

The logo for Cook Brown, LLP Attorneys at Law is displayed in a stylized, metallic font. The letters are large and bold, with a 3D effect. The text "COOK BROWN, LLP" is on the top line, and "Attorneys at Law" is on the bottom line in a smaller, similar font. The background of the logo is a grayscale image of a classical building with columns.

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California Prevailing Wage Law Expands to Off-Site Fabrication and Transportation

Overtuning decades of past practice and enforcement guidelines, the Director of the Department of Industrial Relations recently stated that off-site fabrication and transportation of materials by contractors and subcontractors to a public works jobsite are now subject to the California prevailing wage law. According to recent opinion letters issued by the DIR Director, the reach of the prevailing wage law now extends to fabrication shops as well as the transportation of material to and from public works jobsites.

In *Russ Will Mechanical, Inc.*, the general contractor subcontracted the HVAC portion of a public works project to Russ Will Mechanical who fabricated sheet metal items including ducts, flashings, square rounds and fittings in its permanent shop. The material was made according to the plans and specifications issued by the Foothill-DeAnza Community College District for the modernization of its administration building. There was no dispute that Russ Will Mechanical paid prevailing wages to its installation employees. The sole issue was whether the company had to pay prevailing wages to its shop employees.

The Director determined that the shop work was covered under the California prevailing wage law because it was performed by “workers employed by contractors or subcontractors in the execution of any contract for public work” under Labor Code Section 1772. Unlike the federal Davis-Bacon Act, the California prevailing wage law does not limit coverage to workers employed directly on the site of work, the Director said, and the California law includes all work performed in carrying out or completing the public works contract regardless of where the work is performed.

Relying upon the case of *Williams v. SnSands Corporation*, the Director said that the nature of the work is not a significant factor in determining whether workers must be paid prevailing wages. Instead, he focused on whether the employer was a contractor or subcontractor as opposed to a material supplier who sells products to the general public. Thus, a bona fide fabrication shop that merely supplied material to a public works jobsite was not required to pay prevailing wages to its employees, whereas a contractor or subcontractor performing the exact same work would be required to pay prevailing wages to its shop employees.

In an equally significant ruling, the Director said in *On-Haul and Of-Haul to and from the Friendly Inn/Senior Center* that employees of a contractor or subcontractor who transport material to and from a public works site also must be paid prevailing wages. Like *Russ Will*, the concept of work performed “in the execution of any contract for public work” was greatly expanded so that off-site transportation work identified in the contract specifications was covered by the California prevailing wage law. The Director also went on to say that independent trucking companies hired by a contractor or subcontractor to haul to or from a public works project must pay prevailing wages to their drivers because the work is functionally related to the construction work. Contrary to an earlier decision, the Director said that off-hauling material to a recycling center was also subject to the prevailing wage law.

Based on the *Williams* case, the Director is now taking the position that fabrication, transportation and other off-site work is essential to the performance or execution of a public works contract. Contractors, subcontractors, and independent trucking companies must pay their employees prevailing wages for this work. The only exemption, according to the Director, is for bona fide material suppliers who sell material or products to the general public.

Equally troublesome is the question of what prevailing wage rates must be paid to workers performing off-site fabrication and transportation work. Some existing prevailing wage rates, such as those contained in the Northern California Teamsters wage determination, cover only on-site work. Others, such as the sheet metal workers wage determinations cover on-site work, but these rates are based on collective bargaining agreements which extend to shop work. Under this situation, the on-site prevailing wage rate may apply to the off-site shop work. Many union contractors are signed to separate shop agreements which contain lower wage and fringe benefit rates for shop work. Since these union contracts are not yet recognized by the DIR, their current applicability to prevailing wage work is in doubt.

The DIR is currently gathering information about off-site transportation rates to apply to off-site hauling. In an earlier announcement, the Director held in *Kern Asphalt Paving & Sealing Co., Inc.* that until a rate is established, a contractor should pay the most analogous prevailing wage rate in the county in which the work is located. If allowed to stand, these decisions could create significant liability for contractors, subcontractors, and independent trucking companies on current and past public works projects.

The Director's decisions are opinion letters and are not precedential; however, it is very likely that labor compliance programs will enforce these interpretations and hearing officers will apply them in administrative enforcement proceedings. These opinions ultimately will be challenged in court, but in the meantime, public owners and contractors and subcontractors performing public works will be greatly impacted by these decisions. The Director's opinion letters can be found at www.dir.ca.gov/DLSR/PubWorkDecision.htm.



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