



Labor Compliance Policy Bulletin

LCPB 09-4 Labor Compliance Program Investigations

References: California Labor Code Section 1720–1815, Public Works Chapter
California Code of Regulations 16432, Investigation Methods for Labor
Compliance Programs
Labor Compliance Manual Chapter 1, 1-302A(3a), Section 1776(g) of the
California Labor Code
Chapter 5, “Source Document Review Process”
Chapter 6, “Labor Cases”

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Approved: 
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Labor Compliance Program

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Background

As a result of its approved labor compliance program through the Department of Industrial Relations, Caltrans is responsible for enforcing on its public works contracts the prevailing wage laws set forth in California Labor Code Sections 1720–1815 and the implementing regulations set forth in California Code of Regulations, Title 8, Sections 16000–16439. To ensure continued approval of its labor compliance program, Caltrans must provide up-to-date enforcement standards and operational guidelines to staff engaged in program activities.

Existing Procedure

Under its current program operations, the labor compliance staff is responsible for collecting, logging, tracking, and auditing all certified payroll records received from contractors and subcontractors on contracts subject to prevailing wage requirements. If payroll records are delinquent or inadequate, the labor compliance staff sends a monthly notice to the contractor identifying the deficiencies and, as necessary, withholds funds from prime contractors in the amount of 10 percent of the monthly progress estimate, a minimum of \$1,000, a maximum of \$10,000. Upon notice of the identified discrepancies, contractors are required to provide evidence of restitution to the affected workers within district-specified timeframes. If necessary, labor compliance staff conducts audits of contractors' payroll source documents either by mail or at contractors' home offices.

The frequency of activities occurring under its program operations varies among labor compliance district offices statewide and is based on a number of factors, such as the type and duration of contracts, number of employee complaints, number of discrepancies or missing payroll records, and other factors determined during the life of the contract.

New Procedure

The following program requirements establish minimum criteria and common terminology for all district labor compliance office investigation activities. The labor compliance program must take both prompt and reasonable action to determine if violations exist and enforcement actions, such as withholding contract funds and formal labor cases, are necessary.

Definitions

Review—Inspection of all contractor payroll records for 1) appropriate data elements required by California Labor Code Section 1776, 2) signed Statement of Compliance, and 3) accurate prevailing wage rates for the classifications listed.

Confirmation—Validation of payroll record classifications and hours compared with inspector diary entries, trust fund statements, employee interviews, canceled payroll checks, or any other reasonable method used by the labor compliance program to determine payroll accuracy.

Audit—An onsite or by-mail review of contractor payroll source documents including time cards, payroll journals, canceled paychecks, paycheck stubs, cash receipts, trust fund statements and corresponding canceled checks, tax documents, and any other record of payment to workers. An audit must include a written summary reflecting prevailing wage discrepancies and any estimated penalties. This summary includes use of forms CEM-2506, “Wage Violation Summary Sheet”; CEM-2508, “Source Document Audit Summary”; and CEM-2509, “Source Document Audit Checklist.”

Delinquent Payroll Records—Records not submitted by the 15th of the month for the previous month’s work.

Inadequate payroll records—Records with missing data elements identified during the review process or discrepancies and underpayments of wages identified during the confirmation process.

Notice of Temporary Withholding of Contract Payments—Letter or fax sent to contractors monthly providing notice of delinquent or inadequate payroll records.

Final Notice of Delinquent or Inadequate Payroll Records—Letter sent to the prime contractor providing final notice of delinquent or inadequate payroll records and including an estimated amount of penalties and wages and a referral to the Division of Construction Labor Compliance Unit to process a formal labor case.

Minimum Investigation Requirements

The following minimum guidelines are required for review, confirmation, and audit of certified payroll records received for all prime contractors, subcontractors, and owner operators on all contracts that require prevailing wages. Labor compliance staff must review ***all*** certified payroll records within

30 days of receipt. For each month in which payroll records are received, labor compliance staff must also conduct random confirmation for at least one worker for at least one weekly payroll within that month for prime contractors, subcontractors, and owner operators.

Various methods may be used to randomly choose the worker and payroll record confirmed. If payroll inadequacies are identified through review or random confirmation or worker complaints are received, labor compliance staff must confirm all prior payroll records received for the affected prime contractor, subcontractor or owner operator until no more inadequacies are identified. An audit must be conducted on payroll inadequacies identified through confirmation of payroll records. Audits are conducted by requesting contractor submittal of related payroll source documents or a site visit to the affected contractor's home office and must be initiated within 30 days of identifying payroll inadequacies. Chapter 5, "Source Document Review Process," of the *Labor Compliance Manual* provides information on scheduling and conducting a review of payroll source documents.

Contractor Notices

Notice of Temporary Withholding of Contract Payments

When labor compliance staff has determined that delinquent or inadequate payroll records exist, they provide the contractor with written notice. The notice must include 1) a statement indicating which records are delinquent or why records submitted are inadequate, 2) a 15-day timeframe for compliance, 3) the estimated amount of funds withheld, 4) the prime contractor's requirement to withhold funds from its affected subcontractors, and 5) the contractor's right to an expedited hearing to review the basis for the delinquent or inadequate records and to determine if Caltrans has exceeded its authority by withholding contract funds. Written notice consists of using the attached Notice of Temporary Withholding of Contract Payments (Temporary Withholding Notice). If the contractor does not comply with the requirements of the Temporary Withholding Notice, staff must provide the contractor with final written notice of delinquent or inadequate records due.

Final Notice of Delinquent Certified Payroll Records

Final written notice of delinquent payroll records consists of using the attached Final Notice of Delinquent Payroll Records (Final Notice—Delinquent) and includes 1) a statement indicating which records are delinquent, 2) the date prior notice was provided to the contractor, 3) a statement indicating that contract funds have been withheld, and 4) a minimum ten-day timeframe for compliance. Send the Final Notice—Delinquent letter by certified or overnight mail with a return receipt for signature to the prime contractor and a copy to applicable subcontractors. If the contractor fails to comply with the Final Notice—Delinquent letter, prepare a formal 1776 penalty labor case and forward it to the Division of Construction Labor Compliance Unit for delinquent prime contractor records only. For more information regarding the 1776 process, see Chapter 1, Section 1-302A(3a), "Section 1776(g) of the California Labor Code," of the *Labor Compliance Manual*. If the contractor fails to comply with the request for subcontractor payroll records, staff must schedule an onsite audit of the subcontractor's payroll documents. For more information regarding source document audits, see Chapter 5, "Source Document Review Process," of the *Labor Compliance Manual*.

Final Notice of Inadequate Certified Payroll Records

Final written notice of inadequate payroll records consists of using the attached Final Notice of Inadequate Payroll Records (Final Notice—Inadequate) and includes 1) a statement indicating which records are inadequate, 2) the date prior notice was provided to the contractor, 3) the amount of wages due and potential penalties, and 4) a minimum ten-day timeframe for compliance. The Final Notice—Inadequate letter must be sent by certified or overnight mail with a signed return receipt to the prime contractor with a copy to applicable subcontractors. If the contractor fails to comply with the Final Notice—Inadequate letter, prepare a formal labor case and forward it to the Division of Construction Labor Compliance Unit. For more information regarding the wage case submittal process, see Chapter 6, “Labor Cases,” of the *Labor Compliance Manual*.

Contract Withholds

To determine the amount of temporary withholding for delinquent or inadequate payroll records, consider the approximate amount of wages due and request between \$1,000 and \$10,000 or 10 percent, accordingly. For example, if a contractor is missing one payroll record for one worker during the estimate period or has underpaid one worker for one payroll record, staff would recommend withholding an amount closer to \$1,000 than \$10,000. If there are several payroll records missing and several identified underpayments to workers, staff would recommend a temporary withholding of 10 percent or an amount closer to \$10,000. Staff must use available documents, such as inspector diaries or employee interviews, to evaluate and determine the estimated temporary amount to withhold.

Delinquent Certified Payroll Records

For certified payroll records identified as delinquent, staff must initiate a temporary withholding from the current estimate and notify the contractor using the process identified in Contractor Notices. Temporary withholdings may be reduced for partial compliance with delinquent certified payroll records. Upon receipt of all delinquent certified payroll records, the remaining temporary withholding associated with delinquent records must be released on the next estimate.

Inadequate Certified Payroll Records

For inadequate certified payroll records, staff must notify the contractor using the process identified in Contractor Notices. However, staff does not initiate a temporary withholding until after the 15-day timeframe specified in the Temporary Withholding Notice has expired. If the contractor has not complied with the request for corrective action, staff must initiate a temporary withholding on the estimate following the initial Temporary Withholding Notice. Temporary withholdings may be reduced for partial compliance with inadequate certified payroll records. Upon compliance with all inadequate certified payroll records, staff must release remaining temporary withholdings associated with inadequate records on the next estimate.

District or region labor compliance staff is responsible for tracking temporary withholdings initiated and returned based on achieved compliance. In addition, Caltrans must notify its prime contractors of the receipt of delinquent subcontractor certified payroll records and resolution of inadequate subcontractor certified payroll records. When estimated withholdings are returned, the Temporary Withholding Notice must list the affected subcontractors for whom the prime contractor has achieved compliance.

Restitution at District Level

Report contractor restitution paid to workers as a result of identified inadequate certified payroll records in the monthly Restitution at District Level report. As part of its prompt enforcement actions, Caltrans must not allow repeat offenders to continue to pay restitution at the district level without pursuing a formal labor case. District labor compliance staff must continually review and evaluate the restitution listed on both district and statewide reports for information on contractors with a history of similar inadequate payroll records. Names of contractors with subsequent instances of inadequate records must be forwarded to the Division of Construction Labor Compliance Unit for approval of a formal labor case and an assessment of Labor Code 1775 penalties.

Expedited Hearing

The Temporary Withholding Notice language includes an option for a contractor to request an expedited hearing before the Department of Industrial Relations (DIR) for temporary withholding of contract funds. The expedited hearing is intended to address whether the payroll records are delinquent or inadequate according to the Temporary Withholding Notice. When requesting an expedited hearing, contractors must submit a request for an expedited hearing to **both** Caltrans and the DIR—Office of the Director. The Division of Construction Labor Compliance Unit will be the Caltrans contact. After receiving notice of a hearing request, the Division of Construction Labor Compliance Unit will contact the district or region labor compliance manager to discuss the temporary withholding, assist with preparation for the expedited hearing, and represent Caltrans at the hearing as necessary. If a contractor inadvertently submits a request for an expedited hearing to the district or region labor compliance office rather than the Division of Construction Labor Compliance Unit, the request must be forwarded to the Division of Construction Labor Compliance Unit immediately upon receipt.

The DIR has not yet published guidance specific to conducting expedited hearings; therefore, Caltrans will rely on existing regulatory guidelines for the hearing process.

For questions regarding this policy bulletin, please contact Angela Shell, Division of Construction, at angela_shell@dot.ca.gov or (916) 654-3501.

- Attachments:
1. Notice of Temporary Withholding of Contract Payments
 2. Final Notice of Inadequate Certified Payroll Records
 3. Final Notice of Delinquent Certified Payroll Records—Prime Contractor
 4. Final Notice of Delinquent Certified Payroll Records—Subcontractor
 5. CEM-2507, Labor Violation: Case Summary
 6. CEM-2508, Contractor's Payroll Source Document Audit
 7. CEM-2509, Checklist—Source Document Audit