



Meltzer, Lippe, Goldstein & Breitstone, LLP

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LABOR & EMPLOYMENT PRACTICE GROUP

Meltzer Lippe is home to a large, experienced Labor and Employment Law Practice Group.

We are an integral component to the human resource chain and the first stop before taking action that impacts the employee – employer relationship.

Exclusively representing management, our attorneys are indispensable advisors to senior executives and the HR team. While some business owners and companies rely on our experience and depth to supplement in-house general counsel expertise, others lean on us to resolve their labor disruptions or employ our tenacity in collective bargaining.

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United States Department of Labor Prevailing Wage Calculation Change

On August 8, 2023, the United States Department of Labor (“USDOL”) finalized a rule which will significantly change the way prevailing wages paid to workers on federally funded construction projects are calculated pursuant to the Davis-Bacon Act (the “Act”). The new rule, which overhauls a practice which has been in place for more than forty years, lowers the threshold for calculating whether wage and benefit rates are sufficiently widespread to be deemed the “prevailing wage,” from more than fifty percent to thirty percent. Therefore, with the implementation of the new rule, the prevailing wage rates applicable to the federally-funded construction projects will most likely increase.

Pursuant to the Act, contractors and their subcontractors working on federally funded public works projects must pay their workers the same prevailing wages and benefits as are paid on similar projects in the area. Previously, this meant the prevailing wage would be calculated to match the wage paid to more than fifty percent of the workers in a particular job classification in a particular geographic area. If no single wage reached the fifty percent threshold, the prevailing wage was calculated using a “weighted average” formula which divided total wages paid by number of workers in a particular classification to determine the average wage rate. Under the new rule, the threshold has been lowered to thirty percent, meaning if at least thirty percent of workers in a particular classification in a particular geographic area are paid a certain wage, that wage will become the new prevailing wage. If the thirty percent threshold is not met, the “weighted average” formula will be applied.

In addition to the foregoing, the new rule also expands the range of projects covered by the Act to include, among others, the installation of solar panels, wind turbines, and electric car charging stations. The rule also permits wage rates to be calculated across broader geographic areas. While calculations were previously required to be performed on a county basis, the new rule allows for review of larger geographic areas in connection with multi-county projects, and allows the use of state highway districts rather than counties in connection with highway projects. Further, data from urban counties may be used to assist in calculating prevailing wage rates in rural counties and vice-versa, a practice which was previously forbidden. Finally, the new rule adds an anti-retaliation provisions which protects construction workers who raise complaints about payment practices from adverse employment actions.

It is anticipated these changes will raise wages for more than one million construction workers, affecting more than two hundred billion dollars in construction projects each year. The new rule is currently scheduled to take effect on October 23, 2023.

Companies working on federally-funded construction projects should confirm the wages and benefits paid to their workers in connection with those projects meet the prevailing wage standards established by the new rule. Meltzer Lippe is well versed in legislative developments related to prevailing wage laws, rules, and regulations. Employers with questions relative to the foregoing are encouraged to reach out to your Meltzer Lippe advisor or contact Ana Getiashvili or Stephanie Suarez at Meltzer, Lippe, Goldstein & Breitstone, LLP.

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