

Critical Illinois Prevailing Wage Law Change Impacting Contractors

Labor & Employment Law Update

By Jeffrey Risch on February 26, 2019

You may not remember... in 2013, then Governor Quinn signed into law an amendment to Illinois' Prevailing Wage Act (IPWA) which sort of redefined what the PREVAILING WAGE RATE meant by adding one little word. Effective January 1, 2014, the IPWA defined "general prevailing rate of hourly wages" as hourly cash wages plus ANNUALIZED fringe benefits. By inserting the word ANNUALIZED, the law arguably changed.

For years, many contractors paid the prevailing wage fringe benefits as cash sums added to the employee paycheck based on prevailing wage hours only. Some contractors established bona fide defined contribution plans that provide 100% immediate vesting of the prevailing wage fringe benefit (in whole or in part); usually in the form of health/welfare or retirement savings. The advantages for the worker are obvious. The money is solely and exclusively in the control of the worker to do with it however they deem appropriate. In exchange for such a rich and rewarding benefit, some plans specifically limit the contribution to only those hours actually worked on "public works projects" (aka prevailing wage projects).

Well... in 2013, Big Labor went to the Illinois Legislature and successfully lobbied for the addition of the term "annualized". **Therefore, effective for all work performed on January 1, 2014 and thereafter, the Illinois Department of Labor can audit fringe benefit contributions made under a defined contribution plan, or declared by a contractor in its certified transcripts of payroll, and will calculate those contributions over all hours worked in a given period of time.**

To establish the proper hourly calculation for allowable fringe benefits, contractors are expected to divide the total amount they contribute to a bona fide fringe benefit plan by the total of all hours worked (including non-prevailing wage projects). **According to the Illinois Department of Labor, a contractor cannot exclusively take the hours worked and contributions made on public works/prevailing wage jobs to comply with the hourly fringe benefit component.** An example used by the Illinois Department of Labor includes: If a contractor contributes \$520 per month for single insurance coverage, and the employee works 2080 hours (40 x 52 weeks), then the effective annual

Critical Illinois Prevailing Wage Law Change Impacting Contractors

contribution rate is determined by dividing \$6,240 (\$520 x 12) by 2080 which equals \$3.00 per hour. If the health and welfare portion of the prevailing wage is \$5.05 per hour, the contractor can take a credit of \$3.00 per hour and must pay \$2.05 (\$5.05-\$3.00) additional on the hourly base wage. The same formula will be applied to Pension, Annuity, 401(k) plans, Training, and Vacation in some localities that are funded by the contractor.

What's remarkable is that the annualization of fringe benefits has been part of the federal prevailing wage law under Davis-Bacon & Related Acts (DBRA) for years. However, the United States Department of Labor has always allowed contractors to pay the fringe benefit component based on prevailing wage hours worked only provided the monies went directly and immediately to the worker. The Illinois Department of Labor could adopt a similar approach. However, Big Labor will certainly do everything it can to ensure that does not happen.

What does this actually mean?

The IPWA allows for certain fringe benefits (Health and Welfare, Pension/Annuity, US DOL Training, and Vacation in some localities) to be considered in establishing a prevailing wage rate. The prevailing wage rate includes an HOURLY base portion and a FRINGE BENEFIT portion. Contractors may choose to pay the entire prevailing wage rate in the base hourly rate component (and not take a credit for fringe benefits paid), or they may choose to take credit for certain allowed fringe benefits. **If a contractor does not pay any allowable fringe benefit or just a portion of it, then according to the Illinois Department of Labor, the difference must be made up in the hourly base wage rate in order to comply with this ANNUALIZATION component to the law. Alternatively, all fringe benefit contributions must be determined by dividing the TOTAL fringe benefit payout with ALL HOURS worked. Therefore, the fringe benefit contribution would be diluted in proportion to the non-prevailing wage hours worked by the employee.**

So... while this is yesterday's news, the Illinois Department of Labor under Governor Rauner was not extraordinarily aggressive on this annualization issue. However, under new leadership, contractors should recognize that the Illinois Department of Labor is actively enforcing the annualization component of the law. And, with a 5 year statute of limitations period, bad habits established or just plain ignorance of the law that may have went unchecked under the Rauner administration will cost you if you are not fully and completely in compliance with Illinois' annualization obligation.

BOTTOM LINE: If you are performing public work in Illinois, you need to intimately understand Illinois' prevailing wage law and the many pitfalls that exist under it. The stakes for not knowing or understanding how the Illinois Department of Labor views certain issues are just too high.