

Illinois to Allow Workers to Sue Their Employers for Prevailing Wage Violations -- Even When the Employer Doesn't Have Notice that the IL Prevailing Wage Act Applies

Labor & Employment Law Update

By Jeffrey Risch on October 4, 2023

On June 9, 2023, Governor Pritzker signed into law HB 3491 which amends the Illinois Prevailing Wage Act (IPWA) to provide workers with the following rights against general contractors and sub-contractors:

Any laborer, worker, or mechanic who is employed by the contractor or by any lower tier sub-contractor and is paid for services in a sum less than the prevailing wage rates for work performed on a [prevailing wage] project shall have a right of action for whatever difference there may be between the amount so paid and the prevailing rates required to be paid for work performed on the project.

Effective January 1, 2024, any worker, laborer or mechanic performing construction work on a prevailing wage project can file a private cause of action against the employer for any differential between what was paid and what was required to be paid to them pursuant to the IPWA. Sounds reasonable, right? Of course.

However, this legislation was created in order to reverse the Illinois Supreme Court's 2021 decision in *Valerio, et. al. v Moore Landscapes, LLC* --- where the IL Supreme Court upheld the dismissal of private lawsuit filed by a group of employees against the employer for not paying them prevailing wage because the employer never received clear notice that the IPWA applied to the underlying project. **To be clear, this new legislation doesn't distinguish between the scenario whereby the employer purposely didn't pay its employees the mandated prevailing wage rate and the one (which occurs way more often than you would think) where the employer didn't know prevailing wage**

was required to be paid for the work at issue. In other words, even when the employer doesn't receive actual written notice that they are performing work on a prevailing wage project --- which is required under the IPWA --- they are nonetheless liable in a civil lawsuit brought by their employees for failing to pay the proper prevailing wage.

In light of this new law, all contractors need to be intimately familiar with Illinois' prevailing wage mandates and must be more vigilant to ensure the application of all requirements under the IPWA are met for the work performed. Of course, there are many projects where the employing contractor is not notified that the IPWA applies to the work to be performed. That doesn't appear to matter anymore. Therefore, contract indemnity provisions and/or other contractual terms must be carefully inserted into Illinois construction contracts in order to try and alleviate the hidden financial burdens placed on construction work --- because you just don't always know if the IPWA applies to the contracted work performed.

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