



# **ILLINOIS PREVAILING WAGE ACT: WHAT EVERY CONTRACTOR NEEDS TO KNOW**

**Presented by  
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# The Presenter



**Michael W. Duffee is a partner in the Chicago office of the law firm of Thompson Coburn LLP, and has represented management in labor and employment law matters since 1977.**

**He has particular expertise in the construction industry, handling contract negotiations, arbitrations, union organizing, strikes and picketing, jurisdictional disputes, secondary boycotts and fringe benefit litigation. In addition, he has served as outside counsel for several public employers, including the City of Chicago and the Chicago Transit Authority. He also acts as Fund Counsel to several multi-employer Taft-Hartley pension, welfare and apprenticeship funds in the Chicago area.**



# But First , A Word from Our Legal Department . . . .

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# Issues for Employers Under the Prevailing Wage Act

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- Is the work covered by the Act?
- What is the appropriate rate to be paid?
- What if the CBA rates are different?
- Can prevailing wages be paid differently from the rates set by the Department of Labor?
- What are a contractor's record keeping responsibilities?
- What are a contractor's responsibilities for subcontractor compliance?
- What are the penalties for violations of the Act?



# I. Coverage Under the Act

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- Act covers all “public works” (i.e., “fixed works constructed or demolished by any public body or paid for wholly or in part out of public funds.” (Section 2).
- Includes “maintenance, repair, assembly or disassembly of equipment.”
- Covers persons employed directly at the site of construction.
- Also includes persons involved in transportation of materials or equipment to a jobsite **unless** are those are provided directly by sellers or suppliers or manufacturers.



# I. Coverage by the Act

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## But what about . . .

- TIF funding? Town of Normal v Hafner, 395 Ill.App.3d 589, 918 N.E.2d 1268 (4<sup>th</sup> Dist 2009). But see Section 2: “public works means all fixed works ... paid for wholly or in part by public funds.”
- Sales tax rebate agreements? (See IDOL FAQ).
- Municipal leases of privately constructed facilities?
- Federal funding and the Davis-Bacon Act? (Section 11)

**Note:** transportation to and from a Davis-Bacon project is not considered “prevailing rate” work.



## II. Rates to be Paid

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- Act requires the IDOL to set “prevailing rates” by July 15 of each year.
- Rates are set for each “classification” based upon rates under collective bargaining agreements paid to 30% or more of specific trades in a particular locality.
- But what if classifications “overlap?” (e.g., electricians and operating engineers doing certain trenching work).
- What if classifications do not specifically cover the work in question?
- Does a CBA control IDOL definition of classification?



## II. Rates to be Paid

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“Prevailing rates” v. “Union contract” rates:

- IDOL sets specific hourly wage and fringe rates.
- What if the contractor pays the same “package” but in different amounts? (Higher or lower wage?)
- Can the same fringe benefit amounts be paid to funds in different amounts than IDOL specifies?
- Fringe benefit rates v. “annualized” rates (Section 2)
- Impact of changes in CBA rates during life of a project
- Apprentices and helpers: when can you pay those rates?





# III. Record Keeping Requirements

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Under the Act, a contractor must:

- Place in any subcontract for covered work the “prevailing wage” requirements for the project or risk payment of penalties, interest and fines (Sections 4(h), 4(j)).
- Include prevailing wage guarantee in all bonds for the project (Section 4(k)).
- Post the prevailing rate for classifications or provide written notice to the employee (Section 4(n)).
- Produce all records underlying certified payrolls within 7 days to public body or IDOL. (Section 5(b)).



# III. Record Keeping Requirements

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- Keep project employee information (name, address, SSN, wages, gender, race, ethnicity, veteran status, classification, hourly rate, hours worked, fringe benefit rates, and plan sponsor and administrator) for five years of last payment (Section 5(a)(1)).
- File certified payrolls by 15th of the month with public body (Section 5(a)(2)).
- By April 1, 2020, certified payrolls will be filed with IDOL on its website and not with public body. (Section 5(a)(2)).



## IV. Penalties for Violations

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- Failure to observe prevailing wage, record keeping, and notice requirements are violations of the Act. (Sections 4(h), 4(i), 4(n), 5(a)(2)).
- Wilful failure to file a certified payroll is a violation **and** knowingly filing a false certified payroll is a Class A misdemeanor. (Section 5(a)(2)).
- Failure to place prevailing rate language in contract obligates contractor to pay penalties and interest (Section 4(j)). Amount: 20% up to 50% to IDOL and 2% or 5% per month to the employee. (Section 11).
- Attorney's fees and costs payable to employee in suits. (Section 11).



## IV. Penalties for Violations

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- Contractors which violate the Act 2 times within 5 years can be placed on debarment list for 4 years. (Section 11a).
- Contractors found guilty of misdemeanors in Section 5 for willfully filing false certified payrolls or in Section 6 for willfully failing to keep required records are subject to automatic debarment without hearing rights.
- Disciplining or discriminating against “whistleblowers” will be investigated by IDOL and contractor can be ordered to grant reinstatement and back pay, plus a \$5,000 penalty to the Department (Section 11b).





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# QUESTIONS?

# A FINAL WORD . . .

**BE  
CAREFUL  
OUT  
THERE!**





# Thank You!

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