

## PREVAILING WAGE ACT REQUIREMENTS

The Prevailing Wage Act (“Act”), 820 ILCS 130/0.01 *et seq.*, requires the payment of prevailing wages to all “laborers, mechanics and other workers employed in any public works . . . by any public body and to anyone under contracts for public works.” 820 ILCS 130/2. The term “public works” means, “all fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds.” *Id.* The term “construction” means, “all work on public works involving laborers, workers or mechanics” and “includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.” *Id.*

As a result of these definitions, the Act applies to the construction of a new building, additions or remodeling to an existing building, demolition projects and maintenance of existing fixed works. Many local governmental entities, including libraries, have typically considered the prevailing wage requirements only in conjunction with a construction project. In 2007, the legislature amended the Act to include its application to maintenance of equipment. That amendment has significantly broadened the application of the Act.

The Illinois Department of Labor (“IDOL”) has advised that any project that “requires a screwdriver” requires the payment of prevailing wages. IDOL has provided several examples of maintenance work that require the payment of prevailing wages including: repair and painting, changing of locks, and removal of trees. Public bodies should review their contracts for any annual maintenance on



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items that may constitute “fixed works,” such as the HVAC system, electrical work and alarm systems. Note that IDOL has stated that the Act does not apply to snow plowing, janitorial services, street sweeping or tree trimming unrelated to a construction project. IDOL has treated landscaping, including tree removal, differently based on whether it is part of a construction project or done as maintenance work. We expect that there may be legislation to address the application of the Act to landscaping work.

Contracts for work covered by the Act should specifically state that prevailing wages must be paid. If a public body fails to provide such written notice, it may be required to pay any interest, penalties or fines that would have been owed by the contractor if proper written notice was provided. 820 ILCS 130/4. IDOL may revise the prevailing wage rate during the time that a contract is being performed. If that occurs, the contractor is required to pay the revised rate. Public bodies should notify contractors of this requirement by inserting language in the contract advising the contractor that IDOL revised the prevailing rates and that such rates are available on the IDOL website, [www.state.il.us/agency/idol](http://www.state.il.us/agency/idol). This notification requirement goes into effect on January 1, 2013.

Another requirement under the Act is to require the submission of certified payroll by contractor and any subcontractors. IDOL provides a form on its website that contractors and subcontractors may use. The form must include each worker’s name, address, telephone number, social security number, labor classification, hourly wages paid, number of hours worked and starting and ending times of work each day. The contractor must submit the certified payroll no later than the tenth day of each calendar month for the preceding month. The certified payroll must be signed by the contractor or subcontractor or an officer, employee or agent of the contractor or subcontractor that the certified payroll records are accurate, the hourly rate paid is not less than the prevailing rate and that the person is aware that filing a certified payroll that he/she knows to be false is a Class A misdemeanor. The public body is required to keep the certified payroll for not less than 3 years after the final payment for work has been made. The records are subject to a FOIA request, and the employee addresses, telephone numbers and social security numbers must be redacted prior to providing the records in response to a FOIA request.

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In addition to requiring the payment of prevailing wages on public works projects, the Act requires public bodies to annually adopt a prevailing wage ordinance or resolution. During the month of June of each calendar year, each public body must investigate and ascertain the prevailing rate of wages to be paid for work on public works, publish notice that a determination of those rates has been made in a newspaper of general circulation within its boundaries, post or keep available its determination and file a certified copy of the resolution or ordinance making the determination in the office of the Secretary of State in Springfield and in the office of the Department of Labor by July 15. 820 ILCS 130/9.

As stated above, there are significant consequences for public bodies who fail to comply with the Act. If you have any questions concerning the application of prevailing wage requirements, contract language or certified payroll, please contact us.

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