

Memorandum

*Making Conservation
a California Way of Life.*

To: DAVID PRIZMICH
Division Chief
Division of Procurements and Contracts

Date: April 8, 2019

From: PAT MALONEY *K. Olson for Pat Maloney*
Program Chief
Labor Compliance

Subject: **PREVAILING WAGE CERTIFIED PAYROLL REPORTING AND OVERTIME REQUIREMENTS**

Caltrans Division of Procurement and Contracts (DPAC) requested clarification of the weekly certified payroll (CPR) reporting requirements and overtime payments, as applied to prevailing wage requirements.

The information provided is applicable solely for the enforcement of prevailing wage requirements under the Public Works Chapter of Labor Code.

When a worker performs duties that fall within the definition of public works pursuant to Labor Code Sections 1720 and 1771, the contractor is required to comply with all requirements of the Public Works Chapter of Labor Code Sections 1720 through 1815, which include payroll reporting and overtime requirements.

The following definitions are used for determining hours reported and overtime payment requirements on public works projects.

California Code of Regulations, Title 8, Section 11160(2)(J) defines “hours worked” as:

“Hours worked” means the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

Government Code 6806 defines “day” as:

A day is the period of time between any midnight and the midnight following.

The Public Works Chapter of the California Labor Code Section 1776(a) sets the requirements for reporting of hours worked:

Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

Overtime requirements are found in the California Labor Code Sections 1810 through 1815:

Section 1810: Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

Section 1811: The time of service of any worker employed upon public work is limited and restricted to eight hours **during any one calendar day**, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

Section 1812: Every contractor and subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work.

Section 1815: Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1¹/₂ times the basic rate of pay.

The California Department of Industrial Relations (DIR) provides the clarification on overtime and enforcement of certified payroll reporting in its *Division of Labor Standards Enforcement (DLSE) Public Works Manual*. The overtime requirements and enforcement can be found in sections 3.2.7, 3.2.8, and 4.1.6 through 4.1.9. The DLSE *Public Works Manual* is available at: <https://www.dir.ca.gov/dlse/PWManualCombined.pdf>

Shift provisions provide guidance to determine shift rates based on the hours which the shift took place. DIR provides direction on how shift provisions are to be reviewed and enforced on public works projects, including direction on how to calculate overtime payment for the hours worked. The direction DIR gives specifically states:

Note: The shift provisions provided in the following pages provide guidance on the work hours that are applicable to each shift. Shift differential pay is required and will be enforced during each applicable shift where shift differential pay is in the determinations. Any shift provision restricting the work hours for a particular shift for a type of work will not be enforced on public works. However, if work is performed during hours typically associated with a 2nd or 3rd shift the appropriate shift rate of pay is required. Shift differential pay shall not apply to work during traditional shift hour (swing or grave) if the determination includes a footnote that indicates

that the non-shift rate may be paid for a special single shift. Please note the exemptions in California Code of Regulations Section 16200 (a)(3)(F) do not waive the shift differential pay. These regulatory exemptions only apply to overtime pay. **Overtime shall be required in accordance with the determination and Labor Code Section 1810 through 1815.**

Essentially, when reviewing the requirements as they apply to the enforcement of prevailing wage requirements on public works projects, the following is required:

- In accordance with Labor Code Section 1776(a), CPRs should show “straight time and overtime hours worked each day and week.” Using the definitions provided, the CPR should reflect the hours worked under the control of the employer each day from midnight to midnight. For example: An employee’s work shift on the job site is 8:00 p.m. to 4:00 a.m. beginning Monday night and ending Tuesday morning. The submitted CPR should reflect 4 hours worked on Monday and 4 hours worked on Tuesday.
- In accordance with Labor Code Section 1810, “eight hours labor constitutes a legal day’s work.” Using the definition of hours worked provided, if an employee is under the control of the employer, overtime is required for any work performed more than 8 hours. For example: if an employee’s work hours are from 8:00 p.m. to 8:00 a.m., the employee was under the control of the employer for 12 hours. As such, the employee would be entitled to overtime compensation at the rate specified in the DIR determination for the craft/classification.
- In accordance with Labor Code Section 1811, “any worker employed upon public work is limited and restricted to eight hours during any one calendar day.” Using the definitions provided, a day is a 24-hour period from midnight to midnight. This means overtime payment is required for employees who perform work in excess of 8 hours during a calendar day. For example, an employee works from 2:00 a.m. to 6:00 a.m. and returns home and is no longer under control of the employer, then reports back to the job site at 6:00 p.m. and works until midnight. The total hours in that calendar day are 10 hours. Overtime payment would be required for 2 hours that calendar day of work.

Prevailing wage requirements are what a contractor must pay employees for performing work on public works projects. The amount a contractor may charge an awarding body for services rendered are dictated by separate regulations and contractual provisions, and those payments are not under Labor Compliance’s purview. However, if a contract’s charging costs are based on hourly labor costs, including payment to employees, CPRs may be used by contract managers to confirm the invoice charging is consistent and meets the agreed-upon terms under the contract provisions.

c: Esther Morris, Assistant Division Chief, Division of Procurement and Contracts, Caltrans