENALTIES WILL BE ASSESSED**

FEDERAL PENALTIES: (Work Hours and Safety Standards Act)

You will be notified if federal penalties are being imposed and upon receipt of the letter a copy of which will be forwarded to the Division Administrator of the Federal Highway Administration (FHWA). The assessment of the Federal liquidated damages will be considered final, unless an appeal by you addressed to the FHWA is received by this office within 60 days of written notification of penalties. Any appeal should consist of a written explanation of, or justification for, the apparent underpayments, or a full statement evidencing that such underpayments were caused by inadvertence notwithstanding the exercise of due care.

In the event you file an appeal within the time period set forth above, you will be advised by this office of the decision of FHWA. If such decision is adverse to your interests, you will be notified by certified mail, return receipt requested. In accordance with the Work Hours and Safety Standards Act, you will then be provided a period of 60 days from the date of receipt by you of the FHWA's decision within which to file a claim with the United States Claims Court.

If we are not able to resolve the issues set forth in this letter by date, I will submit a formal wage case to the Division of Construction Labor Compliance Unit for approval.

If you have any questions or need additional information, please contact me at telephone number or address.

EXAMPLE 5*"Caltrans improves mobility across California"*

Section 1 Wage Case Submittal

6-101 General

A labor compliance case is prepared after conducting a source document review and subsequent full investigation, and determining that a labor compliance violation has occurred. The wage case can be against the prime contractor, first-tier subcontractors, or any lower tier subcontractors.

A labor compliance case should include the Source Document Review (SDR), statements from complainants and witnesses, employee interviews, tips from outside sources such as unions and joint labor organizations, and other contractors. Analyze all evidence provided by the contractor to refute or confirm conclusions.

Caltrans does not have statutory authority for approving or ruling on determinations of state labor code violations. When Caltrans has found a violation of state prevailing wage laws and ordered a withholding of contractor funds, the contractor has a right to a hearing administered by the Department of Industrial Relations (DIR). State labor compliance violators are entitled to participate in an administrative hearing process administered through the DIR to arrive at the final determination of a labor code violation.

The Federal Highway Administration (FHWA) has delegated authority to Caltrans for federal labor contract compliance. The federal court system will handle all appeals to final determinations for wage cases based on federal law.

6-102 Submittal Documents

The LCO should include the following documents in the labor violation wage case when submitting it to the Division of Construction labor compliance unit for review:

- Form CEM-2506, “Labor Compliance - Wage Violation,” used to record each employee’s classification, hours and wages in order to calculate the underpayment. Attach a spreadsheet showing a summary of wages and penalties due each employee
- Form CEM-2507, “Labor Violation: Case Summary,” used to summarize the data on Form CEM-2506 and to provide a chronological record of the case. Attach an analysis of the facts based on the SDR, certified payroll evidence, and calculations shown on Form CEM-2506
- Form CEM-2508, “Contractor's Payroll Source Document Review”
- Form CEM-2409, “Checklist - Source Document Review”
- Employee complaints and witness statements
- All pertinent correspondence between the LCO and the prime contractor pertaining to the wage violation
- Preconstruction checklist and sign-in sheet

- Case history
- Copy of the signed certified mail receipt
- Letter of submittal to the Division of Construction labor compliance unit with a brief description of the work performed by the offending contractor, a description of the facts and evidence collected to build the labor compliance case, wages and penalties due, and the LCO's recommendations

Do not submit inspectors' diaries, payrolls and fringe benefit statements, trust fund statements, and evidence provided by and statements made by the contractor or anything else used to complete the case to the Division of Construction labor compliance unit. Retain these documents in the district labor compliance office with any other information used to write the labor case. This information must be provided if requested by the Legal Division.

6-103 Review of Submittal Documents by the Division of Construction Labor Compliance Unit

The Division of Construction labor compliance unit will complete its review of the case within one week of receipt of the wage case submittal documents. If the Division of Construction labor compliance unit determines that there is insufficient evidence to support the wage case, the Division of Construction labor compliance unit notifies the LCO. An LCO may provide additional support or withdraw and later resubmit the case to the Division of Construction labor compliance unit.

If a wage case is accepted, the Division of Construction labor compliance unit sends a letter to the Department of Industrial Relations (DIR) requesting approval. The letter of request must include a copy of the submittal documents, Penalty and Forfeiture Review Tracking Database, and the Statement of Labor Case Findings.

Upon approval from DIR, the Division of Construction labor compliance unit sends a copy of the approval letter from DIR and a memo granting the authority to withhold wages, penalties, and liquidated damages to the LCO. The Division of Construction labor compliance unit sends a copy of the memo granting the authority to withhold wages, penalties, and liquidated damages to the Division of Accounting. Example

6-104 District Labor Compliance Steps after Wage Case Acceptance

When the district receives the Department of Industrial Relations approval letter, the LCO must:

- Release any administrative deductions being withheld for the wage case when you receive a copy of the memo from the Division of Construction labor compliance unit, granting the authority to withhold wages, penalties, and liquidated damages
- Notify the resident engineer of case approval and withhold
- Send "Notice of Withholding of Contract Payments" to the prime, offending subcontractor, and surety(s), by both first class and certified mail in accordance with the California Code of Regulations, Title 8, Section 17220, and California Labor Code Section 1771.6. Include the "Proof of Service" with the "Notice of Withholding of Contract Payments."



6-104A “Notice of Withholding of Contract Payments”

A sample “Notice of Withholding of Contract Payments” is included in this section.

Ensure that the date shown is on or before the date shown on the “Proof of Service.” Ensure that the information is complete and includes the LCOs name, address and phone number. The LCO must sign the document, not just stamp it that the original was signed.

Keep the original “Proof of Service” and a copy of the “Notice of Withholding of Contract Payments” in the case file, and place a copy of the labor case in Category 25.4 of the labor compliance files. An affected contractor or subcontractor may obtain review of the “Notice of Withholding of Contract Payments” by transmitting a written request to the Division of Construction labor compliance unit within 60 days after receipt of the notice.

6-104A(1) Liquidated Damages

In accordance with Section 1742.1, of the California Labor Code, the contractor, subcontractor, and surety are liable for liquidated damages in the amount equal to the wages that remain unpaid 60 days after receipt of the “Notice of Withholding of Contract Payments.” 60 days after the contractor receives the “Notice of Withholding of Contract Payments,” the Division of Construction labor compliance unit requests that the Legal Division move for approval to assess liquidated damages. The workers receive the liquidated damages.

6-107B “Proof of Service”

Include “Proof of Service” with each mailing of the “Notice of Withholding of Contract Payments.”

The LCO mails two copies to each party. The distribution list appears on the “Proof of Service.”

The LCO should ensure that the labor compliance business address is correct. Include the date and county where the document was mailed. The date should be the same date the document is mailed.

The district labor compliance office should mark both methods used to send the “Notice of Withholding of Contract Payments,” both first class and certified mail.

The LCO ensures that the person that mails the “Proof of Service” signs the document. The signature must be original, and cannot be either typed or computer generated.

An example “Proof of Service” is included on the next page.

PROOF OF SERVICE

I, the undersigned, am, and was at all times herein mentioned, a citizen of the United States and employed in the County of _____, state of California, over the age of 18 years and not a party to the within action or proceeding; that my business address is _____, California; that on _____, 200_, I enclosed a true copy of the attached **Notice of Withholding of Contract Payments** in a separate envelope for each of the persons named below, addressed as set forth immediately below the respective names, as follows: [Contractor's name & address]

[Surety's name & address]

The following is the procedure by which service of this document was affected:

_____ United States Postal Service (by placing such envelope(s), with postage thereon fully prepaid as first-class mail, and depositing the same on the aforesaid date in a mailing facility regularly maintained by the United States Postal Service for the mailing of letters at Sacramento, California)

_____ Certified Mail

_____ Personal Service

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

Executed on _____ at _____, California.

Declarant

PROOF OF SERVICE (C.C.P. 1013(a) and C.C.P. 2015.5)

Your name Labor Compliance Officer Address	Phone: XXX-XXX-XXXX Fax: XXX-XXX-XXXX
Date:	In Reply Refer to Case No.:

Notice of Withholding of Contract Payments

Awarding Body Department of Transportation	Work Performed in County of
Project Name	Project No
Prime Contractor	
Subcontractor	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Labor Compliance Program for the Department of Transportation (“Labor Compliance Program”) has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code sections 1771.5 and 1771.6, the Labor Compliance Program hereby issues this Notice of Withholding of Contract Payments.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

- Failure to comply with Section 1771, Requirement of prevailing rate for work under contract
- Failure to comply with Section 1773.1, Benefit payments included in “per diem wages”
- Failure to comply with Section 1777.5, Statutes regarding employment of apprentices on public works
- Other

The Labor Compliance Program has determined that the total amount of wages due is: \$_____.

The Labor Compliance Program has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$_____.

The Labor Compliance Program has determined that the amount of penalties assessed under Labor Code section 1776 is: \$_____.

(Your name here)
Labor Compliance Officer





Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments by transmitting a written request to the office of the Labor Compliance Program that appears below within 60 days after service of the notice. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

Division of Construction, Labor Compliance Unit
Department of Transportation
P. O. Box 1438 MS 44
Sacramento, CA 95812-1438

Either a Request for Review shall clearly identify the Notice of Withholding of Contract Payments from which review is sought, including the date of the notice, or it shall include a copy of the notice as an attachment, and shall set forth the basis upon which the notice is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing within 20 days of the Labor Compliance Program's receipt of the written **Request for Review**.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. California Labor Code section 1743.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(continued on next page)



Opportunity for Settlement Meeting

In accordance with Labor Code Section 1742.1 (b), the Labor Compliance Program shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Notice of Withholding of Contract Payments, afford the contractor or subcontractor the opportunity to meet with the Labor Compliance Program's designee **to attempt to settle a dispute regarding the notice**. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is **in addition** to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written **Request for Review** has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Compliance Program's designee to attempt to settle a dispute regarding this notice must be transmitted to _____ at the following address:

District, Labor Compliance Officer
California Department of Transportation
Street
City, California 90012

Liquidated Damages

In accordance with Labor Code section 1742.1, after 60 days following the service of this Notice of Withholding of Contract Payments, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the notice 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 or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

The Amount of Liquidated Damages Available Under this Notice is: \$ _____



6-105 Proof of Wage Restitution

Release the withhold of the wages from the prime if the offending contractor provides proof of wage restitution. Proof of wage restitution is submitted to the LCO and includes a supplemental certified payroll report and copies of cancelled checks, copied both front and back, or cashier's checks for the employees.

In some instances when the offending subcontractor will not cooperate, the prime contractor may make the wage underpayments directly to the employees of the offending subcontractor. The LCO must inform the Division of Construction labor compliance unit that the contractor has submitted proof of wage restitution and submit a recommendation for the penalties.

6-106 Accessing the Division of Construction Labor Compliance Unit Case Files

Contact the Division of Construction labor compliance unit for instructions about how to access the case files.

Section 2 Administrative Hearing Process

6-201 General

Section 1771.6 of the California Labor Code authorized DIR to create regulations establishing the exclusive method for review to withhold contract payments. The administrative hearing process includes the settlement meeting, the opportunity to review evidence, and the hearing. The administrative hearing process ensures that the contractor is afforded due process before contract payments are permanently withheld.

6-202 Settlement Meeting

The “Notice of Withholding of Contractor Payments” notifies the contractor of their right to request a settlement meeting within 30 days of receipt of the “Notice of Withholding of Contractor Payments.”

This informal meeting between the contractor and the LCO may be held in person or by telephone and takes place before the expiration of the 60 day period for requesting administrative review hearing, in accordance with California Code of Regulations, Section 17221, and Section 1742.1 of the California Labor Code.

6-203 Request for Review Hearing

The contractor or subcontractor may request a review hearing within 60 days of receipt of “Notice of Withholding of Contractor Payments,” in accordance with California Code of Regulations, Section 17222 and Section 1742 (a), of the California Labor Code. The contractor submits requests for review hearings to the Division of Construction labor compliance unit.

The Division of Construction labor compliance unit must keep the envelope containing the request for review hearing to show the postmarked date. The Division of Construction labor compliance unit submits the “Notice of Transmittal,” a copy of the hearing request, a copy of the “Notice of Withholding of Contractor Payments,” and a copy of the Form CEM 2506, “Labor Compliance – Wage Violation” to DIR.

6-204 Request to Review Evidence

The Division of Construction labor compliance unit sends the “Opportunity to Request to Review Evidence” to the contractor, along with the “Request to Review Evidence” form within 10 days after the Division of Construction labor compliance unit receives a written request for review hearing, in accordance with the California Code of regulations, Section 17224.

If a contractor requests to review evidence, they must sign and date the request and send it to Division of Construction labor compliance unit address stated on the “Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b).” The Division

of Construction labor compliance unit notifies the LCO that the contractor requested review of evidence.

The Legal Division will contact the LCO to obtain copies of all evidence as soon as the case is sent to DIR for approval. After a contractor is sent a “Notice of Withholding of Contract Payment,” Caltrans may be required to produce all the evidence it intends to present at hearing. Caltrans must strictly comply with statutory and regulatory timeframes in responding to a contractor’s “Request to Review Evidence.” The LCO should have all of these documents at the office at the conclusion of the investigation, before the case is even sent to the Division of Construction labor compliance unit for review.

6-205 Prehearing Conference

Department of Industrial Relations (DIR) sends a notification to Caltrans indicating the date, time and place of the prehearing conference and the last date upon which the hearing itself may take place. The hearing must be conducted within 90 days of DIR’s receipt of the contractor’s request for review hearing. DIR may send a copy of the schedule to the LCO and the Legal Division.

6-206 The Hearing

A hearing must be conducted within 90 days of the Department of Industrial Relations receipt of the “Notice of Transmittal.” While experienced LCOs may represent Caltrans at DIR hearings in some cases, the Division of Construction labor compliance unit usually requests representation from the Legal Division when the contractor has retained an attorney.

The LCO may be called as a witness at the hearing, and must remain available during the time established for the hearing. DIR hearings are fairly informal and usually last no more than two days.

Section 3 Debarment of Contractors

6-301 General

Contractors are required to pay prevailing wages on public works contracts. Restitution is required if a contractor is found to have paid less than the prevailing wage. In addition, contractors are subject to sanctions for violating the Labor Code. The most severe sanction is debarment. Debarment should be considered for repeat or egregious offenders.

6-302 State Legal Authority

Legal authority for debarring a contractor is in accordance with California Labor Code Section 1777.1, “Penalties for willful violations of chapter; Notice; Hearing,” which states two reasons for debarring a contractor:

1. Section 1777.1(a) requires that a contractor or subcontractor working on a public works project and violating public works law (except section 1775.5) with intent to defraud. Debarment may result from any single violation when intent to defraud is proven. A contractor can be debarred for a period of 1 to 3 years.
2. Section 1777.1(b) requires that a contractor or subcontractor working on a public works project and willfully violating the public works law (except 1775.5). The debarment results from two or more separate willful violations within a three-year period. A contractor can be debarred for up to three years for this offense.

In addition, the California Code of Regulations, Title 8, Sections 16800, 16801, and 16802 provides additional legal authority to debar contractors from conducting business with Caltrans.

A debarment order may be taken against a contractor, subcontractor (1st, 2nd tier, and others), whether they have a written contract, an oral contract, a purchase order or no contract. The intent of the law is to debar and prevent contractors from bidding on public works projects when they have been found to have committed any public works violation with the intent to defraud, or when they have committed more than one willful violation within a three-year period.⁴

The Department of Industrial Relations (DIR), Division of Labor Standards Enforcement (DLSE) has the authority to debar contractors from bidding on public works projects. Caltrans, through its approved labor compliance program, does not directly investigate the contractor for debarment, but can prepare a written complaint to DLSE recommending debarment based on approved cases and a track record. This complaint is forwarded to DIR for a final debarment determination.

⁴ Roberta E. Mendonca, Labor Commissioner, Department of Industrial relations, Division of Labor Standards and Enforcement, Memorandum “Debarment Procedures”, September 20, 1996.

6-303 Verification of Debarment Status

The alleged offending contractor's standing can be checked via the federal and state debarment listings and contractor license. The debarment listings identify contractors ineligible to bid on or be awarded a public works contract for violating the law or substandard contract performance. Use the following web sites to determine debarment status:

Labor Code violations:

<http://www.dir.ca.gov/dlse/debar.html>

Professionalism, law violations:

<http://www.cslb.ca.gov/>

Federal Excluded Parties Listing System, contract performance or law violations:

<http://epls.arnet.gov/>

6-304 Guidelines for Filing a Debarment Complaint

- When the LCO determines that a contractor should be debarred for any of the reasons in Labor Code 1777.1, the LCO should send the debarment recommendation to the Division of Construction labor compliance unit. The debarment recommendation should explain the contractor's violations. This should include the contractor's position on the complaint, and the contractor's explanations of any audit findings.
- The following documents should accompany the debarment recommendation:
 1. Contracts between the awarding body and the prime contractor
 2. Contracts between the prime contractor and subcontractors
 3. California State License Board information, including entity information
 4. Witnesses: affected workers and the Department of Transportation personnel
 5. The Department of Transportation's inspector's diaries
 6. The prime contractor's diaries, if available
 7. Copies of all wage cases filed against the contractor

The Division of Construction labor compliance unit must:

- Review and determine if other districts have similar complaints.
- Prepare a cover memorandum containing a recommended action based on review of the available facts regarding the contractor's performance. The report should be one to two pages in length and contain the basis for the recommendation and a summary of Caltrans conclusion.
- Forward the request for debarment to the Legal Division for review.
- Submit the debarment request to the Chief, Division of Construction for signature.

The Chief, Division of Construction forwards the request to the Division of Labor Standards Enforcement, Legal Unit. The Legal Unit reviews the report and initiates the debarment proceedings, if warranted. The contractor is afforded an opportunity to contest the debarment at a debarment hearing. Caltrans staff may be called to present evidence at the debarment hearing.



6-304A Final Determination for Debarment

The investigation and final determination for debarment rests solely with the Division of Labor Standards Enforcement, Legal Unit. The Division of Labor Standards Enforcement, Legal Unit sends the final determination to Caltrans.

6-305 Federal Debarment

Legal Authority for federal debarment of a contractor is provided by 49 CFR 29.

Section 14 of the special provisions requires the prime contractor to certify under penalty of perjury that they are not currently debarred or have not been debarred within the past three years. It also states that the prime must not enter into a lower tier covered transaction with any person who is debarred.

This suspension and debarment process applies to all federal-aid highway construction projects. Both processes are discretionary administrative actions taken to protect the federal government by excluding persons from participation in the federal assistance programs. A suspension and debarment action ensures that the federal government does not conduct business with a person who has an unsatisfactory record of integrity and business ethics. The suspension and debarment actions are administered government-wide, consequently; a person excluded by one federal agency is excluded from doing business with any federal agency.

6-305B Causes for Federal Debarment

The primary causes for debarment are listed in 49 CFR 29.305, and may include:

- Conviction of, or civil judgment for, fraud or a criminal offense connection with a public or private agreement or transaction; violation of federal or state antitrust statutes (such as price fixing, bid rigging, and other); embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, receiving stolen property, false claims, obstruction of justice; or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.
- Violation of the terms of a public agreement or transaction so serious it affects the integrity of an agency program, that is, willful failure to perform, a history of failure or of unsatisfactory performance, or willful violation of a statutory or regulatory provision or requirement and include any of the following causes: A procurement for example, federal lands, debarment by any federal agency; knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction; failure to pay substantial outstanding debts; violation of a voluntary exclusion agreement or of any settlement of a debarment or suspension action; or any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

Section 1 Minor B and Miscellaneous Service Contracts

7-101 General

The instructions that follow are used for right-of-way, maintenance, minor B, and miscellaneous service contracts. Any specific differences are addressed.

For ease of reading this chapter, the following assumptions are used:

1. The title of resident engineer is interchangeable with contract manager or party responsible for monitoring the contract.
2. The minor B instructions are used for all the contracts excluding minor A and major construction contracts.

7-102 Before Work Begins

Before the start of the work, the resident engineer and the LCO must determine to whom the contractor submits the payroll records. The length of the project usually determines this. If the project is short, the payroll records should go directly to the resident engineer. If the project is lengthy, request that the contractor submit the payroll records to the labor compliance office for immediate review. If a contractor is unfamiliar with minor B public works contracts, the resident engineer may request that the LCO attend the preconstruction conference or kickoff meeting to discuss labor compliance issues.

See Chapter 4, “Preconstruction Conference,” of this manual for a “Minor/miscellaneous Contract Labor Compliance Preconstruction Checklist.” If federal funds are involved, such as in right-of-way demolition contracts, use the federal preconstruction checklist.

7-103 Procedures for Payment

The contractor submits an invoice for payment directly to the resident engineer or contract manager upon completion of the project. The resident engineer or contract manager must verify the work is satisfactorily completed and submit the following documents to the labor compliance office for processing:

- Contract Acceptance
- Weekly Status Reports and diaries
- Form CEM-2402(S), “Final Report - Utilization of Disabled Veterans Business Enterprise (DVBE),” for state funded projects or
- Form CEM-2402(F), “Final Report - Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors,” for projects that contain federal funds
- Certified payrolls, including fringe benefit statements, and Apprentice Agreements
- Employee interviews
- Contractor invoice
- Form FA-1226A, “Receiving Record”

Upon receiving the package from the resident engineer the LCO must:

1. Date stamp the original receiving record in the lower left hand corner and initial.
2. Log the date the receiving record and payroll documents are received, and the date they are submitted to be paid, into the labor compliance tracking system.
3. Ensure the receiving record includes the resident engineer's signature. Return any unsigned receiving record.
4. Make a copy of the receiving record and the invoice to retain in a logbook in a tracking system.
5. Review the payroll records, verify classifications, rates of pay, and hours against the diaries. This is the same process as for major contracts and can be found in Section 2-1, "Payroll Analysis," of this manual.
6. Approve the certified payroll records by signing the receiving record and noting that payroll records are approved.
7. Forward the receiving record and invoice to the Division of Accounting, Disbursement office.
8. Send the contract acceptance with the Form CEM-2402(S), "Final Report - Utilization of Disabled Veterans Business Enterprise (DVBE)," for state funded projects or Form CEM-2402(F), "Final Report - Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," for projects that contain federal funds to the district construction progress pay estimates section.
9. Send all payroll documents back to the resident engineer with a copy of the receiving record showing payroll record approval and the date the invoice was sent to disbursing.
10. Return documents for processing to the contract manager on any contracts other than construction.

Minor contracts must be paid within 30 days of invoice or the Caltrans becomes liable for interest. The LCO can withhold money for missing payrolls or payroll discrepancies. When this happens, immediately complete and file Form Std. 209, "Invoice Dispute Notification," to stop Caltrans from accruing interest payments. Tracking logs are kept to prevent unnecessary interest payment from accruing.

7-103A Invoice Dispute Notification

Inform the resident engineer and send the completed Form Std. 209, "Invoice Dispute Notification," to the contractor and to the Division of Accounting, Office of Accounts Payable.

When missing documents are received, or the dispute is resolved, fax the invoice, the receiving record, and a copy of Form Std. 209 "Invoice Dispute Notification," to the Division of Accounting, Office of Accounts Payable at (916) 227-8766 for payment.

For questions, contact the Division of Accounting, Office of Accounts Payable.

7-103B Partial Payments

The resident engineer can make a partial payment to the contractor during the progress of the work when the number of working days in a contract exceeds 20 days.

When money is withheld on a wage violation, follow the procedures as outlined in Section 6-1, “Wage Case Submittal,” of this manual.

7-104 References

The following web sites are for internal users only.

Caltrans Service Contracts Manual, Chapter 9:

<http://admin.dot.ca.gov/pc/index.shtml>

Service Contract Automated Tracking System:

<http://onramp.dot.ca.gov/hq/accounting/scats/>

Standard 209 form

Form fa-1226A

Definition of Terms

Agency	General term depicting an organization of state government that by size, history, or authority may be called a board, bureau, commission, or department.
Architectural and Engineering (A&E) Contracts	Contracts for professional services requiring engineering judgment or environmental work required by NEPA or CEQA and services part of a larger project with associated WBS codes.
Administrative Deduction (ADM)	Deduction taken on the Progress Payment Estimate for a specific amount of money for violations such as a wage case or a DBE violation
Administrative Hearing	Quasi-judicial proceeding that hears appeals from affected parties as a result of regulatory action taken by government agencies. Hearings conducted in accordance with the Code of Civil Procedure.
Administrative Law Judge (ALJ)	Hearing officer appointed from within the legal staff of the Director's office, DIR. Their role is to conduct administrative hearings pursuant to LC Section 1742, CCR Title 8, Section 17204 and in accordance with rules of the Code of Civil Procedure.
After Acceptance Deduction (AA)	The After Acceptance deduction is usually run 30 days after completion of the project. If documents are missing an OOD deduction is held for 5% of the AA.
Apprentice	A person at least 16 years of age who has entered into a written agreement with an employer or program sponsor. Apprentices must be properly indentured in a bona fide program with, proper certificates prior to the contractor using apprentices on the project. Ref: California Labor Code Section 3077
Approved Labor Compliance Program (LCP)	The Director of DIR is authorized by Sections 16425-16439 of Title 8 of the California Code of Regulations to grant or revoke approval of a Labor Compliance Program. A LCP is approved if the awarding body's program fulfills the requirements of CCR Title 8 Sections 16426 and 16430 and California Labor Code Section 1771.5.
Arbitration	The parties of a dispute seeking resolution submit their differences to the judgment of an impartial person or group. Typically, once both parties voluntarily enter arbitration it

becomes binding and they must comply with the judgment.

Asterisk * or **	The single and double asterisk on the expiration date on the DIR wage rates tells us whether the rate goes up or stays the same. For a better explanation see California Code of Regulations (CCR), Title 8, §16204.
Bid Opening (B.O.) Date	Date on which bid proposals must be received and when they are opened and read publicly. Indicated on the cover of the special provisions.
Bureau of Field Enforcement (BOFE)	Unit of DLSE responsible for conducting investigations of alleged labor compliance violations.
Center for Contract Compliance (CCC)	A joint labor management group.
Collective Bargaining Agreement (CBA)	An agreement between an employer and a labor organization which is enforceable by law and subject to the same remedies as other contracts within the courts of the United States Significant as they contain wages, holidays and other terms of employment and when filed with DIR become enforceable labor provisions.
Contract Change Order (CCO)	A legally binding document used to make changes to the original awarded contract. Changes must be clear, concise, and explicit.
California Code of Regulations (CCR)	The collection of regulations adopted by state agencies, reviewed and approved by the Office of Administrative Law and filed with the Secretary of State. DIR is the proponent agency for labor compliance regulations which are found in Title 8, Industrial Relations, one of 28 titles in the CCR.
Code of Federal Regulations (CFR)	The 50 titles of the collected federal rules that have general applicability to the public and are in effect either currently or will be in the future. Amendments are first published in the Federal Register. 29 CFR deals labor standards, prevailing wages, etc.
Checklist	Generally refers to the Pre-Construction Checklist used at Pre-Construction Conferences by the LCO, RE or Assistant RE to document that labor compliance requirements have been explained to the prime and attending subcontractors.
Classifications	Further breakdown under the workers or crafts.

Commercial versus Noncommercial	Commercial plant or establishment is open to the public on an ongoing basis versus a plant or site set up specifically for a public works project and closed after the project is finished.
Copeland Act.	The Copeland (Anti-Kickback) Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. Ref. under the Copeland Act. <i>48 CFR 22.403-2</i>
Corporation	Corporation is a separate legal entity created by law. It may be held legally liable only for corporate assets, although corporate officers may be personally liable in certain cases. A Corporation must be registered to do business in California with the Secretary of State.
Covered and Noncovered	Refers to whether work is covered by prevailing wage law and therefore requires CPR to be submitted. See Chapter 3 in this manual
Certified Payroll Records (CPR)	Those payroll records accompanied by an affirmation under penalty of perjury that the records are originals or are full, true and correct copies of the originals and depict the type of work, hours and days worked, and amounts disbursed by cash, check or other form.
Contractors State Licensing Board (CSLB)	California agency that licenses and regulates contractors, investigates complaints and, if warranted, suspends or revokes a contractor's license; thus, prohibiting them from working as a contractor within that classification within the state.
DBRA	Davis-Bacon and Related Acts
Division of Apprenticeship Standards (DAS)	Unit within DIR that monitors apprenticeship law, standards and training.
Date of Advertisement	This date is found on the Notice of Advertisement and on the cover of the special provisions. The advertised date is used in determining which state prevailing wage rates, based on their effective date, apply to a contract.

Disadvantaged Business Enterprise (DBE)	Referenced with federal funds and includes former state referenced programs such as Woman-owned Business Enterprise (WBE) and Minority-owned Business Enterprise (MBE).
Delinquency	In this manual, refers to late or missing payroll documents. A LCO deduction is taken when documents are not received by the 15 th of the month for all work performed the previous month.
Department	As used in this <i>Labor Compliance Manual</i> , word refers to the California Department of Transportation. The meaning may differ in other publications.
Department of General Services (DGS)	State agency responsible for varied government services and has a role as a control agency for actions by other state agencies. Parent organization for the unit that creates the State Contracts Register and certifies DVBEs.
Diary	Assistant Resident Engineer’s Daily Report, Form CEM-4601 used to document the activities each day on the construction project.
Department of Industrial Relations (DIR)	State agency responsible for the enforcement of labor law in California. Includes the divisions DAS, DLSR, and DLSE.
District Local Assistance Engineer (DLAE)	Department employee assigned in the district and responsible as the primary contact of local agencies for processing projects.
Division of Construction (HQ)	The part of the California Department of Transportation organization comprised of the policy setting divisions including the Director’s office located at 1120 “N” St., Sacramento, CA 95814. The Division of Construction and the Labor Compliance Branch are part of this organizational entity.
Division of Labor Statistics and Research (DLSR)	Division of DIR that publishes the state prevailing wages and conducts other economic and employment research.
Division of Labor Standards Enforcement (DLSE)	Division of DIR headed by the Labor Commissioner and that enforces wage and labor standards not specifically delegated to another agency.
Disabled Veteran Business Enterprise (DVBE)	A business at least 51 percent owned and managed by a disabled veteran. Certification (and policing) is the responsibility of the Office of Small and Minority Business and DVBE Certification, a unit of DGS. Section 10115 of the Public Contract Code requires the establishment of a 3 percent goal for DVBE participation on state-funded contracts and procurements.



Equal Employment Opportunity (EEO)	EEO is both a state and federal policy of non-discrimination and employment without regard to race, religion, sex, color, national origin, age or disability. FHWA and DOL annually monitor workforce diversity by work classifications (FHWA 1391).
Extra Work Bill (EWB)	Extra work is any new and unforeseen work that cannot be covered by a contract item or a combination of contract items, or it may be work designated as extra work in the specifications. A contract change order is written by the resident engineer and the extra work is billed by the contractor on an EWB.
Foundation for Fair Contracting (FFC) Fair Practices Act	A joint labor management group. The Subletting and Subcontracting Fair Practices Act was created to stop bid shopping for subcontractors by prime contractors after the low bidder is known. Once the job has begun the resident engineer strictly enforces the substitution process. (See Section 3-801C, “The Subletting and Subcontracting Fair Practices Act” of the <i>Construction Manual</i>), <i>California Public Contract Code (PCC) 4100-4114</i>
Federal Highway Administration (FHWA)	Under the direction of the United States DOT - The Federal agency responsible for administering the Federal-aid Highway Program.
Forfeiture	“Forfeitures” are the amounts of unpaid penalty and wage money assessed by the awarding body (Caltrans) for violations of the prevailing wage laws, whether collected by withholding from the contract amount or by suit under the contract.
Good Faith Effort Also known as “GFE”	The effort made by a contractor to meet the federal DBE or state DVBE participation goal specified in a contract or substantiation of the attempt to subcontract a sufficient portion of the work to DBEs or DVBEs respectively.
Helper	Any sub-journeyman classification traditionally used to assist a journeyman. Under no circumstance may the Helper classification be used to replace statutorily required Apprentices.
Indentured	An apprentice registered in a state approved apprenticeship program.
Interviews	Field inspectors take the interviews from the employees on the project as a requirement of the Copeland Act.
Joint Labor Management Committees	Organizations sponsored and paid for by various unions to watchdog non-signatory contractors that bid on public works projects in order to verify that those contractors are paying the

specified prevailing wages as outlined in the contracts.

Journeyman	A fully qualified worker who has completed an apprenticeship program. If a worker is not an apprentice they must be paid as a journeyman at the full wage schedule.
Laches	Legal concept about a delay in asserting a claim or right. If Caltrans was or should have been aware, then Caltrans may be held liable.
Labor Compliance Officer (LCO)	Employee located in the district or region responsible for administering the labor compliance program there. Sometimes referred to as DLCO – District Labor Compliance Officer.
Labor Compliance Program (LCP)	Initiated and enforced by an awarding body in accordance with the Labor Code and Title 8, CCR. See also ALCP – Approved Labor Compliance Program
Liquidated damages	1. A penalty the prime pays for completing a project late. 2. Federal overtime penalties of \$10 a day for a prime contractor not paying overtime over 40 hours per week. 3. Amount equal to underpaid or non-paid wages due after 60 days from when a notice of withholding is served.
Minor B Projects	Projects under \$117,000. Minor B projects are designed in the District and the design package is sent to the Office of Procurement and Contracts in Irvine for advertising rather than to Sacramento. This transaction means the processing time for Minor B projects is generally much quicker than Minor A projects, which are sent to Sacramento for advertising.
Mobilization	Construction contract bid item consisting of preparatory work and operations including the movement of personnel, equipment, supplies and incidentals to the project site. Mobilization does not require payment of prevailing wages. Chapter 1-3 of this manual, “Subtotal amount earned without mobilization.”
Non-signatory	Contractor that has not signed a collective bargaining agreement with a union.
Office Engineer (OE)	Department unit responsible for insuring that the PS&E received from the districts are complete, biddable and buildable. Contracts are awarded by the Office of Office Engineer.
Owner-Operator	Independent contractor that owns his equipment and is paid by the hour as opposed to an employee of a contractor that has employment taxes taken out of his paycheck.

Partnership (General)	General partnership uses the resources of two or more individuals who share in the owning and running of the business. The partnership is not an entity separate from the partners. Each partner remains personally liable to the extent of his or her personal assets.
Partnership (Limited)	Partnership (Limited) allows individuals to join in a partnership without taking full responsibility for the business. The limited partner risks only his or her original investment. There must be at least one General Partner who remains fully responsible for the liabilities of the business and who runs the business.
Payroll records	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.
Penalties	Amounts imposed against a prime or sub-contractor for failure to pay prevailing wages, overtime or submit CPRs, and to properly employ apprentices.
Preconstruction conference	More commonly called “pre-job.” Conference held before start of construction with RE, contractor, subcontractors, and all involved parties to go over the details of the project.
Prevailing wage rate	The California "prevailing rate" means the rate being paid to a majority of workers engaged in a particular craft, classification or type of work within the locality if a majority of such workers are paid at a single rate; if there is no single rate being paid to a majority, then the single rate (modal rate) being paid the greater number is prevailing.
Progress pay	The monthly payments to prime contractors for work performed and materials on hand. The state does not pay in advance and due to the high dollar value and lengthy work, contractors cannot afford to await some payment until project completion.
Proposed Final Estimate (PFE)	Estimate processed after the After Acceptance.
Plans, Specifications, And Estimates (PS&E)	Contract documents depicting or describing the work, how and where it is to be performed that guide both the contractors in constructing the project and the resident engineer in determining whether the work is acceptable.

Public works	Public Works, simply defined, is that work paid for out of public funds that involve some physical structure such as a highway, sewer, building, dam, etc.
Resident Engineer	A registered engineer who is responsible for control and administration of a construction contract. Serves as the Department's representative with the contractor. The labor compliance office has been given responsibility for labor compliance through the resident engineer, who is actually the responsible party.
Right-of-Way Contracts	Contracts for work necessary to appraise and acquire project right of way, relocate individuals or businesses, and revise or relocate utilities.
Refuse	Webster's Third New International Dictionary defines "refuse" as "the worthless or useless part of something; any matter or materials rejected as useless and fit only to be thrown out or away..." If excess material has a further use, as fill material, as recycling material, or as building materials, it is by definition not "refuse"
Restitution	Money paid by the contractor to the employees for wage underpayment
Retention	Monies held by the awarding body until compliance and then returned.
Source Document Review (SDR)	An audit of the contractor's payroll records and supporting documents initiated by the labor compliance officer. Records such as time cards and cancelled checks must be cross checked and verified to substantiate or question the actual payment of prevailing wages. In the context of Labor Code Section 1726 an awarding body's SDR is "...its own investigation..." and may be the basis for writing a wage violation case and withholding contract payments.
Semifinal Estimate	Estimate run after the After Acceptance Estimate (AA) and before the Proposed Final Estimate (PFE). This is the last estimate to release money before the Final Estimate.
Settlement meeting	Any meeting of the contractor and labor compliance staff to resolve labor compliance issues. Section 17221 of Title 8 CCR requires that an affected contractor be afforded an opportunity for early settlement. The meeting may be telephonic or in person.

State Highway Agency (SHA)	Generic federal name for the transportation department of each and every state. Caltrans is the SHA for California.
Sole-owner	Sole-owner has absolute responsibility, complete control and is also, personally liable for any claims against the business.
Source Documents	Documents maintained by the contractor, at the contractor's place of business, and used to complete certified payrolls. These documents are reviewed during a SDR and would include such items as time cards, payroll journals, trust fund statements, EDD reports, bank statements, cancelled checks, etc.
Special Provisions	Contract provisions specific to each project as opposed to the Standard Specifications. Special Provisions are modifications to or additions to and take precedence over Standard Specifications. Both are actually a part of the contract itself.
Statement of Compliance	A statement attached or incorporated into the certified payroll for the purpose of signing "under penalty of perjury" that the payroll is complete and accurate as required by federal "Copeland Anti-Kickback Act"
Stop Notice	A lien filed by the subcontractor, supplier, or employee with the HQ Disbursing Office to hold payment from the prime contractor. The monies are held until a court action determines if the subcontractor is entitled to the monies. If no action has occurred within 90 days after completion of the project, the monies are released to the prime contractor.
Title 8	That part of the California Code of Regulations (CCR) dealing with Industrial Relations
Trainee	Trainee is listed in classifications, and must be a DAS-approved apprentice.
Training Fund Payments	Paid by the contractor either to the appropriate union or to the California Apprenticeship Council (CAC). The training fund comes out of the employee's portion of the wage rate, even though the employee may not belong to the union and receives no benefit from the contribution.
Travel and Subsistence	May be required in the collective bargaining agreement depending on the craft or classification.
United States Department of Labor (DOL)	Federal counter part to DIR. Responsible for establishing and enforcing federal prevailing wage rates and adjudicating appeals. The Wage and Hour Division has responsibility for DBRA.

United States Department of Transportation (DOT)	FHWA’s parent organization with responsibility for all federal transportation programs including aviation, rail and shipping.
Violations	Actions required by either state or federal regulations of contractors relative to the payment and utilization of their employees, which when they fail to perform, or employment or payment actions prohibited by state or federal law. The consequences include restitution, penalties, liquidated damages and possible debarment.
Voucher	Progress Payments Vouchers are processed through the PISA System by Construction, who then submit them to the State Controller's Office for payment. The Warrants are returned back to Construction who then forward them to the contractors.
Weekly Status Report	Form filled out by the resident engineer listing all contractors, subcontractors, owner operators working on the project for the week and sent to the LCO with the diaries attached. A copy is also sent to the prime contractors, as a courtesy, to let them know what payrolls are expected in the Labor Compliance Office but the diaries are not attached to the contractors’ copy.
Withholds	“Withhold” is when the awarding body (Caltrans), or others who pay on its behalf cease payments to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.



History of Labor Law

The following is derived in part from original material developed by Douglas G. Nareau with the author's permission.

The enactment of the first California Labor Compliance laws occurred in 1908. California's Public Works Act, which passed in 1919, was designed to aid mechanics and materialsmen in enforcement of their lien rights. (*Globe Indemnity Co. v. Hanify*) (1933) (217 Cal. 721).

The Federal Davis-Bacon Act was enacted in 1931 during the Great Depression. The primary purpose of this act was to bring stability to the construction industry and place a floor under downward spiraling wages. Non-local contractors were underbidding local contractors for work on federal public works projects by hiring workers from other areas willing to accept lower wages than those prevailing in the local area. The laws intent is not to reduce costs. Instead, Davis-Bacon requirements guarantee that the federal government's vast purchasing power, coupled with a requirement to award contracts to the lowest bidder, will not undercut construction wages in local labor markets or undermine local economies. The basic standard of this act is still enforced. California Labor Code Section 1773 states, "a general prevailing rate of per diem wages for work of a similar character that occurs in the locality in which the public work is to be performed."

Supporters have stated that the Davis-Bacon Act "levels the playing field" in the bidding of highway construction projects. Both large and small contractors must submit bids on the basis on the same minimum wage rate.

The Federal-Aid Highway Acts of 1956 and 1968 provide an active program to ensure that laborers and mechanics employed on federal-aid projects are paid wage rates generally prevailing for the same type of work on similar construction in the immediate locality, as shown in the current wage rate listings of the United States Department of Labor.

In 1891, Kansas became the first state to enact a prevailing wage law. New York followed in 1897, Oklahoma in 1909, Idaho in 1911, Arizona in 1912, New Jersey in 1913, Massachusetts in 1914 and California in 1937.

California's prevailing wage law is one of many state laws called Little Davis-Bacon Laws.

The officer or public body awarding the contract makes the determination as required in the originally enacted California prevailing wage law. The initial role of the Department of Industrial Relations (DIR) was simply to assist local awarding bodies in making surveys. The law was amended in 1953 with the addition of California Labor Code Section 1773.4, which allowed the Director (DIR) to review and resolve disputes regarding the determinations of wage rates set by local awarding bodies.

The 1953 legislation required, in California Labor Code Section 1773, that specific criteria be used in determining prevailing wages rates, requiring awarding bodies to ascertain and consider the applicable wage rates established by collective bargaining agreements and such rates as may have been predetermined for federal public works within the locality and in the nearest labor market area. Where such rates do not constitute the rates actually prevailing in the locality, the awarding body shall obtain and consider further data from the labor organizations and employer or employees associations concerned. The rate fixed for each craft, classification, or type of work shall not be less than the prevailing rate paid in such craft, classification, or type of work.

In 1976, the Director, Department of Industrial Relations became the responsible party for making prevailing wage determinations. This amendment served two important purposes:

- First, it provides for a disinterested party to make the initial, prima facie rate determination, rather than an awarding body with an economic interest in determining the lowest rate.
- Second, it promotes uniformity of rates for similarly situated projects.

How the Current System Works

The present system, in place since 1977, allocates responsibilities among various participants. The Director of Industrial Relations (DIR) ascertains and considers wage rates and publishes them in determinations. (California Labor Code Section 1770 et. seq.) These determinations provide a publicly available menu of various crafts, classifications, or types of workers and corresponding wage rates. In its call for bids and in the bid specifications for the contract, the awarding body specifies the crafts, classifications or types of workers, needed to execute the contract and the corresponding wage rates. Thereafter, the contractor and any of their subcontractor's under the same contract must pay not less than the prevailing wages. (California Labor Code Section 1774.) The awarding body must "take cognizance of violations" (California Labor Code Section 1726), and willful violation of any provision is a misdemeanor. (California Labor Code Section 1777.)

Wage Determinations

Section 1773, of the California Labor Code, now assigns the Director of the Department of Industrial Relations the responsibility for making prevailing wage determinations. The same section specifies the factors to be considered in making such determinations.

The Director is required to:

- Ascertain the applicable wage rates established by collective bargaining agreements and such rates as may have been predetermined for federal public works, within the locality and in the nearest labor market area.
- Where such rates do not constitute the rates actually prevailing in the locality, the Director shall obtain and consider further data from the labor organizations and employers or employer associations concerned.
- When the Director determines that the prevailing wage rate for a particular craft, classification or type of worker is the rate set in a collective bargaining agreement,



the Director may adopt the rate by reference. This determination shall be effective for the life of such agreement or until the Director determines that, another rate should be adopted.

Under California Labor Code 1773, those rates are observed within the locality and nearest labor market. If the comparison to federal wage rates suggests the rates are not prevailing, section 1773 further provides for the collection and consideration of further data from labor organizations, employers and employer associations.

The Department of Transportation does not, as a matter of course; provide Notice, opportunity for comment and hearing, as would be required for the adoption of a regulation, prior to making a prevailing wage determination. Once a craft, classification, or type of worker is recognized, a particular rate of pay (comprising both wages and fringe benefits, and called the “general prevailing rate of per diem wages”) is established and issued as a formal determination.

General Determinations

The Director, Department of Industrial Relations publishes the General determinations and sends them to some 6,000 awarding bodies, contractors and trade associations. Where the general rate does not apply, an awarding body may request a “special determination” pursuant to California Code of Regulation (CCR)16100(b)(B) and 16202.

Frequently, a series of requests resulting in special determinations for a particular classification may lead to a broad survey, which results in the classification being included in a general determination. Conversely, a classification may be found in a particular local market at the time of one award, and subsequently die out. A general determination does not require a survey unless the determination is challenged (Petition to Review) which results in an investigation and survey.

Dispute Resolution for Prevailing Wages

In 1953, after DIR was assigned the task of resolving disputes regarding prevailing wage rates, it adopted regulation CCR 16000, defining “prevailing rate” as follows: The term “prevailing rate” means the rate being paid to a majority of workers engaged in a particular craft, classification or type of work within the locality if a majority of such workers are paid at a single rate. If there is no single rate being paid to a majority, the single rate (modal rate) being paid the greater number is prevailing. The effect of this definition is that the general prevailing rate is a quantity to be found, not construed through the calculation of an average or any statistical manipulation process. In each case, the operative rate is the one paid to the greatest number of actual workers.

Prevailing Wage Disputes and Collective Bargaining

The definition for prevailing rate is the rate resulting from a process, such as collective bargaining, that results in a large number of employees being paid a uniform rate. This process has been demonstrated in various wage surveys conducted by DIR. Thus, California Labor Code 1773 permits the Director to adopt a rate established in a collective bargaining agreement and states that “such determination shall be effective for the life of the agreement or until the director determines that another rate should be adopted.” In most cases, DIR finds that collective bargaining agreement rates are

actually prevailing. DIR normally relies upon survey data to establish prevailing rates. For example, the current prevailing wage rate for glaziers in Humboldt County is based on survey data, rather than the collectively bargained rate.

- In accordance with California Labor Code Sections 1771 and 1773, (see CR 16100(b) (1)) it is the responsibility of the awarding body to obtain the prevailing wage rate(s) from the Director. Section 1773.2 mandates that the awarding body specify which crafts, classifications or types of workers is needed to execute the contract. It must do so prior to seeking bids on the contract in order for those competing to do so on a level playing field. Thus, the crafts, classifications or types of workers are determined by the context of a particular location, time, and kind of work. Awarding bodies will normally refer contractors to the general prevailing wage determinations issued by the Director.
- If the awarding body fails to specify the crafts and classifications, an interested party (which includes contractors and organizations representing them, as well as labor organizations) can petition the Director to include a classification believed to be present in the local labor market, but not published in the Director's general determinations. This process is called a "Petition To Review," as described in California Labor Code Section 1773.4, and detailed in CCR 16302.

Enforcement of the Prevailing Wages

If the labor commissioner determines, after an investigation, that the workers were not paid the proper prevailing wages on a public works project, the labor commissioner may file a Notice of Withholding with the awarding body on the contract funds for the wage deficiencies and for penalties. California Labor Code, Section 1727, states that, "Before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain there from all wages and penalties which have been forfeited pursuant to any stipulation in a contract for public work," and the terms of this chapter. However, no sum shall be withheld, retained or forfeited, except from the final payment, without a full investigation by either the Division of Labor Standards or its representative, the awarding body.

Enforcement by the Awarding Body

The body awarding the contract, pursuant to Section 1726, of the California Labor Code, will take into account violations of prevailing wage laws, and under California Labor Code, Section 1775, are required to assist the Division of Labor Standards Enforcement in enforcing underpayment of prevailing wages. California Labor Code, Section 1775(a), states that the contractor will forfeit to the state no more than \$50.00 per day for each calendar day, or a portion thereof, for each worker paid less than the prevailing wage rates. It also states the amount of penalties will be determined by the labor commissioner based on consideration of the contractor's mistake, inadvertence, or neglect, in failing to pay the correct rate of prevailing wages, or the previous record of the contractor in meeting its prevailing wage obligations, or the contractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate is not excusable if the contractor had knowledge of their obligations under the prevailing wage law.

The prevailing wage law makes the contractor responsible for the wages of the workers employed by the contractor or its subcontractors. If the Notice of Withholding filed by the labor commissioner is due to the failure of the subcontractor in paying its employees the proper prevailing wages, the contractor may withhold the penalties from the subcontractor under its subcontract. If the contractor has already paid the subcontractor, the contractor can take action to recover the forfeited amount from the subcontractor. (California Labor Code, Section 1729).

If the contractor wishes to challenge the assessment and recover the funds withheld, it can file an action against the awarding body on its public works contract without the permission from the state or other authority. The contractor may assign its claim to the funds, i.e., the cause of action against the awarding body. The action is limited to the recovery of the wages and penalties without prejudice to the contractor or assignee's rights concerning other matters affecting the contract. (California Labor Code, Section 1733) The action against the awarding body on the public works contract is the exclusive remedy of the contractor or its assignee. (California Labor Code Section 1732). The contractor must act within 90 days of the completion and formal acceptance of the contract. If the contractor or its assignee fails to take any action, the funds withheld will be transferred to the labor commissioner to be disbursed in accordance with California Labor Code, Section 1775. (California Labor Code, Section 1730) If insufficient funds have been withheld to cover the claims of the labor commissioner, they may take action to recover the wages and penalties due.

Public Works and Determination of Prevailing Rates

The Department of Industrial Relations has the authority to make two determinations;

1. First, whether a particular type of worker is covered by the prevailing wage laws;
2. Second, if so, what the prevailing wage for that type of worker should be.

Power of State to Regulate

A contractor's independence does not override their responsibility to act with due diligence with regard to the requirements of state law and regulation.

The contract belongs to the state, as the guardian and trustee for its people, and having control of its affairs to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities. No court has authority to review its action in that respect. Regulations on this subject suggest only considerations of public policy. Moreover, with such considerations the courts have no concern.

Case Law

Sansone Co. v. Department of Transportation (1975) 55 Cal.App. 3d 434, 463; 127- Cal.Rptr. 799

“The purposes of the public works prevailing wage laws which include protecting employees from substandard earnings if contractors could recruit labor from distant cheap labor areas; allowing union contractors to compete with nonunion contractors for public works; the benefit to the state of superior efficiency arising from well paid labor, and the need to compensate nonpublic employees with higher wages since they do not have the steady employment and fringe benefits

that public employees enjoy. In short, the focus of the public works prevailing wage law is on the protection of private sector workers and to insure that nonunion and union contractors compete evenly.

Lusardi v. DIR (1992) 1 Cal. 4th 976, 4 Cal.Rptr.2d 837.

A statute is intended to stimulate economic activity increasing and reinforcing the purchasing power of employees.

Green v. Jones (1964) 23 Wis.2d 551, 128 ...

Honest contractors who base their bids on the prevailing wage rates and legitimately intend to pay those rates would be punished by losing business to unscrupulous contractors who underbid because they have no intention of paying the prevailing wage.

Corlev 23 WH Cases 1071 at 1076 –

The purpose of the Davis-Bacon legislation was to make sure that government funds would not be spent on projects where workers would be exploited by being deprived of a fair wage for their work.

California Labor Code 1727 and 1775 authorized the State of California to withhold payments to prime contractors under public highway contract because of the subcontractors' failure to pay their employees prevailing wage rates. It did not deny prime contractors due process of law by virtue of their lack of any provision for Notice or hearing to prime contractors prior to withholding of such payments; such statutes did not, in effect, give state right to affect prejudgment attachment, but rather involved imposition by state of penalty for violation of statutory prevailing wage requirements with respect to public works.

Sansone v. Department of Transportation (1976) 55 Cal.App.3d 434, 463; 127 Cal.Rptr. 799

Proceeding to withhold penalties from final payment due contractor for work performed under highway construction contract was civil proceeding and not criminal proceeding and therefore contractor was not entitled to jury trial or to presumption of innocence, and since Legislature provided for proceeding to be brought within limited period to fully litigate and establish contractor's right to recover penalties there was no violation of due process of law. West's Ann. Code.

Sansone Co. v. Dept., of Transportation (1976) 55 CalApp. 3d 434, 127 Cal.Rptr 799

The trial court, in an action by contractors seeking declaratory relief with respect to the constitutionality of L.C. 1726, 1727, 1775, and the Work Hours Standards and Safety Act of 1962 as applied to the circumstances of the case, and seeking release of sums withheld from them by defendant Department of Transportation, found that the contractors were liable for the statutory penalties on the failure of their subcontractors to pay the prevailing wage to employees as required by both federal and state prevailing wage statutes, which were incorporated in the public works contract entered by the contractors with the state and in the contracts with subcontractors. Those found to be subcontractors within the meaning of the prevailing rate statutes were a trucker subcontracted to haul aggregate subbase for use on a highway and a second tier subcontractor hired by him. It was the failure of these two truckers to pay the prevailing wage that prompted the Department of Transportation to withhold, as unpaid wage and fringe benefits and state and

federal penalties, the sum of \$29,578.65 from money earned by the contractors on the projects.

Sansone Co. v. Department of Transportation (1976) 55 Cal.App.3d 434; 127 Cal. Rptr. 799

We find no fault with respondent's imposition of a penalty. Although the violation was neither intentional nor deliberate, the evidence established at a minimum that petitioner knew or should have known that it breached the Labor Law (see Matter of Cam Ful Indus. v. Roberts 128 A.D.2d 539). Petitionees president acknowledged that the company had prepared bids for other public works projects, had completed other such projects, and had received the prevailing wage schedule for the project at issue. More illuminating is the fact that petitioner purposely attempted to circumvent the tax law by paying its employees "off the books." Petitioner's cooperation in the investigation and immediate reclassification of the five apprentices.

Madonna v. State (1957) 312 P.2d 257, 151 Cal.App.2d 836

Public Works Act is not preempted by federal law since it does not define, expand or restrict union craft jurisdiction. Claim that it is an unauthorized attempt by the Department to intrude into the collective bargaining process and regulate union jurisdictional disputes governed by federal labor law is wrong. The rule is designed to assist the Department in determining which wage rates apply to the work being performed by a worker on a public works project so it can ascertain whether the prevailing wage has been paid. It does not dictate who may or must perform the work on such projects and in no way affects a union's power, authority or jurisdiction to determine who is qualified or able to perform such work. It simply provides that when work, meeting the definition set forth for a given occupational title, is performed, the corresponding prevailing wage rate must be paid to whoever did that work, no matter what the workers "official job title" or union affiliation.

Winzler v. DIR (1981) 121 Cal.App.3d 120, 174 CalRptr. 744

The trial judge determined that the issuance of the two general determinations was a quasi legislative action which should be reviewed under Code of Civil Procedure Section 1085. He concluded that the director was required under the Administrative Procedure Act (APA) (Government Code 11370 et seq.) to hold administrative hearings prior to issuing any of the challenged determinations and that he had failed to do so. Accordingly, he held that the challenged determinations were void and remanded the entire matter to the department (DIR) for further proceedings consistent with the APA and his order. The Department of Industrial Relations appealed. The sole issue presented on appeal is whether the director was required to hold a hearing prior to issuing the determination that the field surveying work was covered by the California prevailing wage law (Lab. Code 1720 et seq.) The appellate court held that Government Code 11380, subdivision (a)(1) exempts regulations which establishes or fixes rates, prices or tariffs" and that the determination of the classification or type of work covered is an essential step in the wage determination process and a rate cannot be fixed without such a determination. As the wage determination process is exempted, coverage determination, as an integral part of that process is also exempted.

Wilson v. City of San Bernardino (App. 4 Dist. 1960) 9 CalRptr. 431, 186 Cal.App.2d 603

Contract let by municipality for improvement of city street, constituting part of state highway system, which contract was authorized by agreement between city and state department of public works whereby cost was to be defrayed by state and work was subject to state inspection, must comply with wage provisions of general law, since improvement was not a “municipal affair.”

Becker v. Council of City of Albany (App. 1 Dist. 1941) 47 Cal.App.2d 702, 118 P.2d 924

Contemplated acquisition for street improvement within and without city to be part of state highway system and financed by federal, state, and county bonds and assessments on property specialty benefited was not “municipal affair,” within Constitution section permitting cities to remove themselves from operation of general laws to municipal affairs; hence general law was applicable to property within city.

Ronkin v. Bd. of County Commissioners of Snohomish (1977) Wash. 572 P.2d 1. (See also Jackson v. Pancake (1968) 266 Cal.App.2d 307, 72 Cal.Rptr. Haulers and Materialmen

Where, in performance of highway contractors’ agreement to furnish sub base materials under prime contract, contractors did not furnish sub base materials by securing them through standard commercial supplier, but subcontracted hauling of materials from locations adjacent to and established exclusively to serve project site, obtaining such materials under private borrow agreements with third parties, trucking companies engaged by contractors to haul such materials were not materialmen or employees of materialmen, but were “subcontractors” who were required by applicable law to pay not less than specified prevailing rates of wages to their employees.

Gartrell Construction v. DIR (1991) 941 F.2d 437. State Statutes and Regulations: Labor Code 1720.4

All volunteer labor or non profit project " approved by Director.

Posting Of Prevailing Wage On Job Site

It is clear that the Legislature used the term “job site,” in section 1773.2, in the common parlance to mean a site at which work had actually begun (presuming the bidding process was complete) and that the purpose of the provision is to notify the workers at the site (for whose benefit the prevailing wage rate provisions are intended) of the rates to which they are entitled. California Code of Regulations, Section 16 1 00(b)(2)(A) sets forth the posting requirements.

Fanelli, et al. v. Santa Clara Unified School Dist. (1983) 14 1- Cal. App. 3d 686, 190 Cal. Rptr 515.

Certified Payrolls

When records are requested pursuant to California Labor Code Section 1776 (b)(2), they must be furnished, and the contractor is not entitled to reimbursement costs. The court also held that “costs of preparation,” specified as reimbursement costs in conjunction with the request for certified copies of payroll records by the public under 1776(b)(3), were the costs of reproducing copies of certified payroll records, and not the actual costs of preparing the records.



Mattice Investments v. State of California, Department of Industrial Relations (1987) 190 Cal.App.3d

Classification Of Employees

Authority supports the general conclusion that the Davis Bacon Act classification disputes must be referred to the Department of Labor for resolution. A moment's reflection explains why this must be so. To permit Windsor's claim to go to a jury would result in by passing the carefully crafted administrative scheme for resolving Davis Bacon Act classification disputes. Contrary to this scheme, a jury, not the agency, would listen to testimony of employees regarding the work they performed on various dates and then determine the appropriate classification for any given task by reference to the Department of Labor's complex classification standards. That both parties have retained experts to assist the jury in this undertaking further underscores the wisdom in requiring classification disputes to be resolved in the administrative arena.

United States ex rel. Windsor v. Dyncorp 895 F.Supp. 844 (1995)

“The actual authority of the Department is to make two determinations; first, whether a particular type of worker or work is covered by the prevailing wage laws, and second, if so, what the prevailing wage for that category of worker should be. (LC 1772, 1773).

Independent Roofing Contractors v. DIR (1994) 23 Cal.AppAth 345, 28 Cal.Rptr.2d 550

Where the Secretary of Labor determines that the prevailing wage for a particular craft is derived from experience with negotiated arrangements, the Department of Labor must classify work in the Wage Determination according to the job content upon which the rates are based. A contractor is not free to classify persons performing carpentry work as laborers on the ground that such action is in accordance with local practice in nonunion contracts. A challenge to the use of union rates must be raised before the enforcement stage of proceedings.

Trateros Construction Corp. - 1993 WL 306698 (1993) W.A.B., Case No. 92 03

When the Department of Labor determines that the prevailing wage for a particular craft derives from experience under negotiated arrangements, the Labor Department has to see to it that the wage determinations carry along with them as fairly and fully as may be practicable, the classifications of work according to job content upon which the wage rates are based.

DLSE v. Ericsson Information Systems (App. 4 Dist. 1990) 270 Cal.Rptr. 75 221 Cal.App.3d

Hindsight determination after completion of public project that no classification for employees in question had been published by Division of Labor Standards Enforcement, Department of Industrial Relations did not, as matter of law for purposes of summary judgment, excuse contractor's expressly assumed obligation to pay prevailing wages.

DLSE v. Ericsson Inforination Systems (1990) 270 CalRptr. 75 221 Cal.App.3d 114

Failure of Division of Labor Standards Enforcement Department of Industrial Relations (Department) to promulgate regulation incorporating policy of choosing most closely related classification for prevailing wage purposes when workers in question were not precisely covered under one of published classifications did not defeat Department's right to have trial court enforce prevailing rate in connection with telephone system installation contract at state university; trial court could evaluate department's enforcement demand in light of contract terms of parties, apply contract law principles. Labor Code, and underlying policy, and existing regulations, without utilizing enforceable policy.

Fry Bros. (1980) 614 F.2d 732

If a construction contractor who is not bound by the classification of work at which the majority of employees in the area are working is free to classify or reclassify, grade or sub grade traditional craft work as he wishes, such a contractor can, with respect to wage rates, take almost any job away from the group of contractors and the employees who work for them who have established the locality wage standard. There will be little left to the Davis Bacon Act.

(Opinion No. DB 3 1. November 28, 1962). J.B.L.

The contractor cannot establish his own classification based on a subjective evaluation of the employee's individual skill or experience. Thus the Solicitor of Labor has stated: "The question of skill or individual training involved does not appear material to the issue. In any given work classification, the ability of the individual mechanics will vary. Likewise, in any skilled craft, there will be included work items which viewed apart and by themselves might appear to be of an unskilled labor nature, but which historically and actually are recognized in the industry generally as component elements of the particular trade.

Construction Co. (1978) 23-WH Cases 1067

The test of the correctness of the classification is not skill or experience, but the work actually performed. J.B.L.

(1978) 23 WH Cases 1071 – Electrician

The work of installing electrical systems and their components, such as lines and fixtures, are clearly electrician's work. A laborer might be expected to carry items, help position them, dig, perform ancillary duties and similar activities for which electrician's skills are largely irrelevant. If, however, he actually does independent installation, he is doing work for which electrician's skills and knowledge are needed, regardless of whether a particular employee has them. (In re Hughes Aircraft Co., 24 VVH Cases 513 (1979).

Workers Entitled To Prevailing Wages

Tenalp Constr. Corp. v. Roberts (1988, 2d Dept) 141 App Div 2d 81, 532 NYS2d 801, 29 BNA WH 222, motion gr.

In part on other grounds, motion den, in part (2d Dept) 147 App Div 2d 486, held the worker covered by the statute, which applied to "laborers, workmen or mechanics" employed on public works. Although acknowledging that full time supervisors might be exempt from the statute even though it contained no express exception to this effect, the court rejected the contractor's contention that the worker was an exempt supervisor, the court finding that the worker was employed as both a supervisor and a carpenter. The worker did not cease to be a carpenter said the court, by spending some of his work time in a supervisory role. The worker was a member of a crew of workers, continued the court, and shared the crews' activities and perils. The court stressed that the worker's duties remained primarily physical and, when necessary, he "jumped in and helped" the other workers. The court pointed out that under that act a supervisor who spent more than 20 percent of his or her time performing manual labor is deemed a "working supervisor" or "working foreman" and is covered under the act rather than exempt as a supervisor. Pointing out that the worker's testimony concerning his carpentry work was corroborated by that of two school officials who were present at the worksite an average of three times a day for as much as an hour each time, the court held the evidence sufficient to support the commissioner's determination that the worker spent a substantial amount of his work



time performing carpenter's work. The court said that the testimony of three subcontractors who appeared on behalf of the contractor did not contradict the determination, particularly when only one of them visited the site regularly.

Department of Labor v. Titan Constr. Co. (1985) 102 1, 504 A2d, 27 BNA WH' LC_55741

Held that the state prevailing wage statute (New Jersey Prevailing Wage Act, N.J.S.A. 34:1156:25 to 56.46), applies to workers who are stockholders or principals of a contractor, in that these workers come within the term "workman" in the statute. The court accordingly held that the contractor violated the statute in failing to pay the prevailing wage to three workers participating in a public school improvement project subject to the state who were also the contractor's sole owners. The court reasoned that both the letter and the purpose of the statute would be disserved by a contrary construction of the statute, in that it would invite stock ownership schemes designed to frustrate the statute's purpose of protecting both employers and employee and would prevent the uniform application intended by the state legislature in enacting the statute. The court said that persons performing work on a project do not lose the status of "workman" simply because they also hold the status of principal or stockholder. Relying on precedent the court rejected the contractor's contentions that the statute should not apply to these workers because (1) as owners they could simply reimburse the contractor, making apparent compliance with the prevailing wage standard meaningless; (2) the purpose of the statute was to protect employers from underpaying other employees, not from underpaying themselves; and (3) the prevailing wage was calculated using wage rates in a collective bargaining agreement that excluded supervisors, and this employee class was the one most like that into which the three workers would be placed.

Cugliotta Bros. Inc. v. New Jersey Dept. Of Labor & Industry (1979) 168 NJ Super 556, 403 A2d 945

Affirmed a determination by the department that the state prevailing wage statute (Prevailing Wage Act, L. 1963, c. 150, as amended, N.J. S.A. 34:1156.25 et seq.), applied to two individuals who performed manual work at the site of a project subject to the statute and who were officers of the contractor. The court said that the term "workman," to which the statute applied, was broadly defined to include "laborer, mechanic, skilled or semiskilled, laborer and apprentices or helpers employed by any contractor or subcontractor." Adoption of the contractor's contention that the statute did not apply to individuals who were the "policy setting decision makers" of an enterprise, declared the court, would run contrary to the letter and spirit of the statute and to decisional law in analogous areas of the law.

Partners

The federal cases interpreting the Davis Bacon Act reveal that the principle requiring the payment of the prevailing wage to partners has been applied under that Act (40 US. C. 276a(a)).

In Building and Construction Trades Department, AFL CIO v. Reich 40 F. 3d 1274, 1288 (D.C.-Cir. 1994)

The court stated that the legislative history reveals that Congress amended the Davis Bacon Act in 1935 to eliminate the practice where partnerships were being formed between individual workmen to avoid paying the members of the partnership the prevailing wage rate. Partners must be paid the prevailing wage.

Jurisdictional Disputes

Included within the classic definition of a jurisdictional dispute is a “controversy to whether certain work should be performed by workers in one bargaining unit or those in another.” If two established labor organizations agree to their respective jurisdictions and the only existing dispute is between the employer who has assigned work to members of the wrong union and the other union, there is no jurisdictional dispute. A bona fide disclaimer of jurisdiction of disputed work by a labor organization that originally claimed the work, will eliminate an active competing claim and the Board will not find reasonable cause to believe that a jurisdictional dispute exists. *Teamsters Local 85 (United Cal. Express & Storage Co.)*, 236 NLRB 157, 98 ' 1186 (1978). Classification of all the work on a project from removal of old roofing to clean up as roofers work and not laborers did not create a jurisdictional dispute.

Apprentice Cases

California Division of Labor Standards Enforcement, et al. v. Dillingham Construction, Inc.

California's prevailing wage law does not “relate to” employee benefit plans, and thus is not preempted by ERISA. Where federal law is said to preempt state action in field of traditional state regulation, this court assumes that the states' historic policy powers are not superseded unless that was Congress' clear and manifest purpose. Applicable regulations make clear that the class of apprenticeship program sponsors who may provide approved apprentices under California law is broad enough to include a single employer who defrays the costs of its program out of general assets. The California law is indifferent to the funding, and, thus, to the ERISA coverage, of apprenticeship programs; accordingly, it makes no “reference to” ERISA plans.

Employee Right To Sue Or To Different Rate Federal Davis Bacon

Finally, it has long been settled that employees cannot release, waive, or contract away their right to the correct wage under the Davis Bacon Act. As early as 1938, the United States Court of Appeals, Second Circuit held in the case of the United States ex rel. *Maude A. Johnson v. Morley Construction Co., et al.* 98 F.2d 781 "The statute was passed to protect the employees against the economic pressure it was assumed they would be unable to resist, if offered a job. To this end, it was necessary to deny them the power to bargain away the privilege after they had performed their labor, as before. It has been held in this and other courts that a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory authority.

Midstate Horticultural Co. v. Penn R.R. U 320 U.S. 356. 361

Where a private right is granted in the public interest to effectuate a legislative policy, waiver of a right so charged or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate. J.B.L.

Tippett v. Terich (1995) 37 Cal.App. 4th 1517, 44 Cal. Rptr. 2d 862

Gave employees right to sue for prevailing wages. If contractor agrees to pay employees prevailing wage and fails to do so, direct action for breach of contract is available to employee for failure to be paid prevailing wage. No contract causes of action are available to employee based on employee's failure to pay prevailing wage on public



works projects when prevailing wage rates or commitment to follow them are 7-102
Overview of Prevailing Wage Law.

Full Time Employees

Lwellyn v. Harmon, 285 SW.2d 150 (1955)

Where employees of public road contractor worked exclusively as bull dozer and road scraper operators during road work periods, employees were entitled to payment of minimum prevailing wages for equipment operators during such periods, and employees right thereto was not affected by fact that employer paid employees wages during off season, for work done on machinery in employer garage, when employer might not have done so had he been paying minimum prevailing wages during road work periods.

Release of Money By Awarding Body When Bond Filed

Pacific Materials Co. v. Redondo Beach City School District 94 Cal.App.3d 652

DLSE opposed to contractor bonding around project. (See letter of Douglas G. Nareau dated January 29, 1990) When general contractor filed surety bond to secure release of funds withheld from it by district by reason of dispute over stop notice filed with district by subcontractor's materialman, district which honored bond by releasing withheld funds to general contractor was relieved of any liability resulting from stop notice and could not thereafter be held liable to supplier.

Responsibility Of Contractor

Lusardi v. DIR (1992) 1 Cal.4th 976 (See also Male v. Pompton Lakes Borough Mun. Utilities Assoc. A.2d 224(1969))

The contractor is liable for payment of prevailing wage even if not part of contract.

Naftilos Painting v. Hartnett (1991)569 N.Y.S. 2d.474.

Any failure of labor commissioner to supply current wage rate schedule to employer did not relieve employer from duty to pay prevailing wage rate to which workers were statutorily entitled.

Disclosure of Workers

Painting & Drywall Work Preservation Fund v. HUD 936 F.2d 1300 (199 1)

Disclosure of names and addresses of construction workers from records submitted by public contractors under the Davis Bacon Act and Copeland Anti-Kickback Act would constitute substantial invasion of privacy which was not outweighed by the public interest in disclosure which would allow monitoring of enforcement efforts by Department of Housing and Urban Development (HUD) and the Department of Labor.

York Excavating Co. v. Pa. Wage Appeals 663 A.2d 840 (Pa.Cmwltth 1995)

Building contractor's due process rights were not violated by order protecting confidentiality of workers whose initial complaints led to Prevailing Wage Act investigation of contractor, where complaints merely triggered investigation, other workers testified about being instructed by contractor to under report their operator time, and contractor's counsel had ample opportunity to cross examine workers who testified.

DLSE Can Use "Does" And Approximate Amounts Owed

Mid Hudson v. DIR (1989) 156 A.D.2d 818.

Petitioners records were so incomplete that it was not possible to bring them to the statutorily mandated standard of record keeping. The remedial nature of the enforcement of the prevailing wage statute and its public purpose of protecting workmen entitled the

Commissioner to make just and reasonable inferences in awarding damages to employees even while the results may be approximate.

Debarment

Early and Sons, Inc. WAB Case No. 86 25 (January 29, 1997)

The submission of falsified payrolls to simulate proper payment is aggravated and willful violation of the Davis-Bacon related acts.

McAndrews Company, WAB Case No. 86 32 (March 26, 1987)

The Board stated that for the Department of Labor and this Board to condone the falsification of certified payrolls would undermine the enforcement of the Davis Bacon and related acts. Such falsification would require a sanction. Partners must be responsible for all the acts of the partnership.

P.J. Stella Construction Corp., WAB Case No. 80 13 (March 1, 1984)

In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered.



Appendix 3 Labor Compliance Reference Library

Forms Used in Labor Compliance

<u>NEW NO.</u>	<u>FORMER NO.</u>	<u>TITLE</u>
<i>LABOR COMPLIANCE FORMS</i>		
CEM-2501	HC-50	Fringe <i>Benefit Statement</i>
CEM-2502	HC-347	Contractor/Subcontractor Payroll
CEM-2503	HC-348	Statement of Compliance
CEM-2504	HC-31	Employee Interview: Labor Compliance/EEO
CEM-2505	HC-58	Owner-Operator Listing /Stmnt. of Compliance
CEM-2506	HC-19	Labor Compliance – Wage Violation
CEM-2507	HC-20	Labor Violation: Case Summary
CEM-2508	HC-40A	Contractor’s Payroll Source Document Review
CEM-2509		Checklist – Source Document Review
CEM-2401	HC-46	Substitution Report for DBE/DVBE
CEM-2402(F)	HC-43	Final Report – Utilization DBE
CEM-2402(S)	HC-43	Final Report – Utilization DVBE
CEM-2403(F)		DBE Certification Status Change
CEM-2404(F)		Monthly DBE Trucking Verification
CEM-4601	HC-46	Assistant Resident Engineers Daily Report

CEM forms are located online at <http://adsc.caltrans.ca.gov/CEFS/>

DEPARTMENT OF INDUSTRIAL RELATIONS FORMS

CAC 2	California Apprenticeship Council
DAS Form 7	Agreement to Train Apprentices
DAS Form 10	Apprentices on Public Works
DAS Form 11	Application for Certificate of Exemption
DAS Form 140	Public Works Contract Award Information

DIR forms are located online at <http://www.dir.ca.gov/DAS/>

FEDERAL FORMS

PR-1140	Additional Classification And Wage Report	
FHWA 1391	Federal-Aid Highway Construction Contractors EEO Report	
FHWA 1392	Summary of Form 1391	
<i>FHWA 1444</i>		
<i>FHWA 1494</i>		<i>Semiannual</i>
<i>Labor Compliance Enforcement Report</i>		
<i>FHWA 1495</i>	<i>Wage Rate Information (English)</i>	
FHWA 1495A	Wage Rate Information (Spanish)	
GSA2428	Request for Authorization of Additional Classification & Rate	

Ctrl click on : <http://contacts.gsa.gov/webforms.nsf/>

Then click on GSA-GSAPersonnel





STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
FINAL REPORT - UTILIZATION OF DISABLED VETERAN BUSINESS ENTERPRISES (DVBE)
STATE FUNDED PROJECTS
 CEM-2402S (REV. 10/1999) CT# 7541-3502-2

CONTRACT NUMBER _____ COUNTY _____ ROUTE _____ POST MILES POST KILOMETERS STATE FUNDED ADMINISTERING AGENCY _____ CONTRACT COMPLETION DATE _____
 PRIME CONTRACTOR _____ BUSINESS ADDRESS _____ ESTIMATED CONTRACT AMOUNT \$ _____

CONTRACT ITEM NO.	DESCRIPTION OF WORK PERFORMED AND MATERIALS PROVIDED	SUBCONTRACTOR NAME AND BUSINESS ADDRESS	DBE CERT NO	CONTRACT PAYMENTS		
				DVBE (STATE-FUNDED PROJECTS ONLY)	DATE WORK COMPLETED	DATE OF FINAL PAYMENT
ORIGINAL COMMITMENT DVBE \$ _____				TOTALS \$ _____		

List all Disabled Veterans Business Enterprises (DVBE's) regardless of tier, whether or not the firms were originally listed for goal credit. If actual DVBE utilization (or item of work) was different than that approved at time of award, provide comments. List actual amount paid to each DVBE, even if different than originally listed for goal credit.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

CONTRACTOR REPRESENTATIVE'S SIGNATURE _____ BUSINESS PHONE NUMBER _____ DATE _____

RESIDENT ENGINEER'S SIGNATURE _____ TO THE BEST OF MY INFORMATION AND BELIEF, THE ABOVE INFORMATION IS COMPLETE AND CORRECT BUSINESS PHONE NUMBER _____ DATE _____

COPY DISTRIBUTION: Original - Construction Program Green - Business Enterprise Program Canary - Contractor Pink - District Construction Golden Rod - Resident Engineer
 For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 263-2041 or TDD (916) 263-2044 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95614.



STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
FINAL REPORT - UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE), FIRST-TIER SUBCONTRACTORS
 CEM-2402F (REV. 10/1999) C1# 7541-3502-2

CONTRACT NUMBER _____ COUNTY _____ ROUTE _____ POST MILES POST KILOMETERS FEDERAL AID PROJECT _____ ADMINISTERING AGENCY _____ CONTRACT COMPLETION DATE _____

PRIME CONTRACTOR _____ BUSINESS ADDRESS _____ ESTIMATED CONTRACT AMOUNT \$ _____

ITEM NO.	DESCRIPTION OF WORK PERFORMED AND MATERIALS PROVIDED	SUBCONTRACTOR NAME AND BUSINESS ADDRESS	DBE CERT. NUMBER	CONTRACT PAYMENTS				DATE WORK COMPLETE	DATE OF FINAL PAYMENT
				NON-DBE	DBE	DBE MINORITY	DBE (NON-MINORITY WOMEN)		
			TOTALS	\$	\$	\$	\$	\$	\$

ORIGINAL COMMITMENT \$ _____ DBE \$ _____ DBE MINORITY \$ _____ DBE (MINORITY WOMEN) \$ _____
 \$ _____ DBE (NON-MINORITY WOMEN) \$ _____ DBE (MINORITY WOMEN) \$ _____
 List all First Tier Subcontractors, Disadvantaged Business Enterprises (DBEs) regardless of tier, whether or not the firms were originally listed for goal credit. If actual DBE utilization (or term of work) was different than that approved at time of award, provide comments on back of form. List actual amount paid to each DBE, even if different than originally listed for goal credit.

CONTRACTOR REPRESENTATIVE'S SIGNATURE _____ DATE _____
 BUSINESS PHONE NUMBER _____
 TO THE BEST OF MY INFORMATION AND BELIEF, THE ABOVE INFORMATION IS COMPLETE AND CORRECT

RESIDENT ENGINEER'S SIGNATURE _____ DATE _____
 BUSINESS PHONE NUMBER _____

COPY DISTRIBUTION: Original - Construction Program Green - Business Enterprise Program Canary - Contractor Pink - District Construction Golden Rod - Resident Engineer
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ADA Notice







STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
FRINGE BENEFIT STATEMENT
 CEM-2501 (REV. 8/1994)

CONTRACTOR/SUBCONTRACTOR (Please Print)	CONTRACT NUMBER	FEDERAL AID PROJECT NUMBER	DATE
TO: RESIDENT ENGINEER/DISTRICT LABOR COMPLIANCE OFFICER		BUSINESS ADDRESS	

The following information (as shown or referenced on wage rate determinations) paid to or on behalf of employees in various crafts or classifications is used to check payrolls or applied to force account work on the above contract.

THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE FIRST CERTIFIED PAYROLL, OR WHEN THERE HAVE BEEN ANY CHANGES.

CLASSIFICATION	FRINGE BENEFIT HOURLY AMOUNT	NAME AND ADDRESS OF PLAN, FUND, OR PROGRAM
Effective Date _____	Vacation \$ _____	_____
_____	Health & Welfare \$ _____	
_____	Pension \$ _____	
Subsistence and/or Travel Pay: \$ _____	Apprentice \$ _____	
	Other \$ _____	

CLASSIFICATION	FRINGE BENEFIT HOURLY AMOUNT	NAME AND ADDRESS OF PLAN, FUND, OR PROGRAM
Effective Date _____	Vacation \$ _____	_____
_____	Health & Welfare \$ _____	
_____	Pension \$ _____	
Subsistence and/or Travel Pay: \$ _____	Apprentice \$ _____	
	Other \$ _____	

CLASSIFICATION	FRINGE BENEFIT HOURLY AMOUNT	NAME AND ADDRESS OF PLAN, FUND, OR PROGRAM
Effective Date _____	Vacation \$ _____	_____
_____	Health & Welfare \$ _____	
_____	Pension \$ _____	
Subsistence and/or Travel Pay: \$ _____	Apprentice \$ _____	
	Other \$ _____	

I certify under penalty of perjury that fringe benefits are paid to the approved Plans, Funds, or Programs as listed above.

NAME AND TITLE (Please Print)	
SIGNATURE	BUSINESS TELEPHONE NUMBER

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 263-2041 or TDD (916) 263-2044 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814. CEM2501







STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
STATEMENT OF COMPLIANCE
 CEM-2503 (REV 8/96)

CONTRACTOR/SUBCONTRACTOR	CONTRACT NUMBER
FIRST DAY AND DATE OF PAY PERIOD	LAST DAY AND DATE OF PAY PERIOD

I do hereby certify under penalty of perjury:

- (1) That I pay or supervise payment to employees of the above-referenced contractor on the above-referenced contract. All persons employed on said project for the above-referenced time period have been paid their full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said contractor from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person other than permissible deductions.
- (2) That any payrolls otherwise under this control required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates:
 - (a) Specified in the applicable wage determination incorporated into the contract;
 - (b) Determined by the Director of Industrial Relations for the county or counties in which the work is performed; that the classification set forth therein for each laborer or mechanic conform with the work he or she performed.
- (3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency.
- (4) That fringe benefits as listed in the contract:
 - (a) Have been or will be paid to the approved plan(s), fund(s), or program(s) for the benefit of listed employee(s), except as noted below.
 - (b) Have been paid directly to the listed employee(s), except as noted below.
 - (c) See exceptions noted below.

EXCEPTION CRAFT	EXPLANATION

REMARKS:

NAME (PLEASE PRINT.)	TITLE
SIGNATURE	DATE

On federally-funded projects, permissible deductions are defined in Regulation, Part 3 (29 CFR, Subtitle A), issued by the Secretary of Labor under the Copland Act, as amended (48 Stat. 948 63 Stat. 108,72 State. 967;76 Stat 357:40 U. S. C. 276c).

Also, the willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution (See Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code).

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 263-2041 or TDD (916) 263-2044 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

CEM2503





CONFIDENTIAL
This document contains personal information and pursuant to Civil Code 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

CONTRACT NO.
FED. NO.

INSTRUCTIONS - (SEE REVERSE SIDE)

1. TO BE FILLED IN BY INTERVIEWER (Data may be obtained from payroll records or during source document review)

EMPLOYEE NAME		LABOR CLASSIFICATION
MINIMUM BASE WAGE PER CONTRACT:	BASE RATE	FRINGE BENEFITS
MINIMUM BASE WAGE PER PAYROLL (if available):	BASE RATE	FRINGE BENEFITS
EMPLOYER	PRIME CONTRACTOR ON THE PROJECT (IF SAME, SO STATE)	

WORK BEING PERFORMED AT TIME OF INTERVIEW

2. QUESTIONS TO BE ASKED OF EMPLOYEE

A. HOW LONG HAVE YOU WORKED FOR YOUR PRESENT EMPLOYER?	HOW LONG ON THIS PROJECT?
B. DESCRIBE THE TYPE OF WORK YOU HAVE BEEN DOING THIS PAST WEEK	
C. WHAT IS YOUR WAGE [Include Base Rate and Fringe Benefits (Compare to Payroll)]	DO YOU KEEP A RECORD OF THE HOURS YOU WORK? <input type="checkbox"/> YES <input type="checkbox"/> NO
D. DO YOU WORK OVERTIME? <input type="checkbox"/> FREQUENTLY <input type="checkbox"/> SELDOM <input type="checkbox"/> NONE	ARE YOU PAID TIME AND ONE-HALF FOR OVERTIME? <input type="checkbox"/> YES <input type="checkbox"/> NO IF NO, EXPLAIN
E. HAS YOUR EMPLOYER DIRECTED YOUR ATTENTION TO THE REQUIRED WAGE RATE POSTERS ON THE PROJECT? <input type="checkbox"/> YES <input type="checkbox"/> NO	HAVE YOU SEEN THOSE POSTERS? <input type="checkbox"/> YES <input type="checkbox"/> NO IF NO, EXPLAIN
F. ARE YOU AWARE OF THE CONTRACTOR'S EEO POLICIES? <input type="checkbox"/> YES <input type="checkbox"/> NO	DOES THE CONTRACTOR HOLD REGULAR EEO MEETINGS? <input type="checkbox"/> YES <input type="checkbox"/> NO HOW OFTEN? WHO CONDUCTS THE MEETINGS? WHO IS THE EEO OFFICER FOR YOUR EMPLOYER? WHO IS THE EEO OFFICER FOR THE PROJECT?
G. ARE YOU INTERESTED IN / OR HAS YOUR EMPLOYER INFORMED YOU OF UPGRADING AND TRAINING POSSIBILITIES? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, PLEASE EXPLAIN

3. ADDITIONAL QUESTIONS FOR OWNER OPERATORS

A. EQUIPMENT DESCRIPTION	TRUCK LICENCE NO.	TRUCK CA #
HOURLY RATE (Fully operated and maintained) \$	BASE EQUIPMENT RATE \$	ON WHAT DO YOU BASE YOUR EQUIPMENT RENTAL RATE? <input type="checkbox"/> HOURLY <input type="checkbox"/> WEEKLY <input type="checkbox"/> MONTHLY
B. DO YOU OWN THE EQUIPMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO	MAY I SEE YOUR CERTIFICATE OF OWNERSHIP? (Interviewer Note Response) <input type="checkbox"/> YES <input type="checkbox"/> NO	
LEGAL OWNER	REGISTERED OWNER	

4. EMPLOYEE COMMENTS

DO YOU HAVE ANY COMMENTS OR COMPLAINTS ABOUT WAGES OR EEO POLICIES? BE SPECIFIC:

5. INTERVIEWER'S COMMENTS

INTERVIEWER'S SIGNATURE	DATE	RESIDENT ENGINEER'S SIGNATURE	DATE
-------------------------	------	-------------------------------	------



EMPLOYEE INTERVIEW: LABOR COMPLIANCE / EEO

CEM 2504 (REV 6/1999) (Back) CT #7541-3512-3

DIRECTIONS TO INTERVIEWER

- 1. Fill in Section 1 from payroll records, if available, after interview.***
- 2. Fill in Section 2 completely. (does not apply to owner operators)***
- 3. Fill in Section 3 completely.***
- 4. Employee comments optional in Section 4.***
- 5. Interviewer comments on findings and recommends further actions to be taken. Attach additional sheets if necessary.***



ENTREVISTA DE EMPLEADO: LABOR COMPLIANCE / EEO

CEM-2504 (Spanish) (NEW 11/2003) (Frente)

AVISO ADA

Para personas con incapacidad sensorial, este documento esta disponible en forma alternativa... Para mas informacion llame a (916) 854-6410 or TDD (916) 654-3880o escriba a Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

CONFIDENCIAL

Este documento contiene informacion personal y de acuerdo al codigo civil 1798.21 debera ser mantenida confidencialmente con el fin de protegerla contra divulgaciones no autorizadas.

No DE CONTRATO

No DE FED

INSTRUCCIONES - (VEA EL REVERSO)

1. A SER LLENADO POR EL ENTREVISTADOR (Los datos pueden ser obtenidos de las planillas de pago o durante la revision de documentos)

NOMBRE DEL EMPLEADO		CLASIFICACION DEL TRABAJO
SUELDO BASICO MINIMO POR CONTRATO:	SUELDO BASICO	BENEFICIOS EMPRESARIALES
SUELDO BASICO MINIMO POR PLANILLA:	SUELDO BASICO	BENEFICIOS EMPRESARIALES
EMPLEADOR	CONTRATISTA PRINCIPAL EN EL PROYECTO (SI ES EL MISMO, INDIQUE)	
TRABAJO REALIZADO AL MOMENTO DE LA ENTREVISTA		

2. PREGUNTAS AL EMPLEADO

A. CUANTO TIEMPO HA TRABAJADO CON ESTA EMPRESA?		CUANTO TIEMPO HA TRABAJADO EN ESTE PROYECTO?	
B. DESCRIBA EL TIPO DE TRABAJO HECHO EN LA ULTIMA SEMANA			
C. CUAL ES SU SUELDO? (Incluya sueldo basico y beneficios (Compara con Planilla))			USTED ANOTA SUS HORAS TRABAJADAS? <input type="checkbox"/> SI <input type="checkbox"/> NO
D. USTED TRABAJA HORAS EXTRAS? <input type="checkbox"/> FRECUENTEMENTE <input type="checkbox"/> POCO <input type="checkbox"/> NUNCA		LE PAGARON TIEMPO Y MEDIO POR LAS HORAS EXTRAS? <input type="checkbox"/> SI <input type="checkbox"/> NO	SI ES NO, EXPLIQUE
E. LE HA ORIENTADO SU EMPLEADOR ACERCA DE AFICHES (TABLAS) DE LA ESCALA SALARIAL COLOCADOS EN EL PROYECTO? <input type="checkbox"/> SI <input type="checkbox"/> NO		HA VISTO USTED ESOS AFICHES (TABLAS)? <input type="checkbox"/> SI <input type="checkbox"/> NO	SI ES NO, EXPLIQUE
F. ESTA USTED ENTERADO DE LAS REGLAS DEL CONTRATISTA ACERCA DEL IOE?? <input type="checkbox"/> SI <input type="checkbox"/> NO		REALIZA EL CONTRATISTA REUNIONES (JUNTAS) ACERCA DEL IOE? <input type="checkbox"/> SI <input type="checkbox"/> NO	CON QUE FRECUENCIA?
QUIEN DIRIGE LAS REUNIONES (JUNTAS)?		QUIEN ES EL REPRESENTANTE DEL IOE POR PARTE DE LA EMPRESA?	QUIEN ES EL REPRESENTANTE DEL IOE EN EL PROYECTO?
G. ESTA USTED INTERESADO O SU EMPLEADOR LE HA INFORMADO ACERCA DE PROGRAMAS DE ASCENSO Y POSIBILIDADES DE ENTRENAMIENTO? <input type="checkbox"/> SI <input type="checkbox"/> NO			SI ES SI, EXPLIQUE

3. PREGUNTAS ADICIONALES PARA OPERADORES PROPIETARIOS

A. DESCRIPCION DEL EQUIPO		NUMERO DE LICENCIA DEL CAMION	NUMERO CA # DEL CAMION
PRECIO POR HORA (Operacion y Mantenimiento Total) \$	PRECIO BASICO DE RENTA DE EQUIPO \$	COMO ESTABLECE EL PRECIO DE LA RENTA DEL EQUIPO? <input type="checkbox"/> POR HORA <input type="checkbox"/> SEMANAL <input type="checkbox"/> MENSUAL	
B. ES USTED EL PROPIETARIO DEL EQUIPO? <input type="checkbox"/> SI <input type="checkbox"/> NO		PUEDO VER SU CERTIFICADO DE PROPIEDAD? <input type="checkbox"/> SI <input type="checkbox"/> NO	
PROPIETARIO LEGAL		PROPIETARIO REGISTRADO	
4. COMENTARIOS DEL EMPLEADO		5. COMENTARIOS DEL ENTREVISTADOR	
TIENE USTED ALGUN COMENTARIO O QUEJA ACERCA DE LOS SUELDOS O LAS REGLAS DEL IOE? SEA ESPECIFICO			
FIRMA DEL ENTREVISTADOR		FECHA	FIRMA DEL INGENIERO RESIDENTE
			FECHA



DIRECCIONES PARA EL ENTREVISTADOR

1. *Llene la seccion numero 1 con los datos de planilla, si estan disponibles y despues de la entrevista.*
2. *Llene la seccion numero 2 completamente. (No se aplica a los operadores propietarios.)*
3. *Llene la seccion numero 3 completamente.*
4. *Los comentarios del Empleado en la seccion numero 4 son opcionales.*
5. *Los comentarios del Entrevistador acerca de los hechos encontrados y recomendaciones de futuras acciones a ser tomadas. Adjunte hojas adicionales si es necesario.*

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
OWNER-OPERATOR LISTING
 CEM-2505 (REV 05/2001)

NAME OF CONTRACTOR EMPLOYING OWNER OPERATOR(S)		ADDRESS											
PAYROLL NO	FOR WEEK ENDING	PROJECT AND LOCATION			CONTRACT NO						CHECK NO.		
		TRUCK CAL T NO. AND/OR EQUIP. LICENSE NO.	DESCRIPTION OF EQUIPMENT	WORK CLASSIFICATION	OT OR ST	DAY AND DATE	TOTAL WEEKLY HOURS	HOURLY RATE OF PAY	GROSS PAYMENT EARNED				
					O								
					S								
					O								
					S								
					O								
					S								
					O								
					S								
					O								
					S								
					O								
					S								
					O								
					S								

NOTE: CERTIFICATION WILL BE ACCEPTED ONLY FROM THE CONTRACTOR EMPLOYING THE OWNER OPERATOR: IT WILL NOT BE ACCEPTED FROM THE OWNER OPERATOR HIM / HERSELF.







CONTRACTOR INFORMATION		CONTRACT INFORMATION	
CONTRACTOR INVOLVED		CONTRACT NUMBER	FEDERAL NUMBER(S)
ADDRESS		CONTRACT ADVERTISEMENT DATE	AWARD DATE
PRIME CONTRACTOR	<input type="checkbox"/> SAME	COMPLETION OR ESTIMATED COMPLETION DATE	ACCEPTANCE DATE
ADDRESS		COUNTY WHERE WORK WAS PERFORMED	RESIDENT ENGINEER

WAGES AND PENALTIES			
TOTAL WAGES UNDERPAID (STRAIGHT TIME)	\$	TOTAL STATE PENALTIES (STRAIGHT TIME)	\$
TOTAL UNDERPAYMENTS OF TRAVEL and/or SUBSISTENCE	\$	TOTAL STATE PENALTIES (FAILURE TO SUBMIT PAYROLL RECORDS, PER L.C. 1776(F))	\$
TOTAL WAGES UNDERPAID (OVERTIME)	\$	NO. OF EMPLOYEES x DAYS x \$50.00/DAY	
TOTAL RESTITUTION TO DATE	\$	TOTAL STATE PENALTIES (OVERTIME)	\$
TOTAL WAGES STILL DUE (STRAIGHT TIME, TRAVEL/SUBSISTENCE &)	\$	TOTAL FEDERAL PENALTIES (OVERTIME)	\$
NUMBER OF UNDERPAID WORKERS		CASE TOTAL	\$
WAGE RESTITUTION VERIFIED BY: (NAME OF PERSON)		DISTRICT DEDUCTION FOR THIS CASE	\$
HOW VERIFIED:		APPLICABLE STATE GENERAL PREVAILING WAGE RATE	STATE INDEX #
<input type="checkbox"/> CANCELLED CHECKS	<input type="checkbox"/> INTERVIEW(S)	FEDERAL GENERAL WAGE DECISION NUMBER	MOD.# DATE
OR		CA	

INVESTIGATION BACKGROUND

(FOR THIS SECTION, USE ADDITIONAL SHEET IF NECESSARY - SHOW ITEM NUMBER)

- BRIEF, CONCISE STATEMENT OF THE NATURE OF THE CIRCUMSTANCES PROMPTING THE INVESTIGATION
- BRIEF DESCRIPTION OF THE NATURE AND EXTENT OF THE INVESTIGATION
- BRIEF, CONCISE STATEMENT OF THE FACTS RELATING TO THE DISCREPANCIES

CHRONOLOGY

DATE	ACTION TAKEN	ACTION BY WHOM
	Case began (problem discovered)	District
	Letter to contractor setting SDR	District
	SDR	District
	Case to Headquarters	District
	Review Case	HQLC
	Send to DLSE	HQLC
	DLSE Approval	DLSE
	Notify Dist LCO of Approval	HQLC
	Issue Notice of Withhold	District
	Request to Withhold sent to Progress Pay Section	District
	Settlement Meeting	District
	Receive Legal request to review evidence	HQ Legal/District
	Administrative Hearing	HQ Legal/Contractor

DISTRICT INVESTIGATOR	DISTRICT LABOR COMPLIANCE OFFICER - SIGNATURE	DATE
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CONTRACTOR'S PAYROLL SOURCE DOCUMENT REVIEW

CEM-2508 (REV. 10/1998)

CONTRACTOR REVIEWED

CONTRACT NUMBER	FEDERAL NUMBER	DATE REVIEWED
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CONTRACTOR'S ADDRESS

LOCATION OF DOCUMENTS (IF DIFFERENT FROM CONTRACTOR'S ADDRESS)

NAME/TELEPHONE NUMBER OF CONTACT AT LOCATION OF DOCUMENTS

PRIME CONTRACTOR

SAME

ADDRESS:

REASON FOR REVIEW:

DEFICIENCIES

NO YES (BRIEFLY IDENTIFY BELOW)

DISTRICT ACTION, RECOMMENDATION & CONCLUSIONS

DEFICIENCIES CORRECTED CASE PREPARED

DISTRICT REVIEWER	DATE	SIGNATURE OF DISTRICT LC OFFICER	DATE
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STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
CHECKLIST - SOURCE DOCUMENT REVIEW
 CEM-2509 (REV 1/2003) (USE WITH FORM CEM-2508)

CONTRACTOR REVIEWED	CONTRACT NUMBER
COMPLETION DATE	R.E.

N/A = NOT APPLICABLE					S/R = SEE REMARKS					PR = PAYROLLS				
ITEM NO.	ITEM	YES	NO	N/A	S/R	ITEM NO.	ITEM	YES	NO	N/A	S/R			
A	GENERAL					E	MISCELLANEOUS							
A1	Prime notified					E1	Business license: Co./City # _____ Yr. _____							
A2	Sub notified					E2	Subcontract contains Section 14							
A3	Sub approved					E3	Home office bulletin board in order							
A4						E4								
B	PAYROLLS					E5								
B1	Same as submitted					F	INVESTIGATION							
B2	Time Cards/PR agree					F1	Number of payrolls reviewed: _____ _____ All _____ Random							
B3	Canceled Checks/PR agree					F2	Number of wage underpayments _____							
B4	Wages pd at/above contract min.					F3	Number of workers underpaid: _____							
B5	Nonworking supv. shown on PR					F4								
B6	Fed/State tax held from employee wages					G	CONCLUSIONS							
B7	Employee interview on file (No. _____)					G1	Payrolls okay							
B8	Employee interview reflect problem					G2	Discepancies intentional							
B9						G3								
C	PROPRIETORSHIP					G4								
C1	Sole proprietor					H	DISTRICT RECOMMENDATIONS							
C2	Partnership					H1	Assess State penalties							
C3	Partnership papers available					H2	Assess Federal penalties							
C4	Partnership profit papers available					H3	Contractor aware of findings							
C5	Corporation					H4	Prime Notified of Findings							
C6	Are corp. officers laborers/mechanics					H5	Case to Hqs							
C7	If so, recieving proper wages					H6								
C8						ENTER ITEM #	REMARKS							
D	BENEFITS													
D1	Fringes paid cash													
D2	Fringes paid to a trust fund													
D3	Trust fund approved													
D4	Trust statements available													
D5	Statement hrs per employee per month equal or exceed total PR hours													
D6	Canceled checks agree with payments													
D7	Canceled checks agree with statements													
D8														
D9														
DISTRICT REVIEWER		DATE			DISTRICT LC OFFICER		DATE							

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STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
CHECKLIST - SOURCE DOCUMENT REVIEW
CEM-2509 (REV 1/2003) (USE WITH FORM CEM-2508)

CONTRACTOR REVIEWED	CONTRACT NUMBER
COMPLETION DATE	R.E.







EXCERPTS FROM the CALIFORNIA LABOR CODE RELATING to APPRENTICES on PUBLIC WORKS (DAS – 10)

1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five days of the award, send a copy of the award to the Division of Apprenticeship Standards. When specifically requested by a local joint apprenticeship committee, the division shall notify the local joint apprenticeship committee regarding all such awards applicable to the joint apprenticeship committee making the request. Within five days of a finding of any discrepancy regarding the ratio of **apprentices** to journeymen, pursuant to the certificated fixed number of **apprentices** to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.

51773.4. Any prospective bidder or his representative, any representative of any craft, classification or type of workman involved, or the awarding body may, within 20 days after commencement of advertising of the call for bids by the awarding body, file with the Director of Industrial Relations a verified petition to review the determination of any such rate or rates upon the ground that they have not been determined in accordance with the provision of Section 1773 of this **code**. Within two days thereafter, a copy of such petition shall be filed with the awarding body. The petition shall set forth the facts upon which it is based. The Director of Industrial Relations or his authorized representative shall, upon notice to the petitioner, the awarding body and such other persons as he deems proper, including the recognized collective bargaining representatives for the particular crafts, classifications or types of work involved, institute an investigation or hold a hearing. Within 20 days after the filing of such petition, or within such longer period as agreed upon by the director, the awarding body, and all the interested parties, he shall make a determination and transmit the same in writing to the awarding body and to the interested parties. Such determination shall be final and shall be the determination of the awarding body. Upon receipt by it of the notice of the filing of such petition the body awarding the contract or authorizing the public work shall extend the closing date for the submission of bids or the starting of work until five days after the determination of the general prevailing rates of per diem wages pursuant to this section. Upon the filing of any such petition, notice thereof shall be set forth in the next and all subsequent publications by the awarding body of the call for bids. No other notice need be given to bidders by the awarding body by publication or otherwise. The determination of the director shall be included in the contract.

1773.5. The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, including, but not limited to, the responsibilities and duties of awarding bodies under this chapter.

1773.6. If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality he shall make such change available to the awarding body and his determination shall be final. Such determination by the Director of Industrial Relations shall not be effective to any contract for which the notice to bidders has been published.

1773.7. The provisions of Section 11250 of the Government **Code** shall not be applicable to Sections 1773, 1773.4, and 1773.6.

1773.9. (a) The Director of Industrial Relations shall use the methodology set forth in subdivision (b) to determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed. (b) The general prevailing rate of per diem wages includes all of the following: (1) The basic hourly wage rate being paid to a majority of workers engaged in the particular craft, classification, or type of work within the locality and in the nearest **labor** market area, if a majority of the workers is paid at a single rate. If no single rate is being paid to a majority of the workers, then the single rate being paid to the greatest number of workers, or modal rate, is prevailing. If a modal rate cannot be determined, then the director shall establish an alternative rate, consistent with the methodology for determining the modal rate, by considering the appropriate collective bargaining agreements, federal rates, rates in the nearest **labor** market area, or other data such as wage survey data. (2) Other employer payments included in per diem wages pursuant to Section 1773.1 and as included as part of the total hourly wage rate from which the basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, the director shall establish a prevailing employer payment rate by the same procedure set forth in paragraph (1). (3) The rate for holiday and overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, the rate for holidays and overtime work, if any, included with the prevailing basic hourly rate of pay shall be prevailing. (c) If the director determines that the general prevailing rate of per diem wages is the rate established by a collective bargaining agreement, and that the collective bargaining agreement contains definite and predetermined changes during its term that will affect the rate adopted, the director shall incorporate those changes into the determination. Predetermined changes that are rescinded prior to their effective date shall not be enforced.

1773.11. (a) Notwithstanding any other provision of law and except as otherwise provided by this section, if the state or a political subdivision thereof agrees by contract with a private entity that the private entity's employees receive, in performing that contract, the general prevailing rate of per diem wages and the general prevailing rate for holiday and

overtime work, the director shall, upon a request by the state or the political subdivision, do both of the following: (1) Determine, as otherwise provided by law, the wage rates for each craft, classification, or type of worker that are needed to execute the contract. (2) Provide these wage rates to the state or political subdivision that requests them. (b) This section does not apply to a contract for a public work, as defined in this chapter. (c) The director shall determine and provide the wage rates described in this section in the order in which the requests for these wage rates were received and regardless of the calendar year in which they were received. If there are more than 20 pending requests in a calendar year, the director shall respond only to the first 20 requests in the order in which they were received. If the director determines that funding is available in any calendar year to determine and provide these wage rates in response to more than 20 requests, the director shall respond to these requests in a manner consistent with this subdivision.

1774. The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

1775. (a) (1) The contractor and any subcontractor under 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 or, except as provided in subdivision (b), by any subcontractor under 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 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. (ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations. (B) (i) The penalty may not be less than ten dollars (\$10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, 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. (ii) The penalty may not be less than twenty dollars (\$20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, 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. (iii) The penalty may not be less than thirty dollars (\$30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the **Labor** Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1. (C) When the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section. (D) The determination of the **Labor** Commissioner to the amount of the penalty shall be reviewable only for abuse of discretion. (E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with. (b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless 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. (c) The Division of **Labor** Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of **Labor** Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct. (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his



or her employees on the public works project. (b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis: (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request. (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of **Labor** Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations. (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of **Labor** Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor. (c) The certified payroll records shall be on forms provided by the Division of **Labor** Standards Enforcement or shall contain the same information as the forms provided by the division. (d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request. (e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of **Labor** Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint **labor**-management committee established pursuant to the federal **Labor** Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint **labor** management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint **labor** management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter. (f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address. (g) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she 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 calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of **Labor** Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section. (h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. (i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government **Code**) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil **Code**) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

1777. 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.

1777.1. (a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the **Labor** Commissioner to be in violation of this chapter with intent to defraud, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following: (1) Bid on or be awarded a contract for a public works project. (2) Perform work as a subcontractor on a public works project. (b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the **Labor** Commissioner to be in willful violation of this chapter, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period up to three years for each second and subsequent violation occurring within three years of a separate and previous willful violation of this chapter to do either of the following: (1) Bid on or be awarded a contract for a public works project. (2) Perform work as a subcontractor on a public works project. (c) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions. (d) Not less than semiannually, the **Labor** Commissioner shall publish and distribute to awarding bodies a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works

project pursuant to this chapter. The list shall contain the name of the contractor, the Contractor's State License Board license number of the contractor, and the effective period of debarment of the contractor. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each debarment of a contractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars (\$5,000). The amount paid to the commissioner for the advertisements shall be credited against the contractor's or subcontractor's obligation to pay civil fines or penalties for the same willful violation of this chapter. (e) For purposes of this section, "contractor or subcontractor" means a firm, corporation, partnership, or association and its responsible managing officer, as well as any supervisors, managers, and officers found by the **Labor** Commissioner to be personally and substantially responsible for the willful violation of this chapter. (f) For the purposes of this section, the term "any interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Any interest" does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project. (g) For the purposes of this section, the term "entity" is defined as a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust, or organization. (h) The **Labor** Commissioner shall adopt rules and regulations for the administration and enforcement of this section.

1777..5. (a) Nothing in this chapter shall prevent the employment of properly registered **apprentices** upon public works. (b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for **apprentices** in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered. (c) Only **apprentices**, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following: (1) The apprenticeship standards and apprentice agreements under which he or she is training. (2) The rules and regulations of the California Apprenticeship Council. (d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ **apprentices** in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide **apprentices** to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of **apprentices** in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of **apprentices** to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o). (e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply **apprentices** to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of **apprentices** proposed to be employed, and the approximate dates the **apprentices** would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months. (f) The apprenticeship program that can supply **apprentices** to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities. (g) The ratio of work performed by **apprentices** to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work. (h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate



the ratio. The contractor shall employ **apprentices** for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ **apprentices** during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. (i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of **apprentices** or the ratio of **apprentices** to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g). (j) Upon proper showing by a contractor that he or she employs **apprentices** in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of **labor** performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade. (k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met: (1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent. (2) The number of **apprentices** in training in the area exceeds a ratio of 1 to 5. (3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis. (4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman. (l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards. (m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or **apprentices** in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply **apprentices** to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract. (2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training **apprentices**. The funds shall be distributed as follows: (A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made. (B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of **apprentices** registered in each program. (C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards. (3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government **Code**, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards. (n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor. (o) This section does 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 involve less than thirty thousand dollars (\$30,000). (p) All decisions of an apprenticeship program under this section are subject to Section 3081.

1777.6. It shall be unlawful for an employer or a **labor** union to refuse to accept otherwise qualified employees as registered **apprentices** on any public works, on the ground of the race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077, of such employee.

1777.7. (a) (1) A contractor or subcontractor that is determined by the Chief of the Division of Apprenticeship Standards to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Chief if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit

as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed by the Chief, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due. (2) In lieu of the penalty provided for in this subdivision, the Chief may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d), order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for **apprentices** during the period of noncompliance. (b) In the event a contractor or subcontractor is determined by the Chief to have knowingly committed a serious violation of any provision of Section 1777.5, the Chief may also deny to the contractor or subcontractor, and to its responsible officers, the right to bid on or be awarded or perform work as a subcontractor on any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Chief becomes a final order of the Administrator of Apprenticeship. (c) (1) An affected contractor, subcontractor, or responsible officer may obtain a review of the determination of the Chief imposing the debarment or civil penalty by transmitting a written request to the office of the Administrator within 30 days after service of the determination of debarment or civil penalty. A copy of this report shall also be served on the Chief. If the Administrator does not receive a timely request for review of the determination of debarment or civil penalty made by the Chief, the order shall become the final order of the Administrator. (2) Within 20 days of the timely receipt of a request for review, the Chief shall provide the contractor, subcontractor, or responsible officer the opportunity to review any evidence the Chief may offer at the hearing. The Chief shall also promptly disclose any nonprivileged documents obtained after the 20-day time limit at a time set forth for exchange of evidence by the Administrator. (3) Within 90 days of the timely receipt of a request for review, a hearing shall be commenced before the Administrator or an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5. (4) Within 45 days of the conclusion of the hearing, the Administrator shall issue a written decision affirming, modifying, or dismissing the determination of debarment or civil penalty. The decision shall contain a statement of the factual and legal basis for the decision and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party that the party has filed with the Administrator. Within 15 days of issuance of the decision, the Administrator may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time. (5) An affected contractor, subcontractor, or responsible officer who has timely requested review and obtained a decision under paragraph (4) may obtain review of the decision of the Administrator by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the final decision. If no timely petition for a writ of mandate is filed, the decision shall become the final order of the Administrator. The decision of the Administrator shall be affirmed unless the petitioner shows that the Administrator abused his or her discretion. If the petitioner claims that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the entire record. (6) The Chief may certify a copy of the final order of the Administrator and file it with the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order. A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section. An awarding body that has withheld funds in response to a determination by the Chief imposing a penalty under this section shall, upon receipt of a certified copy of a final order of the Administrator, promptly transmit the withheld funds, up to the amount of the certified order, to the Administrator. (d) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements: (1) The contract executed between the contractor and the subcontractor or 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 continually monitor a subcontractor's use of **apprentices** required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor. (3) Upon becoming aware of a failure of the subcontractor to employ the required number of **apprentices**, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected. (4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of **apprentices** on the public works project. (e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state. (f) The Chief shall consider, in setting the amount of a monetary penalty, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating this section, all of the following circumstances: (1) Whether the violation was intentional. (2) Whether the party has committed other violations of



Section 1777.5. (3) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation. (4) Whether, and to what extent, the violation resulted in lost training opportunities for **apprentices**. (5) Whether, and to what extent, the violation otherwise harmed **apprentices** or apprenticeship programs. If a party seeks review of a decision by the Chief to impose a monetary penalty or period of debarment, the Administrator shall decide de novo the appropriate penalty, by considering the same factors set forth above. (g) The interpretation of Section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council. The Administrator may adopt regulations to establish guidelines for the imposition of monetary penalties and periods of debarment and may designate precedential decisions under Section 11425.60 of the Government Code.



PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: <http://www.dir.ca.gov/das/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Do not send this form to the Division of Apprenticeship Standards.

NAME OF YOUR COMPANY	CONTRACTOR'S STATE LICENSE NO
MAILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO.
NAME & ADDRESS OF PUBLIC WORKS PROJECT	DATE YOUR CONTRACT EXECUTED
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDDING CONTRACT	ESTIMATED NUMBER OF JOURNEYMEN HOURS
	OCCUPATION OF APPRENTICE
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S))	ESTIMATED NUMBER OF APPRENTICE HOURS
	APPROXIMATE DATES TO BE EMPLOYED

This is not a request for dispatch of apprentices.

Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations

Check One Of The Boxes Below

1. We are already approved to train apprentices by the _____
Apprenticeship Committee. We will employ and train under their Standards. Enter name of the Committee
2. We will comply with the standards of _____
Apprenticeship Committee for the duration of this job only. Enter name of the Committee
3. We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

Signature _____ Date _____

Typed Name _____

Title _____

**State of California - Department of Industrial Relations DIVISION
OF APPRENTICESHIP STANDARDS**

DAS 140 (REV. 1/04)





**FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS
ANNUAL EEO REPORT**

OMB NO. 2125-0019
Report For
JULY 20

1. CHECK APPROPRIATE BLOCK
 Contractor
 Subcontractor

2. NAME AND ADDRESS OF FIRM

3. FEDERAL-AID PROJECT NUMBER

4. TYPE OF CONSTRUCTION

5. COUNTY AND STATE

10. EMPLOYMENT DATA
Table A

JOB CATEGORIES	TOTAL EMPLOYEES		TOTAL MINORITIES		BLACK Not of Hispanic Origin		HISPANIC		AMERICAN INDIAN OR ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		WHITE Not of Hispanic Origin		APPRENTICES		ON THE JOB TRAINEES	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
OFFICIALS (Managers)																		
SUPERVISORS																		
FOREMEN/WOMEN																		
CLERICAL																		
EQUIPMENT OPERATORS																		
MECHANICS																		
TRUCK DRIVERS																		
IRONWORKERS																		
CARPENTERS																		
CEMENT MASONS																		
ELECTRICIANS																		
PIPEFITTERS, PLUMBERS																		
PAINTERS																		
LABORERS, SEMI-SKILLED																		
LABORERS, UNSKILLED																		
TOTAL																		
Table C																		
APPRENTICES																		
ON THE JOB TRAINEES																		
11. PREPARED BY																		

This report is required by law and regulation (23 U.S.C. 140a and 23 CFR Part 230). Failure to report will result in noncompliance with this regulation.
Form FHWA-1391 (Rev. 3-92)





FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT																			
OMB NO. 2125-0019 Report For JULY 20		3. FEDERAL-AID PROJECT NUMBER		4. TYPE OF CONSTRUCTION		5. COUNTY AND STATE		6. PERCENT COMPLETE											
1. CHECK APPROPRIATE BLOCK <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor		2. NAME AND ADDRESS OF FIRM		7. BEGINNING CONSTR. DATE		8. DOLLAR AMOUNT OF CONTRACT		9. ESTIMATED PEAK EMPLOYMENT Month and Year (a) Number of Employees (b)											
10. EMPLOYMENT DATA																			
Table A					Table B														
JOB CATEGORIES	TOTAL EMPLOYEES		TOTAL MINORITIES		BLACK Not of Hispanic Origin		HISPANIC		AMERICAN INDIAN OR ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		WHITE Not of Hispanic Origin		APPRENTICES		ON THE JOB TRAINEES		
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
OFFICIALS (Managers)																			
SUPERVISORS																			
FOREMENT/WOMEN																			
CLERICAL																			
EQUIPMENT OPERATORS																			
MECHANICS																			
TRUCK DRIVERS																			
IRONWORKERS																			
CARPENTERS																			
CEMENT MASONS																			
ELECTRICIANS																			
PIPEFITTERS, PLUMBERS																			
PAINTERS																			
LABORERS, SEMI-SKILLED																			
LABORERS, UNSKILLED																			
TOTAL																			
Table C																			
APPRENTICES																			
ON THE JOB TRAINEES																			
11. PREPARED BY: (Signature and Title of Contractors Representative)										DATE		REVIEWED BY: (Signature and Title of State Highway Official)						DATE	

This report is required by law and regulation (23 U.S.C. 140a and 23 CFR Part 230). Failure to report will result in noncompliance with this regulation.

Form FHWA-1391 (Rev. 3-92) PREVIOUS EDITIONS ARE OBSOLETE



U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION SEMIANNUAL LABOR COMPLIANCE ENFORCEMENT REPORT (Pursuant to 29 C.F.R. 5.7 (b))		STATE OR DIVISION DATE
FOR PROJECTS SUBJECT TO THE DAVIS-BACON AND RELATED ACTS		
ITEM		NUMBER/AMOUNT
1. Period Covered From: _____ To: _____		
2. Number of Prime Contracts Awarded		
3. Total Dollar Amount of Prime Contracts Awarded		
4. Number of Contractors/Subcontractors Against Whom Complaints Were Received		
5. Number of Investigations Completed		
6. Number of Contractors/Subcontractors Found in Violation		
7. Amount of Wages found DUE	(a) Davis-Bacon and Related Acts	
	(b) Contract Work Hours and Safety Standards Act	
8. Amount of Back Wages Paid	(a) Davis-Bacon and Related Acts	
	(b) Contract Work Hours and Safety Standards Act	
9. Number of Employees Due Wage Restitution Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act		
10. Amount of Liquidated Damages Assessed Under the Contract Work Hours and Safety Standards Act		
11. REMARKS		
RESPONSIBLE OFFICER	Send To: DOL - Wage and Hour Division Office of Enforcement Policy Government Contracts Team, Room S-3018 200 Constitution Ave., NW Washington DC 20210	
TITLE		
SIGNATURE		
Form FHWA-1494 (Rev. 4-98) (INF4.2, 4/8/98)	(See next page for instructions)	PREVIOUS EDITIONS ARE OBSOLETE



INSTRUCTIONS

General:

2. Reports shall be submitted to the Department of Labor by each Division Administrator. The report is due on or before April 30 and October 30 of each year.
3. Violations of the Fair Labor Standards Act shall not be included in the reports.

Comments on Report Items :

1. Enter the beginning and ending dates (either October 1 through March 31 or April 1 through September 30) of the period covered by each semi-annual report.
2. Enter the total number of contracts awarded by FHWA and/or the State departments of transportation which are subject to the Davis Bacon and Related Acts and the Contract Work Hours and Safety Standards Act.
3. Enter the total dollar amount of the contracts from item 2.
4. Enter the total number of contractors/subcontractors against whom complaints were received.
5. Enter the total number of full scale investigations completed. A full scale investigation is a complete and detailed investigation into the administration of labor standards provisions. Do not include routine payroll checks. However, a full scale investigation may be one limited to some portion of a contractor's/subcontractor's operation such as a single paving operation.
6. Enter the number of contractors/subcontractors found to be in violation as a result of the investigations reported in item 5. Do not count a contractor/subcontractor more than once in a single investigation because he/she has violated more than one act or because more than one contract is included in the investigation.
7. Enter the total dollar amount of wages found to be due employees of the contractors/subcontractors reported in item 6. Separate the dollar amounts according to (a) violations of the Davis-Bacon and Related Acts and (b) violations of the Contract Work Hours and Safety Standards Act.
8. Enter the total dollar amounts of back wages paid to employees of the contractor/subcontractor reported in item 6. Separate the dollar amount according to (a) violations of the Davis-Bacon and Related Acts and (b) violations of the Contract Work Hours and Safety Standards Act.
9. Enter the number of employees to whom the wages were paid in item 8. This figure is the unduplicated count, i.e., an employee paid wages as a result of an investigation shall be counted only once regardless of the fact that he/she may have been paid under both Davis-Bacon and Related Acts and the Contract Work Hours and Safety Standards Act.

10. Enter the total dollar amount of liquidated damages assessed as a result of violations of the Contract Work Hours and Safety Standards Act.
11. Enter any explanation or comment considered necessary to a proper understanding of the report. A separate sheet may be attached if necessary.

[pdf version](#) (13 kb. To view PDF files, you need the [Acrobat® Reader®](#))













STATE OF CALIFORNIA

INVOICE DISPUTE NOTIFICATION

Std. 209

PC/LAN (dispute rev. 2/1996)

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3890 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

(Mail in a window envelope)

**VENDOR
ADDRESS**

(fold)

DATE
INVOICE NUMBER
AMOUNT
\$
DATE RECEIVED
REFERENCE NUMBER(S)

The invoice referenced above is disputed for the following reasons:

- | | |
|-------------------------------------------------------|----------------------------------------------------------------|
| <input type="checkbox"/> Goods/Services not received | <input type="checkbox"/> Duplicate billing |
| <input type="checkbox"/> Noncompliance with contract | <input type="checkbox"/> Invoice belongs to another department |
| <input type="checkbox"/> Incorrect billing/amount due | <input type="checkbox"/> Damaged goods |
| <input type="checkbox"/> Partial shipment received | <input type="checkbox"/> Invoice not properly executed |
| <input type="checkbox"/> Other _____ | |

THIS NOTIFICATION IS A FOLLOWUP TO A PHONE CONVERSATION WITH THE PERSON FROM YOUR COMPANY WHOSE NAME APPEARS BELOW:

NAME	DATE OF CONVERSATION
------	----------------------

IF YOU HAVE ANY QUESTIONS REGARDING THIS DISPUTE, CONTACT:

NAME	TELEPHONE (Include Area Code) (916) 227-
------	---------------------------------------------

FOR STATE AGENCY USE ONLY

DATE DISPUTE RESOLVED	INITIAL
-----------------------	---------

RESOLUTION

RETURN COPY OF THIS NOTIFICATION

WITH THE CORRECTED INVOICE

(For your convenience, the return address has been provided for use in a window envelope.)

RETURN TO:

Department of Transportation
Accounting
P.O. Box 168018
Sacramento, CA 95816

Attention: _____

DISTRIBUTION:

- First - Vendor
- Second - Accounting





STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
RECEIVING RECORD
 FA-1226A (1-90) CT#7541-0603-3

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

RECEIVED FROM		RECEIVED BY (3)		DATE RECEIVED		CLAIM SCHEDULE NO.		CURRENT DOCUMENT NO.	
DESCRIPTION OF SHIPMENT (2)		PREPARED BY		DATE PREPARED		DO APPROVED		PAGE NO. OF	
TYPE CONTAINER (CRATES, BOXES, ETC.) AND ARTICLES		VENDOR NUMBER		SERVICE CONTRACT NUMBER		PURCHASE ORDER NUMBER		GOOD CONDITION? (4)	
NO. PKGS		WEIGHT		FREIGHT BILL NO.		HOW CHECKED? (WEIGHT, COUNT, MEASURE?)		RECEIVED VIA & CAR NO. IF CAR LOAD (1)	
								<input type="checkbox"/> YES <input type="checkbox"/> NO	

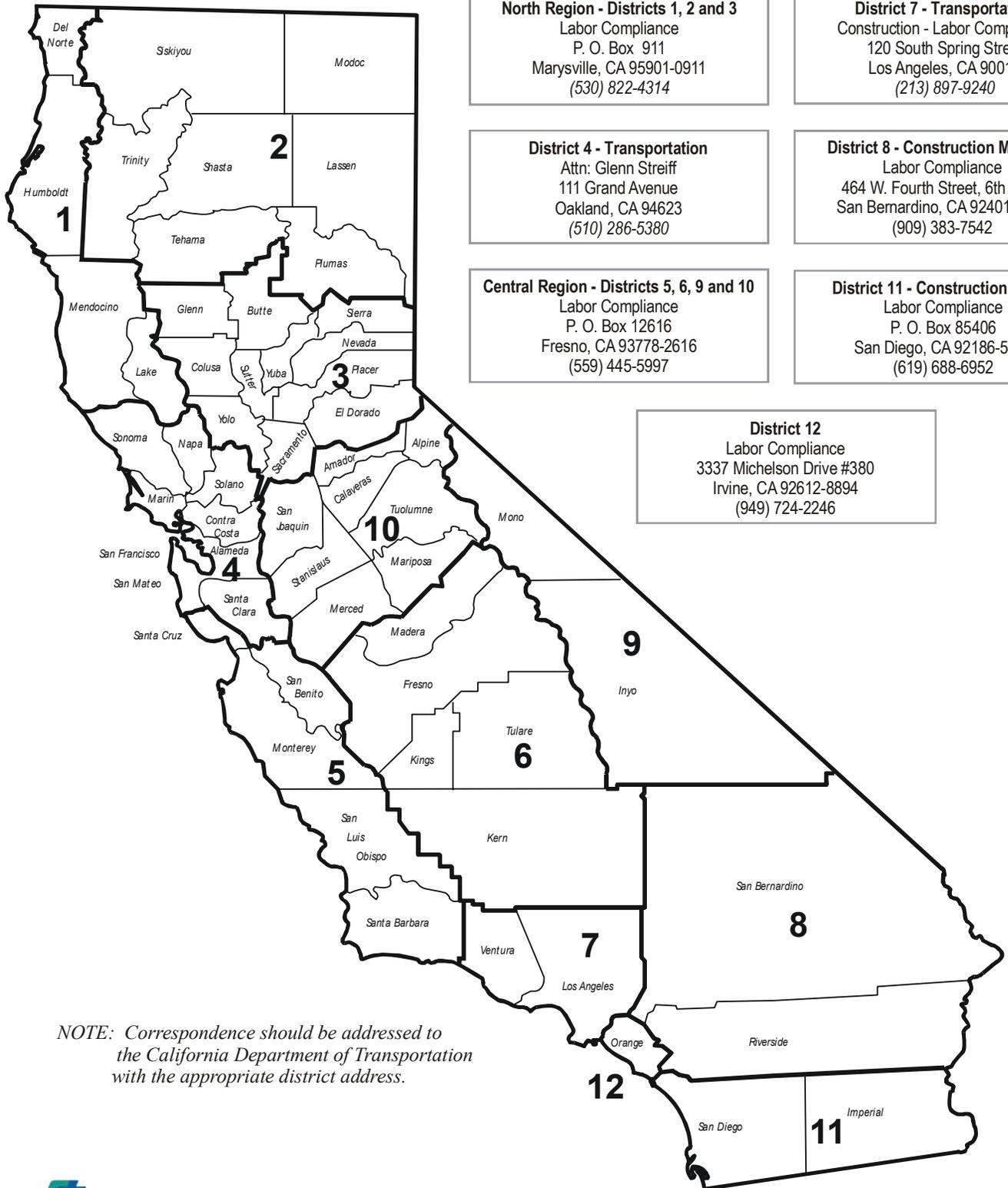
QUANTITY	UNIT	UNIT PRICE	T C	MCD	MCD DIST	UNIT	CHG EXPENDITURE DIST AUTHORIZATION	SUBJOB	P	SPECIAL DESIGNATION	F A	AGCY OBJ	AMOUNT	FFY	CTY	ROUTE	P	TO PM	REFERENCE DOCUMENT NO.	SUF
DESCRIPTION/COMMENTS																				
DESCRIPTION/COMMENTS																				
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NOTE: 1. For callouts, the initials and number of the cars and the date and time of placing and releasing must be shown.
 2. This section must be completed in case of car loss or damage, or when copy of freight bill is not attached.
 3. When receiving record is prepared from signed delivery tag, indicate in space "received by" name of person who actually made count.
 4. If shipment is not received in good condition, explain in body of form.

All shortage of or damage to goods must be noted on this form and handled immediately.
 Receiving records must be made out immediately upon receipt of goods and must be forwarded at once to the District Accounting Office.
 Only items on the same purchase order are to be shown.



District/Region Labor Compliance Offices



North Region - Districts 1, 2 and 3
 Labor Compliance
 P. O. Box 911
 Marysville, CA 95901-0911
 (530) 822-4314

District 7 - Transportation
 Construction - Labor Compliance
 120 South Spring Street
 Los Angeles, CA 90012
 (213) 897-9240

District 4 - Transportation
 Attn: Glenn Streiff
 111 Grand Avenue
 Oakland, CA 94623
 (510) 286-5380

District 8 - Construction MS 1104
 Labor Compliance
 464 W. Fourth Street, 6th Floor
 San Bernardino, CA 92401-1400
 (909) 383-7542

Central Region - Districts 5, 6, 9 and 10
 Labor Compliance
 P. O. Box 12616
 Fresno, CA 93778-2616
 (559) 445-5997

District 11 - Construction MS 72
 Labor Compliance
 P. O. Box 85406
 San Diego, CA 92186-5406
 (619) 688-6952

District 12
 Labor Compliance
 3337 Michelson Drive #380
 Irvine, CA 92612-8894
 (949) 724-2246

NOTE: Correspondence should be addressed to the California Department of Transportation with the appropriate district address.