

CITY OF LOS ANGELES



LABOR COMPLIANCE MANUAL

Revised May 2014

PART I
CITY OF LOS ANGELES
LABOR COMPLIANCE PROGRAM REQUIREMENTS

I. INTRODUCTION

The Bureau of Contract Administration, Office of Contract Compliance, Labor Compliance Section (LCS) is responsible for educating, assisting, monitoring and enforcing prevailing wage requirements of the applicable labor laws to insure that all contractors working on City projects are in compliance with State (California Labor Code Chapter 1 of Part 7 of Division 2) and Federal (Code of Federal Regulations 29) prevailing wage statutes and regulations.

The City's Labor Compliance Program (LCP) is certified under California Code of Regulations Chapter 8, Section 16425. The LCS received initial certification on August 6, 1998. In establishing the LCP, the City adheres to the statutory requirements as stated in California's Labor Code Section 1771.5.

II. LABOR COMPLIANCE PROGRAM REQUIREMENTS

- a.) Pursuant to Labor Code Section 1771.5, the City of Los Angeles requires the payment of the general prevailing rate of per diem wages and the general prevailing rate of per diem wages for holiday and overtime work on this project.
- b.) The Labor Compliance Section monitors labor standards compliance by conducting interviews with construction workers at the job site and reviewing payroll reports and initiates and oversees any enforcement actions that may be required.
- c.) In the event that a project is federally funded, the Federal Department of Labor (DOL) has a role in monitoring Davis-Bacon administration and enforcement. A DOL investigator or other DOL representative may visit Davis-Bacon construction sites to interview construction workers or review payroll information. In the event that there is a conflict between the State prevailing wage rate and the Federal prevailing wage rate, then the higher rate shall be paid.

III. PUBLIC WORKS CONSTRUCTION PROJECTS

This project is subject to the provisions of the State laws and regulations including, but not limited to, California Labor Code Sections 226, 227, 1021, 1021.5, 3093, 3077 and 1720 through and including 1861, together with all applicable regulations (e.g., Title 8 California Code of Regulations Section 16001 et seq.). All pertinent California statutes and regulations, including those

referenced above, are hereby incorporated by reference in this document as if set forth in their entirety.

IV. EMPLOYMENT OF MINORS PROHIBITED

The employment of minors, under 16 years of age, is strictly prohibited in all building and construction work of any kind per California Code of Regulations Title 8, Chapter 6, Subsection 1, Article 1 §11701(b).

V. YOUTH EMPLOYMENT PROGRAMS

Youths (ages 18 – 23) employed on Public Works projects are subject to the payment of the prevailing wage.

VI. CASH PAYMENTS PROHIBITED

The City requires the Contractor and all subcontractors to make weekly wage payments to all workers employed on the project. Payments shall be made by means of a check, money order or cashier's check. **Cash payments are prohibited.**

VII. WORKERS DEFINED

The City defines “worker” as defined in Labor Code Section 1723, and extends the definition to include Corporate Officers, Partners, Sole Owners, Mechanics and Laborers employed or working on the site of the Work. Such workers will be paid unconditionally and not less than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act) (CFR 29 Part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decisions of the State of California Director of the Department of Industrial Relations (DIR).

VIII. PREVAILING WAGES

Payments of wages not less than those contained in the wage determination decision of the State of California Director of the Department of Industrial Relations (DIR), are in effect for the duration of this Contract. Any classes of laborers or mechanics, including apprentices, which are not listed in the applicable wage determination and which are to be employed under the Contract, shall be classified in conformance with the applicable wage determination. If the Contractor fails to request a special determination (CCR 8 §16202) within 45 days after the commencement of advertising of the call for bids, and the classification of laborers and mechanics, including apprentices, is not found in the applicable wage determination, the City reserves the right to re-classify the affected class of laborers and/or mechanics, including apprentices, to the most

closely related craft as published in the applicable wage determination. If the interested parties cannot agree on the proper classification or re-classification of a particular class of laborers or mechanics, including apprentices, to be used, the question accompanied by the recommendation of the City shall be referred to the DIR for final determination.

IX. EFFECTIVE PREVAILING WAGE RATES

The State Prevailing Wage Rates are determined by the Department of Industrial Relations as prescribed in Labor Code Sections 1773 – 1773.1 and are effective 10 days after issuance. The established Prevailing Wage rates are published in the General Prevailing Wage Determinations which are issued bi-annually (occasionally, the DIR may issue an additional General Prevailing Wage Determination in the same year). The **Bid Advertise Date** determines the applicable General Prevailing Wage Determination. The expiration date indicated for each craft is followed by either a single asterisk (*) or double asterisk (**). The single asterisk (*) indicates that the wage rate will remain constant and effective throughout the duration of the contract. The double asterisk (**) indicates that the wage rate is effective until the expiration date, and the rate to be paid for work performed after that date has already been determined. If work will extend past the expiration date, the new rate must be paid and should be incorporated in this contract. (CCR 8, §16204).

To obtain the most current prevailing wage rates, contact the Office of Contract Compliance at (213) 847-2662. The rates are also available on the internet at www.dir.ca.gov.

X. PAYMENT OF PREVAILING WAGE FRINGE BENEFITS

Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time, training contributions and subsistence pay as provided for in Section 1773.8, for apprenticeship or other training programs, authorized by Section 3093. (Contractors paying per diem wages cannot pay less than the basic hourly rate of pay to the worker working on a covered prevailing wage. (CCR 8, §16000))

A copy of California Public Works Form PW-26, *Fringe Benefits Statement*, must be prepared by the Contractor and submitted to the OCC with the first payroll. In addition, a copy of the *Employer's Monthly Report To Trustees*, must be submitted to the OCC by the (15th) of the following month. Any worker not covered under a Trustee account must be paid a fringe benefit equivalent to that required by the DIR, associated with the minimum prevailing wage for the worker classification. Contractors not making payments to a fringe benefit trust account shall include the total fringe benefit package in the Total Hourly Wage Rate paid to the worker.

XI. APPRENTICE REQUIREMENTS

Contractors shall comply with the requirements of the apprenticeship provisions of California Labor Code Section 1777.5.

1. APPRENTICES

In accordance with California Labor Code Section 1777.5(d), a contractor (including any subcontractor) who is awarded a City of Los Angeles contract, and who employs workers in an apprenticeable craft or trade, shall employ apprentices in at least the ratios as stipulated in Labor Code Section 1777.5.

California Code of Regulations Title 8 §230.1 requires contractors who are not already approved to train by an applicable joint apprenticeship committee or unilateral committee, to request the dispatch of required apprentices from all of the applicable Apprenticeship Committees whose geographic area of operation includes the site of the public work by giving the committee actual notice of 72 hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices are required. However, if a non-signatory contractor declines to abide by and comply with the terms of a local committee's standards, the Apprenticeship Committee shall not be required to dispatch apprentices to such contractor. Conversely, if in response to a written request an Apprenticeship Committee does not dispatch any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the Apprenticeship Committee's Standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation as a result of failure to employ apprentices for the remainder of the project, provided that the contractor made the request in enough time to meet the ratios as stated in Labor Code Section 1777.5. If an Apprenticeship Committee dispatches fewer apprentices than the contractor requests, the contractor shall be considered in compliance if the contractor employs those apprentices who are dispatched, provided that, where there is more than one Apprenticeship Committee able and willing to unconditionally dispatch apprentices, a contractor who is not a participant in an apprenticeship program has requested dispatch from all applicable apprenticeship committees in the project area.

Apprentices shall be individually registered in a bona fide state or federally approved apprenticeship program. Apprentices, as defined in Labor Code Section 3077, must be registered with the State of California, Division of Apprenticeship Standards (DAS) to be eligible for employment as an apprentice on the project. Any employee listed on a payroll as an apprentice and paid the apprentice wage rate who is **not** an apprentice, as defined in California Labor Code Section 3077, shall be paid the journey level wage rate determined for the classification of work actually performed. The Contractor and sub-contractors shall furnish the City a copy of a DAS apprentice

registration for each apprentice employed. The wage rates paid to the apprentices shall not be less than the applicable wage determination as determined by the Department of Industrial Relations Division of Apprenticeship Standards (Contact DAS at (415) 703-4920 or (213) 576-7750 or at their website: www.dir.ca.gov/DAS).

2. RATIOS

The ratio of apprentice work to journeyman work shall conform to the requirements as mandated in Section 1777.5 of the California Labor Code. In the event that the Contractor fails to comply with apprenticeship requirements as mandated by California Labor Code Section 1777.5, the Contractor shall be subject to penalties in accordance with California Labor Code Section 1777.7.

If the Contractor fails to comply with the ratios as determined by the DAS, the City will issue a "Notice of Reprimand" and forward the matter to the DAS.

All apprentices shall work under the direct supervision of a journeyman from the trade in which the apprentice is indentured. A journeyman shall be defined as set forth in the California Code of Regulations, Title 8 [apprenticeship] section 205, which defines a journeyman as a person who has either completed an accredited apprenticeship in his or her craft, or has completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the craft which has workers classified as journeyman in the apprenticeable occupation.

XII. LIABILITY FOR UNPAID WAGES

- a.) As required by Labor Code Section 1775, the Contractor and any Subcontractor shall forfeit to the City not more than two hundred dollars (\$200) per day for each worker who is paid less than the prevailing wage rate (including fringe benefits) required.

Additionally, Section 1813 of the Code requires the Contractor or subcontractor to forfeit twenty-five dollars (\$25) to the City for each worker employed in the execution of the Contract for each calendar day a worker is permitted or required to work in excess of 8 hours per day or 40 hours per week at a rate less than 1 ½ times the hourly rate of pay for the worker classification involved. Moreover, the City may withhold payment from the Contractor to ensure that the Contractor's obligation to pay prevailing wage rates is met.

- b.) The **Contract Work Hours and Safety Standards Act (CWHSSA)** require time and one-half pay for overtime as defined by the Federal government. (Overtime as defined by the Federal government is any time

over 40 hours worked by a worker in a given work week.) In the event that this project is federally funded, an additional penalty of \$10/day per violation will be strictly enforced for under-payment of the overtime rate. Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

- c.) California Labor Code Section 1778 makes it a felony for anyone to require any laborer or mechanic employed on a public works project to ***kickback*** any portion of their wages. The **Copeland (Anti-Kickback) Act** is the federal statute that makes it a felony to require any laborer or mechanic employed on a Federal or Federally Assisted public works project to return any portion of his/her wages in connection with services rendered upon any public work.

XIII. POSTING

The Contractor shall post at each job site, in a conspicuous location readily available to the workers, a copy of all applicable wage determinations.

XIV. JOINT LABOR COMPLIANCE MONITORING PROGRAM

The Contractor, and all subcontractors, shall cooperate in allowing approved Compliance Group Representatives access to the project job site for the purpose of conducting worker interviews to insure compliance with the requirement to pay proper prevailing wages on City projects. This will be done in order to comply with the Board of Public Works' August 20, 2004 adoption of a Joint Labor Compliance Monitoring Program.

Each Compliance Group Representative must wear their City-issued Joint Labor Compliance Monitoring Program identification badge at all times while on the job site, and must restrict their actions to interviewing workers employed on the project. For a copy of the Joint Labor Compliance Monitoring Program board report, or for any questions, contact the Office of Contract Compliance at (213) 847-2660.

XV. CERTIFIED PAYROLL RECORDS

- a.) The Contractor shall adhere to the provisions of Labor Code Section 1776.

The payroll records referred to must include the employee's:

- A. name;
- B. address;
- C. social security number;
- D. work classification;
- E. straight time hours per day and total per week;

- F. overtime hours per day and total per week;
- G. gross wages earned this project;
- H. gross wages earned on all other projects;
- I. itemized deductions;
- J. actual per diem wages paid; and
- K. payroll check numbers or direct deposit verification

In addition, the records must identify apprentices and the ratio of apprentices to journeymen.

- b.) Certified payrolls from the Contractor and all Subcontractors shall be submitted to the City weekly through the Department of Public Works Bureau of Contract Administration's Online Certified Payroll System (OCPS) and shall be accompanied by a Statement of Compliance, signed electronically on OCPS by the Contractor or the Contractor's agent attesting that the payrolls are correct and complete and the wage rates contained therein are not less than those set by the applicable wage determinations incorporated into this Contract. The City reserves the right to **reject incomplete** payroll reports and request re-submittal of complete reports.
- c.) The Contractor shall be responsible for ensuring that all their Subcontractors, regardless of tier, submit certified payrolls through OCPS. In the event that Subcontractor payrolls are not submitted, the City may withhold contract payments from the Contractor.
- d.) Upon a request from the City, the Contractor and all Subcontractors shall be prepared to submit hard copies of certified payrolls accompanied by a Statement of Compliance, signed in ink.
- e.) Payroll data pertaining to owner-operators must be submitted on Certified Payroll Reports through OCPS, and a copy of the DMV vehicle registration of the Owner-Operator shall be submitted to the City after the first Certified Payroll on which this owner-operator's name appears. Listing any individual as "Owner-Operator" **will not** be accepted as the classification is not recognized by the State of California Department of Industrial Relations' Office of Policy, Research and Legislation.
- f.) As required by Labor Code Section 1776 (h), the Contractor shall forfeit to the City one hundred dollars (\$100) per day, per worker employed on the project, for failing to comply strictly with requests by the City for submittal of payroll documents and/or all supporting documents which includes, but is not limited to: cancelled checks, time sheets, W-4 Forms, W-2 Forms, DE-6 Forms, and any other forms utilized in the course of business that are relevant to the payment of wages. In addition, according to California Labor Code Section 1777.1(c), the Contractor may also be

subject to debarment by the Labor Commissioner for failure to furnish certified payroll records within thirty (30) days after receipt of the written notice for such records.

XVI. WORKING HOURS

- a.) Generally, the Contractor shall not employ a worker more than eight (8) hours in a calendar day or forty (40) hours in a calendar week except upon compensation of one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day and forty (40) hours per week. Special rules may apply to specific worker classifications. See applicable wage determinations for overtime definitions. Recognized holidays shall be consistent with area practice in determining the applicability of overtime wage rates.
- b.) The Portal-to-Portal Act does not allow employers to forego payments to its employees for compulsory travel time and overtime. A worker required to report to the employer's place of business to load tools and material and to be transported to the job site are entitled to be paid for travel time at the applicable rate as set forth in the General Area Wage Determinations inclusive of return trip travel time from a public work classified project. All "hours worked" must be included in calculating any overtime including time denominated as compulsory travel time.

The Portal-to Portal Act applies to public works project that are funded in whole or in part with federal funds and excludes from the workday travel to or from the workplace by an employee (29 USC 254 (a)(1)). Under section 254(a), this includes work performed pursuant to contracts awarded by the federal government under the Davis-Bacon Act. However, the Portal-to-Portal Act, to the degree it amends the Davis-Bacon Act, does not supercede any aspect of the California Prevailing Wage Law and is not applicable to compulsory travel time incurred in the performance of a California awarding body's public work project when determining the "hours worked" as noted by the California Supreme Court in *Morrillion v. Royal Packing Company* (2000) 22 Cal. 4th 575, 94 Cal. Rptr.2d3,

"The California Labor Code and the Industrial Welfare Commission (IWC) wage orders do not contain an express exemption for travel time similar to that of the Portal-to-Portal Act. ...In contrast to these specific findings showing the congressional intent, the Legislature has not similarly identified existing evils under state law." (*Id.* at p.590.)

In reviewing the history of the IWC's Wage Order No. 14-80, the California Supreme Court said,

“The IWC added the phrase ‘the time during which an employee is subject to the control of the employer’ to the definition of ‘hours worked.’ ...Absent convincing evidence of the IWC’s intent to adopt the federal standard for determining whether time spent traveling is compensable under state law, we decline to import any federal standard, which expressly eliminates substantial protections to employees. Accordingly, we do not give much weight to the federal authority.” (Id. at p. 590-591)

Finally, the California Supreme Court observed,

“our departure from the federal authority is entirely consistent with the recognized principle that state law may provide employees greater protection than the F.L.S.A. [Fair Labor Standards Act].” (Id. at p. 592.)

XVII. WITHHOLDING PAYMENTS FOR LABOR COMPLIANCE VIOLATIONS

In accordance with Labor Code Section 1727, the City may withhold, from any monies payable on account of work performed by the Contractor or Subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of the Contractor or its Subcontractor for unpaid wages and liquidated damages as specified in this Section. In the event of failure to pay any laborer or mechanic, including any apprentice, employed or working on the site of the Work, all or part of wages required by the Contract, the City may, after written notice to the Contractor (Notice of Withholding Contract Payments), take such action as may be necessary to cause the suspension of further payment, advance or guarantee of funds until such violations have ceased.

In accordance with Labor Code Section 1771.5, the City may withhold contract payments when payroll records are delinquent or inadequate.

XVIII. DISPUTES

The City’s Labor Compliance Program administered by the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance, Labor Compliance Section shall adhere to the provisions of Labor Code Section 1771.6 and will provide the Contractor or Subcontractor an opportunity for review of assessed wages and penalties pursuant to the provisions of Labor Code Section 1742.

PART II

LABOR COMPLIANCE PROGRAM REQUIREMENTS – FEDERALLY FUNDED/ASSISTED CONSTRUCTION PROJECTS

Projects receiving full or partial federal funds are subject to the regulations listed below, in addition to any and all applicable California labor requirements.

I. DAVIS-BACON REGULATIONS

The U.S. Department of Labor (DOL) has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR) and can be found in Title 29 CFR Parts 1, 3, 5, 6 and 7. Part 1 explains how the DOL establishes and publishes Davis-Bacon Act wage determinations and provides instructions on how to use the determinations. Part 3 describes the Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. Part 5 covers the labor standards provisions that are in each contract relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Part 7 sets parameters for due process procedures before the Wage Appeals Board (renamed Administrative Review Board). These regulations are used as the basis for administering and enforcing the laws.

The Davis-Bacon Act

The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the DOL) to all laborers and mechanics on Federal construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

The Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 hours in any work week) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts *except* where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

The Copeland Act (Anti-Kickback Act)

The Copeland Act makes it a crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to *kickback* any part of their wages. The Copeland Act also requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs).

The Fair Labor Standards Act (FLSA)

The FLSA contains Federal minimum wage rates and overtime (O/T) requirements. These requirements generally apply to any labor performed and may be *pre-empted* by other Federal standards such as the Davis-Bacon Act prevailing wage requirements and CWHSSA O/T provisions. Only the Department of Labor has the authority to administer and enforce the FLSA. The Office of Contract Compliance (OCC) will refer any possible FLSA violations that are found on projects to the DOL.

II. CONSTRUCTION CONTRACT PROVISIONS

Each contract subject to Federal (Davis-Bacon) labor standards requirements must contain contract provisions containing labor standards clauses and a Davis-Bacon Wage Decision. These documents are bound into the contract specifications.

The Labor Standards Clauses

The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project.

Davis-Bacon Wage Decisions

The Davis-Bacon Wage Decision is a listing of various construction work classifications such as Carpenter, Plumber, and Electrician, and the minimum wage rates (and fringe benefits, where prevailing) that employees performing work in those classifications must be paid.

Contract Administration form BCA-167

The Bureau of Contract Administration form BCA-167 “Contractor Daily Field Report” must be utilized on all projects receiving federal-aid.

The BCA-167 is to be completed by the Prime Contractor on a daily basis and forwarded to the Bureau of Contract Administration Project Inspector no later than noon of the work day following the work date.

III. INQUIRIES

All questions regarding this section and all matters concerning the payment of prevailing wages should be referred to:

The Office of Contract Compliance
Labor Compliance Section
1149 South Broadway, Suite 300
Los Angeles, CA 90015
(213) 847-2662

For more information, log on to:

<http://bca.lacity.org>

<http://www.dir.ca.gov>

<http://www.dol.gov>