

Developments in California Prevailing Wage Law

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The California Legislature's ongoing efforts to strengthen the Prevailing Wage Law continued in 2014, with certain measures enacted to become effective in 2015. Familiar ground to public entities, developers, and contractors, the Prevailing Wage Law, Labor Code section 1720 et seq. ("PWL"), requires payment of the prevailing wage to workers employed on public works projects. To be defined as a public work, the project must 1) involve construction; 2) be done under contract; and 3) be paid for out of public funds. If a project is defined as a public work, the PWL requires the payment of not less than the prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, among other things. The general prevailing rate of per diem wages is determined by the Department of Industrial Relations ("DIR").

Assembly Bill ("AB") 1939, effective January 1, 2015, authorizes a contractor to bring a lawsuit to recover from the "hiring party" any increased costs incurred as a result of a decision by the DIR, the Labor and Workforce Development Agency, or a court that determines the work covered by the project is a public work. The PWL had previously provided remedies by a contractor against an "awarding body" for increased costs of performance caused by, for example, the awarding body's failure to identify the work as a public work. AB 1939, codified at Labor Code section 1784, establishes similar remedies for a contractor to recover increased costs not only from the awarding body but also from the party with which it directly contracts (such as a private developer). The bill was a byproduct of the appellate court decision in *Hensel Phelps Construction Company v. San Diego Unified Port District* (2011) 197 Cal.App.4th 1020, in which a hotel development project was found to be a public work due in large part to the rent subsidy provided to the developer by the public entity. According to the sponsors of AB 1939, the contractor had been told by the awarding body and the developer that the project was not a public works project.

AB 26, also effective January 1, 2015, revises the definition of "construction" covered by the PWL to include work performed during the post-construction phases of construction, including "all cleanup work at the jobsite." According to the legislative analysis, the bill was enacted to bring clarity to Labor Code section 1720 by specifying that cleanup work is included within the definition of public works. Given the DIR's pre-amendment position that cleanup work came within the scope of the PWL, the law does little more than codify the DIR's existing interpretation. The bill was sponsored by the California State Council of Laborers and supported by the California Labor Federation and State Building and Construction Trades Council.

New Registration Program for Public Works Contractors

The passage of Senate Bill 854 in June 2014, as part of the Budget Act of 2014, established the state's mandatory registration program for public works contractors. Specifically, Labor Code section 1771.1 requires prospective contractors and subcontractors involved with public works bids and contracts to register with the DIR. Contracts for public works may not be

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entered into absent proof of the contractor or subcontractor's current registration to perform construction on public works, and a contract issued in violation of the registration requirements shall be subject to cancellation. **Section 1771.1 applies to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015.** Contractors will be subject to a registration and annual renewal fee that has been set initially at \$300. The list of registered contractors is available on the [DIR's website](#).

Michelle focuses her practice on business and civil litigation with an emphasis on construction litigation representing general contractors, subcontractors and sureties in a variety of complex matters including, contractual disputes, bid protests, mechanic liens, bond claims and OSHA citations.