Protect Your Business—Prevent Penalties

Construction

Department of Industrial Relations
Labor Enforcement Task Force (LETF)

2017

As a business owner in construction, you have a lot to consider. You bring jobs to the community and build or repair homes and buildings. When you understand and comply with labor laws, you protect the investment you have made, promote a positive image, and avoid paying penalties.

Through the Labor Enforcement Task Force (LETF), under the direction of the Department of Industrial Relations, California agencies work together to make sure employers are following labor, safety and health, licensing, and payroll tax laws. LETF can help you understand which laws apply to you and how to comply. LETF also inspects businesses and cites employers if violations are found.

This booklet provides general information and is not meant to serve as legal advice. It was developed by the Department of Industrial Relations and its Labor Enforcement Task Force with assistance from the Labor Occupational Health Program at UC Berkeley.

Design by Cuttriss & Hambleton

Penalties

***NOT* following the law will hurt your business.**

Here are some examples of the kinds of penalties you would owe your workers and state agencies.

IF YOU:	YOU WOULD OWE:
Misclassify employees as independent contractors	Fines of $5,000 to $25,000 per violation, plus unpaid payroll taxes
Fail to pay the minimum wage or overtime; fail to provide rest and meal breaks	All wages owed, plus penalties
Fail to provide a pay stub	$250 per employee each time they are paid
Violate health and safety rules	Up to $25,000 for each serious violation and a possible shutdown of operations
Punish or retaliate against workers	All wages owed, a fine of up to $10,000 per employee, and workers get their jobs back
Fail to have workers' compensation insurance	At least $1,500 per employee, and no one can work until all workers are covered
Fail to have appropriate licensing	Fines of up to $5,000 and/or imprisonment
TOTAL:	**NOT WORTH THE RISK!**

In some cases, criminal charges may be filed. You may serve up to 10 years in jail.

In 2015, contractors inspected by LETF were assessed nearly $1.75 million in initial penalties. This brochure describes some of the common problems LETF inspectors find in construction. It also lists where you can get help.

Contractor pays a total of $90,000 in penalties and back wages owed to workers

A construction company in Southern California was paying less than the minimum wage and did not pay overtime. The owner coached workers on what to say if a state agency ever asked them about their wages.

Several workers filed complaints with the state Labor Commissioner. The Commissioner found that the employer owed the workers wages and overtime, which were collected and paid back to the workers.

Note: This example reflects a typical scenario.

As an employer, some of your **KEY RESPONSIBILITIES** are to:

- Pay at least minimum or prevailing wage and overtime for extra hours
- Allow workers to bring up concerns without punishing them
- Provide a safe workplace
- Have appropriate licenses and permits
- Give rest and meal breaks
- Pay all payroll taxes and keep records of employees and contractors
- Have workers' compensation insurance
- Provide a workplace free of discrimination and harassment

Problems LETF finds in construction

Licensing

Contractors are often cited for:

1 Not having a contractor's license, or hiring unlicensed subcontractors.

Employee Hiring

Contractors are often cited for:

1 Misclassifying employees as independent contractors.

If you are the one who controls *how* someone does the work and *when* that work is done, then it is likely that person is legally your employee. State agencies won't care if you gave someone a 1099 form or that an employee agreed to work as an independent contractor.

2 Not keeping all required records.

You must keep records of all your employees for the past four years. This should include name, address, job type, and last four digits of the Social Security number. For minors under 18, you must list their dates of birth.

Wages and Breaks

Contractors are often cited for:

1 Not paying workers the wages they are owed.

- You must pay at least minimum wage for all hours worked. If the city where you are working or the federal government has a higher minimum wage than the state, then you must pay whichever of those rates is the highest.
- You must pay overtime (1 1/2 times the regular rate of pay) and double-time (twice the regular rate of pay) according to the rules stated in Industrial Wage Commission Order No. 16-2001 (which must be posted at your workplace where employees can read it easily).

2 Not allowing rest or meal breaks.

Workers must receive:

- A paid 10-minute rest break for every 4 hours of work.
- An unpaid meal break of at least 30 minutes if they work 5 hours or more. (An employee can agree to skip meal breaks if the workday is 6 hours or less.)

3 Paying a piece rate or other nonhourly rate that does not meet minimum-wage requirements (including any required overtime) or does not separately compensate workers for required breaks and other nonproductive time.

4 Not giving pay stubs or not paying payroll tax.

You must give out pay stubs, list the deductions, and pay payroll tax. For each pay period, keep records of work hours and amounts paid to each worker.

Visit www.dir.ca.gov/dlse/DLSE-FAQs.htm for more information on all the items that must be included in a wage stub.

Health and Safety

Contractors are often cited for:

1 Not complying with the following regulations:

- § 3395 (f). Establish Emergency Response Procedures
- § 3395 (i). Establish a Heat Illness Prevention Plan
- § 1509 (a). Establish an Injury and Illness Prevention Program
- § 1509 (b). Every employer shall adopt a written Code of Safe Practices
- § 1509 (c). Code of Safe Practices shall be posted at a conspicuous location at each job site
- § 1512 (b). Ensure the availability of trained person to render first aid
- § 3276 (e). Care, use, inspection, and maintenance of ladders
- § 1527 (a). Provide 1 washing facility for every 20 employees

Many hazards have specific regulations that describe what an employer must do to protect workers. These are called Title 8 Safety Orders, such as those listed above, and you can find them here: www.dir.ca.gov/samples/search/query.htm.

2 Not providing the equipment, tools or protective clothing that workers need to work safely.

3 Lacking a proper safety plan (Injury and Illness Prevention Program or IIPP).

You must have a written plan to identify hazards and protect workers. You must also have a way for workers to make suggestions without threat of being fired or punished.

4 Poor records of training.

Safety training must be in a language that workers understand. Keep records that include date, type of training, name of trainer, and names of workers who attended. You must pay workers for the time they spend in training.

5 Not having a first-aid kit.

6 Not having workers' compensation insurance or not insuring all employees.

All businesses must have this insurance to provide medical care and other benefits if a worker is injured. As soon as you hear about a possible job injury, you must give the injured worker a claim form and the name of your insurance company.

Stay up to date with new labor laws

Below are some resources to help you stay updated and comply with important recent changes to labor laws:

- **Paid Sick Leave**. Employers must do several things to comply with the Healthy Workplace Health Family Act; visit www.dir.ca.gov/DLSE/ab1522.html.
- **Minimum Wage**. As of January 1, 2017, the minimum wage in California is $10.50 per hour for employers with 26 or more employees and $10.00 per hour for employers with 25 or fewer employees. Some localities (cities and counties) have enacted higher minimum wage rates. For more details, visit www.dir.ca.gov/dlse/faq_minimumwage.htm.
- **Piece-Rate Compensation**. Effective January 1, 2016, AB 1513 adds section 226.2 to the Labor Code concerning how to compensate piece-rate workers for required breaks and other nonproductive time. Visit www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm.

Retaliation is illegal

Employers can be required to reinstate fired employees, pay employees' lost wages, and pay fines up to $10,000 per employee if they punish or fire workers for:

- **Speaking up** about wages that are owed to them
- **Reporting** an injury or a health and safety hazard
- **Filing** a claim or complaint with a government agency.

It is illegal for employers to threaten or retaliate against workers in any way.

For example, employers cannot:

- **Threaten** workers with deportation
- **Punish** workers with undesirable tasks
- **Fire** workers or send them home
- **Prevent** workers from getting a different job.

You do not have to agree with the workers. If you are complying with labor laws, you do not have to make the changes that are being requested. But everyone benefits when workers feel safe enough to bring up concerns. Listen to your employees and involve them in coming up with solutions that work for everyone.

Where to Get Help

There are resources that can help you understand which laws apply to you and how to comply.

LETF

Call the Labor Enforcement Task Force (LETF) toll free at **855-297-5322** or go to **www.dir.ca.gov/letf**.

Through LETF, California agencies work together to target businesses that are not following labor laws and other business requirements. LETF aims to make sure that workers are paid their full wages, workplaces are safe, and employers are complying with labor and payroll tax laws.

LETF agencies include:

Department of Industrial Relations

- Labor Commissioner (DLSE)
- Cal/OSHA

Employment Development Department (EDD)

Contractors State License Board (CSLB)

Board of Equalization (BOE)

Bureau of Automotive Repair (BAR)

Alcohol Beverage Control (ABC)

California Department of Insurance (CDI)

State Attorney General (DOJ)

and other state, federal and local agencies.

Cal/OSHA

Call Cal/OSHA Consultation at **800-963-9424** or go to **www.dir.ca.gov/dosh/consultation.html.**

Consultation Services provides free health and safety consultation to employers. Consultation Services is separate from the Cal/OSHA Enforcement Branch. All your communications with Consultation Services are confidential.

- To improve your safety plan, Cal/OSHA offers a template for a "high hazard" Injury and Illness Prevention Program.
- Go to www.dir.ca.gov/samples/search/query.htm to find regulations about specific hazards (Title 8 standards).

Other sources of help

- Contractors State License Board, www.cslb.ca.gov
- Contractors' Associations
- Small Business Development Centers
- Your workers' compensation insurance broker can offer assistance, including help with developing a safety plan.
- The Governor's Office of Business and Economic Development (GO-Biz): www.business.ca.gov