

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

REM Construction, Incorporated

Case No: **25-0151-PWH**

[Request For Review of
DLSE CASE NO: 40-75323-865]

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor REM Construction, Incorporated. (REM) requested review of a Civil Wage and Penalty Assessment (Assessment or CWPA) issued by the Division of Labor Standards Enforcement (DLSE or Labor Commissioner's Office) on April 30, 2025, with respect to work performed on the Corporation Yard Administration Building for the City of Vacaville in Solano County (Project). On September 26, 2025, the parties appeared for a telephonic Prehearing Conference. Evan Adams appeared as counsel for DLSE. Stacy Russell, Office Coordinator for REM, and David Schell, Senior Project Manager for REM, represented REM. Sonia Linnaus, representative of The Ohio Casualty Insurance Company, also appeared. At the Prehearing Conference, DLSE raised the issue of the timeliness of REM's Request for Review of the Assessment.

Labor Code Section 1742, subdivision (a),¹ mandates that a request for review be transmitted to the office of the Labor Commissioner that appears on the Assessment within 60 days after service of the Assessment or the Assessment becomes final. Therefore, on September 26, 2025, the appointed Hearing Officer, Michael Drayton, served minutes of hearing with an order pursuant to California Code of Regulations, title 8, section 17227, that the requesting party show cause why the request for review

¹ All further statutory references are to the Labor Code unless specified otherwise.

should not be dismissed as untimely under Labor Code section 1742, subdivision (a) (OSC).²

For the reasons stated below, I find that the time limit for requesting review is mandatory and jurisdictional, and that REM's Request for Review was not filed timely. Accordingly, the Request for Review must be dismissed.

FACTS

DLSE issued the Assessment against REM and served it on April 30, 2025. (Certification of Service attached to Assessment dated April 30, 2025.)³ Under Code of Civil Procedure section 1013, service was completed at the time of the deposit in the mail but the 60-day period to obtain review was extended five calendar days.

Notice of the right to seek review is found at the top of page two of the Assessment. The notice states in part:

Notice of Right to Obtain Review – Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment.

To obtain a hearing, a written Request for Review must be transmitted to the following address:

Labor Commissioner– State of California
Civil Wage and Penalty Assessment Review Office
PO Box 255809
Sacramento, CA 95825

² "Upon the application of any Party or his or her own motion, the appointed Hearing Officer may issue an Order to Show Cause why...a Request for Review should not be dismissed as untimely under the relevant statute." (Cal. Code Regs., tit. 8, § 17227, subd. (a).)

³ Service of the Assessment must be completed pursuant to Code of Civil Procedure section 1013 by first class and certified mail. (§ 1741, subd. (a).)

The 60-day period after service of the Assessment within which to timely request review, allowing for the five additional days for responding to service of the Assessment by U.S. mail, expired on Friday July 4, 2025. Because Friday, July 4, 2025, was a State holiday, the time period to respond was extended to the next Working Day, Monday, July 7, 2025.⁴

In subsequent communications between REM and the DLSE Deputy Labor Commissioner who issued the Assessment, Leticia Altamirano (DLSE Investigator), REM was informed of the deadline to request review and to follow instructions provided on the second page of the Assessment document to request review. In an email dated May 15, 2025, the DLSE Investigator informed the REM representative:

I'd like to give you an opportunity to consider settling the case before the deadline.

If this case cannot be resolved before the 60-day deadline, please submit a request for review to avoid this case being referred to a judgment where the full amount assessed must be paid plus court fees. The instruction of how to send a request for review are on the 2nd page of the CWPA. Please do not send your request to me.

In an email the following day, May 16, 2025, an REM representative informed the DLSE Investigator, "We understand we have 60 days to request a hearing and that will likely be what REM will be requesting." On that same day, the DLSE Investigator wrote back, "Otherwise, since you disagree with the findings. Please follow the instructions on the CWPA to file your request for review before the 60-day deadline."

On or about May 28, 2025, David Schell of REM mailed a letter addressed to the DLSE Investigator at 2031 Howe Avenue, Suite 100, Sacramento California, in which he made a "request for formal hearing from DLSE to review the wage and penalty assessment."

⁴ Under the Prevailing Wage Hearings Rules (Cal. Code Regs., tit. 8, § 17201 et seq.), if the last day to exercise a right or to act is not a Working Day (i.e., a Saturday, Sunday, or State holiday), the time to act is extended to the next Working Day. (Cal. Code Regs., tit. 8, § 17203, subd. (a), and § 17202, subd. (o).)

On June 16, 2025, REM mailed another letter Request For Review and Formal Hearing, signed by David Shell, Senior Project Manager for REM. Although the letter indicated it was addressed to the Labor Commissioner, Civil Wage And Penalty Assessment Review Office, PO Box 255809, Sacramento, CA 95825, it was not so properly addressed on the envelope. Rather, it was addressed and delivered to the physical address of the Labor Commissioner's Sacramento office at 2031 Howe Ave., Suite 100, Sacramento, CA 95825. REM mailed the letter to that address because they wanted a signature upon delivery.

In an email dated July 22, 2025, REM informed DLSE that it had filed an appeal, "some time ago and have not had any acknowledgment from the DIR on when our hearing is scheduled." The DLSE Investigator in reply asked, "Did you follow the instructions on the 2nd page of the Civil Wage & Penalty Assessment? If yes, what address did you send the request?" Later that day the DLSE Investigator wrote to REM again stating that, "To obtain a hearing, a written Request for Review must be transmitted to the Civil Wage and Penalty Assessment Review Office within 60-day deadline [Pg 2-attached.] It should not be addressed to my attention." Later still, the DLSE Investigator responded that she had not received the Request for Review, and she reiterated that such a request needed to be sent pursuant to the instructions and the correct address as indicated on page two of the CWPA, and that it should not be sent to her attention.

REM mailed its request for review postmarked July 23, 2025, to the Civil Wage and Penalty Assessment Review Office, this time addressed and delivered to P.O. Box 255809, Sacramento, CA 95865-5809. REM mailed the previous correspondence dated June 16, 2025, with a cover letter signed by Stacy Russell, Office Coordinator of REM, and dated July 22, 2025. The cover letter stated, "Attached is the letter that I originally sent out on 06/16/25 to the DIR. However, I sent it to the physical address on Howe Avenue and I am told it was not received even though I have proof of delivery."

DISCUSSION

Section 1742, subdivision (a), provides:

An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

(Lab. Code, § 1742, subd. (a).) The applicable regulation, at title 8, section 17222, subdivision (a), restates the 60-day filing requirement, and expressly provides that, “Failure to request review within 60 days shall result in the Assessment ... becoming final and not subject to further review under these Rules.”

Section 17227 of the regulations governs the early disposition of a Request for Review that appears untimely. Under the rule, the hearing officer issues an Order to Show cause why the Request for Review should not be dismissed as untimely under section 1742. The Order is served on all parties and provides the parties an opportunity to respond to the Order and to reply to any submission by any other party. Evidence in support or opposition to the order is submitted by affidavit or declaration. (Cal. Code Regs., tit. 8, § 17227, subds. (a) and (b).) There is no right to an oral hearing under the rule. (*Id.* subds. (b) and (c).) The rule expressly authorizes the Director to dismiss a Request for Review that is untimely under section 1742. (*Id.* subds. (c) and (d).)

The case proceeded under procedures set forth in section 17227 of the regulations. The Hearing Officer issued an OSC. REM filed a response on October 10, 2025. DLSE filed its response thereto on October 16, 2025. No objection to the documentary material provided by the parties was received by the Hearing Officer and they were taken into evidence.

The Assessment was served by mail to the address indicated on the Assessment on April 30, 2025.⁵ Sixty calendar days following service fell on Sunday, June 29, 2025. Allowing an additional five days for filing due to service of the Assessment by U.S. mail,

⁵ REM indicated that the Assessment was received in the mail on May 6, 2025.

the sixty-fifth day from the date of service and the date on which to timely request review was Friday, July 4, 2025, which was a holiday. Thus, extending the last date for filing a timely request for review to Monday, July 7, 2025.

REM sent letters requesting review of the Assessment, but to the incorrect address. On May 28, 2025, a letter request for review was mailed by REM to DLSE at a Howe Avenue, Sacramento address. This request did not comply with Labor Code section 1742. On June 16, 2025, another letter request for review was mailed by REM to DLSE at a Howe Avenue, Sacramento address, not the Sacramento Post Office Box address specified in the Assessment, above, and written on the letter requesting review. As indicated above, in several email communications from the DLSE Investigator, REM was reminded to follow the directions on the Assessment to perfect an appeal. The Assessment became final on July 7, 2025.

On July 23, 2025, REM sent a Request for Review of the Assessment to the address of the Labor Commissioner's office designated on the Assessment. However, the request was not timely under section 1742. The Director is without jurisdiction to proceed on the untimely Request for Review. (§ 1742, subd. (a); Cal. Code Regs., tit. 8, § 17222, subd. (a); *see also Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831 (*Pressler*) [where the time for filing is mandatory and jurisdictional, a late filing may not be excused on the grounds of mistake, inadvertence, or excusable neglect]; *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489 (*REO Broadcasting*) [same].)

REM argued that the Labor Commissioner was aware that it disputed the Assessment, that it was in communications with the Labor Commissioner's office regarding the dispute, and that it should be excused from late filing based on mistake, inadvertence, or excusable neglect, where it mailed its request to the incorrect address, which is nonetheless, a physical address of the Labor Commissioner. However, the Assessment bears prominent, boldface type on page two that states: "Notice of Right to Obtain Review-Formal Hearing." That wording is followed by boldface type that reads, "To obtain a hearing a written Request for Review must be transmitted to the following

address:" which, in turn, is followed by the address centered within a box, and the address with the box is as follows:

Labor Commissioner– State of California
Civil Wage and Penalty Assessment Review Office
PO Box 255809
Sacramento, CA 95825

By that wording, REM was notified that a timely Request for Review of the Assessment had to be sent to that address of the Assessment Review Office in Sacramento, California. Further, California Code of Regulations, title 8, section 17222, subdivision (b), expressly provides that, "A Request for Review *shall* be transmitted to the office of the Enforcing Agency designated on the Assessment or Notice of Withholding of Contract Payments from which review is sought." (Emphasis added.) Further, the last sentence of section 1742 subdivision (a), indicates that absent a timely request for review of an assessment, "...the assessment shall become final." (§ 1742, subd. (a).) California Code of Regulations, title 8, section 17222, subdivision (a), reiterates that point, expressly stating that, "Failure to request review within 60 days shall result in the Assessment ... becoming final and not subject to further review under these Rules." Where a statute sets out a duty and a consequence for the failure to act in conformity, that statute is said to be "mandatory." (*California Correctional and Peace Officers v. State Personnel Board* (1995) 10 Ca1.4th 1133, 1145; *Progressive Concrete, Inc. v. Parker* (2006) 136 Cal.App.4th 540, 546-548.) Section 1742, subdivision (a), sets out just such a consequence—the assessment shall become final—in the case of failure to file a request for review timely.

Courts have held similar time limitations in other Labor Code provisions having to do with appeals of Labor Commissioner determinations to be jurisdictional and not subject to a request for relief from their effect on the grounds of mistake, inadvertence, or excusable neglect. In *Pressler*, the court analyzed section 98.2, which sets the time limit for appealing from a Labor Commissioner ruling on a claim for unpaid wages. Section 98.2, subdivision (a) provides, in part: "Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the

superior court, where the appeal shall be heard de novo." The court found this requirement to be jurisdictional, in light of the language of former subdivisions (c) and (d) (now (d) and (e)) of section 98.2, which provide that an order, decision, or award that has not been timely appealed is final and enforceable. *Pressler* held that, "[a] late filing may not be excused on the grounds of mistake, inadvertence or excusable neglect." (*Pressler, supra*, 32 Cal. 3d at p. 837.)

In *REO Broadcasting*, the court relied on *Pressler* in holding that under The Talent Agencies Act (§ 1700.44), the time to appeal the Labor Commissioner's determination to superior court was jurisdictional, and reliance on Code of Civil Procedure section 473 was erroneous. (*REO Broadcasting, supra*, 69 Cal.App.4th at pp. 495-496.) The court summarized the *Pressler* court's articulation that, "granting of relief under Code of Civil Procedure section 473 would undercut the legislative purpose and public policy of assuring the expeditious collection of wages which are due but unpaid [citation omitted]." (*Id.* at p. 496.) The court also observed that the plaintiffs in the administrative proceeding had "provided no logical reason why the general holding in *Pressler* as to the timeliness of an appeal from a final determination by the Labor Commissioner is not equally applicable to *any* kind of administrative proceeding held before the Labor Commissioner" (*Ibid.* (emphasis in original).)

While REM engaged in discussions with DLSE to resolve the issues raised in the Assessment, the mandatory statutory appeal period remained in effect, and nothing in the record demonstrates that any person within DLSE waived, or had authority to waive, the requirement as to the proper DLSE office for submission of a Request for Review. Further, page three of the Assessment also expressly states, again in boldface type, that requesting a settlement meeting does not extend the 60-day period during which a formal hearing must be requested. That reference derives from California Code of Regulations, title 8, section 17221, subdivision (d), which states: "Neither the making or pendency of a request for a settlement meeting, nor the fact that the parties have met or have failed or refused to meet as required by this Rule shall serve to extend the time for filing a Request for Review under Rule 22 [section 17222] below." Even if REM

representatives believed mistakenly that there were no issues with the timeliness of the Request for Review given ongoing discussions with DLSE, the late filing cannot be excused on the grounds of mistake, inadvertence, or excusable neglect because the limitations period under Section 1742, subdivision (a), is mandatory and jurisdictional by statute. (*Pressler, supra*, 32 Cal.3d at p. 837.)

Neither the prevailing wage laws in the Labor Code nor the applicable regulations governing Prevailing Wage Hearings provide the Director with authority to excuse a contractor from its failure to timely request review based on mistake, inadvertence, or excusable neglect. To the contrary, the plain language of section 1742, subdivision (a), unequivocally provides that if there is a failure to timely request review within 60 days after service of the assessment, “the assessment *shall* become final.” (Emphasis added.) Under the Labor Code, the word “[s]hall” is mandatory” (§ 15.) Once the Assessment has become final, the Director lacks authority under the rules to further review the Assessment. (Cal. Code Regs., tit. 8, § 17222.) Further, REM provided no evidence of extrinsic fraud to the Hearing Officer in response to the OSC, in seeking relief from its untimely filing. (See *Division of Labor Standards v. Davis Moreno Construction, Inc.* (2011) 193 Cal.App.4th 560.) Indeed, to the contrary, on several occasions the DLSE Investigator advised REM to follow the instructions in the CWPA to preserve their right to request review.

Had REM timely filed a Request for Review, it would have vested the Director with jurisdiction to review the Assessment and to conduct a hearing as necessary. REM failed to do so. The time limit is mandatory and jurisdictional, and accordingly, the Assessment is final. (§ 1742, subd. (a).)

Based on the foregoing, the Director makes the following findings:

FINDINGS

1. REM Construction, Incorporated, did not timely request review of the Civil Wage and Penalty Assessment issued April 30, 2025.
2. The Assessment became final on July 7, 2025.

3. The Director has no jurisdiction to proceed on the untimely Request for Review filed by REM Construction, Incorporated.

ORDER

REM Construction, Incorporated's Request for Review is dismissed. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties

Dated: 5/28/26



Jennifer Osborn, Director

California Department of Industrial Relations