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New Maryland Laws Affect Construction Industry

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Three new Maryland laws impacting certain sectors of the construction industry will take effect next week on October 1, 2009.

Ober|Kaler has put together summaries of the bills, which cover the **Workplace Fraud Act of 2009, Certificates of Competence for Crane Operators** and the **State Apprenticeship Training Fund**. For assistance in determining how these developments affect your operations, contact the firm's Construction Group chairs, **Joe Kovars** and **Jack Morkan**.

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Senate Bill 909 (Workplace Fraud Act of 2009)

The Workplace Fraud Act seeks to prevent employers in the construction and landscaping industries from misclassifying workers as independent contractors rather than as employees to avoid certain payroll and related costs. The Act provides the Maryland Commissioner of Labor and Industry with broad investigatory powers and permits individual workers to bring civil actions against an employer who knowingly and improperly classifies them as independent contractors. Construction and landscaping companies should determine immediately if they engage any workers as independent contractors. For more information on the Act, click [here](#).

Senate Bill 991 (Crane Operators – Certificate of Competence)

Senate Bill 991 prohibits the operation of a crane or authorizing the operation of a crane in Maryland for the purposes of construction or demolition work unless the operator holds a certificate of competence. Crane operators must carry the certificate while operating the crane and make the certificate available upon request of the Commissioner of Labor and Industry. If a crane operator does not provide proof of certification, the Commissioner must issue a written notice requiring the operation of the crane to cease.

Pursuant to SB 991, the operation of a crane includes the inspection of a crane, assisting in the erection or dismantling of a crane, and the performance of routine maintenance on a crane. Crane operation does not include its

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movement on a State highway. SB 991 applies to persons who operate tower cranes, but not to those who operate other types of power equipment, such as hydraulic cranes, power-operated derricks, aircraft, bucket trucks, digger derrick trucks, fork lifts, knuckle booms, trolley booms, or line trucks used by a public utility company in the construction or maintenance of its transmission or distribution lines.

Employers who hire employees to operate power equipment, including cranes, must also develop and carry out an employee safety training program designed to inform employees of, and train employees in, standards for the safe operation of power equipment. The Commissioner may bring an enforcement action against persons who fail to comply with the written notice. Violators are guilty of a misdemeanor and are subject to a fine of up to \$1,000.

House Bill 644 (State Apprenticeship Training Fund)

House Bill 644 creates the State Apprenticeship Training Fund and requires contractors and certain subcontractors on public works contracts, subject to the prevailing wage law, to participate in an apprenticeship training program, make payments to a registered apprenticeship program or to an organization that operates registered programs for the purpose of supporting the programs, or contribute to the fund. Public works projects subject to the prevailing wage rate are those valued at more than \$500,000 and carried out by the State, or a political subdivision, agency, person, or entity for which at least 50% of the project cost is paid for by State funds. Subcontractors affected by this bill are those with contracts worth at least \$100,000 on eligible public works projects.

A contractor or subcontractor that elects to make payments to the fund must make payments, as determined by the Secretary of Labor, Licensing, and Regulation, not to exceed 25 cents per hour for each employee in each covered craft. Payments to the fund are considered to satisfy any required apprenticeship program contributions under the prevailing wage determination, and may be deducted from the required prevailing wage rate that must be paid to an employee. An employer that is determined to have willfully made a false or fraudulent representation or omission regarding a material fact in connection with prevailing wage records is subject to a civil penalty of up to \$1,000 for each employee.

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