



School Business Law Update

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EVEN SOLE PROPRIETORS MUST BE PAID PREVAILING WAGE

During a recent Schools Legal Service workshop, several people were interested in the question of whether prevailing wage must be paid to owner-operators or others who are compensated on a job based on their ownership interest in the business, not as employees paid wages.

The Labor Code and implementing regulations provide little guidance on the issue, defining a worker as simply a laborer, worker or mechanic. (Labor Code section 1723, Title 8, California Code of Regulations, section 16000). However, the agency responsible for enforcing the prevailing wage law, the California Department of Industrial Relations, takes the position that sole proprietors, partners and any person performing services on a public works project exceeding \$1,000 must be paid prevailing wage.

The Department expressed its position in a 1997 opinion concerning payment of prevailing wage to partners. That opinion held that to exempt partners would frustrate the intent of the law and allow partnerships to underbid others. The opinion notes that the California law is based on the federal Davis-Bacon Act, and cases interpreting that act have held that partners and sole proprietors must be paid prevailing wage.

Our form agreement for projects under the bid threshold (\$15,000, or \$25,000 for districts which have adopted the Uniform Construction Cost Accounting Procedures) contains language calling for payment of prevailing wage. This document is posted on our website with the Public Works Bid Packet (see Construction Contract (Under \$15,000/\$25,000), at www.SchoolsLegalService.org).

Please do not hesitate to contact our office if you need further information on this topic.

—Grant Herndon

School Business Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.