

## Frequently Asked Questions – Hauling under Labor Code Section 1720.3

This FAQ addresses hauling under Labor Code section 1720.3, as amended by AB 1851 (2022), which took effect on January 1, 2023. This information is current as of March 21, 2023, and is intended only as an educational tool for our community.

### Legal Background Regarding Coverage of Hauling of Materials Used for Paving, Grading, and Fill to a Public Works Project:

On August 15, 2021, the California Supreme Court issued two opinions related to public works and prevailing wages. (See [Mendoza v. Fonseca McElroy Grinding Co., Inc. \(2021\) 11 Cal.5th 1118](#); and [Busker v. Wabtec Corporation \(2021\) 11 Cal.5th 1147](#).) In response to these Supreme Court decisions, the Legislature enacted Assembly Bill 1851 (AB 1851), which amended California Labor Code section 1720.3. According to AB 1851's sponsor:

“Unfortunately a series of recent California Supreme Court decisions found that because on-haul trucking is not specifically mentioned in statute as comprising part of a public works project it is unclear whether it is eligible for prevailing wages. As a result, the Department of Industrial Relations could benefit from clarity over whether on-haul truckers at public works projects are to be paid at prevailing wage.”

AB 1851's amendments to section 1720.3 specifically include the “hauling of materials used for paving, grading, and fill onto a public works site, if the individual driver's work is integrated into the flow process of construction” in the meaning of public works and as part of a public works project. (Lab. Code, § 1720.3, subd. (a)(2).) It was the intent of the Legislature in amending section 1720.3 to “restore the holding of [O. G. Sansone Co. v. Department of Transportation \(1976\) 55 Cal.App.3d 434](#), and its subsequent interpretations, as it relates to the on hauling of materials used for paving, grading, and fill onto a public works site.” ([Stats. 2022, chg. 764, § 1.](#))

AB 1851, and the amended provisions of section 1720.3, are effective on January 1, 2023.

### Prevailing Wage Questions and Answers Regarding Hauling of Materials Used for Paving, Grading, and Fill to a Public Works Project:

#### 1. Does AB 1851 apply to projects awarded or advertised for bid before January 1, 2023?

The Department has generally used the “benchmark date” for “purposes of determining which version of the prevailing wage law applies in a given case.” In a traditional design-bid-build public procurement process, which applies to the majority of public works projects, the benchmark date is typically the bid advertisement date. (See, e.g., [PW 2013-027, Los Angeles Community College District Furniture Contracts – Los Angeles Community College District \(Nov. 4, 2014\)](#); [PW 2018-027, Former Naval Training Center Development Hotel Project – City of San Diego \(Nov. 25, 2019\)](#).)

The date of notice or call for bids, which is often referred to as the bid advertisement date, is defined as the “date the first notice inviting bids was published in a newspaper of general circulation or promulgated in a legally sufficient manner which results in a contract being awarded with or without competitive bidding.” ([Cal. Code Regs., tit. 8, § 16000.](#))

If a project’s benchmark date is before January 1, 2023, the Department will apply the pre-AB 1851 version of the prevailing wage law to the project, even if the project was awarded on or after January 1, 2023.

**2. Is a driver hauling materials used for paving, grading, and fill (PGF materials) onto a public works site entitled to prevailing wages?**

A driver hauling PGF materials onto a public works site is entitled to prevailing wages during the delivery of the PGF materials only if the driver’s work is “integrated into the flow process of construction.”

Please note that the delivery of ready-mixed concrete is governed by [different rules](#) under Labor Code section 1720.9 (AB 219 (2015)).

**3. Is a driver hauling materials used for paving, grading, and fill (PGF materials) onto a public works site entitled to prevailing wages on the driver’s return trip (or trip to another location) after the PGF materials are delivered?**

A driver who has completed the delivery of PGF materials may, under certain circumstances, be entitled to prevailing wages for their return trip or for a trip to another location.

Please note that the delivery of ready-mixed concrete is governed by [different rules](#) under Labor Code section 1720.9 (AB 219 (2015)).

**4. What does it mean for an individual driver’s work to be “integrated into the flow process of construction”?**

The Legislature’s intent in enacting AB 1851 was to “restore the holding of *O. G. Sansone Co. v. Department of Transportation* (1976) 55 Cal.App.3d 434, and its subsequent interpretations, as it relates to the on hauling of materials used for paving, grading, and fill onto a public works site.” [O. G. Sansone Co. v. Department of Transportation \(1976\) 55.Cal.App.3d 434 \(O. G. Sansone\)](#) introduced the concept that the delivery of materials was subject to prevailing wages when it was “an integrated aspect of the ‘flow’ process of construction,” which was later expanded upon, and interpreted by the Court of Appeal in [Williams v. SnSands Corporation \(2007\) 156 Cal.App.4th 742 \(Williams\)](#). The Department has issued coverage determinations that interpreted the *O. G. Sansone* and *Williams* decisions and explored the contours of what it means for a driver’s work to be “integrated into the flow process of construction” when delivering materials under specific factual circumstances. (See, e.g., [PW 2012-038, Venice Island](#)

[Levee Rehabilitation, Phase 2, Levee Crown Rising Project \(May 7, 2014 \(Decision on Admin. Appeal\)/May 7, 2013 \(Original Determination\); PW 2009-019, Hauling of Fill Material from Bryan Ranch to State Highway 99 Roadway Project, California Department of Transportation \(Aug. 31, 2009\); PW 2002-010, Production of Recycled Asphalt Concrete from Reclaimed Asphalt Pavement and Related Off-hauling and On-hauling, Street Resurfacing and Reconstruction Program, City of Los Angeles \(Aug. 8, 2007\); 04-0180-PWH, Triple E Trucking \(Nov. 13, 2008.\)](#)

## **5. What are PGF materials?**

**There is no exhaustive list of PGF materials.** Some examples of PGF materials are: “sand, gravel, crushed rock, coal, or bituminous paving materials.” (See [Dictionary of Occupational Titles \(4th Ed., Rev. 1991\) 902.683-010 DUMP-TRUCK DRIVER \(any industry\)](#), used by DIR as advisory scope of work provisions for the dump truck driver classification.)

Furthermore, the Director of Industrial Relations may determine through administrative rules and decisions that a particular material is considered a PGF material for the purposes of AB 1851. (Lab. Code, § 1773.5.) Courts may also decide that a material is or is not a PGF material through judicial decisions.

## **6. What is the prevailing wage rate for a driver engaged in the hauling of PGF materials onto a public works jobsite?**

The “Driver (On/Off-Hauling To/From Construction Site)” rates, if the driver’s work is “integrated into the flow process of construction.” See this [Important Notice](#) for rates applicable to Marin, Napa, Solano, Sonoma, and Yolo Counties.

Please note that the delivery of ready-mixed concrete is paid at the applicable “Driver - Mixer Trucks” rate. (See Lab. Code, § 1720.9, subd. (c).)

## **7. What rates apply to a driver who drives through different counties with different rates to haul PGF materials onto a public works jobsite?**

The “Driver (On/Off-Hauling To/From Construction Site)” rates for the geographic area where the public works jobsite is located, if the driver’s work is “integrated into the flow process of construction.” See this [Important Notice](#) for rates applicable only to Marin, Napa, Solano, Sonoma, and Yolo Counties.

Please note that the delivery of ready-mixed concrete is governed by [different rules](#) under Labor Code section 1720.9 (AB 219 (2015)) (See Lab. Code, § 1720.9, subd. (d) [“For purposes of [AB 219], the applicable prevailing wage rate shall be the current prevailing wage, as determined by the director, *for the geographic area in which the factory or batching plant is located.*”])

**8. What rates apply to a driver who hauls PGF materials from one location to another within a public works jobsite?**

The “Teamster (Applies Only to Work on the Construction Site)” rates for the geographic area where the public works jobsite is located.

**9. Will the “Driver (On/Off Hauling To/From Construction Site)” rates apply to drivers operating vehicles other than dump trucks to deliver PGF materials to a public works jobsite?**

Yes. Pending issuance of new prevailing wage determinations by the Director of Industrial Relations that specifically apply to different types of vehicles, the “Driver – Dump Trucks” rates will apply to drivers operating other types of vehicles to deliver PGF materials to a public works jobsite.

Again, please note that drivers delivering ready-mixed concrete in a mixer truck are paid at the applicable “Driver – Mixer Trucks” rate.

**10. Is the material supplier, or other employer, that employs a driver who is entitled to prevailing wages required to register as a public works contractor?**

Yes, any entity that employs a driver performing public work subject to prevailing wage requirements, including drivers delivering PGF materials to a public works jobsite and drivers who haul “refuse from a public works site to an outside disposal location” (see below), must register as a public works contractor.

This requirement also applies to entities that employ drivers who deliver ready-mixed concrete. Please see [Contractors and Contractor Registration](#) for more information on contractor registration.

**11. Is the material supplier, or other employer, that employs a driver entitled to prevailing wages required to maintain certified payroll records?**

Yes, any entity that employs a driver performing public work subject to prevailing wage requirements, including drivers delivering PGF materials to a public works jobsite and drivers who haul “refuse from a public works site to an outside disposal location” (see below), must maintain accurate certified payroll records. (Lab. Code, § 1776.)

This requirement also applies to entities that employ drivers who deliver ready-mixed concrete. Entities that employ drivers who deliver ready-mixed concrete have additional certified payroll record requirements. Please see [Concrete Delivery Requirements \(AB 219\)](#) for more information on the requirements related to the delivery of ready-mixed concrete to a public works jobsite.

Unless otherwise exempt, the entity must also submit electronic certified payroll records. (Lab. Code, § 1771.4, subd. (a)(3).) Please see [Frequently Asked Questions on Certified Payroll Reporting](#).

### **Prevailing Wage Questions and Answers Regarding Hauling of Refuse from a Public Works Jobsite:**

- 1. Are drivers who haul refuse (such as soil, sand, gravel, rocks, concrete, asphalt, excavation materials, or construction debris) from a public works jobsite entitled to prevailing wages?**

Yes, under Labor Code section 1720.3. (See, e.g., [PW 2018-001, Caltrans Ventura Maintenance Yard – California Department of Transportation \(Jan. 9, 2019\)](#); [PW 2016-017, Highway 99 Realignment Project – California Department of Transportation \(Dec. 29, 2017 \(Decision on Admin. Appeal\) /Mar. 24, 2017 \(Original Determination\).](#))

- 2. What is the prevailing wage rate for a driver engaged in the hauling of refuse from a public works jobsite?**

The “Driver (On/Off-Hauling To/From Construction Site)” rates. Please see this [Important Notice](#) for rates applicable to Marin, Napa, Solano, Sonoma, and Yolo Counties.

- 3. Will the “Driver (On/Off Hauling To/From Construction Site)” rates apply to drivers operating vehicles other than dump trucks to haul refuse from a public works jobsite?**

Yes. Pending issuance of new prevailing wage determinations by the Director of Industrial Relations that specifically apply to different types of vehicles, the “Driver – Dump Trucks” rates will apply to drivers operating other types of vehicles to haul refuse from a public works jobsite.