



# Labor Compliance Policy Bulletin

LCPB 11-1 Labor Compliance Program Investigations

References: California Labor Code Section 1720–1815, Public Works Chapter  
California Code of Regulations 16432, Investigation Methods for Labor  
Compliance Programs  
*Labor Compliance Manual* Chapter 1, 1-302A(3a), Section 1776(g) of  
the California Labor Code  
Chapter 5, “Source Document Review Process”  
Chapter 6, “Labor Cases”

Effective Date: April 1, 2011

Approved:   
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Approval Date: April 1, 2011

## Background

As a result of its approved labor compliance program through the Department of Industrial Relations, Caltrans is responsible for enforcing on its public works contracts the prevailing wage laws found in California Labor Code Sections 1720–1815 and the related regulations found in California Code of Regulations, Title 8, Sections 16000–16439. To ensure continued approval of its labor compliance program, Caltrans must provide up-to-date enforcement standards and operational guidelines to staff engaged in program activities.

## Existing Procedure

Under its current program operations, labor compliance staff is responsible for collecting, logging, tracking, and auditing all certified payroll records received from prime contractors and subcontractors on contracts subject to prevailing wage requirements. If payroll records are delinquent or inadequate, labor compliance staff sends a monthly notice to the prime contractor identifying the deficiencies and, as necessary, withholds funds from prime contractors in the amount of 10 percent of the monthly progress estimate, a minimum of \$1,000 and a maximum of \$10,000. Upon notice of the identified discrepancies, contractors are required to provide evidence of restitution to the affected workers within district-specified timeframes. If necessary, labor compliance staff conducts audits of contractors' payroll source documents either by mail or at contractors' home offices.

The frequency of activities occurring under its program operations varies among labor compliance district offices statewide and is based on a number of factors, such as the type and duration of contracts, number of employee complaints, number of discrepancies or missing payroll records, and other factors determined during the life of the contract.

### **New Procedure**

This policy bulletin supersedes LCPB 09-4, "Labor Compliance Program Investigations." The following program requirements establish minimum criteria and common terminology for district labor compliance office investigation activities. The labor compliance program must take both prompt and reasonable action to determine if violations exist and enforcement actions, such as withholding contract funds and wage violation cases, are necessary.

### ***Definitions***

*Review*—Inspection of all contractor payroll records for 1) appropriate data elements required by California Labor Code Section 1776, 2) signed Statement of Compliance, and 3) accurate prevailing wage rates for the classifications listed.

*Confirmation*—Validation of payroll record classifications and hours compared with inspector diary entries, trust fund statements, employee interviews, canceled payroll checks, or any other reasonable method used by the labor compliance program to determine payroll accuracy.

*Audit*—An onsite or by-mail review of contractor payroll source documents including time cards, payroll journals, canceled paychecks, paycheck stubs, cash receipts, trust fund statements and corresponding canceled checks, tax documents, and any other record of payment to workers. An audit must include a written summary reflecting prevailing wage discrepancies and any estimated penalties. This summary includes use of forms CEM-2506, "Wage Violation Summary Sheet"; CEM-2508, "Source Document Audit Summary"; and CEM-2509, "Source Document Audit Checklist."

*Delinquent Certified Payroll Records*—Records not submitted by the 15th of the month for the previous month's work or records not submitted with an invoice request for payment.

*Inadequate Certified Payroll Records*—Records with missing Labor Code 1776 data elements identified during the review process.

*Discrepant Payroll Records*—Discrepancies, missing records, and underpayments of wages identified during the review or confirmation process. These include misclassification of workers, incorrect hours, straight time and overtime underpayments, employees missing from certified payroll records, unidentified deductions, fringe benefit underpayments, or other discrepancies.

*Notice of Delinquent or Inadequate Certified Payroll Records*—Letter or fax sent monthly to prime contractors providing notice of delinquent or inadequate certified payroll records.

*Other Documents or Information Required*—Addendum attached to monthly Notice of Delinquent or Inadequate Certified Payroll Records letter identifying payroll discrepancies and missing payroll documents.

*Final Notice of Delinquent or Inadequate Payroll Records*—Letter sent to the prime contractor providing final notice of delinquent or inadequate payroll records, including an estimated amount of penalties and wages and a referral to the Division of Construction Labor Compliance Unit to process a wage violation case.

*Final Notice of Payroll Record Discrepancies*—Letter sent to the prime contractor providing final notice of payroll discrepancies and including an estimated amount of wages and penalties and a referral to the Division of Construction Labor Compliance Unit to process a wage violation case.

### ***Minimum Investigation Requirements***

The following minimum guidelines are required for review, confirmation, and audit of certified payroll records received for all prime contractors, subcontractors, and owner operators on all contracts that require prevailing wages. Labor compliance staff must review *all* certified payroll records within 30 days of receipt. For each month in which payroll records are received, labor compliance staff must also conduct random confirmation for at least one worker for at least one weekly payroll within that month for prime contractors, subcontractors, and owner operators.

Labor compliance staff may use various methods to randomly choose the worker and payroll record confirmed. If they identify payroll discrepancies through review or random confirmation, or worker complaints are received, they must confirm all prior payroll records received for the affected prime contractor, subcontractor, or owner operator until no more discrepancies are identified. They must conduct an audit on payroll discrepancies identified through confirmation of payroll records. They request contractor submittal of related payroll source documents or make a site visit to the affected contractor's home office, and they must initiate the audit within 30 days of identifying payroll inadequacies. Chapter 5, "Source Document Review Process," of the *Labor Compliance Manual* provides information on scheduling and conducting a review of payroll source documents.

### ***Contractor Notices***

#### *Notice of Delinquent or Inadequate Certified Payroll Records*

When labor compliance staff has determined that delinquent or inadequate payroll records exist, they provide the prime contractor with the attached Notice of Delinquent or Inadequate Certified Payroll Records. This notice must include which records are delinquent or inadequate by contractor and week ending, the estimated amount of funds withheld or returned to the prime contractor, and any necessary explanatory comments. If the prime contractor does not comply with the notice's requirements, staff must provide the prime contractor with final written notice of delinquent or inadequate records due.

#### *Final Notice of Delinquent Certified Payroll Records*

Final written notice of delinquent certified payroll records consists of using the attached Final Notice of Delinquent Certified Payroll Records for the prime contractor or a subcontractor. For delinquent prime contractor certified payroll records, use the Final Notice of Delinquent Certified Payroll Records—Prime Contractor. Include the month for which records are delinquent, the date the prime contractor was previously notified, and the amount of funds withheld from progress estimates. Send this final notice to the prime contractor by certified or overnight mail with a return receipt for signature. If the prime contractor fails to comply, prepare a 1776 penalty case and forward it to the Division of Construction Labor Compliance Unit for delinquent prime contractor records only. For more information regarding

the 1776 process, see Chapter 1, Section 1-302A(3a), “Section 1776(g) of the California Labor Code,” of the *Labor Compliance Manual*.

For delinquent subcontractor certified payroll records, use the Final Notice of Delinquent Certified Payroll Records—Subcontractor. Include the name of the identified subcontractor, the month for which the records are delinquent, the date the Notice of Delinquent or Inadequate letter was sent to the prime contractor, and the amount of funds withheld from progress estimates. Send this final subcontractor letter to the prime contractor by certified or overnight mail and a copy to the identified subcontractor with a return receipt for signature. If the prime contractor fails to comply with the request for subcontractor payroll records, staff must schedule an onsite audit of the subcontractor’s payroll documents. For more information regarding source document audits, see Chapter 5, “Source Document Review Process,” of the *Labor Compliance Manual*. If the subcontractor fails to comply with the audit request, prepare a wage violation case assuming the subcontractor made zero payment to the workers. For more information regarding the wage violation case submittal process, see Chapter 6, “Labor Cases,” of the *Labor Compliance Manual*.

#### *Final Notice of Inadequate Certified Payroll Records*

Final written notice of inadequate certified payroll records consists of using the attached Final Notice of Inadequate Certified Payroll Records and includes the month for which records remain inadequate, the date the Notice of Delinquent or Inadequate Certified Payroll Records was provided to the prime contractor, the name of the identified subcontractor, and the estimated amount of wages and penalties due. The final inadequate letter must be sent by certified or overnight mail with a signed return receipt to the prime contractor and a copy to the applicable subcontractor. If the prime contractor fails to comply with this letter, prepare a wage violation case and forward it to the Division of Construction Labor Compliance Unit. For more information regarding the wage violation case submittal process, see Chapter 6, “Labor Cases,” of the *Labor Compliance Manual*.

#### *Other Documents or Information Required*

When labor compliance staff determines that payroll discrepancies exist, they must provide the prime contractor with the attached Other Documents or Information Required addendum to the monthly Notice of Delinquent or Inadequate Certified Payroll Records. The addendum must include a description of each discrepancy identified by prime contractor or subcontractor, compliance instructions, and other information or documents required. If, in a given month, there are no new delinquent or inadequate certified payroll records and no notices of compliance achieved for subcontractors listed on previous delinquent or inadequate notices, staff must still provide the addendum to the contractor as notice of discrepant payroll records. If the prime contractor does not comply with the requirements of the addendum, staff must provide the prime contractor with final written notice of payroll record discrepancies.

#### *Final Notice of Payroll Record Discrepancies*

Final written notice of payroll record discrepancies consists of using the attached Final Notice of Payroll Record Discrepancies and includes the month for which records have not been corrected, the date the prime contractor was provided with notice of other documents or information required, the number of affected employees, the name of the applicable subcontractor, and the estimated amount of wages and penalties due. This final discrepancy letter must be sent by certified or overnight mail with a signed return receipt to the prime contractor and a copy to the identified subcontractor. If the prime contractor

fails to comply with the letter, prepare a wage violation case and forward it to the Division of Construction Labor Compliance Unit. For more information regarding the wage violation case submittal process, see Chapter 6, “Labor Cases,” of the *Labor Compliance Manual*.

### ***Contract Withholds***

#### ***Delinquent or Inadequate Certified Payroll Records—Temporary Withholding***

For certified payroll records identified as delinquent or inadequate, staff must initiate a temporary withholding from the current estimate and notify the prime contractor using the process identified in contractor notices. Temporary withholdings may be reduced for partial compliance. Upon receipt of all delinquent or inadequate certified payroll records, the remaining temporary withholding associated with these records must be released on the next estimate.

To determine the amount of temporary withholding for delinquent or inadequate certified payroll records, consider the approximate amount of wages due and request between \$1,000 and \$10,000 or 10 percent, accordingly. For example, if a contractor is missing one payroll record for one worker during the estimate period or is missing payment information for one worker for one payroll record, staff would recommend withholding an amount closer to \$1,000 than \$10,000. If several payroll records are missing or payment information for several workers is missing, staff would recommend a temporary withholding of 10 percent or an amount closer to \$10,000. Staff must use available documents, such as inspector diaries or employee interviews, to evaluate and determine the estimated temporary amount to withhold.

District or region labor compliance staff is responsible for tracking temporary withholdings initiated and returned based on achieved compliance. In addition, Caltrans must notify its prime contractors of the resolution of delinquent or inadequate subcontractor certified payroll records. When estimated withholdings are returned, the delinquent or inadequate notice must list the affected subcontractors for whom the prime contractor has achieved compliance.

#### ***Payroll Record Discrepancies***

If the contractor does not comply with the Final Notice of Payroll Record Discrepancies letter, submit a wage violation case to the Division of Construction Labor Compliance Unit. When the labor compliance unit notifies the district of wage violation case approval, withhold the amount of wages and penalties from the next progress estimate. Provide the contractor with a Notice of Withholding of Contract Payments. For more information on withholding process, see Chapter 6, “Labor Cases,” of the *Labor Compliance Manual*.

#### ***Restitution at District Level***

In the monthly Restitution at District Level report, include contractor restitution paid to workers as a result of identified inadequate certified payroll records or payroll discrepancies. As part of its prompt enforcement actions, Caltrans must not allow repeat offenders to continue to pay restitution at the district level without pursuing a formal labor case. District labor compliance staff must continually review and evaluate the restitution listed on both district and statewide reports for information on contractors with a history of similar inadequate payroll records. Forward wage violations for contractors with subsequent instances of inadequate or discrepant records to the Division of Construction Labor Compliance Unit for approval of a wage violation case and an assessment of Labor Code 1775 penalties.

### ***Expedited Hearing***

The notice of delinquent or inadequate certified payroll records includes an option for a contractor to request an expedited hearing before the Department of Industrial Relations for a temporary withholding of contract funds only for delinquent or inadequate certified payroll records. The expedited hearing is intended to address whether the payroll records are delinquent or inadequate according to the Notice of Delinquent or Inadequate Certified Payroll Records. When requesting an expedited hearing, contractors must submit it to both Caltrans and the Department of Industrial Relations Office of the Director. The Division of Construction Labor Compliance Unit will be the Caltrans contact. After receiving notice of a hearing request, labor compliance will contact the district or region labor compliance manager to discuss the temporary withholding, assist with preparation for the expedited hearing, and represent Caltrans at the hearing as necessary. If a contractor inadvertently submits a request for an expedited hearing to the district or region labor compliance office rather than the Division of Construction Labor Compliance Unit, they must forward it to labor compliance immediately upon receipt.

For questions regarding this policy bulletin, please contact Angela Shell, Division of Construction, at [angela\\_shell@dot.ca.gov](mailto:angela_shell@dot.ca.gov) or (916) 654-3501.

- Attachments:
1. Notice of Delinquent or Inadequate Certified Payroll Records and Other Documents or Information Required Addendum
  2. Final Notice of Delinquent Certified Payroll Records—Prime Contractor (Revised 04/2011)
  3. Final Notice of Inadequate Certified Payroll Records (Revised 4/2011)
  4. Final Notice of Delinquent Certified Payroll Records—Subcontractor (Revised 04/2011)
  5. Final Notice of Payroll Record Discrepancies
  6. CEM-2506, “Labor Compliance—Wage Violation”
  7. CEM-2508, “Contractor Payroll Source Document Audit Summary”
  8. CEM-2509, “Checklist—Source Document Audit”