

Introduced by Senator HertzbergFebruary 4, 2016

An act to amend Section 1773.1 of Labor Code, relating to prevailing wage.

LEGISLATIVE COUNSEL'S DIGEST

SB 954, as introduced, Hertzberg. Public works: prevailing wage: per diem wages.

Existing law requires, except for public works projects of \$1,000 or less, that workers employed on public works be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality that the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed, as prescribed. Existing law requires the Director of Industrial Relations to determine the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is to be performed, and the general prevailing rate of per diem wages for holiday and overtime work.

Existing law includes, as per diem wages, employer payment for industry advancement and collective bargaining agreements administrative fees, provided that these payments are required under a collective bargaining agreement pertaining to the particular craft, classification, or type of work within the locality or the nearest labor market area at issue. Per diem wages also include employer payments for other purposes similar to those specified, including, but not limited to, certain apprenticeship or other training programs, to the extent that the cost of training is reasonably related to the amount of the contributions, and worker protection and assistance programs or committees established under the federal Labor Management

Cooperation Act of 1978, to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.

This bill would instead require per diem wages to include industry advancement and collective bargaining agreements administrative fees, provided that the employer is required by a collective bargaining agreement to make those payments. The bill would also exclude from per diem wages, employer payments for other purposes similar to certain apprenticeship or other training programs, worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978, and industry advancement and collective bargaining agreements administrative fees.

Existing law provides that employer payments are credits against the obligation to pay the general prevailing rate of per diem wages. Credit is prohibited for benefits required to be provided by other state or federal law or for payments made to monitor and enforce laws related to public works if those payments are not made to a program or committee established under the federal Labor Management Cooperation Act of 1978.

This bill would also prohibit credit for payments for industry advancement if those payments are not required by a collective bargaining agreement.

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, as the term is used in this chapter
4 or in any other statute applicable to public works, includes
5 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, to the extent that the cost of training is reasonably
13 related to the amount of the contributions.

1 (7) Worker protection and assistance programs or committees
2 established under the federal Labor Management Cooperation Act
3 of 1978 (29 U.S.C. Sec. 175a), to the extent that the activities of
4 the programs or committees are directed to the monitoring and
5 enforcement of laws related to public works.

6 (8) Industry advancement and collective bargaining agreements
7 administrative fees, provided that ~~these payments are required~~
8 ~~under a collective bargaining agreement pertaining to the particular~~
9 ~~craft, classification, or type of work within the locality or the~~
10 ~~nearest labor market area at issue. *the employer is required by a*~~
11 ~~*collective bargaining agreement to make these payments.*~~

12 (9) Other purposes similar to those specified in paragraphs (1)
13 to ~~(8)~~, (5), inclusive.

14 (b) Employer payments include all of the following:

15 (1) The rate of contribution irrevocably made by the employer
16 to a trustee or third person pursuant to a plan, fund, or program.

17 (2) The rate of actual costs to the employer reasonably
18 anticipated in providing benefits to workers pursuant to an
19 enforceable commitment to carry out a financially responsible plan
20 or program communicated in writing to the workers affected.

21 (3) Payments to the California Apprenticeship Council pursuant
22 to Section 1777.5.

23 (c) Employer payments are a credit against the obligation to
24 pay the general prevailing rate of per diem wages. However, credit
25 shall not be granted for benefits required to be provided by other
26 state or federal law, ~~or~~ for payments made to monitor and enforce
27 laws related to public works if those payments are not made to a
28 program or committee established under the federal Labor
29 Management Cooperation Act of 1978 (29 U.S.C. Sec. ~~175a~~;
30 ~~175a~~), *or for payments for industry advancement if those payments*
31 *are not required by a collective bargaining agreement.* Credits for
32 employer payments also shall not reduce the obligation to pay the
33 hourly straight time or overtime wages found to be prevailing.
34 However, an increased employer payment contribution that results
35 in a lower hourly straight time or overtime wage shall not be
36 considered a violation of the applicable prevailing wage
37 determination if all of the following conditions are met:

38 (1) The increased employer payment is made pursuant to criteria
39 set forth in a collective bargaining agreement.

1 (2) The basic hourly rate and increased employer payment are
2 no less than the general prevailing rate of per diem wages and the
3 general prevailing rate for holiday and overtime work in the
4 director’s general prevailing wage determination.

5 (3) The employer payment contribution is irrevocable unless
6 made in error.

7 (d) An employer may take credit for an employer payment
8 specified in subdivision (b), even if contributions are not made,
9 or costs are not paid, during the same pay period for which credit
10 is taken, if the employer regularly makes the contributions, or
11 regularly pays the costs, for the plan, fund, or program on no less
12 than a quarterly basis.

13 (e) The credit for employer payments shall be computed on an
14 annualized basis when the employer seeks credit for employer
15 payments that are higher for public works projects than for private
16 construction performed by the same employer, unless one or more
17 of the following occur:

18 (1) The employer has an enforceable obligation to make the
19 higher rate of payments on future private construction performed
20 by the employer.

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

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

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

27 (f) (1) For the purpose of determining those per diem wages
28 for contracts, the representative of any craft, classification, or type
29 of worker needed to execute contracts shall file with the
30 Department of Industrial Relations fully executed copies of the
31 collective bargaining agreements for the particular craft,
32 classification, or type of work involved. The collective bargaining
33 agreements shall be filed after their execution and thereafter may
34 be taken into consideration pursuant to Section 1773 whenever
35 they are filed 30 days prior to the call for bids. If the collective
36 bargaining agreement has not been formalized, a typescript of the
37 final draft may be filed temporarily, accompanied by a statement
38 under penalty of perjury as to its effective date.

39 (2) When a copy of the collective bargaining agreement has
40 previously been filed, fully executed copies of all modifications

- 1 and extensions of the agreement that affect per diem wages or
- 2 holidays shall be filed.
- 3 (3) The failure to comply with filing requirements of this
- 4 subdivision shall not be grounds for setting aside a prevailing wage
- 5 determination if the information taken into consideration is correct.

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