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MIND OF A LAWYER. HEART OF A CONTRACTOR.

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Why An US Department Of Labor Investigation Can Ruin Your Year

Over the past few years, state and federal construction projects have been the bread and butter for the struggling construction industry. These projects are largely prevailing wage projects, and unfortunately, [many contractors and subcontractors found themselves trying to understand compliance with these regulations for the first time.](#)

At the same time, federal budget challenges and extra funding from the Obama Administration put more eyes at the US Department of Labor on prevailing wage violations.

The result is that many folks found themselves in the middle of a prevailing wage investigation, and learning about how frustrating and unfair these investigations can be.

This post gives you a glimpse at how these investigations work, and why an investigation - even without underlying wrongdoing - can really ruin the year (or more) for your company.

The Investigation Is Confidential

The first thing you'll learn about a US Department of Labor Prevailing Wage investigation is that it is confidential. You will probably learn this at your first sit down with the investigator, as he or she explains to you all of the alleged violations. You'll likely ask to see what the investigator is using to reach his or her conclusions, and that's when you'll be hit with the bombshell: you can't see a thing.

The Department of Labor typically begins an investigation into a company or project after receiving a complaint. Any requests to see this complaint will be denied, as it is confidential to protect the rights of the complainant and to encourage complaints.

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Then, the department will request you provide wage documentation and certified payroll, and will begin to interview laborers on the project. If you ask the department to identify who they interviewed or what was discussed, all of this will not be disclosed, as it is confidential.

The Complaint Against You Can Be Completely Meritless And Still Cause Problems

I was recently involved in a prevailing wage investigation where the Department of Labor was requiring a construction company to pay back wages on employees whose names were not even fully known, and who the department had no contact information on whatsoever. These partially named parties even appeared to be relatives of other laborers on the project.

So, for example, there would be an Alex Rodriguez on the project, and then a list of two or three other laborers like B. Rodriguez, C. Rodriguez and D. Rodriguez, all without any address or contact information, and with the department claiming these laborers were entitled to 10k - 20k each in back wages!

In other instances, I've seen the department of labor find laborers were working 60-80 hours per week when no one on the job was working those hours, or finding that folks who performed lower classified work (i.e. pure laborers) getting classified as plumbers or electricians.

And while these allegations may be completely meritless they are impossible to fight at the investigation level because the investigations are under seal, and an investigation you can't see is an investigation you can't fight.

So What Are Your Options?

This whole thing may seem a bit unfair, and from my perspective, it is unfair. Really unfair. However, courts have sided with these type of "under seal" investigations in the past, ruling that they protect the integrity of the investigation and the interests of complaints.

The reason these investigations have passed constitutional muster in the past is because a company can appeal the department's findings to a federal court. Upon filing an appeal, the investigation materials become more of an open book.

This sounds fair from a theoretical viewpoint, it has practical challenges in reality.

First, the cost of appealing an investigation is quite high, as you will be hiring an attorney and paying a retainer of at least \$10k - \$20k.

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Second, and more importantly, you'll have lots of pressure on other folks on the construction project to resolve the issue. If you don't resolve it, the investigator will go up the contact chain, all the way to the owner, with all parties being required to pay the back wages. This results in your money getting held up, and making it very difficult for you to continue on with work or a legal fight.

So, what do you do?

You can pay the back charges and try to learn from the experience, or you can lawyer up and fight the investigation findings tooth and nail...fight the good fight.

From a prevention standpoint, you'll want to keep meticulous records and be extra careful to comply with wage determinations on these projects. Hire a construction attorney to advise you on how to comply with these requirements, and follow the regulations to the letter, keeping records you can use to prove your case in the event of an investigation...and, hope for a little bit of luck.