

Setup work doesn't require prevailing wage

All employees engaged in work on public projects are supposed to receive a prevailing wage, which is set by the state. But what about a company's employees who perform work that may be related to a public works contract, but aren't directly doing the public work? Can they be paid less? Yes, under the right circumstances.

Recent case: A construction company set two different pay rates for workers involved in road construction. Workers were paid prevailing wage when working on the road project, but not when preparing equipment for the project at the company's off-site facilities.

Those facilities were used for a wide range of projects, both public and private. Work done there was referred to as mobilization work and consisted of loading milling machines onto a trailer; performing checks on the lights, brakes and fluid levels of a semi-truck used to transport the heavy equipment; driving a transport truck with the milling machine to a construction job site; and driving the transport truck with the milling machine back to the yard.

Some of the employees sued, alleging that their mobilization work should have been paid at the higher prevailing wage.

The court rejected their argument after concluding that California's prevailing wage law did not require prevailing wage to be paid for the kind of preparatory work the employees performed at an off-site facility that services both public and private projects.

Rationale: The off-site storage locations where they performed mobilization work do not depend on any particular public works project for their existence. The mobilization work was not an integral aspect of the process of construction under the public works contracts. It consisted of discrete job tasks independent from the construction work performed at the public works site. (*Mendoza v. Fonseca McElroy*, No. 15-CV-05143, ND CA, 2016)