



School Business Law Update

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FREESTANDING MODULAR OFFICE FURNITURE INSTALLATION BECOMES A PUBLIC WORKS PROJECT: AB 1598 BECOMES LAW

Governor Brown approved AB 1598 on September 30, 2012. This bill changes the way public agencies deal with setup and rearrangement of modular office equipment, now making installation of even freestanding modular office equipment a public works project. Previously, the Department of Industrial Relations deemed freestanding modular furniture installation to fall outside the definition of a public works project; AB 1598 was specifically intended to change that ruling. The bill changed Labor Code Section 1720 to read, in part:

1720. (a) As used in this chapter, "public works" means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work. *For purposes of this paragraph, "installation" includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems.*

With the support of most specialty subcontractor unions, AB 1598 was a direct assault on the prior rulings by the Department of Industrial Relations that modular office equipment installation was not a public project unless the equipment became "affixed" or attached in some way to the building. This distinction (the attachment to the building) has been used in the law for centuries to separate things like "fixtures," which become part of the building, and equipment, which does not. This distinction has long been used to determine whether tenant improvements could be removed by a tenant at the end of a lease or become the property of the building's owner.

This may impact educational agencies that rent some of the facilities they use. For example, if an educational agency rents a commercial building for use as an office, bus barn, or the like, into which modular office furniture will be moved for the use of employees, this move must now

include payment of prevailing wage rates for the assembly/disassembly of office cubicles if that cost exceeds \$1,000. As another example, if carpeting in a facility is being replaced, the company that removes and replaces items such as desks, freestanding bookshelves, and cubicles is likely to be required to pay prevailing wages to its onsite workers, and those vendors must now be selected under the same rules applicable to general contractors for traditional construction if the move cost is higher than the bid threshold.

Buying large amounts of modular office furniture using piggyback or joint-powers arrangements may no longer be possible as “installation” of the furniture, if it comprises more than about 10 percent of the cost, converts the equipment purchase into a public works project and those acquisition methods may not be used to enter into public works projects.

The bill goes into effect January 1, 2013. If you are considering a significant acquisition of modular office furniture, or movement/reconfiguration of modular office furniture, you may want to have the contract signed before the end of 2012 and consultation with legal counsel is advised.

Feel free to call us to discuss any aspect of AB 1598 or its ramifications.

— William A. Hornback

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