

State Comptroller Wants to Enforce the Illinois Prevailing Wage Act???

Labor & Employment Law Update

By Jeffrey Risch on August 16, 2019

On August 13, 2019, Illinois Comptroller, Susana Mendoza, signed an Executive Order (EO) aimed at enforcement of the state's prevailing wage law (aka mandatory top line union wage/benefits scale) for "construction" projects receiving state money. On the surface, one would say "hey, that's a pretty good idea." But... the EO invites more questions than answers. More importantly, it encourages organized labor to target contractors that they have disputes with (without any proof or evidence of actual non-compliance with prevailing wage law) and the Comptroller may take whatever action she wants, including withholding funds.

The EO, in relevant part, reads as follows (with questions and comments following each main point of the EO):

- **Grants and Contracts.** The Illinois Office of Comptroller shall not accept the submission of any grant, contract, or any other award by the State of Illinois of any type to finance, in whole or in part, public works projects under the Rebuild Illinois program or other public works projects, unless the grant, contract, or other award includes a certification that the contractor of the public works project is in compliance with the Prevailing Wage Act (820 ILCS 130).

BUT... what does "compliance" mean? Could the Comptroller hold up a contract if a contractor was found to have made a clerical mistake years ago on a prevailing wage project? What if a contractor merely classified the worker as a laborer vs. an operator and was assessed by the Department of Labor for a few hundred dollars?

- **Duty to Pre-audit.** The Illinois Office of Comptroller shall have the duty to pre-audit or cause to be pre-audited each grant, contract, or other award under the Rebuild Illinois program and other public works projects.

Who is going to conduct the audit? What do they know about prevailing wage? What will they be searching for?

- **Publication.** The Illinois Office of Comptroller's official website shall provide information on grants, contracts, and other public works project awards and shall provide a Prevailing Wage Inquiry Form that allows localities, contractors,

labor organizations, and other interested parties to submit inquiries to the Office.

Okay... so, this function seems fairly benign. It allows the public to view what projects are in the works. But... couple this function with the "Receipt of Inquiries" order and chaos can ensue.

- **Receipt of Inquiries.** The Illinois State Comptroller's Prevailing Wage Enforcement Officer is designated to receive inquiries from labor organizations or other interested parties regarding the status of a public works contract or grant on file with the Illinois Office of Comptroller and compliance with the Prevailing Wage Act.

Here's where we can see efforts by organized labor to target certain contractors that they have problems with. Again, what does "compliance" mean? What's stopping anyone from making an inquiry about a contractor with absolutely no proof or evidence that there's any non-compliance issue to begin with? This third party inquiry piece will invite unintended (or, perhaps intended) consequences that could impede progress on a much needed construction project.

- **Review.** The Illinois Office of Comptroller, through the Prevailing Wage Enforcement Officer, shall work in collaboration with the Department of Labor and other public works agencies to address inquiries that require further review for potential violations of the Prevailing Wage Act.

Will the Comptroller's Office tell the Illinois Department of Labor what to do or who to target for investigation or audit even without any proof of any non-compliance issue?

- **Other Necessary Action.** The Illinois Office of Comptroller shall undertake the appropriate action to inform all state agencies of the requirements promulgated hereunder and shall undertake all necessary action to implement and effectuate this Executive Order.

What action will the Comptroller take? Withhold funds? Delay progress?

Of course, time will tell what the actual impact of this EO will be on contractors and construction projects on a state level in Illinois. But, there are certainly many questions and concerns that anyone working in the construction industry should have with this type of order. Undoubtedly, if anyone is securing, financing, performing or managing public "construction" work in Illinois, an *intimate understanding* of all things prevailing wage is a must.

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