



What "prevailing wages" regulations mean for you and the course of action you should take

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Last month a city contractor admitted to a "willful violation" of the prevailing wage laws and as a result agreed to pay close to \$2.4 million in connection with unpaid wages and benefits to two dozen workers. This was the largest wage underpayment resulting from an investigation by the New York City comptroller's office to date. Not only does this record breaking settlement send a message to contractors regarding the government's focus on ensuring compliance with prevailing wage laws, but it also provides workers with assurance that there is assistance available if they feel they are not compensated in accordance with the law.

Many construction projects in New York State are experiencing the consequences of the recent uptick in enforcement action focused on the violation of prevailing wage laws. To avoid large scale financial and reputational damage, it is imperative that contractors and subcontractors understand relevant regulations and ensure compliance. Furthermore, companies engaged in public work must also understand the course of action they need to take if faced with an investigation.

The ABCs of

"prevailing wages" regulation

Both state and federal regulation dictate the minimum level of wages and fringe benefits which need to be paid for certain types of construction work. Fringe benefits can include items such as health insurance premiums, retirement contributions, life insurance, and paid leave. Alternatively, supplements can be provided to workers in equivalent cash amounts. New York State labor law dictates prevailing wages on public work projects through state agency contracts. At the federal level, the Davis-Bacon and Related Acts (DBRA) apply to contractors and subcontractors who perform on federal contracts in excess of \$2,000.

In addition to setting the minimum hourly wages, regulations also outline the maximum number of weekly work hours and overtime wages. At the state level, at a minimum, all work performed in excess of eight hours in any one day or more than five days in any workweek is overtime. However, the specific overtime requirements for each trade differ and are contained in the wage determinations. At the federal level, the Contract Work Hours and Safety Standards Act stipulates that on prime contracts in excess of \$100,000 contractors and subcontractors are required to pay one and one-half times their basic rates of pay for all hours worked over 40 in a week.

Prevailing wage and fringe benefit rates are updated periodically and listed in wage schedules by work classification. Contracting agencies are required to provide copies of the wage determination to contractors, who in turn are required to provide them to subcontractors.

Contractors and subcontractors are also required to post wage schedules at the construction site. With respect to record keeping requirements, contractors and subcontractors must maintain and submit original payrolls to the contracting agency. The regulations detail exactly what information

needs to be recorded on the payroll. Additionally, a contractor may be required to furnish records such as time cards, work descriptions sheets, and cancelled payroll checks.

Consequences of Violation

In the event of a an investigation resulting in a determination of underpaid wages, in addition to restitution, interest and penalties of up to 25%, violators may also face debarment and criminal sanctions. Under New York State law, a contractor or subcontractor will be debarred from public work contracts for five years if two willful determinations have been rendered against them in any consecutive six year period, or it is determined that the entity falsified payroll records or received kickback of wages or fringe benefits. Furthermore, willful violations may be considered a felony punishable by fines or imprisonment for a maximum of 15 years, or both.

Under the DBRA, contractors or subcontractors are subject to debarment from future public work contracts for up to three years. Fines and/or imprisonment through civil or criminal prosecution can result from the falsification of payroll records or kickbacks.

Things to Consider

Compliance requirements must be reviewed and understood in detail. Under state law, the prime contractor is responsible for any underpayments by their subcontractors. Contractors not only need to pro-actively set up a record keeping system so that their records are maintained accurately, but should also work with subcontractors to ensure that they are also in compliance. Working in conjunction with attorneys and accountants can help resolve any lack of understanding that contractors may have with respect to regulations.

In the event a state or federal investigation is pursued against you, consult an attorney and accountant with prevailing wage experience immediately.

Reena Panchal, CFE, is a consulting manager for Grassi & Co., CPAs, Jericho, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540