

Construction Industry Update

California Prevailing Wage Alert!

*Article courtesy of Marks, Golia & Finch, LLP, Attorneys at Law
Specializing in all areas of the Construction industry*

There are new precedential coverage determinations from the California Department of Industrial Relations (DIR). These determinations relate to: (1) the hauling of materials to and from a California public works project, (2) the hauling of tools and equipment to a contractor's yard or shop, and (3) the payment of prevailing wages to owner/operators.

The DIRs determinations are summarized as follows:

- 1. Owner-Operators** – Self-employed owner-operators are covered by the California prevailing wage law and must be paid prevailing wages.
- 2. On-Hauling of Materials** – Prevailing wages must be paid to employees of a general contractor or a subcontractor who transport materials to a public works project.
- 3. Hauling of Materials within a Public Works Project** – Prevailing wages must be paid to employees who transport materials within the confines of a public works project.
- 4. Off-Hauling of Tools, Equipment, or Materials** – Prevailing wages must be paid to the employees of a general contractor or subcontractor who off-hauls tools, equipment, or materials from a public works project to the contractor's yard or shop.
- 5. Off-Hauling of Materials from One California Public Works Project to Another** – Employees of a general contractor or subcontractor must be

paid prevailing wages when they haul materials from one California public works project to another.

- 6. Off-Hauling of Materials in Accordance with Prime Contract** – Prevailing wages must be paid to employees of a general contractor or subcontractor who off-hauls materials if the prime con-

Wage Alert (continued on page 2)

In this issue...

California Prevailing Wage Alert	1-2
2005 Training Sessions	2
Why Do Contractors Fail? Surety Bonds Provide Prevention and Protection	2-4
Risk Control Corner: Fleet Safety — Employer Pull Notice (EPN) Program	5-6
Factors Leading to Increased Healthcare Costs	6

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tract specifies that hauling be accomplished in a specific manner or to a specific location.

- 7. Off-Hauling of Refuse** – Prevailing wages must be paid to employees who off-haul construction refuse from a California public works project to an outside disposal location.

The DIRs precedential determinations affect every general contractor, subcontractor, owner-operator and material supplier that performs work on California public works projects. ✂

If you have questions concerning how prevailing wage changes may impact your general liability, workers compensation and employee benefit costs, please contact Cavnac & Associates.

If you have questions concerning how to comply with these new determinations, contact Mark T. Bennett, Stephen J. Schultz or Chad T. Wishchuk at Marks, Golia & Finch, LLP, 619-293-7000.

Disclaimer: This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.

2005 Training Sessions

To be held in the Cavnac Training Room

Bank of America Plaza, 450 B Street, 18th Floor
San Diego, CA California 92101-8005

- **Sexual Harassment Training (AB 1825 Compliant)**
Friday, August 5th, 9:00—11:00 AM
- **Workers Compensation Claims Management**
Friday, September 16th, 9:00—11:00 AM
- **Personal Protective Equipment, and Post-Accident Response Training**
Friday, September 30th, 9:00—11:00 AM
- **How to Bullet-Proof Your Workers Compensation Audit**
Friday, October 7th, 9:00—11:00 AM
- **Sexual Harassment Training (AB1825 Compliant)**
Friday, October 21st, 9:00—11:00 AM
- **Injury & Illness Prevention Program (IIPP): How to Set Up an Effective Training Program**
Friday, November 4th, 9:00—11:00 AM
- **Fleet Safety**
Friday, December 2nd, 9:00—11:00 AM

**All training sessions available to our clients
Seating is limited!**

Contact **STUART NAKUTIN** by e-mail at **snakutin@cavnac.com** or by phone at **619-744-0589** for information about upcoming training sessions. ✂

Why Do Contractors Fail?

Surety Bonds Provide Prevention and Protection

Article reproduced by permission of the Surety Information Office (SIO), Washington, DC

Construction is a complicated business that faces ever-changing conditions, and those that are not prepared or capable of meeting these demands may ultimately fail. According to BizMiner, of the 823,830 building (non-single-family), heavy/highway, and specialty trade contractors operating in 2000, only 589,850 were still in business by 2002 – a 28.4% failure rate.

Every year thousands of contractors, whether in business for two years or 20, face bankruptcy and business failure. These firms leave behind unfinished private and public construction projects – and still worse, billions of dollars in losses to project owners and taxpayers. Public and private construction project owners can mitigate the risk of contrac-

tor failure by requiring bid, performance, and payment bonds.

Surety bonds provide financial security and construction assurance to project owners by verifying that contractors are capable of performing the work and will pay certain subcontractors, laborers, and material suppliers. This is especially important on public projects where taxpayers' dollars are at risk.

Surety companies are well positioned to analyze and manage construction risks because of their close relationships with contractors and surety bond producers. The surety bond producer works with contractors to prepare the necessary documentation

Contractors (continued on page 3)

Contractors *(continued from page 2)*

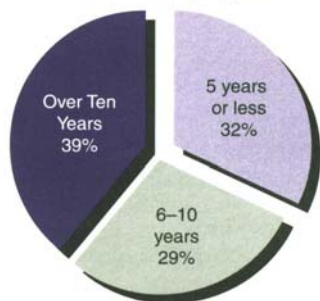
for the rigorous prequalification process conducted by the surety company. Through the prequalification process, the surety verifies the contractor's ability to perform the contract and fulfill its financial obligations (taking into account the contractor's current and projected commitments).

Prequalification is an in-depth process, which includes a complete review of financial statements, capacity to perform, organizational structure, management, trade references, credit history, and banking relationships.

Before a surety company will issue a surety bond, it must be satisfied that the contractor runs a well-managed, profitable enterprise, deals fairly, and performs obligations as agreed.

Because preventing contractor default is a key component to the surety business, surety companies and surety bond producers are experts at spotting business practices and conditions that can lead to contractor failure.

Construction Failures by Age of Business



SOURCE: Dun & Bradstreet *Business Failure Record*, 1990-1997

Events That Lead to Contractor Failure

Contractor failure is usually the result of multiple causes. The Surety Association of America (SAA) reviewed 86 claims cases and identified the top five factors related to contractor failure:

Indicator	% of Cases with Indicator
Unrealistic Growth	37%
Performance Issues	36%
Character/Personal Issues	29%
Accounting Issues	29%
Management Issues	29%

Changes in Line or Scope of Business and/or Over Expansion

- Change in type of work performed
- Change in the location of the work performed
- Significant increase in the size of individual projects
- Rapid expansion

Performance/Management Issues

- Inexperience with new types of work
- Personnel do not have adequate training or experience
- Insufficient personnel

Changes in Ownership and/or Personnel

- Contractor retires, dies, sells company, changing leadership or focus
- No ownership or management transition plan exists to ensure continuity in the event of death or disability
- Key staff leaves company
- Staff inadequately trained on company policy and operations

Accounting & Financial Management Problems

- Inadequate cost and project management systems
- Estimating or procurement problems
- Lack of adequate insurance
- Improper accounting practices (not adhering to the AICPA Audit Guide for Construction Contractors)

Other Factors

- Economic down-turn and high inflation
- Weather delays
- Poor site conditions and/or building plans
- Labor difficulties (lack of skilled labor)
- Material and equipment shortages
- Owner's inability to pay
- Onerous contract terms

Warning Signs That a Contractor Is in Trouble

Ineffective Financial Management System

- Inability to forecast cash flow or cash flow is tight
- Receivables are turning over too slowly
- Vendors are demanding cash on delivery for supplies and materials
- Bills are past due

Bank Lines of Credit Constantly Borrowed to Their Limits

- All credit fully secured
- Credit lines not being renewed

Contractors (continued from page 3)

Poor Estimating and/or Job Cost Reporting

- Revenue and margins decrease over time
- Continued operating losses
- Loss or reduction of bonding capacity
- Bidding jobs too low

Poor Project Management

- Inadequate supervision
- Inability to administer and collect change orders
- Project(s) not completed on time
- One or more contracts have a claim
- Company is constantly involved in litigation

No Comprehensive Business Plan

- Contingency plans are not developed
- Company does not have a “road map,” goals, or objectives

Communication Problems

- Disputes between contractor and owner
- Poor communication from field to management

Qualities of a Solid Contractor

According to FMI, management consultants to the construction industry, good contractors share these characteristics:

Organization

- Formal and on-the-job training for all levels of employees
- Logical, incentive-based compensation plan
- Tenure for proven field superintendents and internal promotion when possible
- Depth at all levels of the organization
- Succession planning
- Up-to-date, distributed organization chart
- Culture of loyalty, ownership, and urgency
- Visionary, inspirational leadership
- Low turnover

Finance

- Solid management of cash flow and overhead
- Profit-focused company
- Timely payment of bills
- Management of debt and retainage
- Reasonable growth without overextending resources

Marketing

- Superior estimating skills and systems to manage costs
- Satisfied customers
- Well-defined market niche and 12-36 month growth plan
- Company culture where everyone is a great salesperson

Project Control

- Closely managed projects with early warning systems to catch potential problems
- Litigation avoidance
- Productive field managers trained to improve processes

Planning

- Disaster preparedness
- Continuity plan with:
 - Adequate life insurance coverage
 - Share-holders’ agreements detailing buy-sell agreement for multiple shareholders
 - Only qualified and interested family members in management
 - Detailed business plan
 - Strengths, weaknesses, opportunities, and threats

It’s a variety of successes that makes a good contractor, and it’s a process that happens continually. Good contractors will heed the warning signs of failure before the red flags go up. ✨

Source: Stuart M. Deibel, FMI Corporation, What Makes a Good Contractor?, 2002, www.fminet.com. Copyright 2004 Surety Information Office, Washington DC, www.sio.org.

For more information about surety bonds, please contact Cavnac & Associates.

Visit us on the Web!



www.cavnac.com



Risk Control Corner

By Stuart Nakutin, AIC, WCCA, WCCP, CDMC



Fleet Safety

Employer Pull Notice (EPN) Program

By Stuart Nakutin, AIC, WCCA, WCCP, CDMC, Director of Loss Control & Claims, Cavignac & Associates

There are many tools available to help you manage your Total Cost of Risk. One of these is an Employer Pull Notice (EPN) Program.

The Employer Pull Notice (EPN) Program allows your organization to monitor the driver's license records of employees who drive on your organization's behalf. This monitoring accomplishes the following:

- Improves public safety
- Determines if each driver has a valid drivers license
- Reveals problem drivers or driving behavior
- Helps to minimize your liability

Prospective Hires

The employer of a prospective driver is required to obtain a copy of the driver record showing the driver's current public record. If hired, the driver record is to be reviewed, signed, and dated by the employer and maintained at the employer's place of business until the employer enrolls the driver in the EPN Program.

EPN Action Reports

The EPN Program automatically generate a driver record to you when any of the following actions/activities occurs:

1. Upon enrollment of driver in the EPN Program.
2. Annually from the date of enrollment or 12 months from the last action/activity printout.
3. When a driver has any of the following actions/activities added to his/her driver record:
 - Convictions
 - Failures to Appear
 - Accidents
 - Driver License Suspensions or Revocations
 - Any other actions taken against the driving privilege

Driver Record

A driver record, also referred to as DL printout, MVR, or ISD 414R, contains information obtained from an individual's driver license application, abstracts of convictions and accidents. (CVC) Section 1808 describes this information as open to public inspection.

A driver record will be generated and mailed automatically to the employer for newly enrolled drivers, upon action/activity or annually for currently enrolled drivers. An employer may also request a copy of a driver record for a prospective hire or casual driver.

Required to Enroll

Employers must enroll any driver employed for the operation of any vehicle, if the driver is required to have any of the following:

1. Class A (formerly known as Class 1), or
2. Class B (formerly known as Class 2) license.
3. Class C (formerly known as Class 3) with Hazardous Materials Endorsement.
4. Class C (formerly known as Class 3) with Special Certificates, issued pursuant to CVC Sections 2512, 12517, 12519, 12520, 12523, or 12523.5.
5. Any driver of a passenger vehicle having a seating capacity of not more than 10 persons, including the driver, operated for compensation by a charter-party carrier of passengers.
6. Passenger stage corporation with a certificate of public convenience and necessity or permit issued by PUC.
7. In addition, if any of the following individuals drive any vehicle requiring a license or certificate described above, they must be enrolled in the EPN Program as a driver:

Risk Control (continued on page 6)

Risk Control (continued from page 5)

- Owners who own, lease or otherwise operate more than one motor unit or more than three towed vehicles
- Owner/operators who have partners
- Family members and volunteer drivers

Employer Responsibility

In order for the EPN Program to maintain accurate record information, it is imperative that the employer notify the department in a timely manner whenever changes occur to their EPN account. Such changes include:

- Termination of enrolled drivers pursuant to CVC Section 1808.1(d)
- Address changes (mailing and physical)
- Change of ownership (corporate officers, partners)
- Employment changes (new driver, termination of drivers)
- Change of Federal Employer Identification Number (FEIN)
- Change of telephone number
- Close of business
- Mergers
- Sale of business
- Company name change
- Account contact person change

Security Requirements

The following guidelines will assist EPN account holders in complying with security requirements for the department's record information:

1. DMV information may only be used for the purpose for which it was approved by the department. It may not be combined with any other information.
2. DMV information must be destroyed when it is no longer needed for the reason for which it was originally requested. The method of destruction must be in a manner that it cannot be reproduced or identified in any physical or electronic form.
3. Security measures must be in place to prevent unauthorized access to any DMV data.
4. Requester codes <<http://www.dmv.ca.gov/vehindustry/epn/epngeninfo.htm>> are confidential and must be protected from unauthorized use or disclosure.
5. An EPN contact person should be appointed and placed in charge of maintaining the security of department record information.

6. Any changes in information contained in your application/contract (INF 1105) <<http://www.dmv.ca.gov/vehindustry/epn/epnformlist.htm>> must be made to the department within 10 days of the occurrence <<http://www.dmv.ca.gov/forms/epn/inf4.pdf>>.

The fees at this time are \$5 per driver for enrollment and \$1 for every printout generated after the initial one. Printouts are generated once every 12 months or when there is a negative activity on the driving record. ✂

Stuart Nakutin is the Director of Claims, Loss Control and Human Resources for Cavnac & Associates.

Factors Leading to Increased Healthcare Costs

Why are U.S. healthcare costs skyrocketing? Several market conditions working in tandem have led to the current onslaught of steep increases. Understanding why your annual health plan renewal rates may be significantly higher than the previous year is the key to formulating alternatives and solutions to your particular plan's challenges. It is also the key to educating your employees about the reasons behind any plan or contribution changes you may decide to introduce.

Below are some key factors leading to recent hikes in medical costs and health insurance premiums follows.

- Demographics: The Aging of America
- Dramatic Rise of Prescription Drug Costs
- Consolidation of Managed Care Companies
- Expansion of Providers
- Political Environment and Government Regulation

You and other employers are undoubtedly trying to determine how to keep accelerating health plan rates from having debilitating repercussions on your organization. Many firms have been trying to absorb most of the costs because of attraction and retention issues, but are now realizing that they will have to pass portions of the costs on to their employees in the form of increased contributions or out-of-pocket expenses. Small businesses in particular are facing the critical decision to raise employee contributions, or to discontinue offering the coverage altogether.

Which solution is right for you? Should you pass costs on to employees, at the risk of losing some of them? Or, should you try to manage costs in some of the other ways discussed above. Ultimately, it is a decision that you need to come to through thoughtful and detailed analysis of your plans, and with the advice of your broker-consultant. ✂