Insights: Alerts

New DOL Rule Updates Manner in Which Prevailing Wages are Calculated for Federally Funded Construction Projects

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The United States Department of Labor ("DOL") finalized a rule today changing how prevailing wage rates are calculated on federal contracts subject to the Davis-Bacon Act and related regulations.

The Davis-Bacon Act covers nearly all federally funded construction projects and obliges federal contractors and their subcontractors to pay their employees the same prevailing wages and benefits as similar projects in the surrounding geographical area. Prior to 1983, a three-step process was used to identify the prevailing wage rate for each classification of workers in a geographical area:

1) Any wage rate paid to a majority of workers (over 50%).
2) If there was no wage rate paid to a majority of workers, then the wage rate earned by the greatest number of workers is the prevailing wage, provided that at least 30% of workers earn that rate.
3) If no wage rate is earned by at least 30% of workers in the classification, the weighted average rate was used.[1]

In 1983, a new rule removed the second step in the process. After the change, if there was no single wage rate paid to a majority of workers, the weighted average rate was used. Use of the weighted average rate was much more common after the 1983 update.

Among other changes, the new rule reverts to the pre-1983 process and restores the 30% rule. If a majority of workers in a classification are not paid the same wage, the DOL can set the prevailing wage rate based on the wage paid to at least 30% of workers in the classification. The change will raise wages for more than one million construction workers and thus drastically increase the costs of federally funded construction projects.

The new rule includes several more updates, including allowing for periodic updates to prevailing wage rates when out of date, including the use of government wage determinations and also for the consideration of broader geographic areas when calculating prevailing wage rates. The new rule also updates the fringe benefits determination process and includes an anti-retaliation provision protecting construction workers who raise concerns about pay practices.

The new rule becomes effective 60 days after it is formally published in the Federal Register. The DOL has published guidance concerning the update, including a chart comparing the prior rule with the new one and also answers to frequently asked questions. It has also scheduled a webinar for September 13 and September 14 to discuss the new rule.

If you have any questions about this Alert, the effects of the final rule, or avenues for the recovery of additional costs

caused by the implementation of the final rule or defenses to its applicability, please contact one of the authors or the attorney(s) in our firm with whom you are regularly in contact.

Footnotes

[1] The weighted average is calculating by dividing the total wages paid to workers in a classification by the number of workers in the classification.

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