



Labor Compliance Policy Bulletin

LCPB 09-3 Prevailing Wage Complaints

References: California Labor Code Chapter 1, "Public Works," §1771.5, "Labor compliance program as exception to §1771; Requirements; Revocation"
Labor Compliance Manual Chapter 1, Section 2, "Office Procedures"
Chapter 2, Section 1, "Payroll Analysis"
Chapter 5, Section 1, "Source Document Review Process"
California Code of Regulations CCR 16434 (b) and (e), "Duties of Labor Compliance Program"
Code of Federal Regulations 29 CFR 5.6, 29 CFR 5.7 (b)

Effective Date: September 23, 2009

Approved:

A handwritten signature in blue ink that reads 'Angela Shell'.

ANGELA SHELL

Chief

Labor Compliance Program

Approval Date: September 22, 2009

Background

The Department of Transportation's (Caltrans) approved Labor Compliance Program (LCP) is responsible for recognizing and investigating potential violations of California Labor Code (Labor Code) sections 1720-1815. Similarly, as a condition of receiving federal-aid funding, Caltrans has an obligation to investigate alleged complaints of the Davis-Bacon Related Acts, the Contract Work Hours and Safety Standards Act, and the Copeland "Anti-kickback" Act on its projects. Staff determine whether evidence exists to substantiate that a violation has occurred or, in the absence of proof, that a contractor is presumed to be in compliance.

If a violation is substantiated, restitution may be owed to employees, and withholds or forfeiture against the prime contractor may be appropriate. These actions would necessitate the preparation and submission of a wage violation case to the Division of Construction's Labor Compliance Unit and the Department of Industrial Relations (DIR) or the United States Department of Labor. Complainant names are kept confidential unless the complainants authorize Caltrans in writing to release their names. However, complainant testimony or depositions may ultimately be used as evidence in the administrative hearing process.

Labor compliance complaints are legitimate inquiries into a contractor's administration and may indicate a more widespread labor compliance issue. If investigation of complaints is not timely, consistent, and sufficient, Caltrans runs the risk of creating an unfair playing field for contract bidders, revocation of our approved LCP, and jeopardizing federal-aid funding.

Existing Procedure

Caltrans refers complaints received, including those received by other divisions and functional units such as Maintenance, Right of Way, and Consultant Services, to appropriate labor compliance staff for investigation. Complaints have priority over other labor compliance activities, with maintaining the confidentiality of the complainant and providing timely communication as key factors to the complaint process. Caltrans conducts an investigation of prevailing wage or apprenticeship complaints consistent with applicable state and federal guidelines and its own procedures. Thorough investigation will determine the validity of a complaint and an appropriate action to take if one or more violations has occurred. Complaints against either a contractor's or Caltrans' Equal Employment Opportunity practices should be addressed as indicated in the Labor Compliance Manual, Chapter 1-6, "Employee Complaints."

New Procedure

As a result of regulatory changes, the new procedure for processing complaints comprises three standardized elements that describe necessary communications, reasonable and effective time frames, and appropriate actions: 1) notice requirements, 2) investigation, and 3) resolution.

Upon receipt of a verbal or written complaint, labor compliance determines if the statute of limitations has expired pursuant to Labor Code Section 1741. If the statute has expired, send the attached Notice of Complaint Assignment-Expired Statute letter within 15 days of receipt of the complaint to communicate the expired statute. If the statute of limitation has not expired, follow the procedure for written or verbal complaints described herein.

Notice Requirements

Upon receipt of a written complaint, labor compliance staff must do **all** of the following:

1. Within 15 days after receiving the complaint, send the attached Notice of Complaint Assignment to the complainant acknowledging receipt of the complaint and the name, address, and telephone number of the assigned investigator.
2. Within 15 days after receipt of the complaint, send the attached Notice of Complaint Filed to the affected prime contractor with the notice required under Labor Code section 1775(c) if the complaint is against a subcontractor.
3. Notify the complainant in writing at least once every 30 days of the status of a complaint that has not been resolved by Caltrans' LCP by sending the attached Notice of Complaint Status letter.
4. Notify the complainant and prime contractor of the resolution of the complaint within ten days after the complaint has been resolved by Caltrans' LCP, using the attached Notice of Complaint Closed and Notice of Complaint Closed-Contractor.
5. Notify the complainant using the attached Notice of Complaint Status - Department of Industrial Relations Referral at least once every 90 days for a complaint that has been referred by Caltrans'

LCP as a wage case to DIR and is currently within the labor case approval or administrative hearing process.

The date a verbal complaint is received is considered the receipt date. Labor compliance staff obtains from the complainant as much information as possible regarding pay, any record of hours worked, and other information that may be important to the nature of the complaint. Maintain comprehensive written documentation of the conversation(s). Send the Notice of Complaint Assignment within 15 days of receipt of the verbal complaint. Include confirmation of your conversation with the complainant and the attached Caltrans Prevailing Wage Complaint Form to help the complainant provide additional information that may contribute to the investigation. The complainant is not required to return the complaint form, so an investigation should be initiated as soon as staff has been assigned the complaint. Follow-up is the same as with written complaints.

If the complaint involves a bona fide apprentice registered with DIR—Division of Apprenticeship Standards, send the attached advisory Notice of Apprenticeship Referral to the Division of Apprenticeship Standards in addition to the notices identified above.

Anonymous complaints warrant an investigation if sufficient information exists.

Investigation

Within 30 days of receipt of a complaint, the responsible investigator must determine whether the complaint has merit. If the complaint lacks sufficient information to determine its merit, include a request for additional information with a deadline for responding in the Notice of Complaint Status letter, and send it to the complainant within the 30-day response period. If the complainant does not respond by the deadline, send a Notice of Complaint Closed letter to the complainant closing out the investigation because of a lack of sufficient information.

Review, confirm, and audit payroll records to determine whether allegations have merit. If you need payroll records, use the monthly notice process to request documents from the prime contractor. For additional information on the monthly notice process, refer to LCPB 09-04, "Labor Compliance Program Investigations." Conduct an audit and prepare forms CEM-2508, "Contractor's Payroll Source Document Audit Summary," and CEM-2509, "Checklist—Source Document Audit," to determine if an underpayment has occurred. If records indicate an underpayment, prepare form CEM-2506, "Labor Compliance—Wage Violation," and send a written notice with copies of the CEM-2506 forms to the contractor (and subcontractor if applicable) requesting restitution. Prepare a brief narrative listing the bid advertisement date of the contract, a summary of the nature of the violation, and the basis upon which the determination of underpayment was made. Notice must be sent to the prime contractor (and subcontractor if applicable) when underpayments have been verified after investigation.

Resolution

Within 60 days, if possible, the investigation should result in one of the following outcomes:

1. Restitution.
2. Complaint lacks merit.
3. Wage case has been submitted to the Division of Construction's Labor Compliance Unit.
4. Additional investigation or time is necessary because of specific or uncontrollable circumstances such as outside intervention, new evidence becoming available, or the size of complaint.

Use the Notice of Complaint Closed letters for the complainant and the contractor to communicate resolution.

Tracking

Tracking the processing of labor compliance complaints received within Caltrans will assure consistent handling, timely communication with complainants, and effective closure of resulting investigations. Labor compliance staff is responsible for tracking timelines for notices to complainants, contractors, and subcontractors as well as documenting phone conversations and other details regarding the complaint. Keep complaint documentation in a file separate from other contract documents and, upon request, provide it to the Division of Construction's Labor Compliance Unit. According to 29 CFR 5.7 (b), Caltrans must report the number of complaints received against contractors and subcontractors as part of its submission of the U.S. Department of Labor Semiannual Labor Compliance Report.

Wage Violation Cases

If the complaint cannot be resolved by working directly with the contractor, submit a wage violation case to the Division of Construction Labor Compliance Unit for approval by DIR or U.S. Department of Labor, Wage and Hour Division, according to the guidelines outlined in Chapter 6, "Labor Cases," of the *Labor Compliance Manual*.

If you have questions regarding this bulletin, please contact Angela Shell, Division of Construction, at angela_shell@dot.ca.gov or (916) 654-3501.

- Attachments:
1. Notice of Complaint Assignment -Expired Statute
 2. Notice of Complaint Assignment
 3. Notice of Complaint Filed
 4. Notice of Complaint Status
 5. Notice of Complaint Closed
 6. Notice of Complaint Closed-Contractor
 7. Notice of Complaint Status -Department of Industrial Relations Referral
 8. Caltrans Prevailing Wage Complaint Form
 9. Notice of Apprenticeship Referral
 10. CEM 2506, "Labor Compliance-Wage Violation"
 11. CEM 2508, "Contractor's Payroll Source Document Audit Summary"
 12. CEM 2509, "Checklist-Source Document Audit"