

Construction Contractors and Certified Payroll Reports Under Massachusetts Prevailing Wage Law

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Under the Massachusetts prevailing wage law (and most prevailing wage laws around the country), construction contractors performing construction on state-funded construction projects are required to pay employees the prevailing wages set by the state for work on the project. In addition, contractors are supposed to ensure that all subcontractors working on the project pay the proper prevailing wage.

As part of a contractor's compliance obligation, the contractor must submit weekly certified payroll reports to the owner of the project, providing the names and wage information for the employees working on the project and receiving the prevailing wage.

In Massachusetts, the Office of the Attorney General may investigate and bring a case against a contractor for violation of the Massachusetts False Claims Act for submitting fraudulent weekly payroll records prepared by its subcontractor for payment. The contractor is not excused from liability if it failed to take steps to verify the payroll information it used to obtain payment. In one case, the court held, "[The contractor] passively disregarded the truth or falsity of the [certified payroll reports], failed to make a minimum examination, and ignored obvious warning signs." The court assessed close to \$1 million in damages against the contractor.

It is important that all contractors, both general and subcontractors, ensure that certified payroll reports submitted to contract owners under the state's prevailing wage law are accurate and correct. Failing to do so, or simply relying on reports from a subcontractor, or turning a blind eye to reports when there could be evidence of noncompliance, will expose a general contractor to significant liability. Enforcement agencies, such as the Massachusetts Attorney General's office, are focused on this compliance issue and we can expect more enforcement in the coming year.

For additional guidance on this issue, please contact a Jackson Lewis attorney.

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