

Attention Contractors: An Update On The New Jersey Prevailing Wage Act

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Since our post in March, 2015, we have received more frequent requests for consultations and representation from contractors facing audits and investigations relating to public works projects and possible violations of the N.J. Prevailing Wage Act. The Prevailing Wage Act applies to all contractors who perform any work on a public work contract regardless of the value of the contract or number of employees. This blog, based on our experience representing contractors before the N.J. Department of Labor is intended to provide practical advice for contractors faced with a Prevailing Wage Act audit or investigation.

Production of Documents: Each audit is initiated by a letter to the contractor with a laundry list of requests for relevant documents related to the project in question. It is advisable, and likely to generate better results, to engage counsel as early in the process as possible. The best way to avoid confrontation with the assigned investigator is to produce all documents requested as promptly as possible and within the time frame demanded by the investigator. If you agree to provide documents by a certain date, keep this commitment and do not make the investigator chase you. If you are unable to provide requested documents for a legitimate reason, be candid about the reason and the length of time which will be necessary for full documentary compliance. Don't make commitments you know you can't keep.

Audits: Internally, the state investigators are evaluated to some extent, based upon their proficiency, promptness and results in concluding audits. Because the investigators are expected to report the status of their work on a scheduled basis, you should refrain, if at all possible, from seeking multiple and what would be considered excessive adjournments of the in person audits. These audits are most often performed at the office of the contractor but can be scheduled at the various offices of the Department of Labor. Keep in mind, the investigator is not the person who ultimately makes the decision on whether you are in compliance with the Act. They simply report their findings up the chain

of command. Thus, be honest and candid during the investigation. Cooperating with the investigator will usually serve you well as they make enforcement suggestions in their reports to their supervisors. Providing inaccurate information will not be helpful.

Settlements: The Department of Labor is not trying to put contractors, who are generally taxpaying entities which employ our residents, out of business. The state decision makers also recognize that although serious violations of the Act could include the penalty of debarment from participation in any Public Works Projects, both individually and in the name of a company, this remedy is likely to cripple a company and is hopefully imposed sparingly. Accordingly, and to avoid the imposition of this condition, when the investigation reaches the level where a financial settlement can be reached, allow your counsel to negotiate a compromised deal on your behalf and most importantly, do not agree to installment payments which you or your company will simply not be able to pay. Keep installment payments current. Do not make the investigator constantly follow up on your payments. They are your responsibility. Most importantly, as with most settlements, if negotiated by a competent attorney the result will be a significant compromise of what was originally sought by the Department of Labor. The settlement documents will contain a provision indicating that a default on a settlement could result in a reversion to the original amount owed and even debarment. Don't let this happen. Pay what you have agreed to pay.

Miscellaneous Observations: You are most likely to avoid problems with a Prevailing Wage Act Audit if you have someone in your employment who is capable of performing the calculations necessary to make sure you are in compliance. Familiarity with the Act and its requirements is essential. If such a person is not employed in your organization, consider utilizing a payroll service which specializes in construction. Not only is it less expensive than traditional payroll services, but they are knowledgeable in properly doing your payroll so you remain in compliance with the Act. Their well organized records are often the basis of your responses to an audit.

Consider sending an employee to seminars which are designed to teach employees the skills necessary to comply with the Act.

Definitely consider the utilization of an attorney who is knowledgeable and experienced in representing contractors in prevailing wage matters. Einhorn Barbarito has several attorneys who have

such knowledge and experience to guide you through this process.