

Chapter 8. Office of the Director

Subchapter 3. Payment of Prevailing Wages upon Public Works

The Department of Industrial Relations adds a new Article 7 to Subchapter 3 of Chapter 8 of Division 1 of the California Code of regulations, as follows.

Article 7. Registration of Public Works Contractors

§16410. Duty to Register: Online Application, Time Period, Identification Number, and Renewals.

- (a) Any contractor or subcontractor who is required to be registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 shall complete an online application on the Department's Public Works website and pay the applicable fee specified in section 16412.
- (b) All registrations shall be for the July 1 to June 30 fiscal year or any part of the fiscal year that remains following the date of registration.
- (c) Registration is required for any contractor or subcontractor who will bid on or perform public work as defined in that is subject to the requirement to pay prevailing wages as described in Labor Code Sections 1771, 1772, and 1774. This requirement includes the following specific situations, in addition to anyone else covered by the definition of contractor in Labor Code Section 1722.1.

(1) Each business entity or name that is ~~(i)~~ separately licensed by the Contractors State License Board or other licensing entity and ~~(ii)~~ intends to bid or work on public works through that separate license, irrespective of whether the separately licensed entities or business names share a common ownership.

~~(d)~~(2) Registration is required for any person entity or individual hired or employed engaged as an independent contractor to perform work that is subject to prevailing wage requirements. For purposes of this section, no person shall be considered an employee of another registered contractor or subcontractor unless the registered contractor or subcontractor has workers' compensation coverage for that person as specified in Labor

Code Section 1725.5(a)(2)(A).

(3) Any entity or individual who is a joint employer of workers employed on public works, whether or not the entity or individual has entered into a contract or subcontract to perform the public work. For purposes of this section, a joint employer includes a professional employment agency, temporary staffing agency, or labor contractor who employs workers in the execution of any contract of public work, as well as an entity or individual who enters into a contract or subcontract to perform public work, but subcontracts with another entity or individual to perform the actual work.

(4) Any sole proprietor, including but not limited to an owner-operator, who performs any work that is subject to the requirement to pay prevailing wages under Labor Code Section 1774.

~~(e)-(d)~~ Every contractor and subcontractor who registers with the Department pursuant to this Article shall be assigned a unique registration number, which may be used as an identification number on other public works forms, notices, and listings that are submitted to or maintained by the Department.

~~(f)-(e)~~ Unless otherwise specified by statute or these regulations, the requirements for renewing an existing or previous registration shall be the same as the requirements for a new registration.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1722.1, 1725.5, 1771, 1771.1, 1772, 1774, and 2810.3, Labor Code.

§ 16411. Required Information.

(a) The registration shall include the applicant's legal name, business name or names (if different), ~~legal mailing address, and physical address,~~ and business email address. The registration shall also specify whether the applicant is a sole proprietor, partnership, limited liability company, corporation, or joint venture, and shall identify the principal owners, officers, or other persons having authority to act on behalf of the business.

(b) The registration shall include the Contractors State License Board license number for any applicant who is required to be licensed by that Board. Other applicants shall identify the type

and number of any professional license, permit, or other form of authorization from an agency of the State of California, if any, that applies to their work.

(c) Either in addition to or in lieu of direct evidence of compliance with the requirements of subparagraphs (A) through (E) of subdivision (a)(2) of Labor Code Section 1725.5, the Labor Commissioner may require applicants to certify under penalty of perjury to their compliance with those requirements.

(d) Notwithstanding any certifications required in accordance with subsection (c) of this section, the Labor Commissioner may require an applicant to provide independent proof of compliance with any of the requirements of subparagraphs (A) through (E) of subdivision (a)(2) of Labor Code Section 1725.5, and the Labor Commissioner may also consult court and agency records, including but not limited to insurance coverage records maintained by the Workers' Compensation Insurance Rating Bureau, to determine if an applicant is in compliance with those requirements.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Section 1725.5, Labor Code.

§ 16412. Registration Fees.

(a) The fees for registration or renewal shall be as set forth below. All fees required under this section shall be nonrefundable.

- (1) Application for new registration – \$400
- (2) Application for new registration after previous denial of registration – \$400
- (3) Application for renewal of registration – \$400
- (4) Additional penalty to apply for registration if contractor or subcontractor has worked, bid, or been listed on a bid in violation of the requirements of Labor Code Section 1725.5(a) within the preceding twelve months – \$2000
- (5) Additional penalty renewal fee, applicable during first ninety (90) days following expiration of prior registration, for a contractor or subcontractor who inadvertently allows registration to lapse but works, bids, or is listed on a bid in violation of the

requirements of Labor Code Section 1725.5(a) – \$400

- (6) The fees specified in paragraphs (1), (2), and (3) are for registration or renewal for a single fiscal year, as determined in accordance with section 16410(b). ~~Effective June 1, 2019, a~~ A contractor or subcontractor may apply to register or renew for one, two, or three years by paying the fee specified in paragraphs (1), (2), or (3) for each year of registration or renewal, plus any additional penalty due under paragraphs (4) or (5) ~~or (6)~~.

~~(b) The fees specified in subsection (a) are subject to modification annually by the Director of Industrial Relations in accordance with the requirements of Labor Code Section 1771.3(e).~~

~~(c)~~ (b) For good cause, the Director of Industrial Relations may suspend or delay application of the penalties specified in paragraphs (a)(4) and (5) as to all registrants or one or more specified subclasses of registrants, but not individually.

~~(d)~~ (c) No registration shall be complete until the required fee has been received and processed. For purposes of this section, processed means that the Labor Commissioner has received and deposited a payment made in cash or has received confirmation of the receipt and deposit of funds provided by credit card or check that are not subject to cancellation, reversion, or return to the person submitting the payment or to any financial institution or other intermediary through which the payment was made.

~~(e)~~ (d) The Labor Commissioner has the discretion in individual cases to refund a penalty assessed pursuant to paragraphs (a)(4) or (5) upon receipt of clear and convincing proof that the applicant was not subject to the penalty.

~~(f)~~ (e) The Labor Commissioner has the discretion in individual cases to cancel a duplicate registration upon receipt of clear and convincing proof that the duplicate registration was submitted unintentionally and in error. When cancelling a duplicate registration, the Labor Commissioner may, but is not required to, refund the fees paid for that registration.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1725.5 and 1771.3, Labor Code.

§ 16413. Denial of Registration.

(a) Incomplete Registration: Registration shall be denied based on an applicant's failure to submit all of the information required by section 16411 or ~~pay~~ submit the registration fees required by section 16412(a). Denial of registration on this basis shall be without prejudice to completing the application or submitting a new application for registration that includes all the required information and the required registration fee.

(b) Denial on Merits: Registration shall also be denied based on an applicant's failure to meet any of the qualifications specified in Labor Code Section 1725.5 or upon the subsequent cancelation or dishonor of any fee payment submitted with the application ~~pay the fees, including any applicable penalties, required by Labor Code Section 1725.5 and section 16412(a) of these regulations.~~

(c) Within ~~thirty (30)~~ sixty (60) days following ~~receipt~~ the issuance of any notice of denial pursuant to subsection (b), including a notification of denial provided at the conclusion of the online registration process or any written notice of denial that is subsequently transmitted, mailed, or delivered to the applicant for registration, the applicant may appeal the denial by submitting a request for reconsideration and hearing.

(d) The appeal shall be in writing and transmitted as specified in section 16415. The appeal shall identify the date and means (electronic notice or other) through which registration was denied, and shall specify the grounds for appeal, including why the applicant believes that the denial was in error. The appeal may include additional evidence or information in support of the applicant's claim that the denial was in error.

(e) A hearing shall be set within thirty (30) days of receipt of an appeal submitted pursuant to subsections (c) and (d). With the consent of the applicant, the hearing may be conducted by conference call or other electronic means in lieu of personal appearances.

(f) At any time up until 48 hours prior to the scheduled date and time of the hearing, the Labor Commissioner may reconsider and, for good cause, rescind the denial and authorize registration, *provided that* the applicant is qualified for registration under Labor Code Section 1725.5 and has paid the fees and any penalties required by ~~Labor Code Section 1725.5 and~~ section 16412(a) of

these regulations.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Section 1725.5, Labor Code.

§16414. Revocation of Previously Approved Registration.

(a) The Labor Commissioner may revoke the registration of a contractor or subcontractor on any of the following grounds:

(1) Evidence that the contractor or subcontractor no longer meets all the qualifications specified in Labor Code Section 1725.5;

(2) Evidence that at the time of the most recent registration or renewal, the contractor or subcontractor did not meet the qualifications specified in Labor Code Section 1725.5 or made a certification to the Department that the contractor or subcontractor knew or should have known to be false at the time the certification was made; or

(3) Evidence that within the preceding twelve (12) months the contractor or subcontractor knowingly or negligently, or by reason of a failure to inquire, ~~subcontracted~~ entered into a subcontract with another person or entity to perform public work in violation of the public works contractor registration requirements of Labor Code Sections 1725.5 and 1771.1.

(b) The notice of revocation shall be in writing, shall specify the grounds upon which registration is being revoked, and shall identify or describe the evidence upon which the revocation is based. The notice shall also specify the length of time during which the contractor or subcontractor will be disqualified from registering with the Department. The period of disqualification shall be no less than 30 days and no greater than 24 months following the effective date of revocation. The Labor Commissioner shall use the substantive standards specified in Labor Code Section 1775(a)(2)(A)(i) and (ii) when determining the length of disqualification, and may postpone or waive the period of disqualification for first time violation that was unintentional and did not prejudice the rights of any other interested party or hinder the Labor Commissioner's ability to monitor and enforce compliance with the public works requirements of the Labor Code.

(c) The Labor Commissioner shall send ~~written~~ the notice of revocation by email and first class mail, using the most recent contact information provided by the contractor or subcontractor through the registration process. ~~The notice shall specify the grounds upon which registration is being revoked and shall identify or describe the evidence upon which the revocation is based.~~ A copy of the notice shall be sent to any awarding body, contractor, or subcontractor known by the Labor Commissioner to have directly engaged the subject contractor or subcontractor for ongoing work that requires registration pursuant to Labor Code Sections 1725.5 and 1771.1.

~~(e)~~(d) Except as provided in section 16417, revocation shall be effective at 11:59 p.m. on the tenth day following the date the Labor Commissioner sends the written notice of revocation specified in subsections (b) and (c), unless prior to that deadline the Department receives the contractor or subcontractor's written appeal under subsection ~~(d)~~(e). ~~The effective date and time of revocation and deadline for prior appeal shall not be extended by Saturdays, Sundays, or holidays.~~

~~(d)~~(e) A notice of revocation may be appealed by submitting a written request for hearing in the manner specified in section ~~16416~~ 16415. The appeal shall clearly identify or include a copy of the notice being appealed and shall specify the grounds for appeal, including why the contractor or subcontractor believes that the notice is in error and registration should not be revoked. The appeal may include additional evidence or information in support of the contractor or subcontractor's position. An appeal may be submitted anytime within ~~thirty (30)~~ sixty (60) days following the ~~contractor or subcontractor's receipt of a notice of revocation~~ the date the Labor Commissioner sends the written notice of revocation; however, only an appeal that is transmitted and received by the Department within the ten (10) day deadline specified in subsection ~~(e)~~(d) will stay the effective date of revocation. In the case of a later appeal, the contractor or subcontractor will be ineligible to bid or work on public works unless and until the revocation is later reversed or rescinded or expires by its own terms or by operation of law, and the contractor or subcontractor is otherwise qualified to register under Labor Code Section 1725.5 and these regulations.

~~(e)~~(f) A hearing shall be set within thirty (30) days of receipt of an appeal submitted pursuant to subsections ~~(e) or (d)~~ or (e), and priority shall be given to an appeal received within ten (10) days

that stays revocation. With the consent of the appellant, the hearing may be conducted by conference call or other electronic means in lieu of personal appearances.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1725.5, 1771.1, and 1775, Labor Code.

§16415. Transmission of Appeal.

(a) An appeal of the denial of registration pursuant to section 16413 or revocation of registration pursuant to section 16414 shall be sent to the Director’s Lead Hearing Officer, with a copy sent simultaneously to the Labor Commissioner’s Office, in one or more of the manners specified in subsections (b) through (c) below. If not apparent on the face of the transmission, the appeal should indicate the manner and address to which the Labor Commissioner’s copy is being sent.

(b) Appeals and attachments transmitted by email shall be sent to:

Lead Hearing Officer at ODLHearingOfficer@dir.ca.gov

Labor Commissioner’s Office at PWContractorAppeals@dir.ca.gov

(c) Appeals and attachments transmitted by regular mail shall be sent to:

Lead Hearing Officer at: DIR, Office of the Director Legal Unit
Attn.: Lead Hearing Officer
1515 Clay Street, 7th Floor
Oakland, CA 94612

Labor Commissioner’s Office at: Division of Labor Standards Enforcement
Bureau of Field Enforcement
Attn: PW Contractor Appeal
300 Oceangate Blvd., No. 850
Long Beach, CA 90802

(d) The appeal shall include contact information, including telephone number, for the appellant or appellant’s representative and should specify the most expeditious or preferred means for the Department to contact the appellant in order to schedule a hearing on the appeal.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Section 1725.5, Labor Code.

§16416. Hearing and Decision.

(a) An impartial hearing officer shall be appointed to hear the appeal in accordance with the requirements of Title 8, California Code of Regulations, section 17204 [Director's Prevailing Wage Hearing Regulations].

(b) A written notice of hearing shall be sent to the appellant or appellant's representative and to the Labor Commissioner's representative at least ten (10) prior to the date of hearing. The hearing officer may first schedule a telephone prehearing conference with the parties or their representatives for the purpose of identifying and narrowing the issues, coordinating the scheduling of the hearing, and making any orders needed to facilitate the production or exchange of evidence.

(c) Unless otherwise ordered by the hearing officer, the hearing shall be conducted in accordance with the procedures specified in sections 17240, 17241(b) and (c), 17242 through 17249, and 17252 of the Director's Prevailing Wage Hearing Regulations.

(d) Within five (5) days following the conclusion of the hearing in which revocation has been stayed under section 16414~~(e)~~(d) and within ten (10) days following the conclusion of the hearing in all other cases, the hearing officer shall issue a written decision that upholds or reverses the denial or revocation of registration and explains the basis for the decision. If a determination to deny or revoke registration is upheld, the decision shall also specify the length of time, if any, during which the appellant shall be disqualified from registering with the Department.

(e) The hearing officer's decision shall be the final decision of the Director of Industrial Relations, and shall not be subject to further appeal except by writ of administrative mandate to the appropriate superior court pursuant to Code of Civil Procedure Section 1094.5, within 45 days after service of the hearing officer's decision. The procedures specified in sections 17262(d) and 17263 of the Director's Prevailing Wage Hearing Regulations shall apply in the event of any such mandamus appeal to superior court.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Section 1094.5, Code of Civil

Procedure; Sections 1725.5, 1742, 1771.1, and 1775, Labor Code.

§16417. Effect of Debarment Under Labor Code Section 1777.1.

Notwithstanding any other rights or requirements set forth in these regulations, an order of debarment made by the Labor Commissioner pursuant to Labor Code Section 1777.1 shall result in an automatic denial of registration or revocation of registration of the debarred contractor or subcontractor and shall not be subject to any notice or appeal rights other than those provided under Labor Code Section 1777.1 and the regulations in Subchapter 4.8 (commencing with section 16800) of Title 8, Division 1, Chapter 8 of the California Code of Regulations.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1725.5 and 1777.1, Labor Code.

§ 16418. Labor Commissioner’s Authority to Assess Penalties and Issue Stop Orders under Labor Code Section 1771.1.

The rights, requirements, and procedures set forth in these regulations shall not apply to any penalty assessment or stop order issued pursuant to Labor Code Section 1771.1, nor shall they modify, restrict, or otherwise affect the Labor Commissioner’s authority to assess penalties or issue stop orders pursuant to Labor Code Section 1771.1 upon determining that a contractor or subcontractor has or currently is engaged in public work without being registered in accordance with the requirements of Labor Code Sections 1725.5 and 1771.1.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1725.5 and 1771.1, Labor Code.