



Contractors Must Maintain Proper Wage Records to Avoid Class Actions

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Over the last few years there have been a rash of lawsuits against contractors regarding the payment of prevailing wages, failure to pay overtime and/or minimum wage, failure to pay wages weekly for employees who perform manual work, failure to have employees timely sign a proper wage notice, and failure to provide the wage statement containing specific categories of accurate information on each payday. These cases, mostly brought in federal court, often seek to have the court designate the action as a federal collective action and, worse, a class action.

The crux of many of these cases focuses on the fact that a worker shows up at a field office in the morning, let's say between 6:30 and 7:30, gets his/her truck ready, and then goes out into the field. The employer pays the worker for 40 hours per week and has timecards showing same, usually with the start time being the same for each day. The problems start with the fact that the employer usually, in good faith, has the worker tell his/her foreman or supervisor the amount of hours that he/she worked.

However, once a lawyer gets involved, the lawyer finds one worker who alleges that he/she worked more than 8 hours in the day because he/she was at the field office preparing his/her truck for the day prior to working the 8 hour shift. Once the lawyer finds this one worker, he/she brings a lawsuit seeking to compensate every other worker at that construction company based on the same allegations. If the lawyer is successful in getting the collective and/or class certified (which is not hard to do), the company can be on the hook for millions of dollars in unpaid wages, shortfalls in wages, as well as liquidated and statutory penalties.

In order to help protect themselves from these claims, employers need to make sure that they utilize proper wage and time records. Importantly, the worker should report his/her exact time starting a shift, leaving for a break, returning from a break, and ending a shift on their timecard and the employee should be paid for all hours worked. Such records should be preserved for six years.