



Brian Franklin <brian.franklin@edcgov.us>

FW: Language re Subcontractor

1 message

Troy Kockrow <Troy@steelheadconstructors.com>

Fri, Jan 17, 2020 at 10:58 AM

To: Brian Franklin <brian.franklin@edcgov.us>, Mike Fromm <michael.fromm@edcgov.us>

Cc: Kirsten Ramstrom <Kirsten@steelheadconstructors.com>, "Kevin M. Ramstrom" <Kevin@steelheadconstructors.com>, 154 Bassi Rd <154BassiRd@steelheadconstructors.com>

Gentlemen,

Please see below/attached. This information was obtained from legal counsel.

As discussed, we are processing Willis Rebar's November Pay Estimate (under a joint check agreement with Farwest Steel) for the full amount due as paid by El Dorado County, less 5% retention. An additional \$15,502 is being withheld to cover the approximated cost of Willis owed fringe benefits, which we have not received confirmation of payment by Willis, for October & November, 2019.

Please let me know if you have any questions.

Regards,

Troy Kockrow | Project Manager

Steelhead Constructors, Inc.

P.O. Box 997 – Palo Cedro, CA 96073

Office: 530-226-6400

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troy@steelheadconstructors.comwww.steelheadconstructors.com**From:** A. Robert Rosin <arrosin@alr-law.com>**Sent:** Friday, January 17, 2020 10:31 AM**To:** Troy Kockrow <Troy@steelheadconstructors.com>**Subject:** RE: Language re Subcontractor

Troy, here is a detailed explanation of the grounds for withholding. Regards, Bob Rosin

Labor Code Provisions Authorizing Withholding

Labor Code Section 1771 requires that “all workers employed on public works” be paid at not less than the “general prevailing rate of per diem wages.” Labor Code Section 1772 provides that workers employed “by contractors or subcontractors in the execution of any contract for public work” are deemed to be employed on public works. Under Labor Code Section 1773.1, the prevailing wage rate is calculated based upon a base wage rate together with other categories of payments made by the employer, including:

- (1) Health and welfare.
- (2) Pension.
- (3) Vacation.
- (4) Travel.
- (5) Subsistence.
- (6) Apprenticeship or other training programs authorized by Section 3093, to the extent that the cost of training is reasonably related to the amount of the contributions.
- (7) Worker protection and assistance programs or committees ... to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.
- (8) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are made pursuant to a collective bargaining agreement to which the employer is obligated.
- (9) Other purposes similar to those specified in paragraphs (1) to (5), inclusive; or other purposes similar to those specified in paragraphs (6) to (8), inclusive, if the payments are made pursuant to a collective bargaining agreement to which the employer is obligated.

Thus, failure to pay health, welfare, vacation, apprenticeship, or other benefit payments constitutes a violation of the prevailing wage laws. Under the Labor Code, both the general contractor and the subcontractor who fails to pay amounts owed as prevailing wages can be held liable for the unpaid wages, together with penalties. Labor Code §§ 1743 & 1775.

Labor Code Section 1775 provides a safe harbor for general contractors against penalties imposed because a subcontractor has not paid all of the amounts required under the prevailing wage laws. To avoid liability for penalties, however, the general contractor must withhold payments from the subcontractor in question. Specifically, Section 1775 provides that if a “worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision ... unless the prime contractor fails to comply with all of the following requirements:

... (3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, **including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.**

A general contractor therefore has a duty to withhold payment from a subcontractor upon becoming aware of a subcontractor’s failure to pay health, welfare, vacation, apprenticeship, or other benefit payments.

Authorization to Withhold Under Prompt Payment Laws

Under California’s prompt payment laws, payment may be withheld when “the sufficiency of the subcontractor’s construction-related performance is the subject of a good faith dispute.” *United Riggers &*

Erectors, Inc. v. Coast Iron & Steel Co., 4 Cal. 5th 1082, 1097 (2018). In this case, there is a good faith dispute because Willis Rebar has materially breached its obligations under the prevailing wage laws and under its subcontract, which requires compliance with all laws (See Subcontract, ¶ I.)

Authorization to Withhold Under Subcontract Provisions

Willis Rebar's subcontract requires that it "provide waivers and releases for itself and its subcontractors and suppliers regardless of tier, **as well as other evidence of payment** to such persons, in a form satisfactory to Contractor, including without limitation, payroll affidavits, receipts, vouchers or other documentation, **demonstrating that Subcontractor has paid for all labor**, equipment, materials, services, taxes **or other charges** in any way relating to Subcontractor's Work and obligations in connection with the Project." (See Subcontract, ¶ C; emphasis supplied.)

In addition, Willis Rebar's subcontract expressly authorizes Steelhead to withhold payment when benefit payments have not been made. Section C of the subcontract provides:

As a cumulative remedy, Contractor may withhold and/or retroactively nullify all or part of any payment to the extent necessary to protect Contractor from: ... (2) **claims that have been asserted** or are reasonably likely to be asserted; (3) **failure of Subcontractor to make payments** to creditors; (4) damage to Contractor or another person; (5) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with laws or requirements; and (6) any other ground for withholding payment allowed by law, this Agreement or the Contract Documents. Contractor may in addition withhold from any payment or retention up to 150% of the amount of any disputed item ...

From: Troy Kockrow <Troy@steelheadconstructors.com>
Sent: Friday, January 17, 2020 9:55 AM
To: A. Robert Rosin <arrosin@alr-law.com>
Subject: RE: Language re Subcontractor

Good Morning,

See attached subcontract as requested. Thank you for your help with this.

Regards,

Troy Kockrow | Project Manager

Steelhead Constructors, Inc.

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From: A. Robert Rosin <arrosin@alr-law.com>
Sent: Friday, January 17, 2020 9:51 AM
To: Troy Kockrow <Troy@steelheadconstructors.com>
Subject: Language re Subcontractor

Good morning, Troy. My contact information is listed below. As we discussed, please send me a copy of the subcontract, and I'll prepare a short statement you can provide to the project owner. Regards, Bob Rosin

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Summary of Grounds for Withholding for Failure to Pay Benefits (00236364x9F7BE).docx
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DIVISION 2. EMPLOYMENT REGULATION AND SUPERVISION [200 - 2699.5] (Division 2 enacted by Stats. 1937, Ch. 90.)

PART 7. PUBLIC WORKS AND PUBLIC AGENCIES [1720 - 1964] (Part 7 enacted by Stats. 1937, Ch. 90.)

CHAPTER 1. Public Works [1720 - 1861] (Chapter 1 enacted by Stats. 1937, Ch. 90.)

ARTICLE 2. Wages [1770 - 1784] (Article 2 enacted by Stats. 1937, Ch. 90.)

1770. The Director of the Department of Industrial Relations shall determine the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773, and the director's determination in the matter shall be final except as provided in Section 1773.4. Nothing in this article, however, shall prohibit the payment of more than the general prevailing rate of wages to any worker employed on public work. This chapter does not permit any overtime work in violation of Article 3.

(Amended by Stats. 2017, Ch. 28, Sec. 17. (SB 96) Effective June 27, 2017.)

1771. Except for public works projects of one thousand dollars (\$1,000) or less, **not less than 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 not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

(Amended by Stats. 1981, Ch. 449, Sec. 1.)

1771.1. (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the "awarding body" is the Chancellor of the California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program, then in addition to the requirements described in subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program, then in addition to the requirements described in subdivision (b) of Section 1771.5, the payroll records shall be reviewed on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(d) (1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2) (A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board shall not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Because the reasonable costs directly related to monitoring and enforcing compliance with the prevailing wage requirements are necessary oversight activities, integral to the cost of construction of the public works projects, notwithstanding Section 17070.63 of the Education Code, the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code for the costs of a new construction or modernization project shall include the state's share of the reasonable and directly related costs of the labor compliance program used to monitor and enforce compliance with prevailing wage requirements.

(f) This section shall only apply to contracts awarded prior to January 1, 2012.

(Amended by Stats. 2014, Ch. 28, Sec. 68. (SB 854) Effective June 20, 2014.)

1772. Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

(Amended by Stats. 1992, Ch. 1342, Sec. 7. Effective January 1, 1993.)

1773. The body awarding any contract for public work, or otherwise undertaking any public work, shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the contract from the Director of Industrial Relations. The holidays upon which those rates shall be paid need not be specified by the awarding body, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

In determining the rates, the Director of Industrial Relations shall ascertain and consider the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works, within the locality and in the nearest labor market area. Where the rates do not constitute the rates actually prevailing in the locality, the director shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized collective bargaining representatives for the particular craft, classification, or type of work involved. The rate fixed for each craft, classification, or type of work shall be not less than the prevailing rate paid in the craft, classification, or type of work.

If the director determines that the rate of prevailing wage for any craft, classification, or type of worker is the rate established by a collective bargaining agreement, the director may adopt that rate by reference as provided for in the collective bargaining agreement and that determination shall be effective for the life of the agreement or until the director determines that another rate should be adopted.

(Amended by Stats. 1999, Ch. 30, Sec. 1. Effective January 1, 2000.)

1773.1. (a) Per diem wages, as the term is used in this chapter or in any other statute applicable to public works, includes employer payments for the following:

- (1) Health and welfare.
 - (2) Pension.
 - (3) Vacation.
 - (4) Travel.
 - (5) Subsistence.
 - (6) Apprenticeship or other training programs authorized by Section 3093, to the extent that the cost of training is reasonably related to the amount of the contributions.
 - (7) Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.
 - (8) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are made pursuant to a collective bargaining agreement to which the employer is obligated.
 - (9) Other purposes similar to those specified in paragraphs (1) to (5), inclusive; or other purposes similar to those specified in paragraphs (6) to (8), inclusive, if the payments are made pursuant to a collective bargaining agreement to which the employer is obligated.
- (b) Employer payments include all of the following:
- (1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.
 - (2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.
 - (3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.
- (c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, credit shall not be granted for benefits required to be provided by other state or federal law, for payments made to monitor and enforce laws related to public works if those payments are not made to a program or committee established under the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), or for payments for industry advancement and collective bargaining agreement administrative fees if those payments are not made pursuant to a collective bargaining agreement to which the employer is obligated. Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing. However, an increased employer payment contribution that results in a lower hourly straight time or overtime wage shall not be considered a violation of the applicable prevailing wage determination if all of the following conditions are met:
- (1) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.
 - (2) The basic hourly rate and increased employer payment are no less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the director's general prevailing wage determination.
 - (3) The employer payment contribution is irrevocable unless made in error.
- (d) An employer may take credit for an employer payment specified in subdivision (b), even if contributions are not made, or costs are not paid, during the same pay period for which credit is taken, if the employer regularly makes the contributions, or regularly pays the costs, for the plan, fund, or program on no less than a quarterly basis.
- (e) The credit for employer payments shall be computed on an annualized basis when the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, unless one or more of the following occur:
- (1) The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.
 - (2) The higher rate of payments is required by a project labor agreement.

(3) The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.

(4) The director determines that annualization would not serve the purposes of this chapter.

(f) (1) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type of worker needed to execute contracts shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification, or type of work involved. The collective bargaining agreements shall be filed after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever they are filed 30 days prior to the call for bids. If the collective bargaining agreement has not been formalized, a typescript of the final draft may be filed temporarily, accompanied by a statement under penalty of perjury as to its effective date.

(2) When a copy of the collective bargaining agreement has previously been filed, fully executed copies of all modifications and extensions of the agreement that affect per diem wages or holidays shall be filed.

(3) The failure to comply with filing requirements of this subdivision shall not be grounds for setting aside a prevailing wage determination if the information taken into consideration is correct.

(Amended by Stats. 2016, Ch. 231, Sec. 1. (SB 954) Effective January 1, 2017.)

1773.2. The body awarding any contract for public work, or otherwise undertaking any public work, shall specify in the call for bids for the contract, and in the bid specifications and in the contract itself, what the general rate of per diem wages is for each craft, classification, or type of worker needed to execute the contract.

In lieu of specifying the rate of wages in the call for bids, and in the bid specifications and in the contract itself, the awarding body may, in the call for bids, bid specifications, and contract, include a statement that copies of the prevailing rate of per diem wages are on file at its principal office, which shall be made available to any interested party on request. The awarding body shall also cause a copy of the determination of the director of the prevailing rate of per diem wages to be posted at each job site.

(Amended by Stats. 1992, Ch. 1342, Sec. 8. Effective January 1, 1993.)

1773.3. (a) (1) An awarding body shall provide notice to the Department of Industrial Relations of any public works contract subject to the requirements of this chapter, within 30 days of the award, but in no event later than the first day in which a contractor has workers employed upon the public work.

(2) Notwithstanding paragraph (1) and subject to the discretion of the Labor Commissioner, an awarding body shall provide notice to the Department of Industrial Relations of any public works contract awarded pursuant to Section 10122, 20113, 20654, or 22050 of the Public Contract Code that is subject to the requirements of this chapter within 30 days after the award of the contract, but in no event later than the last day in which a contractor has workers employed upon the public work.

(3) The notice shall be transmitted electronically in a format specified by the department and shall include the name and registration number issued by the Department of Industrial Relations pursuant to Section 1725.5 of the contractor, the name and registration number issued by the Department of Industrial Relations pursuant to Section 1725.5 of any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, jobsite location, and any additional information the department specifies that aids in the administration and enforcement of this chapter.

(b) In lieu of responding to any specific request for contract award information, the department may make the information provided by awarding bodies pursuant to this section available for public review on its Internet Web site.

(c) (1) An awarding body that fails to provide the notice required by subdivision (a) or that enters into a contract with or permits an unregistered contractor or subcontractor to engage in the performance of any public work in violation of the requirements of Section 1771.1, shall, in addition to any other sanction or penalty authorized by law, be subject to a civil penalty of one hundred dollars (\$100) for each day in violation of either requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000) for each project.

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(d) An awarding body shall withhold final payment due to the contractor until at least 30 days after all of the required information in paragraph (2) of subdivision (a) has been submitted, including, but not limited to, providing a complete list of all subcontractors. If an awarding body makes a final payment to a contractor after that time and an unregistered contractor or subcontractor is found to have worked on the project, the awarding body shall be subject to a civil penalty assessed by the Labor Commissioner of one hundred dollars (\$100) for each full calendar day of noncompliance, for a period of up to 100 days, for each unregistered contractor or subcontractor.

employer payments included in per diem wages pursuant to Section 1773.1, a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change to either the basic hourly wage or other employer payments included in per diem wages for up to 60 days following the director's publication of the specific allocation of the predetermined change.

(3) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but the allocation of that predetermined change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section 1773.1 is subsequently altered by the parties to a collective bargaining agreement described in paragraph (1), a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change in accordance with either the originally published allocation or the allocation as altered in the collective bargaining agreement.

(Amended by Stats. 2007, Ch. 482, Sec. 2. Effective January 1, 2008.)

1773.11. (a) Notwithstanding any other provision of law and except as otherwise provided by this section, if the state or a political subdivision thereof agrees by contract with a private entity that the private entity's employees receive, in performing that contract, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, the director shall, upon a request by the state or the political subdivision, do both of the following:

(1) Determine, as otherwise provided by law, the wage rates for each craft, classification, or type of worker that are needed to execute the contract.

(2) Provide these wage rates to the state or political subdivision that requests them.

(b) This section does not apply to a contract for a public work, as defined in this chapter.

(c) The director shall determine and provide the wage rates described in this section in the order in which the requests for these wage rates were received and regardless of the calendar year in which they were received. If there are more than 20 pending requests in a calendar year, the director shall respond only to the first 20 requests in the order in which they were received. If the director determines that funding is available in any calendar year to determine and provide these wage rates in response to more than 20 requests, the director shall respond to these requests in a manner consistent with this subdivision.

(Added by Stats. 2003, Ch. 343, Sec. 1. Effective January 1, 2004.)

1774. The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

(Enacted by Stats. 1937, Ch. 90.)

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and Sections 1771, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

(Amended by Stats. 2011, Ch. 677, Sec. 1. (AB 551) Effective January 1, 2012.)

1776. (a) 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. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the