



# Public Works

State of California

Department of Industrial Relations



## *DISCLAIMER*

The following presentation is intended to summarize relevant portions of existing law in the Labor Code and California Code of Regulations, but those code sections, as interpreted by the courts, will govern actual enforcement. The information contained in this presentation is a general overview of existing law, and is not intended to amend, interpret, or make specific any existing law or regulation. Any opinions expressed are solely those of the author/speaker and are not necessarily the official position of the Department of Industrial Relations (DIR), its Director, or any related public entity. The information in this presentation is not intended as legal advice, and does not guarantee any outcome in specific enforcement or coverage proceedings within the jurisdiction of DIR.

## Divisions, Boards and Commissions at DIR

- **Office of the Director – Legal Unit (OD Legal)**
  - Assists the Director with drafting coverage determinations
  - Acts as hearing officers for appeals of wage/penalty assessments
  
- **Office of Policy, Research and Legislation (OPRL)**
  - Issues Prevailing Wage Determinations
  
- **Division of Labor Standards Enforcement (DLSE)**  
**(“Labor Commissioner’s Office”)**
  - Enforces prevailing wage and apprenticeship laws
  
- **Division of Apprenticeship Standards (DAS)**
  - Administers apprenticeship laws, programs, and standards
  - Approves apprenticeship programs

### Department of Industrial Relations

#### Quick Links

- ▶ [LETF Home](#)
- ▶ [Report a labor law violation](#)
- ▶ [Report a workplace hazard to Cal/OSHA](#)
- ▶ [File a wage claim](#)
- ▶ [Know my employment rights](#)
- ▶ [Know my rights as an injured worker](#)
- ▶ [Get workplace postings](#)
- ▶ [Find prevailing wage determinations](#)

#### Also of Interest

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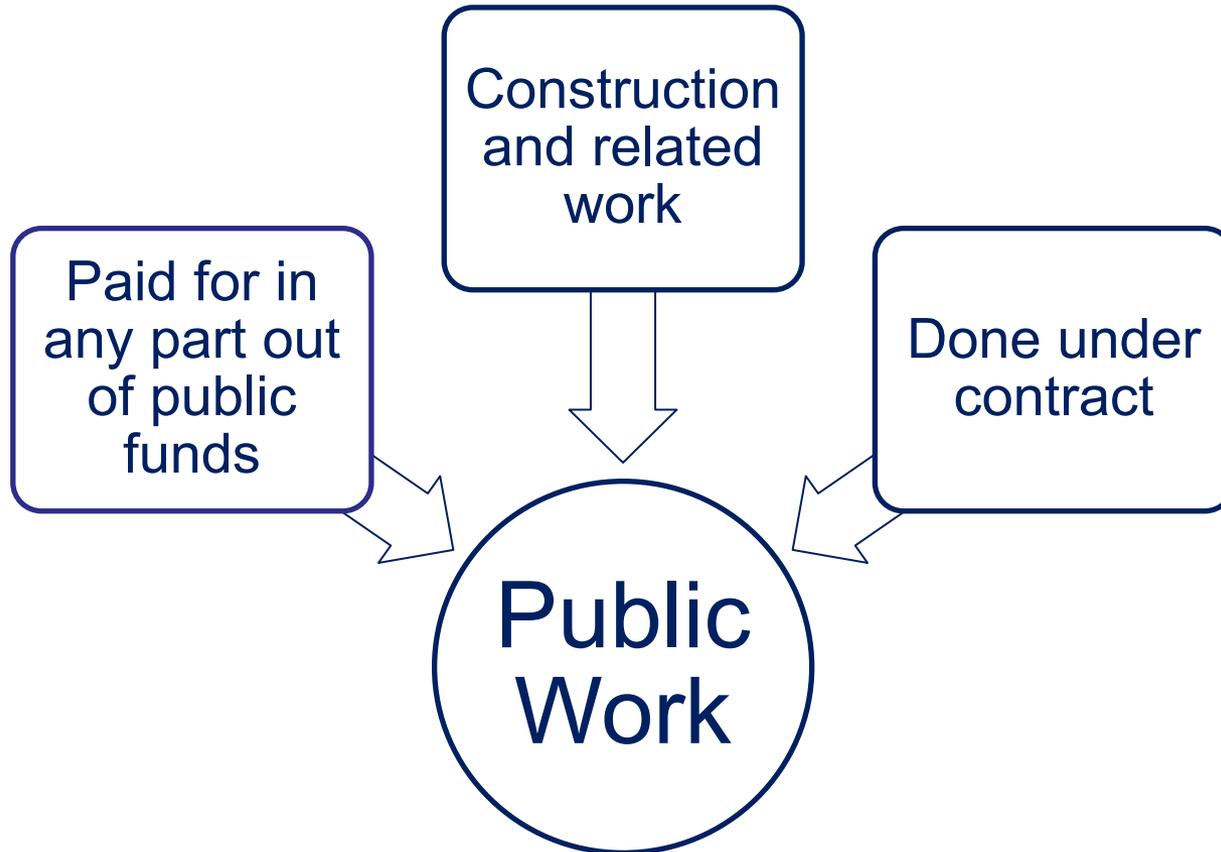
#### Other Resources

- ▶ [California Labor & Workforce Development Agency](#)
- ▶ [Employment Development Department](#)
- ▶ [U.S. Dept. of Labor](#)



## Department of Industrial Relations Recent Appointments

- Katrina S. Hagen – Director
- Doris Ng – General Counsel





## Labor Code Section 1771

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

**Prevailing wages apply to all public works over \$1,000,  
unless there's an exception.**

## Labor Code Section 1720

(Labor Code 1720(a)(1))

(a) As used in this chapter, “public works” means:

**(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds...**

- Construction (includes preconstruction *and* post construction)
- Alteration
- Demolition
- Installation
- Repair
- Maintenance (Labor Code section 1771, 8 CCR 16000)



## Labor Code Section 1720

**(Labor Code 1720(a)(1)) 1/1/2020 (AB 1768)**

- (a) As used in this chapter, “public works” means:**
- (1) For purposes of this paragraph, “construction” includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including, but not limited to, inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite.**

Other definitions of “public works”

## Section 1720(a)

- 1) Standard definition: (Construction work done under contract paid for in any part out of public funds)
- 2) “Work done **for irrigation, utility, reclamation, and improvement** districts, and other districts of this type.”
- 3) “**Street, sewer, or other improvement work** done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district . . . .”



Other definitions of “public works”

**Section 1720(a)**

4)The **laying of carpet done under a building lease-maintenance contract** and paid for out of public funds.

5)The **laying of carpet in a public building** done under contract and paid for in whole or in part out of public funds.

**6)Public transportation** demonstration projects (Streets and Highways Code s 143)

7)(A) **Infrastructure project grants** from the California Advanced Services Fund pursuant to Section 281 of the Public Utilities Code.

8)Tree removal work done in the execution of a project under paragraph (1)

## Other definitions of “public work”

- Section 1720(e) [Work on electric transmission system]
- Section 1720.2 [Private construction leased to public entity]
- Section 1720.3 [Off-haul of refuse]
- Section 1720.6 [Private renewable energy projects on public property]
- Section 1720.7 [Work done under private contract on general acute care hospitals]
- Section 1720.9 [Hauling of ready-mixed concrete]

## **Paid for in whole or in part out of public funds**

**(Labor Code 1720(b))**

1. The payment of money or the equivalent of money . . . directly to or on behalf of the public works contractor, subcontractor, or developer.
2. Performance of construction work . . . in execution of the project.
3. Transfer . . . of an asset of value for less than fair market price.



## **Paid for in whole or in part out of public funds**

(Labor Code 1720(b))

4. Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven . . . .

5. Money loaned . . . that is to be repaid on a contingent basis.

6. Credits that are applied . . . against repayment obligations . . . .

- Public funds includes “state, local and/or federal monies.” (8 CCR 16001)
- Federally Funded or Assisted Projects: “The application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are **controlled or carried out by California awarding bodies** of any sort.”
- California Prevailing Wage Law (CPWL) cannot be applied to a project which is “under the complete control of the federal government.” (*Southern Cal. Labor Management Committee v. Aubry* (1997) 54 Cal.App.4th 873, 886.)



## Section 1720(c)(1) exception

- 1) Private residential project;
- 2) Built on private property; and
- 3) Not built under an agreement with a state agency, redevelopment agency, a successor to a redevelopment agency when acting in that capacity, or a local public housing authority.



## Section 1720(c)(2) exception

- 1) the public improvement work is required as a condition of regulatory approval;
- 2) the project is an otherwise private development;
- 3) the public entity must not contribute more money, or the equivalent of money, to the overall project than is required to construct the public improvement work; and
- 4) the public entity must not maintain any proprietary interest in the overall project.

## Miscellaneous Exceptions

- Section 1720.4 (Volunteers or Conservation Corps)
- Section 1720.5 (Graffiti Removal Work in the City of Los Angeles Done by a Community-Based Organization Under Certain Circumstances)
- 8 CCR 16000 (Janitorial, Custodial, Security Guards)

## *COVERAGE DETERMINATIONS*

- The coverage determination process is spelled out in Labor Code section 1773.5 and Cal. Code Regs., title 8, sections 16001-16002.5.
  
- Two types of coverage determinations
  - Whether a project is covered
  - Whether a type of work is covered.

## What is a coverage determination?

### **Section 1773.5 and Cal. Code Regs., Title 8, Sections 16001-16002.5**

- The Director has the power to determine that a project or a type of work is public work through issuing what is known as a coverage determination.
- The administrative process consists of an initial coverage determination and a final determination on administrative appeal.
- Depending on when the parties make their submissions, the entire process can take many months.



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## Useful Links

- DIR's Public Works Home Page
  - <http://www.dir.ca.gov/Public-Works/PublicWorks.html>
- The Director's Public Works Coverage Determinations
  - <http://www.dir.ca.gov/OPRL/PubWorkDecision.htm>
- The Director's General Prevailing Wage Determinations
  - <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>
- DLSE's Public Works Manual
  - <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>
- California Labor Code
  - <http://leginfo.legislature.ca.gov/faces/codes.xhtml>
- California Code of Regulations
  - <http://www.oal.ca.gov/>