

DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Labor Statistics and Research  
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San Francisco, CA 94102

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November 17, 2008

Mr. Trucker, Inc.  
Attn: Rodney R. Lawley, President  
2710 Loomis Road  
Stockton, CA 95205

RE: Questions Regarding Notice of Public Hearings and Request for Data to Determine the Prevailing Wage for Off-the-Site Hauling (to/from a Construction Site)

Dear Mr. Lawley:

This is in response to your letter dated November 11, 2008, asking for a postponement of the public hearings and the posting of a prevailing wage for Off-the-Site Hauling (to/from a Construction Site) until the Division responds to the questions raised in your letter.

Your requests to postpone the public hearing and to issue prevailing wage determinations have been considered and are not granted. However, we are providing answers to your questions to clarify any confusion about the investigation and the public hearing process. We encourage you to participate by providing the Division with the information requested in the October 8<sup>th</sup> public hearing notice and in the October 20<sup>th</sup> clarification notice (see attached). You only need to file the original data by November 24, 2008, on a county by county basis, where your company performs work. You have until December 12, 2008, to file additional supporting wage data, either on your own or at the request of DLSR.

### 1) Overview

*Q. What is the general background that prompted this proceeding?*

A. Former Department of Industrial Relations Acting Director John Rea determined that the construction Master Labor Agreements for the Teamster craft did not accurately reflect the prevailing wage rates for off-the-site hauling (to/from a construction site). Therefore, the Department has engaged in this investigation to determine the prevailing wage rates for off-the-site hauling (to/from a construction site).

*Q. Why has this type of proceeding not happened before?*

A. The Department has used this methodology in the past for other crafts/classifications. A similar general investigation for hauling took place in 2005. Due to a recent California Court of Appeal reiterating that certain on and off-haul trucking is covered work decision DIR is attempting once again to set rates for on and off haul trucking for those instance where the rates may be required.

*Q. In this proceeding, does the source of the materials matter?*

A. The Division is attempting to ascertain rates for any hauling performed off-the-site of construction regardless of source.

*Q. Does the relation of the driver to the material supplier matter?*

A. No, not for the rate setting-process.

*Q. Does the relation of the driver and the supplier to the construction firm matter?*

A. Same as above.

*Q. Does the activity of the driver matter?*

A. Yes. Employers should only report workers who perform off-the-site hauling (to/from a construction site).

## **2) On-site vs. Off-site Classification**

*Q. Why aren't separate hearings being conducted in each county?*

A. Conducting fifty-eight (58) hearings – one in each county – for this investigation would be unnecessary, inefficient, and prohibitively costly to the State of California. The Department believes it can achieve virtually the same results by conducting two general public hearings in the two largest metropolitan areas of the state (Los Angeles and San Francisco) seeking data for all 58 counties. Members of the public also have the option of submitting written materials – as you have – to the Department in lieu of attending the public hearings. You are certainly invited to do both if you wish.

*Q. Why is the on-site construction rate being referred to as the default rate for delivery of material to a site?*

A. If a certain craft, classification, or type of work(er) is covered under prevailing wage laws, then a published prevailing wage rate must be paid to the worker. In enforcement proceedings, the Teamster rate is applied because it reflects the prevailing rates for work that most closely resembles transportation of materials to and from a construction site.

## **3) Implication of Proceeding**

*Q. What will happen if no wage information is provided?*

A. The Division does not discuss response rates from employers with others to avoid introducing bias into the investigation. In order to guarantee that your pay rates are considered, every employer is encouraged to participate by providing the Division with wage data. No employer is too small to participate.

In response to your question, however, DLSR is required by statute and regulation to set a prevailing wage rate and will look to and verify those sources available to set such a rate where possible, including conducting a survey, if necessary.

*Q. What will happen if no wage information is provided for a specific county?*

A. See response to question above.

*Q. How can this proceeding and the information submitted help ascertain actual prevailing wage rates?*

A. The wage and project data submitted will be used to determine the single rate paid to a majority of workers engaged in a particular craft, classification, or type of work(er). If no single rate is paid to a majority, then the single rate paid to the greatest number of workers, or modal rate, performing off-the-site hauling (to/from a construction site) is prevailing.

*Q. Why have not all affected companies been contacted directly about this proceeding?*

A. The Department broadcasted the notice of public hearings widely by distributing it to every identifiable trucking, material supplier, and construction employer association representing the vast majority of employers that engage in off-the-site hauling, the Teamster Union which have collective bargaining agreements covering this type of work, and placing it on the DIR and DLSR internet websites.

#### **4) Determining Prevailing Wages**

*Q. How are prevailing wage rates determined?*

A. The prevailing wage laws require the Director of Industrial Relations to ascertain the prevailing rate by considering the appropriate collective bargaining agreements, federal rates, rates in the nearest labor market area, or other such data such as wage survey data. Such data may be obtained by holding a hearing, instituting an investigation, or by such other means as the Director of Industrial Relations determines will best serve the purposes of the law.

*Q. What is the "modal" rate and how is it determined?*

A. The prevailing wage laws define the modal rate as the single rate paid to the greatest number of workers engaged in a particular craft, classification, or type of work(er).

*Q. Will the collective bargaining rate always prevail?*

A. No.

*Q. Does it matter if there is a construction or production agreement already in place?*

A. All employers including those signatory to construction or production agreements are encouraged to provide wage and project data for employees engaged in off-the-site hauling (to/from a construction site).

*Q. What is the implication of a single rate versus 5 rates?*

A. The prevailing wage laws define the prevailing rate as the single rate being paid to the majority of worker engaged in a particular craft, classification, or type of work(er). If no single rate is being paid to a majority of the workers, then the single rate being paid to the greatest number of workers, or modal rate, is prevailing.

*Q. Does the type of truck matter?*

A. This investigation is primarily concerned with wages paid for off-the-site hauling. When reporting the number of workers employed by your firm, please identify the classification and type of truck used for each rate paid. If you have detailed information about the type of trucks used, please include a description of the trucks used. In some localities there may be an employer practice of classifying and paying workers differently depending on the type of truck driven. The Division will contact the employer if necessary to ask further questions.

*Q. Does the material delivered matter?*

A. Potentially. For example, ready-mix concrete is delivered in transmit mixer trucks while aggregate materials is generally delivered in dump trucks. Therefore, please identify the type of trucks used as indicated in the response to your last question.

*Q. There may be different payment methods, such as hour wage rates, price per ton of material delivered, by the load, or percentage of revenue? How are these different methods of payment considered for purposes of prevailing wage? What happens if the driver is compensated on a combination of the above methods?*

A. For the purposes of prevailing wage investigations, employers are asked to report the basic hourly wage rate paid to their workers.

*Q. When does DIR expect the new wage rates to begin?*

A. The DIR expects to issue wage rates for this type of work no earlier than February 22, 2009, to become effective on March 4, 2009.

## **5) Data Request**

*Q. What information is really needed regarding employee wages? This question is asked, since there is concern about releasing personal information about employees.*

A. Confidential information about employees is protected by law. The Department will not release this information. The information you provide will be used for statistical purposes only.

*Q. Is the social security # required?*

A. Sufficient information should be provided to verify employment of workers. Payroll records showing the social security number are preferred. At a minimum, the records should show the last four digits of the social security number. Employers must comply with any requests from the Division for additional business records to verify any questionable data submitted.

*Q. Is the address and home phone number required?*

A. No.

*Q. Is the employee name required?*

A. Yes, sufficient information should be provided to verify employment of workers.

*Q. Is the employee # (assigned by the company) sufficient?*

A. No. The Division needs to be able to clearly identify the individual employers in records.

*Q. What is a sufficient amount of information to meet your objectives without compromising an employee or liability of a company?*

A. The Department requires actual supporting documents such as business records, payroll records, time cards, etc. that contain personal information. Please be advised that this information will be treated as confidential and will be used strictly for statistical purposes only.

*Q. Can information be summarized?*

A. Information can be summarized on a county-by-county basis. However, payroll records must be submitted to support the summary data you provide.

*Q. Is it sufficient to mail this information to DIR, or does it have to be also presented at a hearing, too?*

A. It is sufficient to mail the information.

## **6) Hearings**

*Q. What information or topics can be addressed at the hearings?*

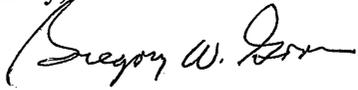
A. Comments and testimony should be limited to the prevailing wage determination procedures to the extent that they are relevant to the purpose of the hearing (see Notice of Public Hearing dated October 8, 2008). Coverage issues surrounding on-the-site or off-the-site hauling may not be addressed at the hearing.

*Q. Can issues of wage classification be addressed?*

A. Any formal requests about wage classifications should be submitted in writing including a full explanation to be given proper consideration.

I hope this information addresses your concerns. If you have any questions, please call me at (415) 703-4780.

Sincerely,

A handwritten signature in black ink that reads "Gregory W. Govan". The signature is written in a cursive style with a large initial 'G'.

Gregory Govan  
Chief

Enclosure(s)