

**THIS GUIDE SUPERSEDES ALL PREVIOUS GUIDES & CHARTS.**

### The Story So Far

Prevailing wage coverage of on-/off-haul trucking has expanded greatly over the past 10-15 years, through legislation, DIR determinations, and court rulings. With very limited exceptions, on-/off-haul trucking has been covered by prevailing wages. Coverage has even expanded in recent years to ready-mix delivery by either contractors or suppliers.

### What Happened in 2021?

In August 2021, the California Supreme Court's issued their decision in *Mendoza et al v. Fonseca McElroy Grinding Co.et al*. The Supreme Court held that the work of loading milling equipment to break up existing roadbeds from an offsite location and the transport of the equipment to and from public works jobsites by workers operating the equipment on the jobsites were **not** activities "performed in the execution of a contract for public works." The court held that this is the proper interpretation under existing prevailing wage law.

### What Happened in 2022?

On September 29, 2022, [AB 1851](#) [Labor Code Section 1720.3(a)(2)] was signed into law, codifying a 1976 court decision (O.G. Sansone Co. v. Dept. of Transportation) and its related interpretations. Effective January 1, 2023. Labor Code 1720.3(a) now states that "public works" includes:

- 1) The hauling of refuse from a public works site to an outside disposal location.
- 2) *The 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.* [New language italicized]

### What Does This Mean?

AB 1851 affirms that the on-hauling of materials used for paving, grading, and fill onto a public works jobsite, where the individual driver's work is integrated into the flow process of construction, is subject to prevailing wage coverage on public works projects. **Additionally, the law substantially limits the instances when the hauling of materials used for paving, grading, and fill onto a public works site will not be subject to prevailing wage coverage.**

Review the chart below and on the next page for details. **Items in the chart that have changed from the previous chart are in red, and are also marked with \*.**

### DISCLAIMERS:

- The information set forth in this chart is intended for general reference, not a substitute for legal advice, a legal coverage determination by the DIR/DLSE, or a decision by a court of law.
- Awarding bodies and government agencies may take a broader approach to coverage interpretations. Be sure to work with legal counsel for guidance on specific situations.
- This chart is intended only to provide examples of trucking activities that, in our understanding, are generally either covered or not covered by prevailing wage law in the State of California at this time.
- The information is **not** applicable to trucking work "...done for irrigation, utility, reclamation and improvement districts, and other districts of this type" pursuant to [Labor Code Section 1720\(a\)\(2\)](#). (See California Supreme Court decision *Kaanaana v. Barrett Business Services, Inc., 2021*.)

<b>COVERED BY PREVAILING WAGE REGULATIONS</b>		
<b>Trucking Activity</b>	<b>Destination</b>	<b>PW</b>
water trucks, street sweepers	onsite activity	Yes
onsite hauling of dirt, materials	onsite activity	Yes
hauling of dirt, materials from borrow sites, stockpiles, or batch plants on property of public works owner	public works project site	Yes

<b>COVERED BY PREVAILING WAGE REGULATIONS (CONTINUED)</b>		
<b>Trucking Activity</b>	<b>Destination</b>	<b>PW</b>
hauling of dirt, materials from dedicated borrow pit, batch plant, or stockpile established to service a distinct public works project	public works project site	Yes
delivery of ready-mix concrete	public works project site	Yes
off-haul of refuse, including soil, sand, gravel, rocks, concrete asphalt, excavation materials and construction debris	off public works site	Yes
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. regardless of whether the driver gets out of the truck while the material is being integrated into the flow process of construction*	public works project site	Yes

<b>NOT COVERED BY PREVAILING WAGE REGULATIONS</b>		
<b>Trucking Activity</b>	<b>Destination</b>	<b>PW</b>
delivery of construction materials that are not immediately integrated into the flow process of construction*	public works project site	No
delivery of tools, equipment, manufactured products and transport of employees	public works project site	No
delivery and off-haul of service products (e.g., fuel and lubricants, portable toilets) from jobsite	public works project site	No
off-haul of recyclable metals such as copper, steel and aluminum that have been separated from other materials at the jobsite and are to be sold at fair market value to a bona fide purchaser	off-site location other than public works project site	No

**Which prevailing wage determinations apply?**

For onsite work, the appropriate Teamster determination will apply. For all on-/off-haul work, be sure to check the prevailing wage determination (listed under Statewide) by county for dump trucks and mixer trucks, as they may differ from the standard Teamster on-site rate. Teamster rate may apply in certain counties and on certain public works projects covered by project labor agreements.

**Does it matter who employs the worker?**

No. All of the above examples apply whether the truck driver is employed by a contractor, a material supplier or other supplier, or is hired through a subcontract or purchase order.

**What about Owner Operators?**

There is no owner operator exemption from prevailing wages and no special wage rates. Independent contractor owner-operator truck drivers who meet the requirements of AB 5 [[Labor Code Section 2781\(h\)\(1\)](#)], are [registered with DIR](#), and perform on-haul and off-haul driving subject to prevailing wage requirements should submit their own certified payroll records in compliance with prevailing wage requirements.

The DIR has posted the following [FAQ](#) on the subject of owner-operator certified payroll reporting (#8 under Certified Payroll Reporting):

**I am an owner/operator, sole proprietor, or business owner, and I do not receive payroll checks or pay myself an hourly salary. How do I handle certified payroll reporting for my own work, and how do I determine how much I am being paid for that work?**

Even if you are paid by salary, draw, or contract payments, you still should be able to provide the following information for any work you perform on public works projects: (a) your name, address, and SSN (or FEIN, if you have no SSN); (b) the work classification for your prevailing wage work; (c) the hourly rate for that classification; (d) the number of hours that you performed that work; and (e) the estimated amount paid to you for your labor for that work. To calculate how much you were paid for your own labor, subtract all your other expenses (including materials, pro rata share of business overhead, and payments to other workers or subcontractors) from the gross contract price. The net amount should be your labor cost, and it should be equal to or higher than the compensation required for your work classification (determined by multiplying your work hours by the applicable rates) in order to comply with prevailing wage requirements.

Specific questions regarding current DLSE enforcement of prevailing wage obligations with respect to owner-operator truck drivers should be directed to the Office of Policy, Research & Legislation (OPRL) Prevailing Wage Unit: 415-703-4774 or [statistics@dir.ca.gov](mailto:statistics@dir.ca.gov)

## **FOR MORE INFORMATION**

California Department of Industrial Relations (DIR): 844-522-6734 - for additional information on laws and regulations of the State of California determining prevailing wage coverage on public works projects.\*\*

Prevailing Wage Unit: 415-703-4774 or [statistics@dir.ca.gov](mailto:statistics@dir.ca.gov) - for prevailing wage and classification questions

[Director's General Prevailing Wage Determinations](#)

[California Labor Code](#)

[DIR FAQ – Off-Site Hauling](#)\*\*

[DIR FAQ – Public Works \(including Concrete Delivery Requirements\)](#)\*\*

[Labor Commissioner's \(DLSE\) Public Works Manual](#)\*\*

[UCON AB 219 Compliance Contractor Resources Packet](#)

\*\* These sources may not be updated to reflect the latest court decisions and legislative changes.