

In Case it was Ever in Doubt, the Illinois Prevailing Wage Act Now Expressly Adopts UNION SCALE to Establish Prevailing Wage in the “Construction” Industry

Labor & Employment Law Update

By Jeffrey Risch on June 18, 2019

Organized labor wasted no time in securing Governor Pritzker’s signature on legislation that undoubtedly calls for the Illinois prevailing wage rate to fall in lock step with the area union contracts. Per the new law, now in effect, the prevailing rate of wages paid to individuals covered under Illinois’ prevailing wage law shall not be less than the rate that prevails for work of a similar character on public works in the locality in which the work is performed under collective bargaining agreements, or understandings between employers or employer associations and bona fide labor organizations relating to each craft or type of worker or mechanic needed to execute the contract or perform such work, and collective bargaining agreements or understandings and successor agreements — so long as said employers or members of said employer associations employ at least 30% of the laborers, workers, or mechanics in the same trade or occupation in the locality where the work is being performed. To be even clearer, the Illinois Department of Labor is the sole government entity to decide the prevailing wage rates.

Of course, contractors may legally challenge the IDOL’s determinations through what is often cited as the Section 9 Hearing process. This procedure is part of the Illinois Prevailing Wage Act. Written objections to any published rate must be timely presented (no less than 30 days following the publication by the IDOL on its website). In the event it is determined, after a written objection is filed and a hearing is held, before an Administrative Law Judge with the IDOL, that less than 30% of the laborers, workers, or mechanics in a particular trade or occupation in the locality where the work is performed receive a collectively bargained rate of wage, then the average wage paid to such laborers, workers, or mechanics in the same trade or occupation in the locality for the 12-month period preceding the Department of Labor’s annual determination shall be the prevailing rate of wage. So, in other words, the burden is squarely on the objector and the cards are clearly stacked.

Curiously, the IDOL does not adopt other aspects of the dominant area union contract for prevailing wage purposes such as: overtime rules, traveling rates or weekend/holiday scale. Accordingly, many union contractors get caught up with prevailing wage issues in Illinois.

Bottom line: Anyone who performs construction work in Illinois needs to be intimately familiar with Illinois' prevailing wage law. It has one of the more complex and, arguably, the most overbearing prevailing wage laws in the United States. Interestingly, in recent years, more and more states are getting away from prevailing wage laws.

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