



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

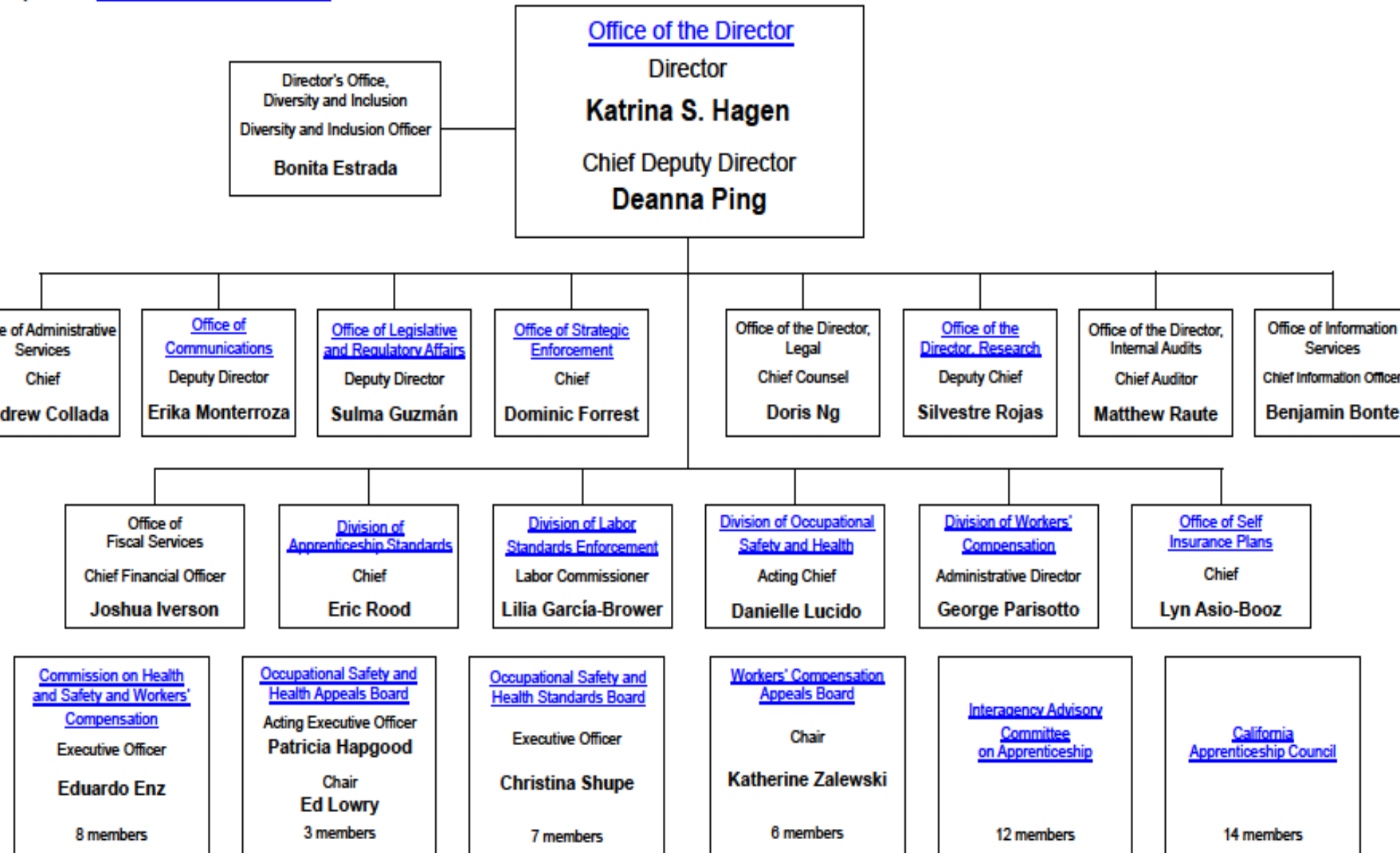
- ▶ [Industrial Relations databases](#)
- ▶ [Subscribe to a distribution list](#)
- ▶ [Work for DIR](#)
- ▶ [Do business with DIR](#)

Other Resources

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

Department of Industrial Relations

Department of Industrial Relations Director reports to [California Labor and Workforce Development Agency](#) Secretary Natalie Palugyai who in reports to [Governor Gavin Newsom](#).



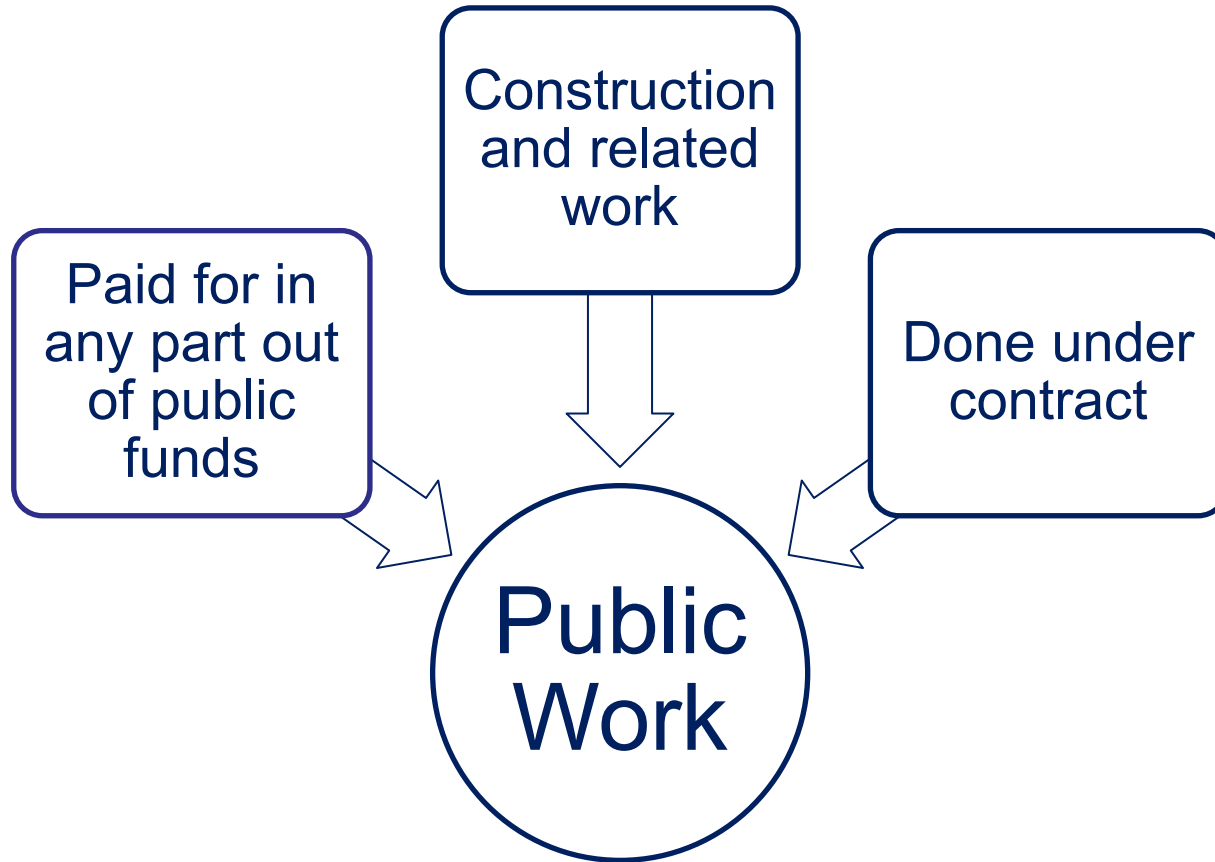


Labor Code Section 1771

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) [AB 1768]
- Alteration
- Demolition
- Installation
- Repair
- Maintenance (Labor Code section 1771, 8 CCR 16000)

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.” (*Kaanaana v. Barrett Business Services*)
- 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)

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.

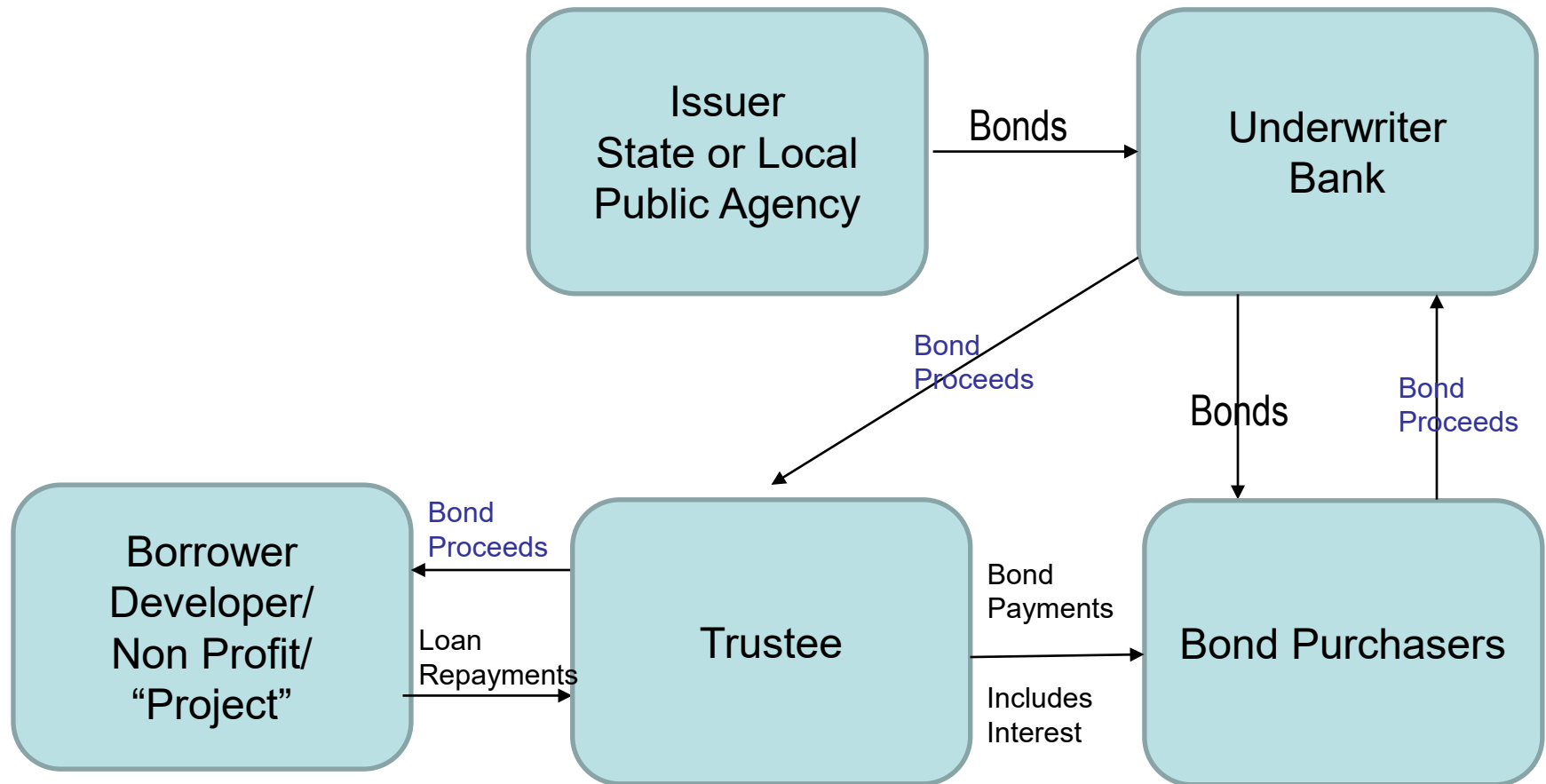
6. Credits that are applied . . . against repayment obligations



- For purposes of the prevailing wage law, public funds **do not** include:
- Proceeds from **Conduit Revenue Bonds**
 - Usually available to build schools, hospitals, and housing.
 - But see 1720.9 (general acute care hospitals) and 1720.8 (charter schools)
- **Low Income Housing Tax Credits**
 - Usually allocated by the California Tax Credit Allocation Committee (CTCAC).



Conduit Revenue Bonds



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 on general acute care hospitals]
- Section 1720.8 [Work done on charter schools] 1/1/2021
- Section 1720.9 [Hauling of ready-mixed concrete]

Tenant Improvements Paid for by Private Landlord

Private Office Building
with 100,000 total sq. ft.

City of
Sacramento
60,000 sq. ft.

Tenant improvements done by the private landlord before the City even signs a lease.

Tenant improvements are done according to the City's specs.

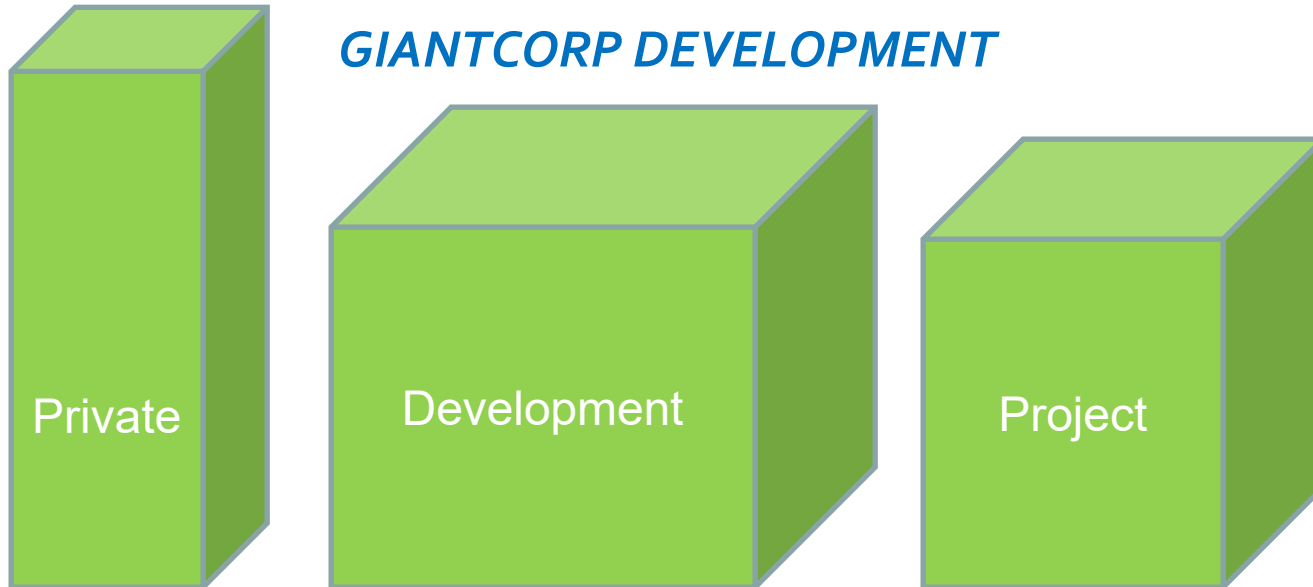
(Section 1720.2)

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.



GIANTCORP DEVELOPMENT



**\$200M Project – City requires Sidewalks and Traffic Signals as a Condition of Regulatory Approval
Cost of Sidewalk and Signals \$10M, Public Subsidy, \$8M**



Section 1720(c)(3)(A) exception

- So-called “de minimis exception” applies when a public entity provides a public subsidy to an otherwise private development project that is “de minimis” in the context of the project.

Section 1720(c)(3)(B) exception

- De minimis if it is both less than \$600,000 and less than 2 percent of the total project cost.
- For projects that consist entirely of single-family dwellings, de minimis is merely less than 2 percent of total project cost.
- Not applicable to projects advertised for bid/awarded before 7/1/21

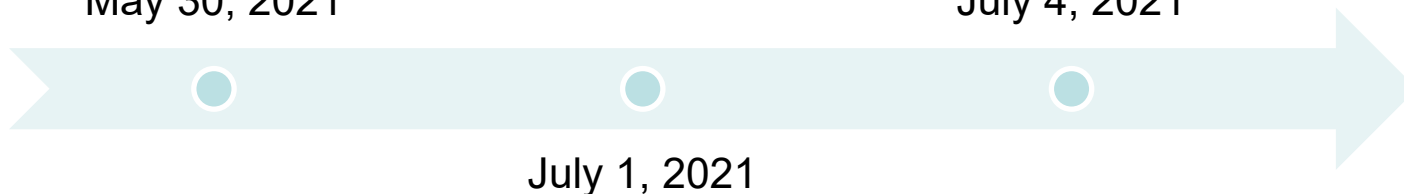
1720(c)(3) – Does the Exception Apply?

Mixed-use Project Costs \$30 million

- The State provides a grant equal to 2% of the project cost. (\$600,000)
- Project is advertised for bid on May 30, 2021
- Project is awarded on July 4, 2021.

Project Advertised
May 30, 2021

Project Awarded
July 4, 2021





Section 1720(c)(5)(e) exception

Affordable Housing Project (20-40-80)

- 1) At least 40% of the units
- 2) Made Available to Households Making No More than 80% of the Area Median Income
- 3) These restrictions are in place for at least 20 years **and**
- 4) Only form of public funds is a below market interest rate loan

1720(c)(5)(E) – Does the Exception Apply?

Affordable Housing Project has 100 units.

- 20 units for families making no more than 80% of the AMI.
- 15 units for families making no more than 60% of the AMI.
- 5 units for families making no more than 50% of the AMI.
- 60 market-rate units.
- Affordability restrictions are in place for 55 years.

Project receives LIHTCs, proceeds from conduit revenue bonds, commercial bank loans, and a 65-year loan from County for 1% interest. The public agencies are silent on PW requirements.

Miscellaneous Exceptions

- Section 1720.4 (Volunteers or Conservation Corps) (Sunsets 1/1/24)
- Section 1720.5 (Graffiti Removal Work in the City of Los Angeles Done by a Community-Based Organization Under Certain Circumstances) (Sunsets 1/1/24)
- 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.

New Law 2023

AB 1851: Hauling of materials for grading/paving/fill (Labor Code § 1720.3)

AB 1886: Street sweeping (Labor Code § 1720, subd. (a)(9))

SB 954: eCPRs (accessible to Taft-Hartley trust funds and LMCCs)

AB 2011: Affordable Housing and High Road Jobs Act of 2022 (See Gov. Code § 65400)



Recent Decisions

- *Kaanaana v. Barrett Business Services* (March 29, 2021)
- *Busker v. Wabtec Corp., et al.* (August 16, 2021)
- *Mendoza v. Fonseca* (August 16, 2021)



**Office of the Director – Legal Unit
Public Works Inquiries**

PWCoverage@dir.ca.gov

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/>