

California Officials Put Additional Pressure on General Contractors to Prevent Wage Theft

Article By:

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General contractors' top priorities on a construction project are completing the work on time, completing the work within budget, and guarding against future construction defect claims. New and pending laws in California, however, have added one more item to that list: serving as guarantor for the wages and fringe benefits owed not only to their employees but to each of its subcontractor's employees as well.

In recent months, the California labor commissioner has brought suit against or fined general contractors for wage theft in instances where a subcontractor failed to pay its employees minimum wage and overtime in accordance with the California Labor Code. The labor commissioner also issued multimillion-dollar citations against a general contractor for its subcontractor's misclassification of employees. And the stakes are expected to rise in the near future.

Current General Contractor Responsibilities

Currently, general contractors are jointly responsible (or liable) with their subcontractors for:

- the payment of wages owed to all workers supplying labor on a project; and
- failure to secure valid workers' compensation coverage.

General contractors are prohibited from adding provisions to their construction agreements to waive these obligations; any such waiver provision will be deemed void and unenforceable as being contrary to California public policy.

In addition, general contractors—upon request from a state enforcement agency or department—are required to provide copies of documents and information to verify that all of their workers and their subcontractors' workers are being paid all wages owed. In an effort to enforce these wage and hour laws, the California labor commissioner, the Division of Occupational Safety and Health, and the Employment Development Department can adopt necessary regulations, issue citations, and file suit against a general contractor and its subcontractors.

Even though the current laws affecting general contractors have been in effect since January 1, 2015, the California labor commissioner in particular has started to aggressively enforce the laws as

of June of 2017. One general contractor received a citation for \$249,879, while an Oakland construction company was cited for \$3.5 million for wage theft impacting 119 workers. In August of 2017, the California labor commissioner filed suit against a southern California contractor, seeking \$6.3 million dollars in damages and penalties for wages on a misclassification claim impacting 249 employees—a sign that the state is focusing its resources on this issue.

New Responsibilities in 2018

The recent uptick in enforcement actions is anticipated to increase now that Governor Jerry Brown signed California Assembly Bill No. 1701 on October 14, 2017. Under AB 1701, which will go into effect on January 1, 2018, general contractors will have the added headache of being subject to double payments for work performed or, in the alternative, be potentially liable for attorneys' fees, costs, expert fees, and/or attachment of property to satisfy an adverse judgment on claims brought by (or on behalf of) a subcontractor's employees for outstanding wages and fringe benefits.

Any aggrieved subcontractor employees must still give the general contractor 30 days' notice of a wage claim before filing suit. In addition, general contractors can still rely upon indemnity provisions in a subcontract agreement to recoup losses from an adverse judgment. Yet, avoiding the potential damage to reputation, work stoppages, and loss of operating capital in connection with significant wage claims—like those seen in recent months—may become more difficult on private projects now that AB 1701 is law.

In light of this changing landscape in the intersection between the state's wage and hour laws and the construction industry, general contractors may want to reassess their payment documentation requirements and back-of-house payment review practices to ensure that downstream payments reach the intended workers. These assessments may encourage employers to require weekly or monthly certified payroll reports, conduct pay audits, or amend the terms of progress payment and indemnity provisions within master subcontract agreements.

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