

**UPDATED INFORMATIVE DIGEST**  
**for**  
**PROPOSED AMENDMENTS TO REGULATIONS GOVERNING**  
**LABOR COMPLIANCE PROGRAMS; COMPLIANCE MONITOR-**  
**ING AND ENFORCEMENT BY DEPARTMENT OF INDUSTRIAL**  
**RELATIONS and RELATED REVISIONS**

**CALIFORNIA CODE OF REGULATIONS**  
**TITLE 8, CHAPTER 8, SUBCHAPTERS 4 THROUGH 4.8**

**Statutory Changes:**

There have been no statutory changes directly affecting the subject matter of these proposals since the preparation of the Notice of Proposed Rulemaking that was published on November 20, 2009.

**Further Revisions to Amendments since the Notice of Proposed Rulemaking:**

The Director has made the following substantive changes to the regulations originally proposed in the Notice of Proposed Rulemaking:

**Section 16423. Approved Labor Compliance Programs Required by Statute.**

At the end of subsection (b), the following sentence was added: "Notices provided pursuant to this subpart may be posted on the Department of Industrial Relations' website."

**Section 16431. Annual Report.**

At the end of subsection (a), a sentence was added to specify that the Director of the Department of Industrial Relations may provide for the filing of an interim or supplemental report to cover the gap between a labor compliance program's current reporting period under the current regulation and the uniform July 1 to June 30 fiscal year reporting period that will apply to all programs under other amendments to this section. In addition, a new subsection (f) was added which states: "Annual reports are public records and may be posted on the Department of Industrial Relations' website."

**Section 16451. Notice of Projects Subject to Fees.**

In the introductory sentence of subsection (a), the word "chapter" was corrected to read "subchapter," which is the intended scope of this regulation. In subsection (a)(3)(F), the words "any state-issued public works bond" were inserted before the word "funding" and the words "of that funding" were added after the word "source" at the end of the subsection. The language of subsection (a)(3)(G) was restated to read as follows: "The estimated total project costs, exclusive of amounts paid for land acquisition." A related expanded definition of "total project costs" was added to section 16452 (*see below*).

At the end of subsection (b), the following language was added: “Notices provided pursuant to this subpart or subpart (a) above may be posted on the Department of Industrial Relations’ website.” In the first sentence of the second paragraph of the Notice language in subsection (d), the words “at least” were inserted before the words “the minimum hourly wage,” so that the first line reads, “The prevailing wage law requires that all workers be paid at least the minimum hourly wage . . .”

**Section 16452. Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations.**

Subsection (a)(3) was revised to read as follows: “For purposes of this subchapter, the term “total project costs” shall include all costs that are incident to the construction of a public works project, including but not limited to financing, engineering, architecture, surveying, testing, legal, and construction management expenses, but shall not include amounts paid for land acquisition.” At the end of subsection (b), language was added to specify that where the fee is based on the receipt of state-issued bonds, an additional fee will be due for each successive release of such funding. A new subsection (c) was added to set forth the standards for calculation and payment of fees based on “total project costs.” The introductory language of this subsection specifies that the fee will be calculated based on total estimated costs at the time the awarding agency awards the public works contract that triggers the fee requirement, and that this will constitute the entire fee due for the project unless specified exceptions apply. Subsection (c)(1) specifies that the Department may require verification of items used to calculate the estimate and may require the fee to be recalculated if not based on the regulatory definition of “total project costs” in subsection (a)(3). Subsection (c)(2) specifies that if bond-funding is obtained for a project which results in a higher fee under the bond proceeds formula (subsection (a)(2)(A)) than under the total project costs formula (subsection (a)(2)(B)), then an additional payment shall be made to reach the maximum fee required under the subsection (a)(2). Subsection (c)(3) specifies that that if the Department receives payments in excess of the maximum allowable fee, it shall refund that excess. The subsections originally designated as (c) and (d) were redesignated as (d) and (e) respectively without any changes to their text.

**Section 16453. Voluntary Payment of Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations in Lieu of Enforcing Labor Compliance Program.**

A new subsection (d) was added to specify that the Labor Commissioner shall, upon request, enter into an agreement to provide labor compliance program services with any awarding agency that is required to have a labor compliance program under Public Resources Code Section 75050 by reason of its receipt of Proposition 84 funds, and is also obligated to pay a fee to the Department for compliance monitoring and enforcement under any other statute. The subsection also specifies that the awarding agency would have to agree to pay a fee of no less than one-quarter of one percent of the Proposition 84 funds, in addition to whatever fee is required under the other statute.

**Section 16455. Fee Waivers; Exemption from Requirements of this Subchapter.**

The language initially proposed for subsection (c) was redrafted to read as follows: “Notwithstanding subparts (a) and (b), an Awarding Body shall lose its exemption and be subject to the fees and other requirements of this subchapter if it contracts with a third party to initiate and enforce labor compliance programs on its projects.” A second sentence and four subsections were added to specify circumstances under which an awarding agency with an approved labor compliance program can use consultants for labor compliance services without losing its exemption from fees (*i.e.* fee waiver) under the statute and this regulation: (1) for legal representation or other licensed professional services; (2) for augmentation of staff performing required tasks so long as the consultants are not delegated discretionary authority and are under direct day-to-day control and supervision of awarding body labor compliance program staff; (3) as outside auditors or advisors without any authority to take or compel actual enforcement activities, or the withholding of same, by the awarding agency; or (4) for any other purpose that would not require payment of fee under this subchapter or use of an approved labor compliance program under section 16423 of the labor compliance program regulations.

In subsection (d), commas were inserted before and after the phrase “as specified in this section”, and the words “monitoring and” were inserted between “compliance” and “enforcement”. A new subsection (e) was added to specify that fee waivers will be automatic for qualifying awarding body labor compliance programs, and that the Director will maintain a list of qualified programs, which may be posted on the Department’s website.

**Section 16460. Establishment of Compliance Monitoring Unit.**

In subsection (a), the word “specific” was added before the words “labor compliance monitoring . . .” in the first line, and the word “subpart” was changed to “Article.” A second sentence was added to specify that the Compliance Monitoring Unit’s functions are in addition to and do not limit or supplant the Labor Commissioner’s other traditional authorities and responsibilities in public works enforcement. A new subsection (c) was added to specify that the failure of the Compliance Monitoring Unit, the Division of Labor Standards Enforcement, or the Department to meet specified obligations in this subchapter does not constitute a defense to any contractor violation of public works requirements in the Labor Code.

**Section 16461. Review of Payroll Records and other Monitoring and Investigative Activities of Compliance Monitoring Unit.**

A new subsection (g) was added to authorize the Labor Commissioner to develop and make available a model prejob conference covering the topics listed in Appendix A following section 16421 of the labor compliance program regulations.

**Section 16462. Complaints.**

The language of subsection (a) was substantially revised by (1) stating that the Division of Labor Standards Enforcement may provide for electronic filing of complaints; (2) stating that complaints need not conform to technical requirements as long as they provide suffi-

cient information to identify the project, affected parties and dates, and describe the subject matter of the complaint in enough detail to enable the Division to commence an investigation into whether a violation occurred; and (3) deleting the sentence which stated that the Division could determine not to investigate claims filed more than 90 days after the completion of the project.

**Section 16463. Withholding of Contract Payments When Payroll Records are Delinquent or Inadequate.**

In subsection (d)(3), “Labor Compliance Program” was changed to “Labor Commissioner.” A new subsection (i) was added to clarify that this section does not apply to withholdings based on issuance of a civil wage and penalty assessment for unpaid wages and penalties under Labor Code Sections 1775, 1776(g), and 1813.