

# PREVAILING WAGE REMINDER: Local, State and Federal Prevailing Wage Obligations Vary Greatly

## Labor & Employment Law Update

By Jeffrey Risch on February 25, 2021



Contractors, developers, architects, owners, project managers and even public bodies often ask the same obvious question when dealing with any type of prevailing wage ordinance or law, “what are my obligations?” While everyone involved in public construction projects want to comply with prevailing wage

mandates, more often than not those involved in such projects are either oblivious to their responsibilities or are mistaken in their belief as to such responsibilities. This is not surprising in light of the great variance in prevailing wage laws, related rules and interpretations of such rules and laws on a local, state and federal level. It’s unfortunate that there is no set standard or guidebook on the subject. And, that’s the point of this alert!

What a GC or subcontractor must do under California’s prevailing wage law is entirely different with respect to Illinois law. Likewise, what a developer or owner needs to ensure on a prevailing wage project under Ohio law is different than pursuant to New York mandates. There are also great variations in the types of forms required (including the certified transcript of payroll), written notifications and/or legal disclaimers, contract provisions, wage and fringe benefit responsibilities, actual rate determinations per trade and area, potential liabilities and actual compliance standards. These variations are controlled on a local and state level where prevailing wage requirements still exist. For a summary of where state prevailing wage mandates still are in play, the U.S. Department of Labor’s quick summary is quite helpful:

Of course, federal prevailing laws (aka Davis Bacon & Related Acts – “DBRA”) must also be recognized. While the general procedures and processes on federal DBRA projects are the same, what a particular federal contracting or financing agency will require can differ from agency to agency.

With the above in mind, there are 7 basic rules for anyone dealing with construction projects that are financed, owned, controlled or benefiting (in whole or in part) a local, state or federal government agency or body:

1. Know your legal obligations under any and every local, state or federal prevailing wage ordinance/law that applies to your business (note: what’s permissible under Federal Davis-Bacon may be unlawful under the Illinois Prevailing Wage Act);
2. Ensure your business is complying with all applicable prevailing wage obligations for every worker, every day, every week, every job and utilize the certified transcript of payroll form required by the government agency or body at issue (i.e. don’t use the DBRA CTP form for local or state projects);
3. Never allow a prevailing wage audit or investigation to be closed or remain in limbo without some document that confirms your full compliance with your legal obligations (note: you may have to do this yourself by letter to the auditor or agency at issue);
4. Never sign any settlement agreement concerning prevailing wage issues without first reviewing it with competent legal counsel to help ensure that no admission of liability or guilt is made and to expressly state that you are free and clear to bid and perform future public construction work;
5. Educate your local units of government on who you are and highlight your good name and business reputation — get to know the public officials, get involved and form business relationships;
6. Review your purchase orders, bid specifications and contracts to incorporate necessary prevailing wage notice obligations as well as certain disclaimers to ensure proper and/or mandatory notice obligations are in place; and
7. Don’t rely entirely on a governmental agency’s internal staff or published FAQ’s or interpretive guidance on prevailing wage obligations — some are flat-out wrong and some don’t necessarily supply the most accurate information needed.

Prevailing wage audit and enforcement is becoming increasingly aggressive throughout much of the United States. Any individual, business, contractor, developer, owner, architect, project manager or public body not intimately familiar and comfortable with applicable prevailing wage obligations is playing a dangerous game that could have a serious short and long term financial impact.

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