

**UNIVERSITY OF CALIFORNIA
MERCED**

LABOR COMPLIANCE PROGRAM

Prepared by the University of California

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IMPLEMENTATION PLAN & OPERATIONS MANUAL

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INTRODUCTION

The Regents of the University of California (the “University of California”) institutes this Labor Compliance Program (LCP) for the purpose of implementing its policy relative to the labor compliance provisions of public works contracts funded by bonds issued by the State of California. This update is provided as part of the University’s continuing commitment to the requirements of LCP laws and regulations. The University will continue to update its program as the laws and regulations relating to Labor Compliance Programs are changed and updated.

This program is applicable to all public works projects awarded by the University on or after January 1, 2012, using funds derived from any bond issued by the State of California to fund public works projects that are not otherwise administered by the Department of Industrial Relations’ Compliance Monitoring Unit.

California Labor Code Section 1770, et seq., and Education Code Section 17424 require contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

California Labor Code Section 1776 requires contractors to keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

California Labor Code Section 1777.5 requires contractors to employ registered apprentices on public works projects.

This labor compliance program contains the labor compliance standards required by state laws, regulations, and directives, as well as University policies and contract provisions, which include, but are not limited, the following:

1. Payment of applicable prevailing wage rates.
2. Employment of properly registered apprentices.
3. Providing certified payroll records upon request but not less than monthly.
4. Monitoring University construction sites for the verification of proper payments of prevailing wage rates and work classification.
5. Conducting pre-job conferences with contractors/subcontractors.
6. Withholding contract payments and imposing penalties for noncompliance.
7. Applicable reports to the California Labor Commissioner

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8. Preparation and submittal of an Annual Report to the Department of Industrial Relations.

The University is committed to providing a current, complete and accurate LCP program for all applicable projects. As such, the University will update this administrative manual and LCP documents each time the Labor Code is amended and /or the DIR issues new regulations relating to LCPs. The University will also continue to conduct periodic training of its LCP Campus Officers and staff when the Labor Code and DIR regulations relating to LCP change and/or as needed by the LCP campus staff.

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SECTION I.

PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates as set forth in Labor Code Sections 1720, 1720.2, 1720.3, and 1771, have been made applicable to University construction contracts funded in whole or in part by bonds issued by the State of California and include, but are not limited to, such types of work as construction, alteration, demolition, repair, installation or maintenance work. The Division of Labor Statistics and Research (DLSR) predetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

A. Types of Contracts to Which Labor Compliance Program Requirements Apply

As provided in Labor Code Section 1771.3(a)(2) and (b), 1771.5(c) and California Code of Regulations Section 16450 et seq., an awarding body Labor Compliance Program (LCP), shall apply to any public works project awarded on or after August 1, 2010 that is funded in whole or in part from any bond issued by the State of California to fund public works projects.

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SECTION II.

**UNIVERSITY PUBLIC
WORKS CONTRACTS – CONTRACT LANGUAGE**

All University solicitations for bids and contracts for projects funded in whole or in part by bonds issued by the State of California and requiring LCP compliance shall contain appropriate language concerning the requirements of the Public Works chapter of the Labor Code similar to the sample language listed below:

This project is subject to the requirements of Section 1770 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. The University of California has on file at {ADDRESS OF UNIVERSITY FACILITY ISSUING DOCUMENTS} copies of the prevailing rate of per diem wages to be paid to all applicable workers. The prevailing wage rate determinations on file with University of California shall be made available to all interested parties upon reasonable request during normal business hours. Additionally, a copy of the prevailing wage determinations shall be available at each job site. Prevailing wage information may also be obtained via the internet at: www.dir.ca.gov. The University of California has instituted a Labor Compliance Program (LCP) and all contractors who perform work on projects covered by the LCP with this awarding body will be subject to the terms of that LCP.

As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the University, along with its request for payment, all applicable and necessary certified payrolls and other required documents for the time period covering such payment request. The University shall withhold any portion of a payment, including the entire payment amount, until certified payroll forms and other required LCP documents are properly submitted. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., or wage violations are identified by the University, the University may continue to hold sufficient funds to cover estimated wages and penalties under the contract.

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SECTION III.

JOB START MEETING

After the University awards the public works contract, and prior to the commencement of the work, a mandatory Pre Construction Conference shall be conducted with the developer, contractor and subcontractors for the particular project. The general contractor is responsible to see that the information provided at the Pre Construction Conference, relating to Labor Compliance Program (LCP) requirements, is distributed to its subcontractors.

At that meeting, the University will discuss the federal and state labor law requirements applicable to the contract, including prevailing wage requirements, the respective record keeping responsibilities, the requirement for the submittal of certified payroll records to the Agency, the prohibition against discrimination in employment and other items required to be covered at the pre-job conference.

At the Pre Construction Conference, each contractor and subcontractor will be given 2 copies of the form “Checklist of Labor Law Requirements” (available at http://www.dir.ca.gov/DAS/DAS_BuildingCompliance/Contractors/ChecklistLaborLawReq.pdf and referred to herein as the “Checklist”.) The Checklist is a brief summary of the labor laws which will be reviewed in the Pre-Construction Conference. At the end of the conference, 1 copy of the Checklist shall be completed and signed by a representative of the contractor or a representative of each subcontractor who is present, and by the University’s representative. That signed Checklist shall then be turned in to the University.

Contractors are referred to the DIR website at www.dir.ca.gov for updated prevailing wage information, apprenticeship regulations, forms, etc. The contractor is provided with information regarding the LCP contact person assigned to the specific project.

The contractors and subcontractors present at the Job Start meeting will be given the opportunity to ask questions of the University relative to the items contained in the Labor Law Requirements Checklist.

The average time to review this information with contractors is approximately 30 minutes to one hour, depending on the number of contractors in attendance and the number of questions asked.

The Developer/General Contractor is responsible to provide copies of the Checklist of Labor Law Requirement to all subcontractors on the project who are not in attendance at the Pre Construction Conference.

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SECTION IV.

REVIEW OF CERTIFIED PAYROLL RECORDS

A. Certified Payroll Records Required

The contractor and each subcontractor shall maintain payrolls and basic records (timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working at the University's project sites. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid.

1. Submittal of Certified Payroll Records

The contractor and each subcontractor shall maintain weekly certified payroll records for submittal to the University of California Labor Compliance Office as required, but not less than monthly. The contractor shall be responsible for the submittal of payroll records of all its subcontractors. All certified payroll records shall be accompanied by a statement of compliance signed by the contractor indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations, and that the classifications set forth for each employee conform with the work performed.

For weeks in which a contractor/subcontractor is not working on a project, a Statement of Non-Performance is required. Once a particular contractor/subcontractor has completed their work, the last Certified Payroll submitted should be identified as the "Final" Certified Payroll.

The contractor and each subcontractor shall submit certified payroll and all other labor compliance documentation using the FM International Labor Compliance Program software LCPTracker provided by the University. The software is a web-based system accessed by a web browser. The contractor/subcontractor will be provided a log-on identification and password to access the University's reporting system. The University may elect to schedule training classes in the use of LCPTracker. This requirement is in addition to those mentioned in trailer bill SB 854.

2. Full Accountability

Each individual, laborer or craftsperson working on a public works contract must appear on the payroll. The basic concept is that the employer who pays the tradesworker must report that individual on its payroll. This includes individuals working as apprentices in

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an apprenticeable trade. Owner-operators are to be reported by the contractor employing them; rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually done. The contractor shall make the records required under this section available for inspection by an authorized representative of the University and the Department of Industrial Relations, and shall permit such representatives to interview tradesworkers during working hours on the project site.

3. Responsibility for Subcontractors

The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors in the manner specified by Labor Code Section 1775. Moreover, the contractor is responsible for Labor Code violations by its subcontractors.

- a. The contractor shall monitor the payment of the specified general prevailing per diem wages by each subcontractor to its employees by periodic review of the subcontractor's certified payroll records.
- b. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project (upon receipt of notification that a wage complaint has been resolved, the contractor shall pay any money retained from and owed to a subcontractor).
- c. Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the general prevailing rate of per diem wages to its employees on the public works project, as well as any penalties which may have been imposed for working hours violations (Labor Code Section 1775 and 1813).

4. Payment to Employees

Employees must be paid unconditionally, the full amounts which are due and payable for the period covered by the particular payday. An employer must, therefore, establish a fixed workweek (i.e., Sunday through Saturday). On each and every payday, each worker must be paid all sums due and must be provided with an itemized wage statement.

If an individual is called a subcontractor, when, in fact, he/she is merely a journey level

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mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the contractor who contracted for his or her services as a tradesworker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the contractor who contracted for his or her services for purposes of workers' compensation laws.

A worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the Prevailing Wage Rate Determinations for the class of work actually performed. Any work performed on Saturday, Sunday, and/or a holiday, or a portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day or 40 hours in a workweek shall be premium (overtime) pay. All work performed in excess of eight hours per day, 40 hours per week, on Saturday, on Sunday, and on holidays shall be paid in accordance with the applicable Prevailing Wage Determination. Additionally, appropriate shift pay and applicable travel and subsistence pay is also required.

5. Maintaining Records:

The University shall maintain all records relating to any project subject to Labor Compliance for a period of three (3) years from the date of the filing of the Notice of Completion of the Project. In the event no Notice of Completion is filed, the University shall maintain all LCP records relating to a specific project for three (3) years from the date of actual completion or beneficial occupancy, whichever is later.

B. Apprentices

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeymen in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed.

The contractor shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work.

Pre-apprentice trainees, trainees in non-apprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing

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wage rates as journeypersons.

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Register the prevailing wage project (DAS-140 available at <http://www.dir.ca.gov/DAS/DASForm140.pdf>);
2. Request to Train apprentices on public works projects in a ratio to journeypersons as stipulated in the Apprenticeship Standards under which each Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one (1) apprentice hour to each five (5) journeypersons hours worked on the project. (DAS-142 or equivalent documentation or the actual employment of apprentices).
3. Contribute to the training fund in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. Where the trust fund administrators cannot accept the contributions, then payment shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142; and
4. It should be noted that a prior approval for a separate project does not confirm approval to train on any other project. The contractor/subcontractor must check with the applicable Apprenticeship Committee to verify status.

C. Payroll Review and Audits

Payroll review and audits shall be conducted by the University's Labor Compliance Officer (LCO), or his/her trained designee, and may also be conducted at the request of the Labor Commissioner to determine whether all tradesworkers on project sites have been paid according to the prevailing wage rates.

At a time and in a manner of his/her convenience, the LCO shall review certified payroll records for all employees for all weeks of work on a project at least once a month. However, the LCO shall review the certified payrolls not less than once a month. The LCO shall review payrolls for at least one full week of payroll for each contractor or subcontractor performing work on the applicable project for each month in which work was performed on the project.

1. Audit of the obligation to pay the prevailing per diem wage means review and audit of weekly-certified payroll records for compliance with:
 - a. All elements defined as the General Prevailing Rate of Per Diem Wages in Title 8 CCR Section 16000, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any

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subsequent revised determination issued by the Director's office, copies of which are available at the University's Facility Office and posted at the public works job site;

b. All elements defined as Employer Payments to Workers set forth in Title 8 CCR Section 16000, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the University's Facility Office and posted at the public works job site.

The LCO shall also seek verification of proper payment of prevailing wages to workers by randomly requesting paycheck verification for at least one worker from each contractor/subcontractor for at least one weekly period within each month.

2. Audit of the obligation to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public work as to: whether contract award information was received (DAS-140), including an estimate of journeyman hours to be performed and the number of apprentices to be employed; whether apprentices have been requested (DAS-142), and whether the request has been met; whether the program sponsor knows of any amounts received from the contractor or subcontractor for the training fund or the California Apprenticeship Council (CAC-2); and whether persons listed on the certified payroll in that craft or trade being paid less than the journeyman rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards. Alternatively or in addition to inquiring of the program sponsor, the LCO shall, as appropriate, reference the DIR website for the listing of enrolled apprentices and any contribution alleged to have been made by a contractor on a CAC-2 form for the payment of training contributions.

DAS 140 - Register to Train – The University must receive a DAS-140 from each contractor for each apprenticeable craft employed on the project. The original DAS-140 shall be sent within ten days of each contractor/subcontractor starting work on the project. A copy of DAS 140 forms shall be turned in with each contractor's and subcontractor's first certified payroll. If the form is not completed correctly or is not submitted, the contractor/subcontractor will be notified of this deficiency and asked to take corrective action by completing and filing a correct DAS-140 form.

DAS 142 - Request apprentices - The University (i) must verify that apprentices are employed on the project (through examination of certified payrolls) or (ii) must receive a DAS-142 (or its equivalent) from the contractor/subcontractor for each apprenticeable trade employed on the project and confirmation that the DAS-142 form was sent to an appropriate apprenticeship committee. A contractor is NOT REQUIRED to use the DAS-

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142 form, but can document its request for apprentices by other means. However, if a contractor does use the 142 form (filling it out properly and filing it promptly), with a delivery receipt, the contractor is “legally presumed” to be in compliance.

Title 8 CCR §16432- (c) "Confirmation" of payroll records furnished by contractors and subcontractors shall be defined as an independent corroboration of reported prevailing wage payments. Confirmation may be accomplished through worker interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations), or any other reasonable method of corroboration. For each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one worker for at least one weekly period within that month”

Employ Apprentices in 1:5 ratio – To the extent that apprentices are available for employment, the Labor Code mandates that apprentices are employed in a 1:5 ratio. This means an average (calculated at the end of the project) of one apprentice hour for every 5 journeymen hours. Some approved Apprenticeship Standards recognize a different ratio and those other ratios may be used so long as the apprenticeship committee has DAS approval.

Pay correct apprenticeship rates - Apprenticeship wage rates will also be checked by the University against the applicable prevailing wage determination.

Pay correct training contribution (CAC 2) - The University will review and confirm that the training contributions set forth in the prevailing wage determination are paid to either an approved apprenticeship committee or to the California Apprenticeship Council. (CAC-2 contributions to be confirmed through DIR website.)

Additional Review: The University will also engage in the following additional review to determine LCP compliance:

Proper Licensing

Businesses and Professions Code Section 7000 et seq. requires all companies performing construction work to be properly licensed and bonded. The University will check the contractor’s/subcontractor’s license status through the Contractors State License Board website at: www.cslb.ca.gov. Contractors working without a valid license will be removed from the project.

Worker’s Compensation Insurance

Labor Code Section 1861- All contractors and subcontractors employing workers on the project are required to provide worker’s compensation coverage. If the project is participating in

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the University Controlled Insurance Program (UCIP), the contractor and all subcontractors must enroll in the program to provide workers' compensation coverage for all of their employees working on the project at the project site (and in enrolled off site locations). If the project is not participating in the UCIP, the University will verify that all contractors/subcontractors have appropriate worker's compensation while employing workers on the project. This information can also be verified through the California Contractor's State Licensing Board website. Contractors who do not have worker's compensation for their employees will be removed from the project (recognizing that sole proprietor, owners, corporate officers and some related family members are excluded from worker's compensation requirements). Further, out of state contractors may be allowed to use their out of state workers compensation coverage for a period of up to 30 days.

Contractor Registration

Per trailer bill SB 854, contractor/subcontractor will be subject to a registration and annual renewal fee that has been set initially at \$300. The fee is non-refundable and applies to all contractors and subcontractors who intend to bid or perform work on public works projects (as defined under Labor Code).

Contractors will apply and pay fee online and must meet minimum qualifications to be registered as eligible to bid and work on public works projects.

Local Labor Management

Contractor and subcontractors shall employ apprentices from the local, state approved, joint labor-management apprenticeship programs for the applicable occupation in at least the ratio required in the California Labor Code Section 1777.5

Electrician Certification

The Division of Apprenticeship Standards also requires that all electricians in the State of California possess adequate training to perform their job. As such, all electricians must fall into one of the following categories:

- Journeyman- Certified
- Journeyman- Trainee
- Apprentice

The University will check the status of all electricians employed by using the DAS website. Electricians who do not fall into one of these categories will be removed from the project and the incident will be reported to the DAS at the end of the project.

The University shall also review and provide compliance review for all other items listed on the Checklist.

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SECTION V.

ONSITE JOB VISITS AND WORKER INTERVIEWS

Site Visits

1. Safety is the paramount factor for any site visit to any University of California construction projects. Every visitor to the site is expected to exercise reasonable caution at all times.
2. All University labor compliance personnel (interviewer, site monitor) working on or visiting any University of California construction sites are required to be properly identified and wear a visible, University-issued picture ID (badge). Additionally, all authorized personnel are required to wear hard hats and safety shoes.
3. Authorized personnel shall visit all sites on a non-interference basis and take a minimum amount of the workers' time for interview purposes.

Each week upon arrival at a site, the site monitor will check in at the site superintendent's (contractor's) trailer to determine if the appropriate postings are on the jobsite. These include, but are not limited to:

- EEO Posters
- Prevailing wage sheets posted
- Notice informing the employees that the project is subject to a Labor Compliance Program and providing the University's LCP contact information.
- Other appropriate required postings required by law.

Interviewing

1. Not less than once a month, job site interviews of employees will take place. It is the University's policy to attempt to interview at least one employee from each contractor/subcontractor who performs work on the project. With that goal in mind, interviews may be conducted on a weekly basis, but in no event less than monthly.
2. Once the LCO or his/her designee checks in with the site superintendent and obtains access to the site, the interviewer shall identify himself or herself as a University representative, and ask to speak to the employees for a few minutes. Interviews should not be conducted in an area or during a time when either the interviewer or the worker would be subject to injury due to worksite activity.

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These interviews are random; two or three tradespersons for each subcontractor is sufficient for one visit. Any persons missed are usually interviewed on subsequent visits. Thirty minutes of interviewing per site is typically sufficient, depending upon the site size and/or number of subcontractors present. Contractor tradespersons should also be interviewed.

3. Using an electronic device the Labor Compliance Site Visitation Interview will be immediately entered into LCPTracker. Each individual will be asked the following: name, social security number, employer, title (trade), rate of pay, and task being performed at the time of interview.

Guidelines for Interviewers:

- a. Should someone decline to speak with you, respect those wishes. If someone asks if this is union-related, tell them no. The University of California works with both open and closed shop trades.
- b. If you try to interview someone who does not speak English and you cannot communicate in the appropriate language, try to locate a coworker who can interpret for you. If you find an entire crew unable to speak English and no interpreter, include this in your report to the LCO.
- c. If someone refuses to disclose his/her social security number to you, respect those wishes. However, assure that person that all information given is kept strictly confidential.
- d. If someone does not know their rate of pay (most tradespersons do not know the exact penny of wages earned), ask for an estimate. If the response is, "whatever prevailing wage is", so indicate on the form.
- e. If someone indicates that he/she is an apprentice, make sure that you ask him/her what apprenticeship period he or she is in. These can be anywhere from 1st to 10th -. If s/he's not sure, ask him/her how many years s/he's been apprenticed in the specific trade and/or to estimate and so indicate on the interview form.
- f. ALWAYS thank them for their time.
- g. Keep in mind that you are there to collect information only, do not tell them how to do their jobs. Should you witness what you consider a potentially unsafe or unwarranted condition, you are to contact the site inspector or job superintendent and advise him of your findings immediately and also make a note on your site visitation log of what you observed. Upon your return to the office, report your findings to the LCO.

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Reporting

The LCPTracker Site Visitation Summary Report shall be submitted to the LCO no later than the end of each workweek.

Daily Job Logs

The Daily Job Logs will be used by the University to cross check staffing on the various LCP projects. The Daily Reports should list those contractors and subcontractors present on the site on a specific day as well as the number of employees employed on the project by each contractor/subcontractor. While the Daily Reports are merely a “snap shot” of the project at the time of the report information, the Daily Reports are used by the University to determine if a Contractor has failed to properly list all employees performing work on the project.

Extended Audits

When the University finds a potential violation which leads it to believe that prevailing wages has not been properly paid and the documentation submitted by the contractor/subcontractor is inconclusive, the University will exercise its authority to conduct a full investigation to verify whether appropriate prevailing wages were paid on the project

1. Requesting Additional Documentation from Contractor

The University shall request additional documents in writing, listing the specific documentation requested. The University will also invoke the provisions of Labor Code Section 1776 in demanding that the documents be produced within 10 days.

2. Conducting Additional Interviews

Based on the University’s investigation, the University shall engage in additional interviewing of employees who worked on the project. These interviews may be conducted in person or via other means of communication (i.e. email, telephone, mail.)

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SECTION VI.

ENFORCEMENT

A. Duty of the Awarding Body

The University of California, as the awarding body having an LCP, has a duty to enforce the Labor Code public works requirements (Chapter 1 of part 7 of Division 2 and Division 3 of the Labor Code).

Monthly Communication to the Contractor:

Upon completion of the monthly audit and review of certified payrolls, the University shall communicate with the prime contractor on the project as to all violations, inadequacies, or deficiencies for the prime contractor and any applicable subcontractor. The University shall create Monthly Audit Reports for each contractor/subcontractor on the project who has failed to submit correct LCP documentation and/or has failed to pay the applicable prevailing wage or comply with other LCP requirements.

If a contractor has no errors or incomplete information in the current month, but has outstanding items from a prior month, the University will continue to send a Monthly Audit Report until full compliance has been met.

The University's monthly report to the Contractor shall include:

- Name of Project
- Prime Contractor
- Subcontractor with outstanding violation
- Weeks of Certified Payrolls reviewed
- Any deficiency in paperwork
 - Incorrect or Missing:
 - Certified Payrolls
 - Fringe Benefit Statement
 - DAS 140
 - DAS 142
 - CAC 2
- Identify any wage deficiencies, classification issues, etc.
- Direct Contractor to correct said deficiencies and provide documentation of corrective action.
- Invoke 1776 documents request – as needed.

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B. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate

1. "Withhold" means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the contractor. Where the violation is by a subcontractor, the contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729. A release bond under Civil Code Section 3196 may not be posted for the release of the funds being withheld for the violation of the prevailing wage law.
2. "Contracts," except as otherwise provided by agreement, means only contracts under a single master contract, or contracts entered into as stages of a single project which may be the subject of withholding pursuant to Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1771.5;
3. "Delinquent payroll records" means those not submitted on the basis set forth in the University contract and the Labor Compliance Program;
4. "Inadequate payroll records" are any one of the following:
 - a. A record lacking the information required by Labor Code Section 1776;
 - b. A record which contains the required information but which is not certified, or certified by someone not an agent of the contractor or subcontractor;
 - c. A record remaining uncorrected for ten (10) days after the awarding body has given the contractor notice of inaccuracies/omissions detected by audit or record review; provided, however, that prompt correction will stop any duty to withhold if such inaccuracies/omissions do not amount to 1 percent of the entire certified weekly payroll in dollar value and do not affect more than half of the persons listed as workers employed on that certified weekly payroll, as defined in Labor Code Section 1776 and Title 8 CCR Section 16401. Prompt correction will stop any duty to withhold if such inaccuracies are de minimus.

Progress payments will be withheld if certified payrolls have not been properly submitted. If the University does withhold any portion of a progress payment due to an identified prevailing wage violation, the contractor shall be notified in writing of such withholding and given an opportunity to have a meet and confer meeting/conference call with the University's representative not later than 15 days after the progress payment is withheld.

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SECTION VII.

THIRD PARTY REQUESTS AND ENFORCEMENT

1. Third Party Requests for Payroll

When the University receives a request for certified payrolls of a contractor /subcontractor from a third party pursuant to Labor Code Section 1776, any records which the University makes available to such a third party shall be appropriately redacted pursuant to Labor Code Section 1776 (e).

2. Third Party Complaints

Upon receipt of a written complaint from a third party alleging that a contractor or subcontractor has failed to pay prevailing wages as required by the Labor Code, the Labor Compliance Program shall do all of the following:

- (1) Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the investigator assigned to the complaint;
- (2) Within 15 days after receipt of the complaint, provide the affected contractor with the notice required under Labor Code section 1775(c) if the complaint is against a subcontractor;
- (3) Notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the Labor Compliance Program;
- (4) Notify the complaining party in writing at least once every 30 days of the status of a complaint that has not been resolved by the Labor Compliance Program; and
- (5) Notify the complaining party in writing at least once every 90 days of the status of a complaint that has been resolved by the Labor Compliance Program but remains under review or in litigation before another entity.

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SECTION VIII.

PROJECT CLOSE-OUT- FORFEITURES AND PENALTIES

Once the project has been completed, the University shall:

1. Write a letter to each contractor/subcontractor who still has outstanding documents or wage and apprenticeship violations requesting that the contractor provide any required documentation to the University or pay restitution due its employees within ten days from the date of the receipt of the letter. See sample letter Appendix C. A copy of this letter will also be mailed to:

Subcontractor – Certified and Regular Mail

General Contractor – Certified and Regular Mail

2. After 10 business days, determine if all of items have been addressed.

IF NO WAGE VIOLATIONS HAVE OCCURRED during the course of the project, and nothing is outstanding, the University shall end its monitoring of wages paid during construction of the project and keep this data to reference in the University's Annual Report.

If ANY WAGE VIOLATION HAS OCCURRED during the course of the project, then the University will assess penalties as follows:

•**Wage Violation** – Labor Code 1775 - \$200 per day per worker per violation. The University now has discretion to reduce or waive penalties. Reductions or waivers will only be made if the contractor meets the requirements of Labor Code Section 1775, subparagraph (b) i.e. good faith or inadvertent error, prompt correction and no additional violations. No reduction should be made if there are outstanding wages still due. Reasons for reduction of penalties will be documented and included in the form of Request for Approval of Forfeiture sent to the Labor Commissioner in the DIR-approved format.

•**Overtime Violation** – Labor Code Section 1813 - \$25 per day per worker. Mandated by statute with no discretion for reduction. Even if certain union agreements allow for employees to work four days of 10 hours each day without overtime, it is the prevailing wage determination which will control in this instance with overtime pay being mandated after 8 hours worked in a day. Labor Code Section 1811.

•**Failure to Provide Certified Payrolls** (including fringe benefit statements, timecards,

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canceled checks, etc.) within 10 days of Request - Labor Code 1776 (g). The penalty of \$25 per day per worker continues until strict compliance is met (all documents delivered). Before imposing 1776 penalties, the University will ensure that any request for documentation includes:

- Identification of the specific documents requested
- Identification that the request is made pursuant to section 1776(g) of the Labor Code and that penalties of \$25 per day per worker will be imposed until there is strict compliance
- Delivery of the notice must be by certified and regular first class mail

•**Willful and/or Repeat Offenders** will be subject to maximum penalties as stated above and a recommendation of debarment from public works will be made to the DIR.

•**Liquidated Damages** – If prevailing wages remain unpaid 60 days after a Notice to Withhold is issued to the contractor, the contractor shall be assessed liquidated damages equal to the amount of any unpaid wages. The University shall hold appropriate funds at the conclusion of the project to cover all wages due, penalties and liquidated damages.

•**Apprenticeship Violation** - Labor Code Section 1777.7 \$100 - \$300 per calendar day of noncompliance and debarment up to 3 years. This may include failure to pay training contributions, employ apprentices at the ratio required, etc. The University does not have the authority to impose penalties for Apprenticeship Violations, but instead will file a Public Works Complaint detailing the violation and submitting relevant documentation of the violations to the DAS.

• **Unlicensed Contractor** – Labor Code Section 1021. Any contractor working without a valid contractor license shall be subject to a penalty of \$200 per day per worker. This is not a penalty that LCPs enforce. Rather, the University will file a complaint with the DIR, as well as with the Contractors State License Board (CSLB).

3. If the total wages and penalties outstanding and due are less than \$1,000, then the LCO will proceed to issue a Notice of Withhold to the Contractor/and any applicable subcontractor.

4. If wages and penalties exceed \$1,000, the University will complete the Request for Approval of Forfeiture form (see DIR website for format) and send it with the appropriate documentation to the Labor Commissioner for review and decision. “LCP Request for Approval of Forfeiture” and “Penalty Worksheet” spreadsheet will be completed in full. Penalty worksheet will list dates of violation and include summary worksheet, including the following:

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- a. Audit summary (University's penalty worksheet summary and individual employee penalty worksheets)
- b. 1st Bid Advertisement Publication and Notice of Completion (if filed)
- c. Scope of Work
- d. Complaint forms and declarations, if any, from third parties or employees.

The close out documents will be sent to the following:

- General Contractor – certified and regular mail;
- Affected Subcontractor – certified and regular mail;
- Labor Commissioner - Overnight delivery (with signature required) or certified mail

- 5. The Labor Commissioner then has 30 days to respond. (Once the University has had a response from the Labor Commissioner, a Notice to Withhold shall issue. In the event the Labor Commissioner does not respond within 30 days, the University shall then issue a Notice to Withhold based on the information provided in the Request for Forfeiture Notice. The Notice to Withhold shall be sent as follows:

- General Contractor –certified and regular mail
- Affected Subcontractor – certified and regular mail

- 6. Allow 60 days for the contractor to contest the penalties. If the contractor contests the Notice to Withhold, then the University (upon receipt of the written Request for Review) will promptly forward the Request for Review to the University's General Counsel.

- (a) Potential Settlement Options – The University does have the ability to engage in settlement discussions and will do so before the filing of a Request for Forfeiture. Specifically, once the University has determined an actual violation has occurred, notification will be provided to the affected contractor/subcontractor with an opportunity to correct the wage deficiency. The contractor/subcontractor shall have at least 10 days from such notification to submit information/documentation that such error was made in good faith and corrected promptly. If the correction is made promptly and a waiver of penalties is determined, no Request for Forfeiture will be made to the Labor Commissioner. However, the University will keep this information and include it with its Annual Report. When considering the compromise or waiver of

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penalties, the University will consider the nature of the violation, good faith error versus a knowing violation. **Any contractor with an outstanding wage violation at the completion of the project (after being provided the information of the violation and at least 10 days to correct that violation) is NOT eligible for a reduction or waiver of penalties.**

After a Notice to Withhold is issued, a contractor or subcontractor may request a settlement meeting pursuant to Labor Code Section 1742.1(b). The LCP shall have and exercise the same rights and responsibilities as the Enforcing Agency (as defined in section 17202(f) of Title 8 of the California Code of Regulations) in responding to such a request for review, including but not limited to the obligations to (i) serve notices, (ii) transmit the Request for Review to the hearing office, and (iii) provide an opportunity to (a) review evidence in a timely manner, (b) participate through counsel in all hearing proceedings, and (c) meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments.

(b) If a contractor or subcontractor seeks review of a Labor Compliance Program enforcement action, the Labor Commissioner may intervene to represent the Awarding Body, or to enforce relevant provisions of the Labor Code consistent with the practice of the Labor Commissioner, or both. Except in cases where the Labor Commissioner has intervened pursuant to CCR Title 8 Section 16439 subpart (b), the Labor Compliance Program shall have the authority to prosecute, settle, or seek the dismissal of any Notice of Withholding of Contract Payments issued pursuant to Labor Code Section 1771.6 and any review proceeding under Labor Code Section 1742, without any further need for approval by the Labor Commissioner. Whenever the LCP settles in whole or in part or seeks and obtains the dismissal of a Notice of Withholding of Contract Payments or a review proceeding under Labor Code Section 1742, the LCP shall document the reasons for the settlement or request for dismissal and shall make that documentation available to the Labor Commissioner upon request.

7. If the 60-day time period expires and no request for review is filed, then the sums set forth in the Notice to Withhold are deemed forfeit to the University (except to the extent that any wages due must be turned over by the University to the affected employees. (If the employees cannot be located after a diligent search, then those wage funds are turned over to the Labor Commissioner.)

APPRENTICE/TRAINING VIOLATION:

- Unpaid training for any trade
- No DAS 140 form submitted
- No DAS 142 form submitted and no apprentices on the project

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- Electrician certification violation

For any violation relating to apprenticeship or training, the University shall complete and file a Public Works Complaint with the Division of Apprenticeship Standards and enclose the applicable documentation.

The Public Works Complaint and applicable documents shall be sent to:

- General Contractor – certified and regular mail;
- Affected Subcontractor – certified and regular mail;
- DAS :

The Division of Apprenticeship Standards
Public Works Division
P.O. Box 420603
San Francisco, CA 94142

Close Out Completion Report:

For each LCP project, the University Campus LCP shall prepare a Project Completion Report and keep such report in the applicable project file.

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SECTION IX.

**NOTIFICATION OF CONTRACTOR AND APPEAL RIGHTS
OF PROGRAM ENFORCEMENT ACTION**

Notice of Withholding of Contract Payments (NWCP)

After determination of the amount of forfeiture by the Labor Commissioner, the University shall provide notice of withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. Notice to Contractor shall be deemed notice to its performance bond surety. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on such bond, if their identities are known to the awarding body.

Review of NWCP

1. An affected contractor or subcontractor may obtain review of an NWCP under this chapter by transmitting a written request to the office of the LCP that appears on the NCWP within 60 days after service of the NWCP. If no hearing is requested within 60 days after service of the NWCP, the NWCP shall become final.
2. Within five days following the receipt of the request for review, the LCP shall transmit to the Office of the Director-Legal Unit the request for review and copies of the Notice of Withholding of Contract Payments, any audit summary that accompanied the notice, and a proof of service or other documents showing the name and address of any bonding company or surety that secures the payment of the wages covered by the notice. The Office of the Director- Legal Unit, shall complete and serve a Notice of Transmittal on the DIR and the applicable contractor(s) within ten days of the date the letter requesting review by the contractor was delivered to the LCO at the applicable campus.
3. Upon receipt of a timely request, a hearing shall be commenced within 90 days before the Director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the LCP at the hearing within 20 days of the receipt of the written request for

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a hearing. Any evidence obtained by the LCP subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor. A copy of a Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b) form is available at <http://www.dir.ca.gov/lcp/LCPEnforcementFormsResources.htm> . The contractor or subcontractor shall have the burden of proving that the basis for the NWCP is incorrect. The NWCP shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

Pursuant to Labor Code Section 1742.1, there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties has been deposited by the contractor with the Department of Industrial Relations within 60 days following service of Notice to Withhold.

Within 45 days of the conclusion of the hearing, the Director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the Director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the LCP. Within 15 days of the issuance of the decision, the Director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time. The Director has adopted regulations setting forth procedures for hearings under this subdivision.

4. An affected contractor or subcontractor may obtain review of the decision of the Director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

5. A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

6. A judgment entered pursuant to this procedure shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

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7. This procedure shall provide the exclusive method for review of a NWCP by the University to withhold contract payments pursuant to Section 1771.7.

A copy of a Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b) form is available at <http://www.dir.ca.gov/lcp/LCPEnforcementFormsResources.htm> .

The contractor or subcontractor shall have the burden of proving that the basis for the NWCP is incorrect. The NWCP shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

Pursuant to Labor Code Section 1742.1, there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties has been deposited by the contractor with the Department of Industrial Relations within 60 days following service of Notice to Withhold.

Within 45 days of the conclusion of the hearing, the Director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the Director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the LCP. Within 15 days of the issuance of the decision, the Director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time. The Director has adopted regulations setting forth procedures for hearings under this subdivision.

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5. A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

6. A judgment entered pursuant to this procedure shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

7. This procedure shall provide the exclusive method for review of a NWCP by the University to withhold contract payments pursuant to Section 1771.7.

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SECTION X

PRIORITY DISTRIBUTION OF FORFEITED SUMS

Withholding of Forfeited Sums

1. Before making payments to the contractor of money due under a contract for public work, the University shall withhold and retain from sums owing Contractor, if any, all amounts required to satisfy the NWCP. The amounts required to satisfy the NWCP shall not be disbursed by the University until receipt of a final order that is no longer subject to judicial review.
2. Pending a final order, or the expiration of the time period for seeking review of the Notice of the Withholding, the University shall not disburse any contract payments withheld.
3. From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers employed on the public works project who are paid less than the prevailing wage rate.
4. Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid to the University facility that has enforced this chapter pursuant to Section 1771.7.
5. If insufficient funds are withheld, recovered, or both, to pay each underpaid worker in full, the money shall be prorated among all said underpaid workers.
6. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture or underpayment of wages, and the matter has been resolved without litigation by or against the Labor Commissioner, the Labor Compliance Program shall deposit penalties and forfeitures with the University. Where collection of fines, penalties or forfeitures results from administrative proceedings or court action to which the Labor Commissioner and University or its Labor Compliance Program are both parties (including cases where the Labor Compliance Program or the University make an appearance as a real party in interest), the fines, penalties or forfeitures shall be divided between the general funds of the state and the University, as agreed upon by the Labor Commissioner and the University. If the Labor Commissioner and the University cannot agree on the division of the fines, penalties or forfeitures, if the

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case is resolved by a Hearing Officer or court, the fines, penalties or forfeitures shall be divided between the general funds of the state and the University, as the Hearing Officer or court may decide.

All penalties recovered in administrative proceedings or court action brought by or against the Labor Commissioner and to which the University or its Labor Compliance Program is not a party or a real party in interest, shall be deposited in the general fund of the State.

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SECTION XI.

ANNUAL REPORTS

Annual Report on the Labor Compliance Program to the Director of the Department of Industrial Relations

The Labor Compliance Program Office of each Facility will prepare and submit to the Director of the Department of Industrial Relations an annual report (form LCP-AR1 available at http://www.dir.ca.gov/lcp/LCP-AR1-AB_limited.doc.) on the operation of its Labor Compliance Program, within 60 days after the end of its fiscal year. The annual report will contain, as a minimum, the following information:

1. The LCP contact person;
2. An itemized list of public works contracts awarded after August 1, 2010, and within the past 12 months, using funds derived from any bond issued by the state to fund public works projects, the bid advertisement date, prime contractor and contract amount for each such project, and their total value;
3. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates and all penalties assessed and/or recovered;
4. An itemized summary of those violations for which forfeiture was not requested;
5. An itemized summary of those violations for which forfeiture was requested;
6. An itemized summary of all Labor Code section 1742 proceedings (contractor-requested hearing).