

**California Wage and Hour Issues:
What You Don't Know Will Cost You**

Randall L. Erickson, *Moderator*

**Kendra D. Miller, Theresa C. Lopez
and Rosemary K. Carson, *Panelists***

CROWELL & MORING LLP

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Sources and Coverage of Employment Laws Affecting Your Construction Company

Federal Sources:

- Federal Labor Standards Act in Title 29 of the U.S. Code
- Federal case law
- Department Of Labor opinion letters
(<http://www.dol.gov/esa/whd/opinion/flsana.htm>)

Federal Coverage:

- Construction companies with 2 or more employees and annual gross sales volume of \$500,000 or more; or
- Individual employees whose work involves interstate commerce

Sources and Coverage of Employment Laws Affecting Your Construction Company

California Sources:

- California Labor Code
- Industrial Welfare Commission Wage Orders
- Division of Labor Standard Enforcement opinion letters
(<http://www.dir.ca.gov/dlse>)

California Coverage:

- When both federal law and California law address the same practice, such as overtime pay, California employers must comply with the *stricter* law.

Wage and Hour Issues On
Private Construction Jobs

Minimum Wage and Overtime Requirements:

- Apply to non-exempt employees
- Applicable minimum wage
- Calculating overtime

Record Keeping

- What information must be maintained?
- How long must you maintain payroll records?

Compensable Time For Non-Exempt Employees:

- On-call and waiting time
- Travel time vs. commuting time
- Early arrivers and late departers

Certain Employees Are Exempt From Overtime

- Administrative Exemption
- Executive Exemption
- Professional Exemption

Avoid Liability For Misclassified Exempt Employees

Step 1: Evaluate

Step 2: Document

Step 3: Don't simply react – it could cost you!

Independent Contractors and Joint Employment

- Multi-Factor tests
- Control over manner and means of work
- Control over pay rates
- Control over hours worked
- Provision of equipment and supplies
- Right to hire and fire

Breaks and Hours Worked

- Meal breaks
- Rest breaks
- Off the clock work
- On call time
- Split shifts
- Reporting time

Business Expenses and Deductions From Wages

- Business Expenses
- Uniforms of distinct color or design
- Deductions from wages

Other Payroll Practices

- Defining the workweek
- Rounding
- Itemized wage statements
- Vacation pay
- Paychecks from out-of-state banks or subject to fees/holds

Payment At Termination Or Resignation

- Final wages due at termination.
- Final wages due within 72 hours of resignation without notice.
- Final wages due at time of resignation with 72 hour notice.
- Right to inspect payroll records and personnel files.

Putative Class Actions

- Frequent in context of wage-and-hour claims.
- Generally involve class of 40+ employees.
- Courts determine whether there were common policies or procedures.
- Certification of class allows one employee to represent entire class.

Statute of Limitations On Claims For Unpaid Wages

- Statute of limitations generally
- Could be longer where UCL claim asserted

**Wage and Hour Issues On
Public Construction Jobs**

Prevailing Wages

- construction, alteration, demolition, repair, installation, or maintenance projects
- in excess of \$1,000 (generally)
- “paid for in whole or in part”
- public funds or its equivalent

Projects Subject to Prevailing Wages:

- Generally
- Projects indirectly paid with public funds
- Certain “private” jobs

Tips for Avoiding Prevailing Wage Non-Compliance When Bidding And Starting A Public Job:

- Bid specifications
- DLSR
- Watch out for “double asterisks”
- Required job site posting
- Good faith compliance and penalties

Prevailing Wage vs. Union Contract Wage

- Prevailing wage = minimum wage not maximum wage
- Overlapping union contracts
- Expanding scopes of work
- Get advice from an “insider”

Record Keeping on a Public Job

- What information must be maintained?
- Certification / under oath
- Subject to inspection
- Burden of proof on prevailing wage claims

Bottom Line for Public Works Projects

- DIR coverage determinations
- Neither ignorance nor, for the most part, good faith, is an excuse

Other Pertinent Labor Laws

- The Immigration Reform and Control Act (“IRCA”)
- The Wage Garnishment Law
- The Employee Polygraph Protection Act
- Family Medical Leave Act, Americans with Disabilities Act, Workers’ Compensation Laws, and State Specific Laws
- Worker Adjustment and Retraining Notification Act (“WARN”)
- Occupational Safety and Health Act (“OSHA”)
- Employee Retirement Income Security Act (“ERISA”)
- Fair Credit Reporting Act (“FCRA”)

CONTACT INFORMATION

Crowell & Moring LLP
3 Park Plaza, 20th Floor
Irvine, California 92614
(949) 263-8400
www.crowell.com