

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2677

Introduced by Assembly Member Swanson

March 5, 2012

An act to amend Section 1773.1 of, and to add Section 1773.8 to, the Labor Code, relating to prevailing wages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2677, as amended, Swanson. Public works: wages: ~~fringe benefit employer payment~~ contributions.

Existing law requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations, as specified, be paid to workers employed on public works projects. Existing law deems per diem wages to include specified employer payments and provides that employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. Existing law, however, provides that credits for employer payments do not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing.

This bill would provide that an increased ~~fringe benefit employer payment~~ contribution that results in a lower hourly straight time or overtime wage is not considered to be a violation of the applicable prevailing wage determination so long as specified conditions are met.

This bill would provide that an increased ~~fringe benefit employer payment~~ contribution that results in a lower taxable wage is not a

violation of the applicable prevailing wage determination if specified conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1773.1 of the Labor Code is amended to
- 2 read:
- 3 1773.1. (a) Per diem wages, when the term is used in this
- 4 chapter or in any other statute applicable to public works, shall be
- 5 deemed to include employer payments for the following:
- 6 (1) Health and welfare.
- 7 (2) Pension.
- 8 (3) Vacation.
- 9 (4) Travel.
- 10 (5) Subsistence.
- 11 (6) Apprenticeship or other training programs authorized by
- 12 Section 3093, so long as the cost of training is reasonably related
- 13 to the amount of the contributions.
- 14 (7) Worker protection and assistance programs or committees
- 15 established under the federal Labor Management Cooperation Act
- 16 of 1978 (Section 175a of Title 29 of the United States Code), to
- 17 the extent that the activities of the programs or committees are
- 18 directed to the monitoring and enforcement of laws related to
- 19 public works.
- 20 (8) Industry advancement and collective bargaining agreements
- 21 administrative fees, provided that these payments are required
- 22 under a collective bargaining agreement pertaining to the particular
- 23 craft, classification, or type of work within the locality or the
- 24 nearest labor market area at issue.
- 25 (9) Other purposes similar to those specified in paragraphs (1)
- 26 to (8), inclusive.
- 27 (b) Employer payments include all of the following:
- 28 (1) The rate of contribution irrevocably made by the employer
- 29 to a trustee or third person pursuant to a plan, fund, or program.
- 30 (2) The rate of actual costs to the employer reasonably
- 31 anticipated in providing benefits to workers pursuant to an
- 32 enforceable commitment to carry out a financially responsible plan
- 33 or program communicated in writing to the workers affected.

1 (3) Payments to the California Apprenticeship Council pursuant
2 to Section 1777.5.

3 (c) Employer payments are a credit against the obligation to
4 pay the general prevailing rate of per diem wages. However, no
5 credit shall be granted for benefits required to be provided by other
6 state or federal law. Credits for employer payments also shall not
7 reduce the obligation to pay the hourly straight time or overtime
8 wages found to be prevailing. However, an increased ~~fringe benefit~~
9 *employer payment* contribution that results in a lower hourly
10 straight time or overtime wage shall not be considered a violation
11 of the applicable prevailing wage determination so long as all of
12 following conditions are met:

13 (1) The increased ~~fringe benefit~~ *employer payment* is made
14 pursuant to criteria set forth in a collective bargaining agreement.

15 (2) The *basic hourly rate and increased fringe benefit and hourly*
16 ~~straight time and overtime wage combined~~ *employer payment* are
17 no less than the general prevailing rate of per diem wages *and the*
18 *general prevailing rate for holiday and overtime work in the*
19 *director's general prevailing wage determination.*

20 (3) The ~~fringe benefit~~ *employer payment* contribution is
21 irrevocable unless made in error.

22 (d) The credit for employer payments shall be computed on an
23 annualized basis where the employer seeks credit for employer
24 payments that are higher for public works projects than for private
25 construction performed by the same employer, except where one
26 or more of the following occur:

27 (1) The employer has an enforceable obligation to make the
28 higher rate of payments on future private construction performed
29 by the employer.

30 (2) The higher rate of payments is required by a project labor
31 agreement.

32 (3) The payments are made to the California Apprenticeship
33 Council pursuant to Section 1777.5.

34 (4) The director determines that annualization would not serve
35 the purposes of this chapter.

36 (e) (1) For the purpose of determining those per diem wages
37 for contracts, the representative of any craft, classification, or type
38 of worker needed to execute contracts shall file with the
39 Department of Industrial Relations fully executed copies of the
40 collective bargaining agreements for the particular craft,

1 classification, or type of work involved. The collective bargaining
 2 agreements shall be filed after their execution and thereafter may
 3 be taken into consideration pursuant to Section 1773 whenever
 4 filed 30 days prior to the call for bids. If the collective bargaining
 5 agreement has not been formalized, a typescript of the final draft
 6 may be filed temporarily, accompanied by a statement under
 7 penalty of perjury as to its effective date.

8 (2) Where a copy of the collective bargaining agreement has
 9 previously been filed, fully executed copies of all modifications
 10 and extensions of the agreement that affect per diem wages or
 11 holidays shall be filed.

12 (3) The failure to comply with filing requirements of this
 13 subdivision shall not be grounds for setting aside a prevailing wage
 14 determination if the information taken into consideration is correct.

15 SEC. 2. Section 1773.8 is added to the Labor Code, to read:

16 1773.8. An increased ~~fringe benefit~~ *employer payment*
 17 contribution that results in a lower taxable wage shall not be
 18 considered a violation of the applicable prevailing wage
 19 determination so long as all of the following conditions are met:

20 (a) The increased ~~fringe benefit~~ *employer payment* is made
 21 pursuant to criteria set forth in a collective bargaining agreement.

22 (b) The increased ~~fringe benefit~~ *employer payment* and hourly
 23 straight time and overtime wage combined are no less than the
 24 general prevailing rate of per diem wages.

25 (c) The ~~fringe benefit~~ *employer payment* contribution is
 26 irrevocable unless made in error.