

RESOLUTION NO. 3637-2013

RESOLUTION OF THE FORT BRAGG CITY COUNCIL ADOPTING THE CITY OF FORT BRAGG LABOR COMPLIANCE PROGRAM (LCP)

WHEREAS, Section 1771.5 of the California Labor Code requires awarding bodies undertaking construction projects using funds from specific grants to initiate a specified labor compliance program (LCP) and to ensure that workers employed by contractors on the projects are paid according to minimum labor standards; and

WHEREAS, the City of Fort Bragg was awarded funds as a sub-grantee of Humboldt County for the Proposition 84 Integrated Regional Water Management Plan; and

WHEREAS, Proposition 84 funds are subject to State Prevailing Wages, and the Bond Act requires that recipients of these funds have a Labor Compliance Program approved by the Department of Industrial Relations;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby adopt the City of Fort Bragg Labor Compliance Program.

The above and foregoing Resolution was introduced by Councilmember Courtney, seconded by Councilmember Deitz, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 8th day of July, 2013, by the following vote:

AYES: Councilmembers Courtney, Deitz, Hammerstrom, Kraut, and Mayor Turner.
NOES: None.
ABSENT: None.
ABSTAIN: None.



DAVE TURNER,
Mayor

ATTEST:


Cynthia M. VanWormer, MMC
City Clerk

**CITY OF FORT BRAGG
LABOR COMPLIANCE PROGRAM
(LCP)**



**CITY OF FORT BRAGG
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FORT BRAGG, CA 95437
(707) 961-2824**

DECEMBER 2012

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TABLE OF CONTENTS

INTRODUCTION	1
LABOR COMPLIANCE PROGRAM COMPONENTS	2
DOCUMENTATION & FORMS REQUIRED DURING CONSTRUCTION	3
LABOR COMPLIANCE INVESTIGATION	6
GUIDELINES FOR PREVAILING WAGE	7
CONTRACTOR'S RESPONSIBILITY FOR CERTIFIED PAYROLL	10
CONTRACTOR'S RESPONSIBILITY TO APPRENTICES	11
AUDIT, INVESTIGATIVE, AND ENFORCEMENT RESPONSIBILITIES	12
CHECKLIST OF LABOR LAW REQUIREMENTS	15

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INTRODUCTION

Labor Code section 1771.5 authorizes the establishment of Labor Compliance Programs ("LCPs") to enforce prevailing wage requirements on public works construction projects. LCPs enforce prevailing wage laws on behalf of public agencies that award public works contracts (known as "awarding bodies") and serve as an alternative to the traditional enforcement role of the Division of Labor Standards Enforcement.

LCPs are required, among other things, to inform contractors about their prevailing wage obligations, monitor compliance by obtaining and reviewing certified payroll reports, investigate complaints and other suspected violations, and take appropriate enforcement action when violations are found. LCPs must be approved, may have their approval revoked, and must follow specific reporting and performance standards set forth in regulations adopted by the Director of Industrial Relations at Title 8, California Code of Regulations, sections 16421 – 16439.

Public Resources Code §75075 [Initiative Measure (Prop. 84, §1, approved Nov. 7, 2006)] requires Public Works Projects financed in any part by the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 to have an LCP.

LABOR COMPLIANCE PROGRAM COMPONENTS

Advertisement for bid/construction contract

The call for bids and the contract or purchase order shall contain language appropriate to the requirements of prevailing wage law as contained in Labor Code sections 1771, 1775, 1777.5, 1813 and 1815. The first advertisement date of the project determines the applicable prevailing wages.

Pre-job conference

This meeting is to be held by the City before commencement of the work for contractors and subcontractors with accepted bids. The City representative at the meeting will be prepared to discuss and answer questions about requirements and procedures, including record keeping, wage determinations, apprenticeship requirements and required form filing. Information on paying training fees and giving notice to use registered apprentices should also be given out at the pre-construction meeting. Labor code sections 1777.5 and 1777.6 contain the instructions for hiring apprentices and the ratios to journey persons. A checklist showing which federal and state labor law requirements were discussed shall be kept for each conference.

Payroll records

Certified payroll records must be kept by the contractor in accordance with Labor Code section 1776 and furnished to the City at times designated in the contract or within 10 days of request by the City.

Review

There must be a program for orderly review of payroll records and, if necessary, for audits to verify compliance with the statutory requirements.

Withholdings

There must be a prescribed routine for withholding penalties, forfeitures and underpayment of wages for prevailing wage violations.

Delinquency

All contracts to which prevailing wage requirements apply shall include a provision that contract payments shall not be made when payroll records are delinquent or inadequate.

Public works contract award form

The Public Works Contract Award Form (DAS 140) must be filled out by contractors and subcontractors with the appropriate apprenticeship box checked and sent to the appropriate local apprenticeship committee within five days of signing the contract. The City must have a copy of this form in the project file. A copy of this form can be printed from <http://www.dir.ca.gov/DAS/DASForm140.pdf>.

Proof of general liability and workers' compensation insurance

The City must require appropriate evidence of required insurance. The evidence should be a part of the City Clerk's files.

Documentation and forms required during construction

Payroll records

Each contractor and subcontractor is required by Labor Code section 1776 to keep and maintain certified payroll reports.

All certified payroll reports are to be submitted to the City for review during the course of the contract and furnished to the City at times designated in the contract or within 10 days of the request by the awarding body. The certified payroll reporting form (A-1-131) can be obtained from any office of the Department of Industrial Relations' Division of Labor Standards Enforcement (DLSE) or downloaded from the Web site at

<http://www.dir.ca.gov/dlse/publicWorksPayrollInstructions.htm>.

If the contractor uses his/her own form, it **must** contain the following information:

- Employee full name, address and social security number.
- Work classification.
- Amount paid per hour. If payments are made to any third party trust, funds or plans for health and welfare, pension or vacation trusts, as part of the employer's prevailing wage obligation, then those payments should be indicated on the payroll report. The basic wage rate paid per hour plus the amounts contributed per hour for benefits, including training fund contributions, must at least equal the total prevailing rate required for that classification.
- Daily regular, overtime and holiday hours and weekly totals.
- Gross/net wages paid for this project/all projects.
- Contractor's full name and address.
- Project name and location.
- Dates of the payroll.
- Certification statement signed by a person with the authority to represent the company. This statement must declare under penalty of perjury that 1) the information contained in the payroll record is true and correct and 2) the employer has complied with the requirements of Labor Code sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project.

It is important that each contractor write "final" on the last submitted payroll for the project.

The contractor must complete a non-performance report for each week in which no work is performed. All days worked on a project must be accounted for, including Saturdays, Sundays and holidays.

Statement of employer payments

The form, Statement of Employer Payments (PW 26), must be completed by each contractor and subcontractor who pays benefits to a third party trust, plan or fund for health and welfare benefits, vacation funds, or makes pension contributions. It must contain the fund or trust name, address, administrator, and amount per hour contributed and frequency of contributions for each classification of worker. Training fund contributions must be reported on this form. A copy of the form can be downloaded from <http://www.dir.ca.gov/dlse/DLSEForm-PW26.pdf>.

Payroll rate verification

The City acquires and reviews new prevailing wage rates at least twice yearly through the Department of Industrial Relations' Division of Labor Statistics and Research or from the Web site at http://www.dir.ca.gov/DLSR/statistics_research.html.

Payrolls are checked to make sure the new rates are in effect for each trade. New determinations are published in February and again in August. The rates go into effect the day after the expiration date on the determination.

Job site monitoring

Workforce documentation

The City must keep a daily record of all workers at the job site. Job classifications should be included. The City may also request that the inspector of record (IOR) include this information in the daily report form.

All prime contractors are required to submit a prime contractors daily superintendent report with workers and their classifications listed on site for the day.

Random onsite inspections

Onsite, random inspections will be conducted on a regular basis to observe, interview workers and check hourly wage and classifications.

Close-out documentation and procedures

Final payroll

The City must verify project payrolls have been submitted by each prime contractor or subcontractor. The final payroll from each must be marked "final" by the contractor.

Final release of funds

Prior to final release of the funds, the payroll monitor for the City and the contract administrator may review the log to verify all documentation has been received.

Labor compliance investigation

In addition to monitoring all certified payroll records provided by the contractors, the City investigates worker complaints of underpayment of prevailing wage rates. The major components and tasks related to this responsibility are as follows:

- Gather supporting documents from all available sources and analyze for authenticity.
- Conduct a complete certified payroll record (CPR) and/or project audit. Review CPRs for errors, inconsistencies, discrepancies, falsification, misclassification, under-reporting, and any other omissions that render the records inaccurate where needed by comparing the inspector of records daily log with all available records.
- On an as-needed basis according to the circumstances and issues that may arrive:
- Calculate back wages and penalties using the proper wage determinations and trade classifications pursuant to the Department of Industrial Relations' Division of Labor Statistics and Research (DLSR) directives and records.
- Review findings with contractor/subcontractor.
- Write a complete summary of investigation with a statement of finding and recommended action for submission to the Department of Industrial Relations' Division of Labor Standards Enforcement for approval of withholdings.
- Conduct settlement negotiations.
- Testify on behalf of the awarding body or entity in appeal hearings and in litigation.
- Attend pre-bid and job-start meetings and monitor active construction projects.
- Interview workers to validate complaints.

Guidelines for prevailing wages

Labor code section 1771 requires that workers receive 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 the general prevailing rate of per diem wages for holiday and overtime work.

Prevailing wage rate determinations

The law requires that workers on a publicly-funded project must be paid the prevailing wage of the area in which the project is located. The director of the Department of Industrial Relations establishes prevailing wage rates by various methods, and these rates are made available to the City, contractors, workers and the general public by the department's Division of Labor Statistics and Research (DLSR) or on their Web site at http://www.dir.ca.gov/DLSR/statistics_research.html.

The rates are published twice each year as prevailing wage determinations. Some trades are issued regionally (northern or southern California) and other subtrades are issued by county in which the project is located.

Each wage determination for each classification of worker will indicate the basic wage rate and fringe benefit amounts which equal the total required wage for each classification of worker for straight time and overtime work.

If you need help with a special or unknown classification, you can submit a written request to the DLSR and they will make a determination.

The contractor is obligated to pay the full prevailing rate of per diem wages. He/she, however, may take credit for amounts up to the total of fringe benefit amounts listed as prevailing in the determination. The credit may be taken only for amounts which are actual payments as defined under the Employer Payments Section CCR 16000(1)-(3). If the total of employer payments for the fringe benefits listed is less than the aggregate amount in the wage determination, the contractor must pay the difference directly to the employee. No amount of credit for payments over the aggregate amount of employer payments shall be taken as a credit towards the hourly wage required to be paid.

The determinations indicate the amount required for straight-time work, overtime, holiday, and Saturday and Sunday work. There may be special requirements for the payment of overtime and Saturday/Sunday work, and these requirements will be indicated by footnotes. These footnotes should be examined carefully.

There are separate determinations issued for apprentices on public works. These footnotes should also be examined carefully.

Each wage determination will indicate when the determination will expire and whether the rate will increase during the project. A single asterisk after the expiration date indicates the rate is good for the life of the project.

A double asterisk after the expiration date indicates the rate for work performed after the expiration date has been determined. If work extends past that date, the new rate must be paid and should be incorporated in contracts entered into at the time of bid. Contact DLSR to obtain any predetermined increases.

Overtime

Work performed by employees on public works in excess of eight hours per day and 40 hours per week must be paid for at not less than one-and-one-half times the basic rate of pay (Labor Code section 1815). Each wage determination will specify the wage rate required for overtime pay. Failure to pay the required rate will subject the contractor to a penalty of \$25 per worker per violation (Labor Code section 1813).

Holidays

Work performed on certain holidays may require the payment of overtime or double time. A list of designated holidays for each craft or classification of labor can be found on the Division of Labor Statistics and Research (DLSR) Web site at http://www.dir.ca.gov/DLSR/statistics_research.html. Each wage determination will specify the appropriate wage rate for holiday work.

Saturday/Sunday work

Most classifications of workers require the payment of overtime or double time for work performed on Saturdays and Sundays. Each wage determination will specify the required wage rate for this work. Pay attention to any footnotes that may contain exceptions or special requirements.

Travel/subsistence payments

Because the law requires that workers receive the general prevailing rate of per diem as part of the contractor's prevailing wage obligation, there may be a requirement to pay travel/subsistence. Many classifications require the payment of mileage or subsistence for traveling certain distances. These requirements are contained in the collective bargaining agreement on file with DLSR for each craft/classification of worker. You can download those requirements from the DLSR Web site at http://www.dir.ca.gov/DLSR/statistics_research.html.

Owner, operator, partners

The law prescribes that workers on a public works project receive prevailing wages. Owners, partners, owner-operators or officers of corporations performing labor on a prevailing wage project must be paid prevailing wage rates.

Contractor's responsibility for certified payroll

The City must make sure contractors on the project are aware of their responsibilities to pay prevailing wages. This is done through the language in the general conditions of the bidding documents, the contract language and the pre-job meeting.

A partial list of the requirements follows:

- The contract executed between the prime contractor and the subcontractor for the performance of work on the public works project contains provisions of Labor Code sections 1771, 1775, 1777.5, 1813 and 1815.
- The prime contractor must monitor the specified determination rate of hourly wages paid by the subcontractor to employees by reviewing the payroll records of each subcontractor.
- Upon becoming aware of the failure of any subcontractor to pay workers the specified per diem wages, the prime contractor must halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project to cover the wage deficiency and;
- Before making final payment to the subcontractor for work performed on the public works project, the prime contractor must obtain an affidavit, signed under penalty of perjury, from the subcontractor, stating that he/she has paid the specified, determined prevailing wage rate of per hour wages to employees.
- The contractor must complete a non-performance report form when required. This form is completed when no work is performed on the project for a period of time. On the form the contractor states there was no payroll for a specific time period. All days for a project must be accounted for, including Saturdays, Sundays and holidays.
- Complete the Statement of Employer Payments. This form can be downloaded from <http://www.dir.ca.gov/dlse/DLSEForm-PW26.pdf>. It must be submitted at the time of bid acceptance. The prime contractor must inform the awarding body of any fringe benefit amounts paid on behalf of workers.
- In February and in August of each year during the project, verify changes in wage rates for the trade or classification used on the project. Send in a new statement of employer payments reflecting the changes in wages and/or fringes or training fees. It should be dated accordingly.

Contractor's Responsibilities to Apprentices

In addition to the items above, there are additional requirements of the contractor regarding the use of apprentices (sections 1777.5 and 1777.6 of the California Labor Code):

- Notify the local apprenticeship committee of the award of a contract by submitting a copy of a Division of Apprenticeship Standards (DAS 140) form for the trades involved. A copy of this form can be printed from <http://www.dir.ca.gov/DAS/DASForm140.pdf>.
- Request the dispatch of apprentices.
- Only employ apprentices who have a written apprenticeship agreement registered with the state, (DAS). Apprentices must be employed according to the ratio set by the apprenticeship program standards, but not less than a 1-to-5 hour ratio, measured against the number of journey person hours worked by the contractor for that particular trade. This rule applies to all apprentice-able trades, in accordance with the rules and regulation of the California Apprenticeship Council (CAC).
- Pay the apprentices the correct wages and benefits.
- Pay to either an apprenticeship committee approved by the DAS or the CAC the apprenticeship fees listed on the wage rate determination for each hour of work for all journey persons and apprentices of that craft on the project.

Penalties

Failure to pay prevailing wages to every worker on the project may result in the contractor being prohibited from bidding on public works projects for three years. In addition, wages not paid become forfeitures and can be collected from the contractor. Fines of up to \$50 per day can also be assessed. The penalties are severe and range from misdemeanors to felonies (Labor Code sections 1777.5-1777). Although the fundamental obligation to pay prevailing wage rates rests with the contractor, ensuring payment also is important to the City.

Failure to pay required overtime wages will result in the assessment of \$25 per worker per violation.

It is against the law for an employer or other person to accept any compensation from workers on a prevailing wage project. Anyone found guilty of accepting fees, bribes or any other form of compensation or kickbacks from a worker on a prevailing wage project is guilty of a felony. Any person or company that attempts to charge a fee for registration or information about public works employment is guilty of a misdemeanor.

Audit, investigative and enforcement responsibilities

Introduction

Audit, investigative and enforcement responsibilities are the most challenging aspects of operating a labor compliance program. If these responsibilities are approached objectively and consistently, however, the challenges are far less daunting.

Audits should be conducted on a random or as-needed basis. An audit is the comparison of certified payroll records (CPRs) to records or documents maintained independent of CPRs or those records used to gather the information contained in CPRs. These are usually referred to as source documents and include but are not limited to front and back copies of cancelled checks, time cards, copies of pay check stubs, payroll registers, personnel sign in sheets, daily logs and any other document which authenticates or corroborates that which has been reported.

Investigative activities are the duties and tasks engaged in to verify the payment of prevailing wage rates upon receipt of a complaint or in conducting an audit of records. Prior to filing a Notice of Withholding of Contract Payments (see Appendix 2), an awarding body or third party entity must demonstrate a thorough and objective investigation took place.

Consequently, all activities aimed at verifying a complaint or the accuracy of records must be documented and maintained in the event of an appeal or litigation.

Enforcement responsibility is extended to agencies by the Division of Labor Standards Enforcement (DLSE) that operate an LCP according to Labor Code section 1771.5. Enforcement encompasses activities that result in compliance with requirements to pay prevailing wage rates on public works projects. The most common aspect of enforcement is the assessment of penalties and the withholding of back wages owed to workers. It is of utmost importance to develop a fair and objective philosophy and criteria for enforcement and then consistently apply this criterion to each case. The most effective criteria for enforcement are simple written statements with the consequences of the failure to comply clearly stated.

Below is an outline of critical steps for document collection, which should be routinely applied in every prevailing wage violation case and particularly for those cases that lead to the filing of a Notice of Withholding of Contract Payments (see Appendix 2).

Case preparation and documentation guidelines

- **Copy of worker complaint**
 - Notes from worker interview.
 - Calendar of dates and hours worked.
 - Copies of check stubs or other form of proof of underpayment.
 - Document all attempts to authenticate the complaint.
 - Other supporting documentation where necessary.
- **Copy of all correspondence to contractor**
 - Job-start meeting checklist.
 - Initial notification of complaint.
 - Invitation to review the preliminary findings.
 - Request for additional documentation such as canceled checks, check stubs, time cards, cash receipts, ledgers, etc.
 - Log of all calls to contractor with notes about the content of discussion.
- **Certified payroll records**
 - For the period of time covered in the complaint and the corresponding audit.
- **Inspector's daily log**
 - Or another detailed record of work performed by date and the numbers of workers on project.
 - For the period of time covered in the complaint.
- **Correct prevailing wage determination and applicable increases**
 - For each classification appearing in the audit.
- **Scope of work for trade classifications used**
 - From Division Labor Statistics and Research (DLSR).
- **Tabulation of bids**
 - Advertisement date(s).
 - List of subcontractors.
 - Contract award amounts.
 - Description of project.
- **Notice to proceed**
 - Official project start and completion dates.
 - Duration of project.
- **Notice of completion (if applicable)**
 - With date stamp showing when it was recorded.
 - Any withholding or action must take place within 180 days from the date of recording.
 - Another 180 days is granted beyond this date if funds are still available in contract.
- **Surety company information**
 - The surety is entitled to receive a copy of any action taken or Notice of Withholding of Contract Payments filed.
- **Contractor's previous record of violations (if applicable)**
 - Formal actions and withholdings.
 - Informal actions and withholdings.

- The Notice of Withholding of Contract Payments (if applicable)
 - Always attach a copy of the audit spreadsheet.
- Release of Notice of Withholding of Contract Payments (if applicable)
 - Returns withheld funds.
 - Filed when a case is settled in whole or part.
 - Filed when it is determined the violation did not occur.
- • Memo to file
 - Explains circumstances and reasons for case closure without action.
 - Provides explanation and reasons for settlement and spells any agreements reached with contractor or other parties.

**CHECKLIST OF LABOR LAW REQUIREMENTS
CITY LABOR COMPLIANCE PROGRAM**

(Pursuant to CCR 16430)

The federal and state labor law requirements applicable to the contract are composed of but not limited to the following:

1. Payment of prevailing wage rates

The contractor to whom the contract is awarded and its subcontractors hired for the public works project are required to pay the specified general prevailing wage rates to all workers employed in the execution of the contract. The contractor's duty to pay prevailing wages under Labor Code section 1770 et seq., should the project exceed the exemption amounts.

The contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view.

2. Apprentices

It is the duty of the contractor and subcontractors to employ registered apprentices on the public works project under Labor Code section 1777.5.

3. Penalties

There are penalties required for contractor or subcontractor failure to pay prevailing wages (for nonexempt projects) and for failure to employ apprentices including forfeitures and debarment under Labor Code sections 1775, 1777.7 and 1813.

4. Certified payroll records

Contractors and subcontractors are required to keep accurate payroll records showing the name, address, social security number and work classification of each employee and owner performing work, the straight time and overtime hours worked each day and each week, the fringe benefits, and the actual per diem wage paid to each owner, journeyperson, apprentice worker or other employee hired for the public works project under Labor Code section 1776

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor or subcontractor or shall be furnished to any employee, or his/her authorized representative on request, according to Labor Code section 1776.

Each contractor and subcontractor shall submit its certified payroll record to the City on a weekly basis. If there was no work performed during a given week, the certified payroll record shall be annotated: "no work" for that week.

There are penalties required for contractor/subcontractor's failure to maintain and submit copies of certified payroll records on request under Labor Code section 1776 (g).

5. Nondiscrimination in employment

Employment discrimination is prohibited under Labor Code sections 1735 and 1777.6, the government code, the public contracts code, and Title VII of the Civil Rights Act of 1964, as amended. All contractors and subcontractors are required to implement equal employment opportunity practices for women and minorities as delineated below:

- a. Equal employment poster: The equal employment poster shall be posted at the job site in a conspicuous place, available to employees and applicants for employment and shall remain posted for the duration of the project.

6. Kickbacks prohibited

Contractors and subcontractors are prohibited from accepting, taking wages illegally or extracting "kickback" from employee wages under Labor Code section 1778.

7. Acceptance of fees prohibited

Contractors or subcontractors are prohibited from accepting fees for registering any person for public work under Labor Code section 1779 or for filling work orders on public works contracts pursuant to Labor Code section 1780.

8. Listing of subcontractors

All prime contractors are required to list properly all subcontractors hired to perform work on the public works projects covering more than one-half of 1 percent, according to government code section 4100 et seq.

9. Proper licensing

Contractors are required to be licensed properly and to require that all subcontractors be properly licensed. Penalties are required for employing workers while unlicensed under Labor Code section 1021 and under the California Contractor License Law found at business and professions code section 7000 et seq.

10. Unfair competition prohibited

Contractors and subcontractors are prohibited from engaging in unfair competition as specified under business and professions code sections 17200 to 17208.

11. Workers' compensation insurance

Labor code section 1861 requires contractors and subcontractors be insured properly for workers' compensation.

12. OSHA

Contractors and subcontractors are required to abide by the occupational, safety and health laws and regulations that apply to the particular construction project.