



ACCNJ LEGAL & INSURANCE UPDATE

NJDOL Issues Warning to Businesses with Unsettled Labor Violations

The New Jersey Department of Labor and Workforce Development (DOL) recently began issuing **letters to employers with outstanding liabilities** for violations of wage, benefit and tax laws, with a warning that, if unaddressed, their name will be posted on the new Workplace Accountability in Labor List (WALL), prohibiting them from public contracting opportunities. The list of non-compliant businesses is accessible **online** and updated monthly.

Posting on the WALL is separate from, and potentially in addition to, other accountability measures, such as public contractor debarment and business license suspension or revocation. Furthermore, it is important to note that procurement officers at state, county, and municipal levels will be able to cross-reference the list of non-compliant businesses prior to awarding public contracts.

Given the DOL's aggressive penalty provisions, we strongly suggest members continue to stay current with their wage and recordkeeping practices.

DOL Finalizes Changes to Davis-Bacon Act

In August, the US Department of Labor (USDOL) issued a **Final Rule** on the Davis-Bacon and Related Acts (Davis-Bacon), which establishes the requirement for prevailing wages to be paid to craftworkers employed by contractors and subcontractors with federal contracts. The rules governing Davis-Bacon have remained relatively unchanged for 40 years. However, for the first time since the Reagan administration, the USDOL is making several significant changes, most notably updating the definition of "prevailing wage."

Under the previous definition, the USDOL determined a locality's prevailing wage by identifying a rate paid to the majority (over 50%) of workers. If no majority rate existed, the weighted average paid to workers was used, which pulled down the prevailing rate due to some employers paying significantly lower wages.

In hopes of cutting the use of weighted averages in half and making it more likely that workers are paid a true prevailing wage, the USDOL is returning to its original methodology (pre-1983) for determining whether a wage rate is considered prevailing. Under this methodology, referred to as the "30% rule," in the absence of a majority rate, a wage rate is considered prevailing if it is paid to at least 30% of workers. Thus, weighted averages will only be utilized if the 30% rule fails to identify a prevailing rate.

The Final Rule is set to go into effect on October 23rd and is expected to have a substantial impact on federal construction contractors, including an increase in labor costs.

As these developments unfold, contractors should begin to assess how these changes may influence their contracts and shape their future strategies for bidding on federal construction projects.

Changes to New Jersey's Unemployment Compensation Law

Back in July, ACCNJ staff issued a Bulletin (B-53-2023) outlining the Unemployment Compensation Law's updated reporting requirements. Since then, there have been many questions left unanswered, as the DOL remains delayed in releasing instructions and other information necessary for employers to ensure compliance.

The DOL seemed to acknowledge the holdup, stating that it "has not yet provided to employers the directions that would instruct them what information an employer must provide to the Division [of Unemployment Insurance] immediately upon an individual's separation from employment" and went on to further state "employers will not be expected to provide information to the Division immediately upon an employee's separation from employment" until such instructions are provided to employers.

While the DOL works on preparing instructions and creating an online form for employers to use to submit the required information, they have already "communicated to all employers the need for them to register with [the online platform] [Employer Access](#) and provide an email address to the Division," which, for the time being, will satisfy the employer's requirement to communicate with the Division through electronic means. Additionally, the DOL clarified that, "the new law does not require that an employer send the completed BC-10 form to the Division immediately upon the employee's separation from employment." Rather, the [FAQs](#) explain that, "under the new law, the only information from the BC-10 form that the employer is required to provide to the Division immediately upon the employee's separation is the date upon which the unemployment will begin." However, it is important to note that employers will not be expected to provide this information until the DOL provides employers with submission directions.

While we await the release of instructions and revised forms, the DOL has indicated that it "will exercise discretion under the law to neither assess penalties against employers, nor bar them from obtaining relief of benefit charges, for failure to provide information immediately upon an individual's separation from employment." In light of these delays, ACCNJ staff will continue to monitor the release of the aforementioned materials and will provide updates accordingly. In the meantime, we strongly suggest members continue to be diligent in providing separated employees with the required information and to timely respond to all requests from the DOL for wage and separation information.

Final Buy America Act Guidance Issued

Last week, ACCNJ hosted a webinar on the Office of Management and Budget's (OMB) recently issued [Final Guidance](#) on the implementation of the Build America, Buy America (BABA) provisions of the Bipartisan Infrastructure Law. BABA imposes Buy America preferences on items such as iron and steel, manufactured products, and construction materials used in federally funded infrastructure projects. The Final Guidance provides several updates, including redefining key terms such as "manufactured products" and "construction materials" and clarifying the waiver process. For an in-depth look at the updated regulations, members can access a recording of ACCNJ's webinar [here](#), with the PowerPoint slides readily available upon request.

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