

## CHAPTER 2

### DEFINITION OF TERMS

#### Definitions Contained in the California Code of Regulations (CCR)

The **California Code of Regulations (CCR)** contains the regulations that have been formally adopted by state agencies, reviewed and approved by the Office of Administrative Law, and filed with the Secretary of State. The CCR consists of 28 titles and contains the regulations of approximately 200 regulatory agencies.

The sections relating to Labor Compliance Programs, sections 16000 – 17270, of Title 8 California Code of Regulations may be accessed from the Department of Industrial Relations web site at:

[www.dir.ca.gov](http://www.dir.ca.gov)

Title 8 CCR section 16000 contains definitions of terms pertaining to the Payment of Prevailing Wages upon Public Works and Awarding Body Labor Compliance Programs.

## **Chapter 8. Office of the Director**

### **Subchapter 3. Payment of Prevailing Wages upon Public Works**

#### **Article 1. Definitions**

---

#### **§16000. Definitions.**

---

The following terms are defined for general use in these regulations within Group 3, Payment of Prevailing Wages Upon Public Works and Group 4, Awarding Body Labor Compliance Programs:

**Area of Determination.** The area of determining the prevailing wage is the “locality” and/or the “nearest labor market area” as determined by the Director. In determining the area, the mobility of each craft, classification and type of work will be considered.

**Awarding body.** Any state or local government agency, department, board, commission, bureau, district, office, authority, political subdivision, regional district officer, employee, or agent awarding/letting a contract/purchase order for public works.

**Bid.** Any proposal submitted to an awarding body in competitive bidding for the construction, alteration, demolition, repair, maintenance, or improvement of any structure, building, road, property, or other improvement of any kind.

**Certified.** The affirmation of a person with the authority to so affirm, under the penalty of perjury that the records are originals or are full, true and correct copies of the original and depict truly, fully and correctly the craft or type of work performed, hours and days worked, and the amounts by category listed, disbursed by way of cash, check, or in whatever form or manner to each person by job classification and/or skill pursuant to a public works contract.

**Chief of DAS.** Chief of Division of Apprenticeship Standards or a duly authorized representative.

**Chief of DLSE/Labor Commissioner.** Chief of the Division of Labor Standards Enforcement or a duly authorized representative.

**Chief of DLSR.** Chief of the Division of Labor Statistics and Research or a duly authorized representative.

**Coverage.** This means being subject to the requirements of Part 7, Chapter 1 of the Labor Code as a “public work.” This includes all formal coverage determinations issued by the Director of Industrial Relations.

**DAS.** Division of Apprenticeship Standards.

**Date of Notice or Call for Bids.** The date the first notice inviting bids was published in a newspaper of general circulation or promulgated in a legally sufficient manner which results in a contract being awarded with or without competitive bidding. This may also be referred to as the Bid Advertisement Date.

**Days.** Unless otherwise specified means calendar days.

**DLSE.** The Division of Labor Standards Enforcement.

**DLSR.** The Division of Labor Statistics and Research.

**Director.** The Director of the Department of Industrial Relations or his/her duly authorized representative.

**Duly Authorized Representative.** An employee of the Department of Industrial Relations.

**Effective Date.** The date upon which the determinations of the Director go into effect. This date is ten days after the issue date of the determination.

**Employer Payments.** Includes:

- (1) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program for the benefit of employees, their families and dependents, or retirees;
- (2) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees, their families and dependents or to retirees pursuant to an enforceable commitment or agreement to carry out a financially responsible plan or program which was communicated in writing to the workers affected; and
- (3) The rate of contribution irrevocably made by the contractor or subcontractor for apprenticeship or other training programs authorized by Section 3071 and/or 3093 of the Labor Code.

**Expiration Date.** The date upon which the determinations of the Director are subject to change.

**General Prevailing Rate of Per Diem Wages.** Includes:

- (1) The prevailing basic straight-time hourly rate of pay; and
- (2) The prevailing rate for holiday and overtime work; and
- (3) The prevailing rate of employer payments for any or all programs or benefits for employees, their families and dependents, and retirees which are of the types enumerated below:

- (A) medical and hospital care, prescription drugs, dental care, vision care, diagnostic services, and other health and welfare benefits;
  - (B) retirement plan benefits;
  - (C) vacations and holidays with pay, or cash payments in lieu thereof;
  - (D) compensation for injuries or illnesses resulting from occupational activity;
  - (E) life, accidental death and dismemberment, and disability or sickness and accident insurance;
  - (F) supplemental unemployment benefits;
  - (G) thrift, security savings, supplemental trust, and beneficial trust funds otherwise designated, provided all of the money except that used for reasonable administrative expenses is returned to the employees;
  - (H) occupational health and safety research, safety training, monitoring job hazards, and the like, as specified in the applicable collective bargaining agreement;
  - (I) See definition of “Employer Payments,” (3).
  - (J) Other bona fide benefits for employees, their families and dependents, or retirees as the Director may determine; and
- (4) travel time and subsistence pay as provided for in Labor Code Section 1773.8.
- (b) The term “general prevailing rate of per diem wages” does not include any employer payments for:
- (1) Job related expenses other than travel time and subsistence pay;
  - (2) Contract administration, operation of hiring halls, grievance processing, or similar purposes except for those amounts specifically earmarked and actually used for administration of those types of employee or retiree benefit plans enumerated above;
  - (3) Union, organizational, professional or other dues except as they may be included in and withheld from the basic taxable hourly wage rate;
  - (4) Industry or trade promotion;
  - (5) Political contributions or activities;
  - (6) Any benefit for employees, their families and dependents, or retirees including any benefit enumerated above where the contractor or subcontractor is required by Federal, State, or local law to provide such benefit; or

(7) Such other payments as the Director may determine to exclude.

**Interested Party.** When used with reference to a particular prevailing wage determination made by the Director, includes:

(1) Any contractor or subcontractor, or any organization, association, or other representative of any contractor or subcontractor likely to bid on or to perform a contract for public work which is subject to the particular prevailing wage determinations, and/or

(2) Any worker in the particular craft, classification, or type of work, who may be employed on a public work project subject to the particular prevailing wage determination, or any labor organization or other representative of such a person, including the recognized collective bargaining representative for the particular craft, classification, or type of work; and/or

(3) Any awarding body or association or other representative of awarding bodies concerned with the administration of a public works contract or proposed contract, which is subject to the particular prevailing wage determination.

**Helper.** Any sub journeyman classification traditionally used to assist a journeyman. Under no circumstance may the Helper classification be used to replace statutorily required Apprentices.

**Identify or Give Notice of Identity.** This means to state the name, job title, address and current telephone number of a person or entity.

**Interim Determination.** Those determinations of the Director issued between the quarterly updates.

**Issue Date-Issuance.** The date upon which copies of the determination of the Director are deposited in the mail.

**LCP.** A labor compliance program initiated and enforced by an awarding body in accordance with these regulations.

**Locality.** See Labor Code Section 1724.

**Maintenance.** Includes:

(1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

(2) Carpentry, electrical, plumbing, glazing, [touchup painting,] and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

Exception: 1: Janitorial or custodial services of a routine, recurring or usual nature are excluded.

Exception: 2: Protection of the sort provided by guards, watchmen, or other security forces is excluded.

(3) Landscape maintenance. See Public Contract Code Section 21002.

Exception: Landscape maintenance work by “sheltered workshops” is excluded.

**Mistake, Inadvertence, or Neglect.** Mistake, inadvertence, or neglect in failing to pay the correct general rate of per diem wages means the lack of knowledge that any reasonable person would also be expected to have under the same or similar circumstances.

**Nearest Labor Market Area.** The nearest geographical area from which workers of the crafts, classifications, and types to be used in the performance and execution of the public work can be drawn for employment upon such public work.

**Payroll Records.** All time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project.

**Person.** Any individual [or legal entity, including a] partnership, corporation, association, or any local, state, regional, national or international organization, public or private, or any awarding body, or any agent or officer thereof, authorized to act for or on behalf of any of the foregoing.

**Political Subdivision.** See Labor Code Section 1721.

**Predetermined Changes.** Definite changes to the basic hourly wage rate, overtime, holiday pay rates, and employer payments which are known and enumerated in the applicable collective bargaining agreement at the time of the bid advertisement date and which are referenced in the general prevailing rate of per diem wages as defined in Section 16000 of these regulations. Contractors are obligated to pay up to the amount that was predetermined if these changes are modified prior to their effective date. Predetermined changes which are rescinded prior to their effective date shall not be enforced.

**Prevailing Rate.** Includes:

(1) The basic hourly rate being paid to a majority of workers engaged in the particular craft, classification or type of work within the locality and in the nearest labor market area, if a majority of such workers is paid at a single rate; if there is no single rate being paid to a majority, then the single rate (modal rate) being paid to the greater number of workers is prevailing. If there is no modal rate, then an alternate rate will be established by considering the appropriate collective bargaining agreements, Federal rates or other data such as wage survey data, including

the nearest labor market area, or expanded survey as provided in Article 4 of these regulations;  
(2) Other employer payments as defined in Section 16000 of these regulations and as included as part of the total hourly wage rate, from which the prevailing basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, then the Director may establish a prevailing employer payment rate by the same procedure outlined in subsection (1) above.

(3) The rate for holiday or overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, holidays and overtime (if any) included with the prevailing basic hourly rate of pay shall be prevailing.

**Public Entity.** For the purpose of processing requests for inspection of payroll records or furnishing certified copies thereof, “public entity” includes: the body awarding the contracts; the Division of Apprenticeship Standards (DAS), or the Division of Labor Standards Enforcement (DLSE).

**Public Funds.** Includes state, local and/or federal monies.

Note: Public funds do not include money loaned to a private entity where work is to be performed under private contract, and where no portion of the work is supervised, owned, utilized, or managed by an awarding body.

**Public Works.** See Sections 1720, 1720.2, 1720.3, and 1771 of the Labor Code.

**Service upon a Contractor or Subcontractor.** This is the process defined in Title 8, California Code of Regulations, (CCR) Section 16801(a)(2)(A).

**Serve upon the Labor Commissioner.** Delivery of all documents including legal process to the Headquarters of the Labor Commissioner.

**Sheltered workshop.** A nonprofit organization licensed by the Chief of DLSE employing mentally and/or physically handicapped workers.

**Wage Survey.** An investigation conducted pursuant to Labor Code Sections 1773 and/or 1773.4 to determine the general prevailing rate of per diem wages for the crafts/classifications in the county(ies) for which the survey questionnaire was designed.

**Willful.** See Labor Code Section 1777.1(d).

**Worker.** See Labor Code Sections 1723 and 1772.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1191.5, 1720, 1720.2, 1720.3, 1721, 1722, 1722.1, 1723, 1724, 1770, 1771, 1772, 1773.5, 1776, 2750.5, 3071 and 3093, Labor Code; and Section 21002, Public Contract Code.

## History

1. Repealer of group 3 (articles 1-3, sections 16000-16004, 16100-16101 and 16200-16205) and new group 3 (articles 1-4, sections 16000-16013, 16100-16109, 16200-16206 and 16300-16305) filed 1-3-77 as an emergency; effective upon filing (Register 77, No 2). For prior history, see Register 56, No. 8.
2. New group 3 (sections 16000-16014, 16100-16109, 16200-16207.9) filed 2-8-78; effective thirtieth day thereafter (Register 78, No. 6).
3. Renumbering and amendment of former sections 16000-16006 and 16008-16019 to section 16000; renumbering and amendment of former section 16100 to section 16002; renumbering and amendment of former section 16101 to section 16203; renumbering and amendment of former sections 16102-16105 to section 16200; renumbering and amendment of former section 16106 to section 16206; renumbering and amendment of former sections 16107(a), (b) and (c) to sections 16201, 16202 and 16205; renumbering and amendment of former section 16108 to section 16204; renumbering and amendment of former section 16200 to section 16300; renumbering and amendment of former sections 16007, 16201, 16202, 16204 and 16206 to section 16302; renumbering and amendment of former section 16207 to section 16303; renumbering and amendment of former sections 16207.2 and 16207.3 to section 16304; renumbering and amendment of former section 16207.5 to section 16100; renumbering and amendment of former section 16207.7 to section 16301; renumbering and amendment of former sections 16207.10-16207.14 to section 16400; renumbering and amendment of former sections 16207.15 and 16207.16 to section 16401; renumbering and amendment of former section 16207.17 to section 16402; renumbering and amendment of former section 16207.18 to section 16403; renumbering and amendment of former section 16207.19 to section 16500; repealer of former sections 16100.1, 16109, 16203, 16205, 16207.1, 16207.4, 16207.6 and 16207.8; and new sections 16001, 16101 and 16102 filed 2-11-86; effective thirtieth day thereafter (Register 86, No. 7). For prior history, see Registers 82, No. 51; 80, No. 6; 79, No. 19; 72, No. 23 and 72, No. 13.
4. Amendment filed 2-20-92; operative 3-23-92 (Register 92, No. 13).
5. Repealer of definition of “Predetermined Changes” filed 12-27-96; operative 1-26-97 (Register 96, No. 52).
6. Amendment of definition of “Prevailing Rate” filed 12-27-96; operative 1-26-97 (Register 96, No. 52).
7. Change without regulatory effect restoring definition of “Predetermined Changes” and repealing amendments to definition of “Prevailing Rate” filed 2-19-99 (Register 99, No. 8). Pursuant to Sacramento Superior Court Order Issued 6-4-97 in Case 97CS 00471 the amendments filed 12-27-96 and effective 1-27-97 were invalidated and the prior regulations were reinstated.

The above information is provided free of charge by the Department of Industrial Relations from its web site at <a href="http://www.dir.ca.gov">www.dir.ca.gov</a> .
--



# The Requirement to Pay Prevailing Wages (Including overtime, holiday, and shift differential rates)

## Public Works Registration

Pursuant to Labor Code section 1771.1, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5.

It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the Business and Professions Code, or by section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Labor Code section 1725.5 at the time the contract is awarded.

## Prevailing Wage Requirements

California Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, 1720.6, 1771, 1771.5, 1774 and 1815 require that all Contractors and Subcontractors performing work on public works contracts must pay their workers the State-determined prevailing wage rate. Specifically, Labor Code §1771.5 states that the requirement to pay prevailing wages applies to all construction and installation contracts over \$25,000 and all contracts over \$15,000 when the project is for alteration, demolition, repair, maintenance, or warranty work.

**NOTE:** This threshold is only for LAUSD projects and other government agency public works projects may have a different threshold.

**MAINTENANCE:** Some maintenance work is subject to a prevailing wage and some is not; it depends on the type of work. Please contact our offices at (213) 241-4665 and we will ascertain whether the maintenance work falls under the prevailing wage requirement.

## Department of Industrial Relations Establishes the Prevailing Wage Rate

The General Prevailing Wage Determination (PWD), specifying the appropriate prevailing wage rates for particular construction trades and crafts, is established by no other entity than the DIR, Division of Labor Statistics and Research (DLSR). The DLSR publishes these rates twice a year, on February 22 and August 22.

**NOTE:** According to the Department of Industrial Relations, each Prevailing Wage Determination is effective 10 days after its issued date.

Besides the rate changes in each published Prevailing Wage Determination, the determination include links to predetermined wage increases. These predetermined increases can also be specifically accessed on the DIR website.

## **Components of the Prevailing Wage Rate**

The prevailing wage rate includes the basic hourly rate of pay plus employer paid contributions including:

- health and welfare
- pension
- vacation
- travel and subsistence
- training fund

All prevailing wage rates, including overtime, holiday, and shift differential, contain this component, as modified by footnotes or prevailing wage determination.

## **Payment of Overtime**

Pursuant to Labor Code Section 1815, the overtime prevailing wage rate applies to hours worked in excess of 8 hours in any one calendar day, and 40 hours in any one calendar week. Any work performed on Saturday, Sunday, and/or holidays shall be paid the correct overtime prevailing wage rate according to the Prevailing Wage Determination for that particular craft/trade.

## **Payment of Shift Differentials**

In any event, where the shift differential wage rate is included in the California Prevailing Wage Determination, the shift differential rate must be paid for work performed during appropriate shifts.

## **Owner-Operators**

Owner-Operators are individuals that own and operate their own machines. Owner-Operators are not to be confused with Operating Engineer employees, who operate equipment owned by a company.

If Owner-Operators are incorporated, they must submit Certified Payroll Records (CPRs). For example, Smith Backhoe, Inc. is a corporation, and its owner, Mr. Smith, is an employee of the corporation; therefore, Smith Backhoe, Inc. must report Mr. Smith as an Operating Engineer and Smith Backhoe, Inc. must submit CPRs for its employee, Mr. Smith.

However, Mr. Jones, as a sole-proprietor Owner-Operator, is not incorporated. Therefore, he must be included on the CPRs of the company to which he is contracted, as an Owner-Operator.