



AB 1851  
HAULING UNDER LABOR  
CODE SECTION 1720.3

PUBLIC WORKS, CALIFORNIA LABOR COMMISSIONER'S OFFICE  
DEPARTMENT OF INDUSTRIAL RELATIONS

# DISCLAIMER

- ▶ The following presentation is intended to summarize relevant portions of existing law in the Labor Code and California Code of Regulations, but those code sections, as interpreted by the courts, will govern actual enforcement. The information contained in this presentation is a general overview of existing law or regulation. Any opinions expressed are solely those of the author/speaker and are not necessarily the official position of the Department of Industrial Relations (DIR), its Director, or any related public entity. The information in this presentation is not intended as legal advice, and does not guarantee any outcome in specific enforcement or coverage proceedings within the jurisdiction of DIR.

# AB 1851

- ▶ Effective January 1, 2023, Assembly Bill (AB) 1851 amended the Labor Code to clarify that the on-hauling of materials used for paving, grading, and fill specifically falls under the definition of public works.

# WHAT IS A PUBLIC WORK?

- ▶ Labor Code section 1720(a)(1) generally defines “public works” to include construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds.
- ▶ Labor Code sections 1720 through 1720.9 also specifically define additional types of work as “public works.”

# COVERAGE OF ON-HAULING WORK

- ▶ For over four decades, the Courts of Appeal and DIR consistently found on-hauling and off-hauling work not otherwise defined in the statute to be covered, relying on Labor Code section 1772 which states: “[w]orkers employed by contractors and subcontractors in the execution of any contract for public work are deemed to be employed upon public work.”

# IMMEDIATELY INCORPORATED

- ▶ In general, on-hauling that was performed by workers employed by a public works contractor or subcontractor, for the delivery of materials that were immediately incorporated into the project, was determined to be covered work requiring the payment of prevailing wages because it was performed “in the execution of” the public works contract.
- ▶ In contrast, on-hauling work performed by employees of bona fide material suppliers (e.g., companies selling materials to the general public and not as part of an operation dedicated to the public works site), was found not to be covered.

# SUPREME COURT OPINIONS

- ▶ In 2021, the California Supreme Court issued three opinions which examined the legislative history of Prevailing Wage Law and the statutory definition of “public works” under the Labor Code.
- ▶ *Mendoza* specifically held that Labor Code section 1772 does not define or expand the categories of work that are covered by prevailing wage law.
- ▶ In doing so, the Court expressly overturned *Sansone* and the line of subsequent appellate cases interpreting section 1772 to independently serve as the basis for coverage under the definition of “public works.”

# NARROW HOLDING

- ▶ The Mendoza Court cautioned that its holding was “narrow” and pointed out that the work at issue may be covered under another theory.
- ▶ As a result, coverage of any work previously found to meet the definition of public works under section 1772 now must be analyzed under the definition of public works found in sections 1720 through 1720.9.



# LEGISLATIVE RESPONSE

- ▶ In response to these recent opinions, the legislature provided clarity by amending Labor Code section 1720.3 to specify that the on-hauling of materials used for paving, grading and fill to a public works site meets the definition of “public works.”

# LABOR CODE SECTION 1720.3

- ▶ Labor Code section 1720.3 was amended to specifically add “[t]he on hauling of materials used for paving, grading, and fill onto a public works site, if the individual driver’s work is integrated into the flow process of construction” to the definition of public works.
- ▶ This amendment was intended to restore the status quo prior to *Mendoza* by codifying the holdings of *Sansone* and its progeny as it relates to the coverage of on-hauling of materials for paving, grading, and fill.

# IMPACT OF AB 1851

## Labor Code section 1720.3

- ▶ The determination as to whether a type of work or a particular project is a “public work” subject to prevailing wage requirements ultimately rests with the Director.
- ▶ Since AB 1851 simply restores the status quo regarding work which has been found to be covered for over four decades, the impact of AB 1851 on the Labor Commissioner’s public work enforcement is likely to be minimal.

# WHAT IS “INTEGRATED INTO THE FLOW PROCESS OF CONSTRUCTION”?

- ▶ *Sansone* introduced the concept that the delivery of materials was subject to prevailing wages when it was “an integrated aspect of the ‘flow’ process of construction.”
- ▶ This concept was later expanded upon, and interpreted by the Court of Appeal in *Williams*.

# DIRECTOR'S COVERAGE DETERMINATIONS

- ▶ The Director is ultimately tasked with the quasi-legislative authority to determine whether a particular type of work is covered. Labor Code section 1773.5.
- ▶ The Director has issued coverage determination that interpreted the *O.G. Sansone* and *Williams* decisions and explored the contours of what it means for a driver's work to be "integrated into the flow process of construction" when delivering materials under specific factual circumstances.

# WHAT ARE PAVING, GRADING, AND FILL MATERIALS (PGF)

- ▶ There is no exhaustive list of PGF materials. Some examples of PGF materials are “sand, gravel, crushed rock, coal or bituminous paving materials.”
- ▶ The Director may determine through administrative rules and decisions that a particular material is considered a PGF material for the purposes of AB 1851.
  - ▶ Courts may also decide that a material is or is not a PGF material through judicial decisions.

# A DRIVER HAULING PGF MATERIALS ONTO A PUBLIC WORKS SITE IS ENTITLED TO PREVAILING WAGES

A driver hauling PGF materials onto a public works site is entitled to prevailing wages during the delivery of PGF materials only if the driver's work is "integrated into the flow process of construction."

# REGISTRATION AS PUBLIC WORKS CONTRACTOR

- ▶ Any entity that employs a driver performing public work subject to prevailing wage requirements, including drivers delivering PGF materials to a public works jobsite, must register as a public works contractor.



