

## DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

455 Golden Gate Avenue, Tenth Floor

San Francisco, CA 94102

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April 13, 2005

RE: Enforcement of Prevailing Wage Obligations for On-Haul and Off-Haul Trucking By Owner-Operators Not Employed by Material Suppliers

Dear Interested Parties:

This notice is in response to the various letters I have received regarding enforcement of prevailing wage obligations for owner-operator truck drivers hauling material and equipment to and from public works sites.

It has been this Department's policy that owner-operators, including owner-operator truckers, performing public work must be paid prevailing wages.<sup>1</sup> It appears, however, and as some of you have acknowledged, the majority of the Department's enforcement of prevailing wage obligations has concerned owner-operators (of any kind) performing work within a public works site.<sup>2</sup>

In light of the Department's enforcement experience and its current consideration of appropriate wage rates for owner-operators performing on-haul and off-haul trucking, enforcement of prevailing wage obligations for such work is stayed pending DLSR's establishment of the appropriate rates, including a formula for applying them to the unique circumstances of owner-operator compensation.<sup>3</sup>

In addition, the rates established by DLSR for owner-operator truckers performing off-haul and on-haul deemed to be public work will be applicable to all work advertised for bid on or after the date of the rates issued by DLSR.<sup>4</sup>

Sincerely,

/s/John M. Rea  
Acting Director

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<sup>1</sup> Under *O. G. Sansone Co. v. Department of Transportation* (1976) 55 Cal.App.3d 434, 458, 127 Cal.Rptr. 799, this excludes owner-operators employed by material suppliers.

<sup>2</sup> Almost all prevailing wage complaints involving owner-operators performing on-haul and off-haul trucking appear to have come in after the request for a determination or after the issuance of the determination.

<sup>3</sup> Labor Compliance Programs are required to enforce prevailing wage obligations in a manner consistent with the enforcement policies of DLSE (title 8, California Code of Regulations, section 16434). Thus, Labor Compliance Programs are directed to observe the same stay policy as described herein.

<sup>4</sup> Consistent with the Department's enforcement policy, if an awarding body does not advertise the public works project for bid, other benchmarks events, including the first written memorialization of the agreement concerning the public works elements of project or the contract governing the award of public funds will be utilized instead. See e.g., Baldwin Park Market Place, City of Baldwin Park, Public Works Case No. 2003-028, October 16, 2003.