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CHANGE IN LABOR CODE WILL REQUIRE UPDATING SUBCONTRACT FORMS FOR STATE AND LOCAL PROJECTS

With the New Year, prime contractors who perform work for state and local public agencies will want to update the Labor Code exhibit that they attach to their subcontracts. As discussed in prior Construction Alerts, a general contractor can be held liable for a subcontractor's prevailing wage liabilities. However, under Labor Code Section 1775, if the general contractor takes four steps, it can avoid being found liable for penalties. These four steps are:

1. Monitoring the payment of prevailing wages rate by periodic review of the subcontractor's certified payroll records.
2. Upon becoming aware of a failure by the subcontractor to pay prevailing wages, taking diligent "corrective action to halt or rectify the failure," including but not limited to "retaining sufficient funds due the subcontractor."
3. Including in its subcontract a copy of the text of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.
4. Prior to making final payment to the subcontractor, obtaining from the subcontractor an affidavit under penalty of perjury stating that the subcontractor has paid the specified prevailing wages and any overtime wages and penalties.

The third of the four steps is the reason why most subcontracts on prevailing wage projects have an attachment or otherwise include the text of certain Labor Code provisions. The Legislature this year made a minor change to Labor Code Section 1777.5,

which is one of the statutes that need to be included in a subcontract to qualify for the safe harbor protection from penalties arising from a subcontractor's violation of the prevailing wage laws. Although the Legislature's changes were not substantive, out of an abundance of caution, it would be a good idea to update the text of these Labor Code statutes in your subcontract forms.

With this email, we have included a copy of a new Labor Code exhibit that includes the updated language.

This also is a good time to review your policies and procedures for complying with apprenticeship, skilled and trained workforce, local hiring and local business preferences, DBE, WBE, and DVBE requirements.

Local agencies and state regulators have become aggressive in their enforcement efforts, imposing significant penalties. Caltrans' personnel have also become very literal and strict in their enforcement of good faith efforts requirements, rejecting valid low bids where DBE goals have not been met even when the lowest bidder has engaged in extensive, documented good faith efforts to subcontract work to DBE firms.

All of us at Leonidou & Rosin extend our best wishes for a safe and prosperous New Year!