

SB 854: *ARE YOU REGISTERED?*

by Patricia Walsh

Important reminder: in order to be listed on a bid for public work as of **March 1, 2015**, or to perform work on a project awarded on or after **April 1, 2015**, contractors and subcontractors must register with the Department of Industrial Relations.

Senate Bill 854, signed into law on June 20, 2014, requires all contractors and subcontractors who bid on or perform “public work” to register with the Department of Industrial Relations. There is a \$300 non-refundable application fee to register. You can register online at <https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRegistrationForm>.

Beginning March 1, 2015, no contractor or subcontractor may submit a bid on public work unless it has registered. Labor Code § 1725.5(e). Effective April 1, 2015, a public agency cannot enter into a construction contract with a contractor that is not registered and may require that a contractor replace a subcontractor that has not registered. Once this requirement takes effect, it is important to ensure that the subcontractors your company lists in its bid proposals are registered, as listing of an unregistered subcontractor will likely lead to bid protests and to having to replace subcontractors at additional cost. The department maintains a searchable database of registered companies at <https://efiling.dir.ca.gov/PWCR/Search>.

Untimely registration is costly. The new law allows for late registration after March 1, 2015, if the contractor or subcontractor pays a **\$2,000** nonrefundable fine and the failure to register was inadvertent.

Annual registration renewal and payment. Contractors and subcontractors on an annual basis will need to renew their registration and to pay a renewal fee in an amount to be determined by the department.

An inadvertent error by a general contractor in listing a subcontractor who is not registered shall not be grounds for filing a bid protest against the general contractor or grounds for considering the general contractor's bid to be nonresponsive, provided that any of the following apply: (1) The subcontractor is registered prior to the bid opening; (2) within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee; or (3) the subcontractor is replaced by another registered sub-

contractor pursuant to Section 4107 of the Public Contract Code.

The definition of “public work” under SB 854 is extremely broad and is the same as the definition for prevailing-wage laws. For example, if a private developer receives any public money in connection with a project or is excused from paying fees or from other obligations, then the project likely will be considered to be a public work and subject to registration requirement of SB 854. See Labor Code §§1720 and 1725.5. Low-income housing developments, animal shelters, and zoological parks and museums may appear to be private projects but, because of a contribution of public funds or benefits in many instances, may be public work subject to registration and prevailing-wage requirements.

It, therefore, is a good idea to register even if you do not usually perform work on public projects. You may find yourself performing public work even if you did not expect to do so.

Method of Certified Payroll Submission

SB 854 also will change the way that certified payrolls are submitted. Certified payrolls will be submitted directly to the California Labor Commissioner, except where: (1) the owner has enforced an approved labor compliance program continuously since December 31, 2011; or (2) there is a Project Labor Agreement (PLA) that includes a mechanism for resolving disputes about the payment of wages. The Department of Industrial Relations has indicated that certified payroll reports will not be submitted directly to the

California Labor Commissioner on projects awarded by Caltrans, the city of Los Angeles, the county of Sacramento or the Los Angeles Unified School District, provided that these agencies continue to maintain Labor Compliance Programs approved by the department. The requirement to submit certified payroll reports (CPRs) to the labor commissioner will be phased in as follows:

- Contractors will continue to submit CPRs to the labor commissioner if they already do so
- Projects awarded on or after April 1, 2015, will be subject to the new requirement
- On or after January 1, 2016, all projects, whether new or ongoing, will be subject to the new requirement

The department has published an online fact sheet concerning the SB 854: www.dir.ca.gov/dlse/PublicWorks/SB854FactSheet_6.30.14.pdf.

For more information, contact Janette Leonidou, Bob Rosin or Patricia Walsh at (650) 691-2888.

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Patricia Walsh has been practicing law since 1985 and has been litigating construction collection, lien, delay and impact claims exclusively for 15 years. She has been with Leonidou & Rosin Professional Corporation for 14 years. Patricia also handles general litigation and business needs for contractor, subcontractor and supplier clients, in addition to her subspecialty in real estate matters.

