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NEW CALIFORNIA CONSTRUCTION LAWS FOR 2019

If you have any further questions or concerns regarding construction related issues, please do not hesitate to contact Kevin T. Cauley, Esq. at (619) 236-8821 or by email at kevin@sscmlegal.com.

AB 1565 – Contractor Wage Liability

AB 1565 repeals the provision that relieved direct contractors for liability for anything other than unpaid wages and fringe or other benefit payments or contributions, including interest owed. In the past, a direct contractor could withhold “disputed” sums owed to a subcontractor if the subcontractor failed to provide “information” about their and lower-tier subcontractors’ payroll records.

For contracts entered into on or after January 1, 2019, the direct contractor must now specify in the subcontract what documents and information the subcontractor must provide. If the subcontractor fails to provide such materials, or if the information provided shows non-compliance, only then is the direct contractor authorized to withhold a disputed payment. Direct contractors should consider requiring submission of payroll records/statements, fringe benefit and subsistence statements, and employee time cards, among other types of records to substantiate payroll.

AB 3018 – Skilled and Trained Workforce

AB 3018 imposes penalties on contractors and subcontractors who fail to comply with “skilled and trained workforce” requirements. It also requires the awarding body to forward a monthly report to the California Labor Commissioner for issuance of a civil wage and penalty assessment, if a contractor or subcontractor has failed to comply with skilled and trained workforce requirements.

Those failing to comply with skilled and trained workforce requirements can be penalized by the Labor Commissioner up to \$5,000 per month (first violation) and up to \$10,000 per month (additional violations). The awarding body may withhold any progress payment from a direct contractor for failure by the contractor or its subcontractor(s) to be substantially compliant.

To protect themselves, Contractors should at a minimum (1) recite the skilled and trained workforce requirements within the body of subcontracts; (2) attach full copies of Labor Code sections 2601-2603 to subcontract agreements; (3) monitor each subcontractor’s use of a skilled

and trained workforce; (4) take corrective action once aware of a subcontractor's failure to use a skilled and trained workforce; (5) and require each subcontractor to provide with each payment application a declaration from the subcontractor, signed under penalty of perjury, that the subcontractor has met the skilled and trained workforce requirements.

AB 1654 – PAGA Relief for Unionized Construction Employers

AB 1654 clarifies that unionized workers in the construction industry are not covered by the Private Attorney General Act (they cannot assert PAGA claims), if their Collective Bargaining Agreement: (1) is entered into before January 1, 2025; (2) provides for the wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and for the employee to receive a regular hourly pay rate of not less than 30 percent more than the state minimum wage rate; (3) prohibits all of the violations of the Labor Code that could be addressed under PAGA; (4) provides a grievance and binding arbitration procedure for alleged violations and authorizes the arbitrator to award all remedies potentially available under the Labor Code (except PAGA remedies); and (5) waives PAGA rights.

AB 2705

AB 2705 increases the statute of limitations for prosecuting a contractor that has failed to obtain workers' compensation insurance to two years (formerly one year).

AB 3126

AB 3126 eliminates the option of posting a cash deposit with the CSLB in lieu of a contractor's license bond, bond of qualifying individual or disciplinary bond.

SB 1465

AB 1465 requires contractors and insurers to report to the CSLB final civil judgments, settlements and arbitration awards involving damage claims more than \$1 million for construction defects and multi-family residential structures.

SB 914

SB 914 expands the authority from counties to public entities on which members of County Board of Supervisors make up the governing body of the public entity. The bill also expands the types of projects in which the CM at risk project delivery method may be utilized to include buildings, utility improvements associated with buildings, flood control and underground utility improvement and bridges, but excludes road.

AB 618

The bill authorizes school districts that have entered into project labor agreements to use job order contracting for public works irrespective of value through January 1, 2022. This is an increase from the job order contracting limit of 25,000 that previously existed.

SB 96

SB 96 made numerous changes to certain laws:

1. The bill eliminates the discretion of the DIR to waive the payment of liquidated damages for violations of the prevailing wage law. Contractors on public works projects must be registered through the Department of Industrial Relations Public Works Program. The bill also imposes per day civil penalties for a contractor's failure to register through the public works program and requires the Labor Commissioner to issue a stop work order on projects where the contractor has failed to register through the Public Works Program.