

ATTN: Public Works Contractors, New Labor Code Changes Effective in 2022

Assembly Bill 1023 was approved by the Governor on September 27, 2021. AB 1023 made material changes to Labor Code 1771.4. Labor Code 1771.4 now allows the Labor Commissioner to assess penalties for failing to electronically upload payrolls in a timely fashion. Payrolls shall be made at least once every 30 days while work is being performed and within 30 days after the final day of work performed on the project. 14 days past this requirement the Labor Commissioner can start assessing penalties of \$100 per day, not to exceed \$5000 per project. It has been a requirement to upload payrolls to the DIR's CPR portal since the implementation of the electronic system, however, AB 1023 takes things a step further. The Labor Commissioner now has the authority to assess penalties for a late upload to the electronic portal. This change was spearheaded by The Federation for Fair Contracting (FFC). The FFC is a Labor Management Committee sponsored by LIUNA and the Operating Engineers. Given this information, I don't suspect the DIR will actively seek penalties regarding the change. However, making sure your payrolls are uploaded on time is the only way to ensure avoiding potential penalties. Please see Labor Code 1771.4 copied below with the new language highlighted and be sure to brief your payroll administrators as to the new time constraints.

LABOR CODE - LAB 1771.4.

(a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) (A) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(i) At least monthly or more frequently if specified in the contract with the awarding body. For purposes of this clause, "monthly" means that a submission of records shall be made at least once every 30 days while work is being performed on the project and within 30 days after the final day of work performed on the project.

(ii) In an electronic format, in the manner prescribed by the Labor Commissioner, on the department's internet website.

(B) A contractor or subcontractor who fails to furnish records pursuant to subparagraph (A), relating to its employees, shall be subject to a penalty by the Labor Commissioner of one hundred dollars (\$100) per each day in which that party was in violation of subparagraph (A), not to exceed a total penalty of five thousand dollars (\$5,000) per project. Penalties received pursuant to this paragraph shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(C) The Labor Commissioner shall not levy a penalty pursuant to subparagraph (B) until a contractor or subcontractor fails to furnish the records pursuant to subparagraph (A) 14 days after the requirement set forth in clause (i) of subparagraph (A).

(D) Penalties pursuant to subparagraph (B) may only accrue to the actual contractor or subcontractor that failed to furnish the records pursuant to subparagraph (A).