

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 776

Introduced by Senator Corbett

February 22, 2013

An act to amend Section 1773.1 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 776, as amended, Corbett. Public works: prevailing wage rates: employer payment credits.

Existing law defines the term “public works” for purposes of requirements regarding the payment of prevailing wages, the regulation of working hours, and the securing of workers’ compensation for public works projects. Existing law further requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations as specified, be paid to workers employed on public works projects, and imposes misdemeanor penalties for certain violations of this requirement.

Under the law, employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages, except credit is not granted for benefits required under state or federal law. Employer payments include the rate of contribution made by the employer to a trustee or 3rd person pursuant to a plan, fund, or program, the rate of actual costs to the employer anticipated in providing benefits to workers pursuant to a specified enforceable commitment, and payments to the California Apprenticeship Council.

This bill would provide that an employer may take credit for those specified employer payments, even if those payments are not made during the same pay period for which credit is taken, if the employer

regularly makes those payments on no less than a quarterly basis. This bill would prohibit credit from being granted for employer payments made to monitor and enforce laws related to public works if those payments are not required by a collective bargaining agreement.

~~Existing law requires that credit for employer payments be computed on an annualized basis when the employer seeks credit for payments that are higher for public works projects than for private construction by that employer, with exceptions, including if the director determines that annualization would not serve a specified purpose.~~

~~This bill would prohibit that exception from applying to payments to a supplemental unemployment benefits plan or to a qualified cash or deferred arrangement, as described.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1773.1 of the Labor Code is amended to
2 read:
3 1773.1. (a) Per diem wages, as the term is used in this chapter
4 or in any other statute applicable to public works, includes
5 employer payments for the following:
6 (1) Health and welfare.
7 (2) Pension.
8 (3) Vacation.
9 (4) Travel.
10 (5) Subsistence.
11 (6) Apprenticeship or other training programs authorized by
12 Section 3093, to the extent that the cost of training is reasonably
13 related to the amount of the contributions.
14 (7) Worker protection and assistance programs or committees
15 established under the federal Labor Management Cooperation Act
16 of 1978 (Section 175a of Title 29 of the United States Code), to
17 the extent that the activities of the programs or committees are
18 directed to the monitoring and enforcement of laws related to
19 public works.
20 (8) Industry advancement and collective bargaining agreements
21 administrative fees, provided that these payments are required
22 under a collective bargaining agreement pertaining to the particular

craft, classification, or type of work within the locality or the nearest labor market area at issue.

(9) Other purposes similar to those specified in paragraphs (1) to (8), inclusive.

(b) Employer payments include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.

(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, credit shall not be granted for benefits required to be provided by other state or federal law, or for payments made to monitor and enforce laws related to public works if those payments are not made to a program or committee established under the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code). Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing. However, an increased employer payment contribution that results in a lower hourly straight time or overtime wage shall not be considered a violation of the applicable prevailing wage determination if all of following conditions are met:

(1) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.

(2) The basic hourly rate and increased employer payment are no less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the director's general prevailing wage determination.

(3) The employer payment contribution is irrevocable unless made in error.

(d) An employer may take credit for an employer payment specified in subdivision (b), even if contributions are not made, or costs are not paid, during the same pay period for which credit is taken, if the employer regularly makes the contributions, or

1 regularly pays the costs, for the plan, fund, or program on no less
2 than a quarterly basis.

3 (e) The credit for employer payments shall be computed on an
4 annualized basis when the employer seeks credit for employer
5 payments that are higher for public works projects than for private
6 construction performed by the same employer, unless one or more
7 of the following occur:

8 (1) The employer has an enforceable obligation to make the
9 higher rate of payments on future private construction performed
10 by the employer.

11 (2) The higher rate of payments is required by a project labor
12 agreement.

13 (3) The payments are made to the California Apprenticeship
14 Council pursuant to Section 1777.5.

15 (4) The director determines that annualization would not serve
16 the purposes of this chapter. ~~This paragraph does not apply to~~
17 ~~employer payments made to a supplemental unemployment benefits~~
18 ~~plan or to a qualified cash or deferred arrangement, as described~~
19 ~~in Section 401(k) of Title 26 of the United States Code.~~

20 (f) (1) For the purpose of determining those per diem wages
21 for contracts, the representative of any craft, classification, or type
22 of worker needed to execute contracts shall file with the
23 Department of Industrial Relations fully executed copies of the
24 collective bargaining agreements for the particular craft,
25 classification, or type of work involved. The collective bargaining
26 agreements shall be filed after their execution and thereafter may
27 be taken into consideration pursuant to Section 1773 whenever
28 filed 30 days prior to the call for bids. If the collective bargaining
29 agreement has not been formalized, a typescript of the final draft
30 may be filed temporarily, accompanied by a statement under
31 penalty of perjury as to its effective date.

32 (2) When a copy of the collective bargaining agreement has
33 previously been filed, fully executed copies of all modifications
34 and extensions of the agreement that affect per diem wages or
35 holidays shall be filed.

36 (3) The failure to comply with filing requirements of this
37 subdivision shall not be grounds for setting aside a prevailing wage
38 determination if the information taken into consideration is correct.

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