UHY LLP Certified Public Accountants

CONSTRUCTION INSIDER

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In This Issue:

MICHIGAN DEBATES WHETHER TO BE OR NOT TO BE A "PREVAILING WAGE" STATE

Prevailing wage laws date back to the 1800's, and were established to protect workers wages in Public Works projects. In Michigan the prevailing wage is defined as union-scale wages and benefits. These laws have recently been under debate across the country, and a determined effort is underway to eliminate them in the state of Michigan. There are also many who feel just as strongly that the best thing for the state is to keep these laws in place.

Supporters of prevailing wage laws believe that these laws remove wages out of the equation, and contractors will be competing on; quality of services provided, as well as productivity, and efficiency. Additionally they feel that if prevailing wage laws were eliminated, the main determining factor for these bids would be, to lower the bottom line. Therefore by lowering these bids would cause a decrease in quality of workers as well as the work to be performed. (Michigan Prevails)

The opponents of prevailing wage laws believe that these laws hurt free market competition and cause costs to escalate on such public projects. This ultimately, they argue, cost all the taxpayers substantial amounts of tax dollars, or reduce the number of public projects that can be undertaken by the government. According to the Michigan Department of Licensing and Regulatory Affairs a painter earns $31.74 per hour and an operating engineer's hourly wage ranges from $37.60 to $51.50, depending on the type of machinery they use.

According to Crain's Detroit, Michigan's Governor Rick Snyder is opposed to changing the law for multiple reasons. The first is that he feels that this will be a detriment to his efforts to attract skilled labor to the state. He also believes that data on how eliminating the prevailing wage law will save the state money simply doesn't exist. Other supporters feel that the opponents to the existing laws are directly attacking labor unions similar to "right to work" issues.

Those opponents consist of non-union contractors, and other Republican

Continued on Page 2...

MICHIGAN DEBATES WHETHER TO BE OR NOT TO BE A "PREVAILING WAGE" STATE, CONTINUED

Continued from Page 1...

members of Michigan's House and Senate. Despite Governor Snyder's views and his intention to veto any legislation passed, these GOP members have found a way to potentially eliminate prevailing wage laws without having to obtain Governor Snyder's approval. This new push is spearheaded by a group called "Protecting Michigan's Taxpayers", and consists of the Michigan Freedom Fund and the Associated Builders and Contractors of Michigan (ABC). The Freedom Fund has ties to the DeVos family according to Crain's, ABC has only non-union workers. If they are successful in getting the 253,000 signatures needed, the issue will be on the ballot for 2016.

Both sides refer to studies giving contradictory information. Prevailing wage opponents cite a 2013 report from East Lansing based Anderson Economic Group which was commissioned by ABC. This study found that Michigan taxpayers could have saved $224 million per year and $2.2 billion in total on certain school building construction from 2002 to 2011 if prevailing wage laws were not in effect. This study assumes that prevailing wage laws inflate pay rates by 25%.

Supporters of prevailing wage cite a 2013 report by the University of Utah economics professor Peter Philips. Philips wrote that the Anderson's study was based on outdated and miscalculated assumptions, one of which considered capital outlays on school projects solely as payments to contractors when they also include land purchases and other costs. His study reviewed data from Kentucky, Ohio and Michigan and found no statistical difference in cost per square foot on school projects when comparing times with and without prevailing wage laws. All three states had times without prevailing wages laws during the 1990's.

The group Associated General Contractors of Michigan (AGC), which is the counterpoint of ABC, believes that savings like those represented in the Anderson report just do not occur in the reality of construction markets. As reported in Craine's, AGC negotiates contracts with trade unions on public projects, including equipment operators, carpenters, masons, and ironworkers. These wages are bargained for regionally and are the highest in Detroit. Wages in Lansing, Saginaw and in the Upper Peninsula tend to be 75% of those Detroit rates, 68% in Grand Rapids, and 65% in Traverse City. AGC represents approximately 200 construction firms and two thirds of its member contractors use union labor on their projects.

Those supporting prevailing wage laws state the following as some of the reasons why eliminating these laws would be detrimental to Michigan: The quality of work would lower with the race to the lowest bid; they will also cause worker shortages in the state due to unions cutting budgets for training skilled trades; Michigan lost many of its skilled workers during the recession and is currently trying to lure them back and cutting wages will not help that process.

However, ABC believes that the prevailing wage laws and not the lack thereof that hinders recruiting. ABC claims that the less construction activity that can get financed, that can be afforded, and that can be put into place, the less the need for construction workers. Fewer construction companies and overall less construction activity will also result. (ABC MI)

Early indications show that the ABC led group has more than enough signatures to get the issue on the 2016 ballot. According to a study done by the Detroit News and using data from the Economic Census of Construction if prevailing wage laws are eliminated, 11,300 jobs $1.7 billion economic activity statewide would also be eliminated as well as the state incurring the loss of $28 million in state and local tax revenue. Finally, according to Michigan Prevails website the only states that currently do not have prevailing wage laws are lower income states including Alabama, Arizona, Florida, Georgia, Idaho, Louisiana, Mississippi, North Carolina, South Carolina, and now Indiana which is the state with the lowest per capita income in the Midwest.

The debate will continue into 2016. What is clear though is that this issue will more likely than not be on the ballot for 2016, and Michigan voters will hear much more on the subject in the months to come.

> "The laws have recently been under debate across the country, and a determined effort is underway to eliminate them in the state of Michigan."

SUBCONTRACTOR DEFAULT INSURANCE

General contractors face large amounts of liability during a construction project. One such risk is the default of subcontractors. One way to mitigate the risk of a subcontractor default is Subcontractor Default Insurance (SDI), which is also highly known as Subguard Insurance. Although the terms are used in practice interchangeably, Subguard is the name of the first ever created SDI insurance product by the company Zurich in 1996. SDI is an insurance policy that reimburses general contractor's for costs incurred in the default of a subcontractor. A subcontractor defaults when they fail to meet the terms and conditions of their subcontract agreement.

SDI is a two part agreement between the general contractor and insurance company. Each policy is individually negotiated by the insurance provider and general contractor. Insurance providers have strict requirements with insuring a general contractor and require the general contractor to qualify subcontractors. The general contractor is responsible for creating criteria and qualifying subcontractors that meet this criterion and will usually request private information from each subcontractor including company financials. Generally, there are two types of SDI: retrospective premium agreement and high deductible. With a retrospective premium agreement, the insured has the possibility of receiving a refund of premium if the project does not experience frequent or severe subcontractor defaults. The benefits of high deductible plans are cheaper insurance premiums compared to a retrospective agreement.

SDI products cover both direct and indirect costs of a subcontractor's default. The direct costs include what a subcontractor was required to pay third parties and any costs to correct defective and nonconforming work on a project. Examples include attorney, consultant, and investigation fees. Indirect costs that may be covered include any extended overhead, delay costs, liquidated damages, and job acceleration costs. Other features of SDI include the ability to receive funds within 30 days of making a claim and covering a subcontractor's work for up to 10 years after completing a job. Therefore, a general contractor is protected not only during but after completion of a subcontractors' work.

Most SDI policies carry a $500,000 deductible with up to $50 million coverage in losses and are geared towards large construction companies with $100 million or more in sales. However, due to the increasing demand and successful use of the product, insurers are now beginning to offer insurance to mid-size construction companies. An example of a claim calculation is shown below:

$5,000,000		Original contract value
$2,000,000	+	Change orders
$1,000,000	-	Amount paid on original contract
$8,000,000	-	Amount to finish remaining
$2,000,000	=	Loss amount before indirect
$500,000		25% Indirect
$2,500,000		Claim before deductible

Overall, since the SDI product was introduced in 1996, the product has had much success and helped in protecting the general contractor.

UNION EMPLOYEES AND HOW THEY AFFECT THE AFFORDABLE CARE ACT REPORTING REQUIREMENTS

The Affordable Care Act (ACA), beginning in 2016 for the 2015 calendar year, requires many employers to report coverage offered to full-time employees in order to show compliance with the ACA's employer mandate. The reporting requirements for employees under a collective bargaining agreement (i.e. union employees) cause some complexity for employers of these employees in determining what their actual reporting requirements are as it relates to the ACA. Further complexity is caused due to the fact that different reporting requirements exist depending on whether the employer is an applicable large employer or a small employer and the type of plan offered by the employer and multiemployer (union).

Where a single, applicable large employer (50 or more full-time equivalents) offers a fully-insured plan to non-union employees and a self-funded plan offered by a multiemployer plan (a collectively bargained plan) to union employees, the employer is responsible for reporting the existence or nonexistence of a minimum value, affordable offer of coverage to any employees (including union employees) who were full-time for at least one month during the year (monthly measurement method or look-back measurement method). This can be achieved by using Form 1094-C and Parts I and II of Form 1095-C. This is ultimately the responsibility of the employer; however, significant coordination with the union may be necessary in order to obtain this information. The insurance carrier responsible for non-union covered individuals will need to report this coverage on Forms 1094-B and 1095-B. The union plan sponsor must report any union covered individuals by filing Forms 1094-B and 1095-B. To summarize, full-time employees receive Form 1095-C from the employer, non-union individuals covered under the fully-insured plan receive Form 1095-B from the insurance carrier, and all union individuals that are covered under the self-funded plan receive a Form 1095-B from the union plan sponsor.

Where a single, applicable large employer (50 or more full-time equivalents) offers a self-funded plan to non-union employees and a self-funded plan offered by a multiemployer plan to union employees, the employer is responsible for reporting the existence or nonexistence of a minimum value, affordable offer of coverage to any employees (including union employees) who were full-time for at least one month during the year (monthly measurement method or look-back measurement method). This can be achieved by using Form 1094-C and Parts I and II of Form 1095-C. This is ultimately the responsibility of the employer; however, significant coordination with the union may be necessary in order to obtain this information. The employer also bears the reporting responsibility for any non-union covered individuals using Form 1094-C and Part III of Form 1095-C; however, Forms 1094-B and 1095-B may be used at the employer's discretion for non-employees (i.e. retirees) instead of using the "C" forms. The union plan sponsor must report any union covered individuals by filing Forms 1094-B and 1095-B. To summarize, full-time employees and non-union individuals covered under the self-funded plan offered by the employer receive a Form 1095-C from the employer (covered non-employees may receive Form 1095-B instead); union individuals covered by the self-funded plan (multiemployer/union plan) receive Form 1095-B from the multiemployer.

Where a single, small employer (fewer than 50 full-time equivalents) offers a fully-insured plan to non-union employees and self-funded plan offered by a multiemployer plan to union employees, there is no reporting responsibility on the part of the employer. The insurance carrier responsible for non-union covered individuals will need to report this coverage on Forms 1094-B and 1095-B. The union plan sponsor must report any union covered individuals by filing Forms 1094-B and 1095-B. To summarize, non-union individuals covered under the fully-insured plan receive Form 1095-B from the insurance carrier and all union individuals covered under the self-insured plan receive a Form 1095-B from the union plan sponsor.

Where a single, small employer offers a self-funded plan to non-union employees and a self-funded plan offered by a multiemployer plan to union employees, the employer bears the responsibility of reporting for any non-union covered individuals by filing Forms 1094-B and 1095-B. The union plan sponsor bears the responsibility for reporting on any union covered individuals by filing Forms 1094-B and 1095-B. Non-union covered individuals receive Form 1095-B from the employer and all union individuals covered under the self-funded union plan will receive Form 1095-B from the union plan sponsor.

The reporting requirements of employers are increasing and becoming significantly more complex. Please contact a member of the firm's Construction Practice in Detroit 313 964 1040, Farmington Hills 248 355 1040 or Sterling Heights 586 254 1040, or visit us on the web at www.uhy-us.com to assist with helping to understand your filing requirements.

"The Affordable Care Act (ACA), beginning in 2016 for the 2015 calendar year, requires many employers to report coverage offered to full-time employees."

EXECUTIVE ORDERS WILL GREATLY AFFECT FEDERAL CONTRACTORS

Recently, the Obama Administration has issued two executive orders that will change the way federal contractors manage their workers. The executive orders will affect the wages paid per hour and the sick time allotted to workers. These are important changes to the industry, which will require federal contractors to adhere and comply with the new rules.

Executive Order 13658, Establishing a Minimum Wage for Contractors, was signed by President Barack Obama on February 12, 2014. The Executive Order (Order) established a minimum wage of $10.10 per hour for direct federal contractors and subcontractors at all tiers. The new minimum wage does not apply to all employees but rather to workers in performance of the contract. The increased wage took effect on January 1, 2015.

The Executive Order authorized the Wage and Hour Division (WHD) of the Department of Labor (DOL) to make an annual determination of the minimum wage rate for subsequent years, beginning January 1, 2016. The Secretary of Labor (Secretary) is required to provide notice to the public of the new minimum wage rate at least 90 days before such rate is set to take effect. The Secretary has already announced that the minimum wage for certain federal contracts will increase to $10.15 per hour beginning January 1, 2016. Federal agencies must compensate contractors for the annual inflation increases in the minimum wage. This requirement will entitle contractors to an adjustment by federal agencies where the annual inflation increase to the minimum wage was not covered by the existing contract. The adjustment will be based on actual hours and not bid hours.

The minimum wage requirements apply to procurement contracts for construction covered by the Davis-Bacon Act, service contracts covered by the Service Contract Act, concessions contracts, and contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public. The effects of the wage increase have not yet been determined; however, there are effects that can already be anticipated. First, employees not covered by the Executive Order will still be paid the new minimum wage amount under the Fair Labor Standards Act. Also, the DOL's wage determinations in more rural regions show wages for several lower-skilled service and construction jobs are below $10.10 per hour. The increased minimum wage could create a ripple effect through other labor classifications. The Small Business Administration has already reported widespread complaints about the financial burden imposed by this order.

Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors, was signed by President Barack Obama on September 7, 2015. The

Continued on Page 6...

EXECUTIVE ORDERS WILL GREATLY AFFECT FEDERAL CONTRACTORS, CONTINUED

Continued from Page 5...

Executive Order (Order) requires federal contractors to offer their employees up to seven days of paid sick leave per year. The Order, which requires a minimum of 56 hours a year of paid sick leave, is extremely broad in scope. It would apply to absences from work resulting from an employee's illness or an employee's caring for a child, parent, spouse, domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. The Order also defines sick leave to apply to absences from work resulting from domestic violence, sexual assault or stalking, if the absence was used to seek medical attention, obtain counseling, seek relocation assistance from victim service organizations or prepare civil or criminal proceedings. Use of paid sick leave cannot be made contingent on the employee finding a replacement to cover for the missed work day.

Employees accrue time by earning a minimum of one hour of paid sick leave for every 30 hours worked. Employers are required to allow unused paid leave to accrue, year after year. Employers are required to guarantee one hour of paid sick leave for every 30 hours worked by covered employees. Though the accrual is required, the Order does not require employers to pay out accrued but unused sick time upon termination. However, employees rehired within 12 months after job separation, must have their accrued sick time reinstated.

The Order will apply to covered federal contracts solicited or awarded on or after January 1, 2017. Covered contracts include procurement contracts for services or construction; contracts or contract-like instruments for services covered by the Service Contract Act; contracts or contract-like instruments for concessions; and contracts or contract-like instruments with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. In addition, the wages of employees under the categories of contracts or contract-like instruments covered by the Order must be governed by the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act, including employees who qualify for an exemption from its minimum wage and overtime provisions.

This Order will impose a huge administrative challenge for federal contractors. Federal contractors will have to devise a way to track sick leave used. They will also need to revise leave policies to reflect the new requirements. Other considerations include how the sick leave requirement will factor into pricing bids for federal contract work and how to staff projects to account for the sick leave.

Federal contractors should examine the DOL regulations and the Federal Acquisition Regulations when they are issued to make sure they are accurately following the new regulations.

For more information on DOL regulations and the Federal Acquisition Regulations, please contact a member of the firm's Construction Practice in Detroit 313 964 1040, Farmington Hills 248 355 1040 or Sterling Heights 586 254 1040, or visit us on the web at www.uhy-us.com.

CONSTRUCTION INDUSTRY INSIGHT

UHY LLP's National Construction Practice is comprised of the country's foremost experts in regards to audit and assurance, tax planning and compliance, and business advisory services for the construction industry. We work with a wide range of key industry segments including general contractors, underground contractors, underwater construction, tunnel, and bridge and heavy highway contractors.

As active members of various national, state and local construction associations, state housing councils and specialty trade groups, our team keeps alert to industry trends and opportunities. Our professionals are leaders in the industry and take the steps necessary to ensure our client's future success by identifying and addressing new accounting requirements and regulations. You can depend on us to anticipate major industry issues that might impact your company and help you structure workable solutions.

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GA Atlanta 678 602 4470
MD Columbia 410 423 4800
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MI Farmington Hills 248 355 1040
MI Sterling Heights 586 254 1040
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NJ Oakland 201 644 2767
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