

IDOL on the PROWL: Looking At Non-Union Contractors to Debar for Technical Violations of the Illinois Prevailing Wage Act

Labor & Employment Law Update

By Peter Hansen and Jeffrey Risch on May 7, 2021



Contractors beware – the Illinois Department of Labor (IDOL) has ramped up audits of contractors as labor unions and related organizations flood the IDOL with “complaints. Remember, under the Illinois Prevailing Wage Act (IPWA), a prevailing wage “complaint” need not be verified or even submitted to the IDOL under penalty of perjury. The IDOL will investigate each and every “complaint” regardless of merit and, while historically the main focus of the IDOL

was to ensure proper and full payment of the actual prevailing wage, it is now seeking to issue violations and debar contractors for technical violations (i.e. failure to post rates or provide written notice to contractors or lower tiered contracts).

Typically, debarment from contracting for public works (for up to 4 years) occurs only after the IDOL issues two distinct formal written notices of IPWA violations to a contractor within 5 years. Until recently, the IDOL considered the severity of the violation, the contractor’s history, and whether the contractor generally complied with other IPWA obligations before issuing a violation notice. The IDOL is now moving towards a philosophy of issuing a formal notice of violation for technical violations – especially when it comes to non-union contractors.

The IDOL's increased activity is exceptionally troubling for all contractors given the IPWA's broad definition of "violation" under its Administrative Rules. Pursuant to the IDOL's prevailing wage rules, a violation occurs whenever the IDOL determines that the contractor:

- failed to pay the prevailing wage to one or more employees performing work covered under a public works contract;
- failed to keep, produce, or submit accurate records demonstrating compliance with the IPWA;
- refused to comply with the certified payroll filing obligations (this now requires the use of the IDOL's own online electronic portal system);
- refused to allow the IDOL's access to inspect the contractor's records;
- failed to insert a written stipulation that prevailing wage rates be paid into each subcontract and into the project specifications;
- failed to obtain a bond guaranteeing performance of the prevailing wage clause (when required by the public body to do so); or
- failed to post or communicate to the workers the applicable prevailing wage rates on the public works project site.

There's clearly a lot of room for the IDOL to issue violation notices for technical violations that have nothing to do with the actual payment of the prevailing wage to the worker. The IPWA arguably has the most complex and administratively burdensome laws in the country. That's on purpose!

All contractors must be acutely aware of the IDOL's increased audit activity – and unprecedented scrutiny. And, in light of Springfield's allegiance to organized labor these days, non-union contractors are in particular need to be doing everything possible to make certain they are complying with the IPWA's technical requirements, beyond the payment of the actual prevailing wage.

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