

LEGAL ALERT

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U.S. DEPARTMENT OF LABOR ANNOUNCES OVERHAUL OF PREVAILING WAGE RULES

STEVE SEASLY AND ANN KNUTH

Hahn Loeser & Parks LLP

On March 11, 2022, the U.S. Department of Labor announced a Notice of Proposed Rulemaking to update the rules governing how workers are paid on federally funded construction projects. The proposed changes represent the largest overhaul of the regulations implementing the Davis-Bacon Act and the Davis-Bacon Related Acts in 40 years. The Department of Labor projects that over time, the proposed changes will result in higher wages for workers.

The proposed substantive changes include:

- Returning to the definition of “prevailing wage” used from 1935 to 1983. Under that definition, a three-step process identified as prevailing:
 - (1) any wage rate paid to a majority of workers; and, if there was none, then
 - (2) the wage rate paid to the greatest number of workers, provided it was paid to at least 30 percent of workers, and, if there was none, then
 - (3) the weighted average rate. The proposed rule would restore the second step, which was eliminated in the 1982 regulations.
- Create a new mechanism for periodically updating non-collectively bargained prevailing wage rates between survey periods.
- Providing broader authority to adopt state or local wage determinations when certain criteria is met.
- Issuing supplemental rates for key job classifications when no survey data exists.
- Strengthening worker protections and enforcement, including debarment, new anti-retaliation provisions, and updating the cross-withholding procedure for recovering back wages on contracts held by other agencies.

The Notice of Proposed Rulemaking can be found [here](#). Following review by the Office of the Federal Register, the official Notice of Proposed Rulemaking will be published in the Federal Register. Comments on the proposed rules will be accepted for 60 days following publication in the Federal Register.

The announcement by the Department of Labor follows the February signing of an Executive Order which requires, with some limited exceptions, that contractors working on federal construction projects valued at \$35 million or more enter into project labor agreement with one or more appropriate labor union, demonstrating beyond a doubt the support of the Biden administration for unionization.

AUTHORS



STEVE SEASLY, CHAIR, LABOR & EMPLOYMENT GROUP

sseasley@hahnlaw.com

216.274.2234



ANN KNUTH, OF COUNSEL

aknuth@hahnlaw.com

216.274.2478

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