



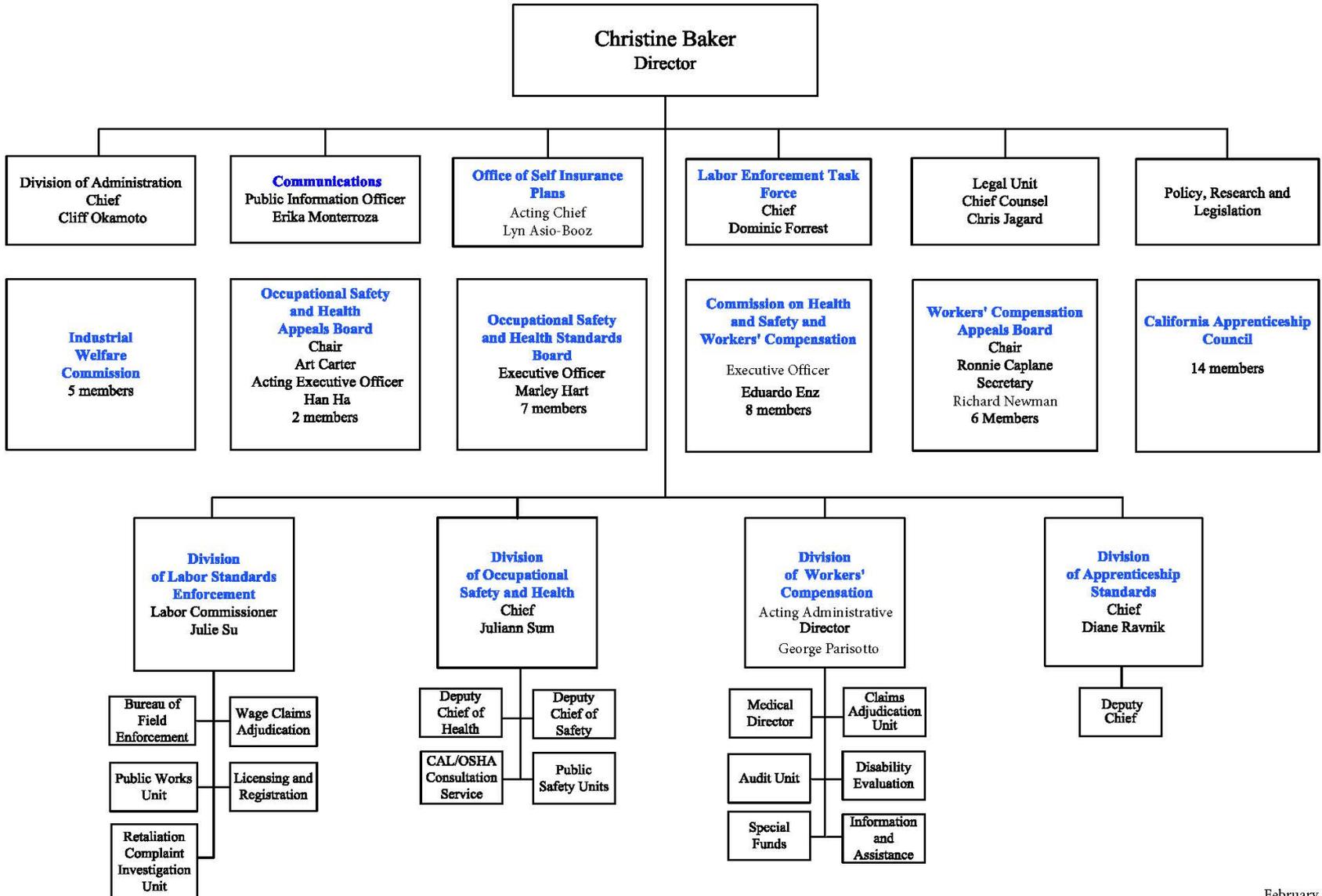
Public Works

State of California

Department of Industrial Relations

Department of Industrial Relations

Director Christine Baker reports to the Secretary of the California Labor & Workforce Development Agency, David M. Lanier, who in turn reports to Governor Edmund G. Brown Jr. as a member of his Cabinet.



Department of Industrial Relations (DIR)

▶ Divisions, Boards and Commissions at DIR

- ▶ Office of the Director – Legal Unit (OD Legal)
 - ▶ Assists the Director with drafting coverage determinations
 - ▶ Acts as hearing officers for appeals of wage/penalty assessments

- ▶ Office of Policy, Research and Legislation (OPRL)
 - ▶ Issues Prevailing Wage Determinations

- ▶ Division of Labor Standards Enforcement (DLSE) (also known as Labor Commissioner's Office)
 - ▶ Enforces prevailing wage and apprenticeship laws

- ▶ Division of Apprenticeship Standards (DAS)
 - ▶ Administers apprenticeship laws, programs, and standards
 - ▶ Approves apprenticeship programs

Department of Industrial Relations

★ Quick Links

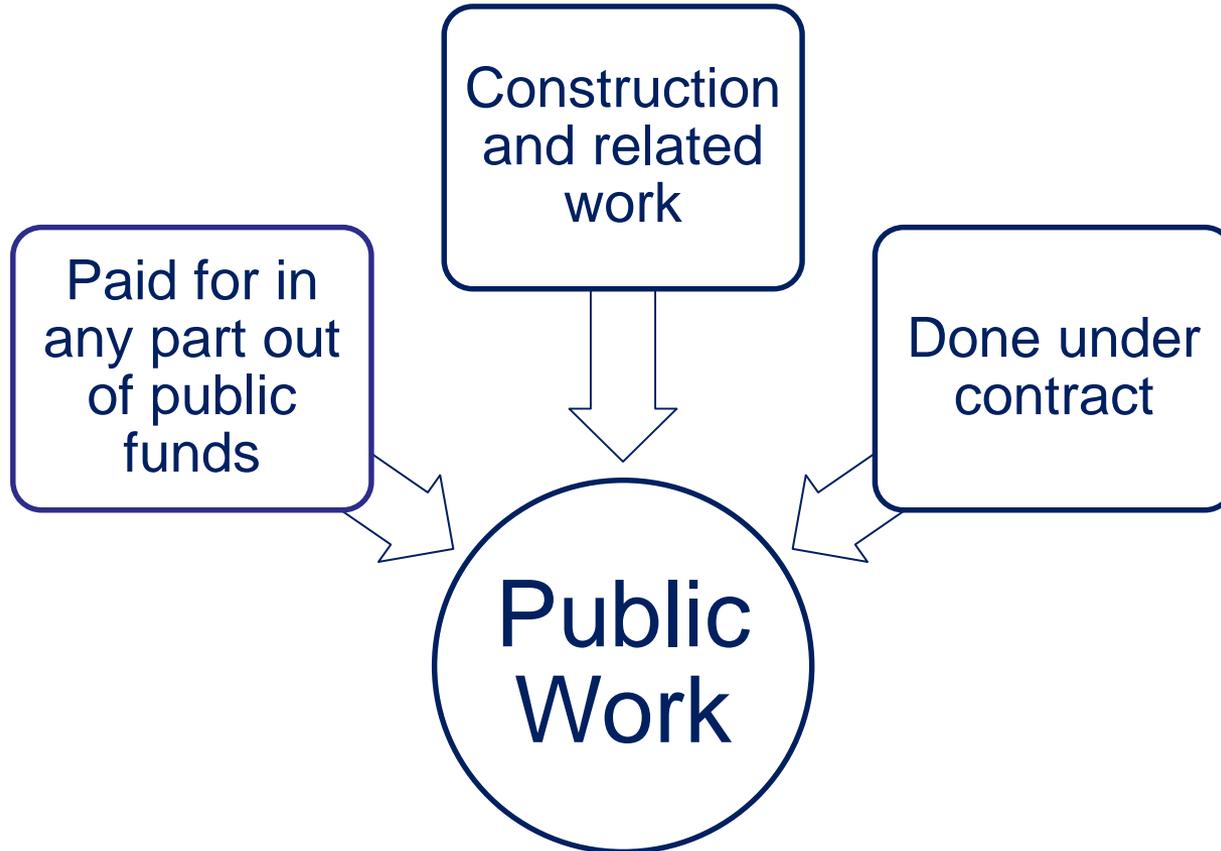
- ▶ [LETF Home](#)
- ▶ [Report a labor law violation](#)
- ▶ [Report a workplace hazard to Cal/OSHA](#)
- ▶ [File a wage claim](#)
- ▶ [Know my employment rights](#)
- ▶ [Know my rights as an injured worker](#)
- ▶ [Get workplace postings](#)
- ▶ [Find prevailing wage determinations](#)

★ Also of Interest

- ▶ [Industrial Relations databases](#)
- ▶ [Subscribe to a distribution list](#)
- ▶ [Work for DIR](#)
- ▶ [Do business with DIR](#)

★ Other Resources

- ▶ [California Labor & Workforce Development Agency](#)
- ▶ [Employment Development Department](#)
- ▶ [U.S. Dept. of Labor](#)



LABOR CODE SECTIONS 1720 AND 1771

- Prevailing wages apply to all public works over \$1,000, unless there's an exception.
- What constitutes construction, alteration, demolition, installation, repair, or maintenance work?
- What constitutes public funds?



Paid for in whole or in part out of public funds

(Labor Code 1720(b))

1. The payment of money or the equivalent of money . . . directly to or on behalf of the public works contractor, subcontractor, or developer.
2. Performance of construction work . . . in execution of the project.
3. Transfer . . . of an asset of value for less than fair market price.

Paid for in whole or in part out of public funds

(Labor Code 1720(b))

4. Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven

5. Money loaned . . . that is to be repaid on a contingent basis.

6. Credits that are applied . . . against repayment obligations



- Public funds includes “state, local and/or federal monies.” (8 CCR 16001)
- Federally Funded or Assisted Projects: “The application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort.”
- California Prevailing Wage Law (CPWL) cannot be applied to a project which is “under the complete control of the federal government.” (*Southern Cal. Labor Management Committee v. Aubry* (1997) 54 Cal.App.4th 873, 886.)

EXAMPLE:

- If US DOT fully funds a project, but Caltrans controls or carries it out, CPWL applies.
 - Be careful – other Davis Bacon requirements may also apply. Check with DOL.
- If project is under the complete control of US DOT, only Davis Bacon applies.

Section 1772 (in the “execution of the contract”)

- “Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.”

- Off-Site Hauling (On and Off-Haul from Outside the Public Works Job Site)
 - *O. G. Sansone v. Department of Transportation* (1976) 55 Cal.App.3d 434 (On-haul)
 - *Williams v. SnSands Corp.* (2007) 156 Cal.App.4th 742 (Off-haul)

- Off-Site Prefabrication
 - *Sheet Metal Workers' International Association, Local 104 v. Duncan* (2014) 229 Cal.App.4th 192. (Russ Will)
 - “Offsite fabrication is not covered by the prevailing wage law if it takes place at a permanent, offsite manufacturing facility and the location and existence of that facility is determined wholly without regard to the particular public works project.”

Other definitions of “public works”

Section 1720(a)

- 1) Standard definition: (Construction work done under contract paid for in any part out of public funds)
- 2) “Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type.”
- 3) “Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district”

Other definitions of “public works”

Section 1720(a)

- 4) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.
- 5) The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.
- 6) Public transportation demonstration projects (Streets and Highways Code s 143)
- 7)(A) Infrastructure project grants from the California Advanced Services Fund pursuant to Section 281 of the Public Utilities Code.

Other definitions of “public work”

- Section 1720(e) [Work on electric transmission system]
- Section 1720.2 [Private construction leased to public entity]
- Section 1720.3 [Off-haul of refuse]
- Section 1720.6 [Private renewable energy projects on public property]
- Section 1720.7 [Work done under private contract on general acute care hospitals]
- Section 1720.9 [Hauling of ready-mixed concrete]



AB 219

Ready-Mixed Concrete



Applies to work advertised for bid on or after July 1, 2016.

- “Hauling and delivery of ready-mixed concrete to carry out a public works contract”
- “Includes receiving the concrete at the factory or batching plant and the return trip.”
- Rates where the plant is located apply.
- Must have written subcontract agreement.
- Must submit CPRs to GC within 5 working days.



Exceptions:

- (c)(1) exception for private residential projects built on private property
- (c)(2) exception for public improvement on a private project required as a condition of regulatory approval
- (c)(3) "de minimis" exception
- (c)(4) affordable housing exception for RDA money
- (c)(5)(A)-(E) – various exceptions for private residential projects: housing for homeless, downpayment or mortgage assistance, below market rate loans for low income housing projects.

COVERAGE DETERMINATIONS

- The coverage determination process is spelled out in Labor Code section 1773.5 and Cal. Code Regs., title 8, sections 16001-16002.5.

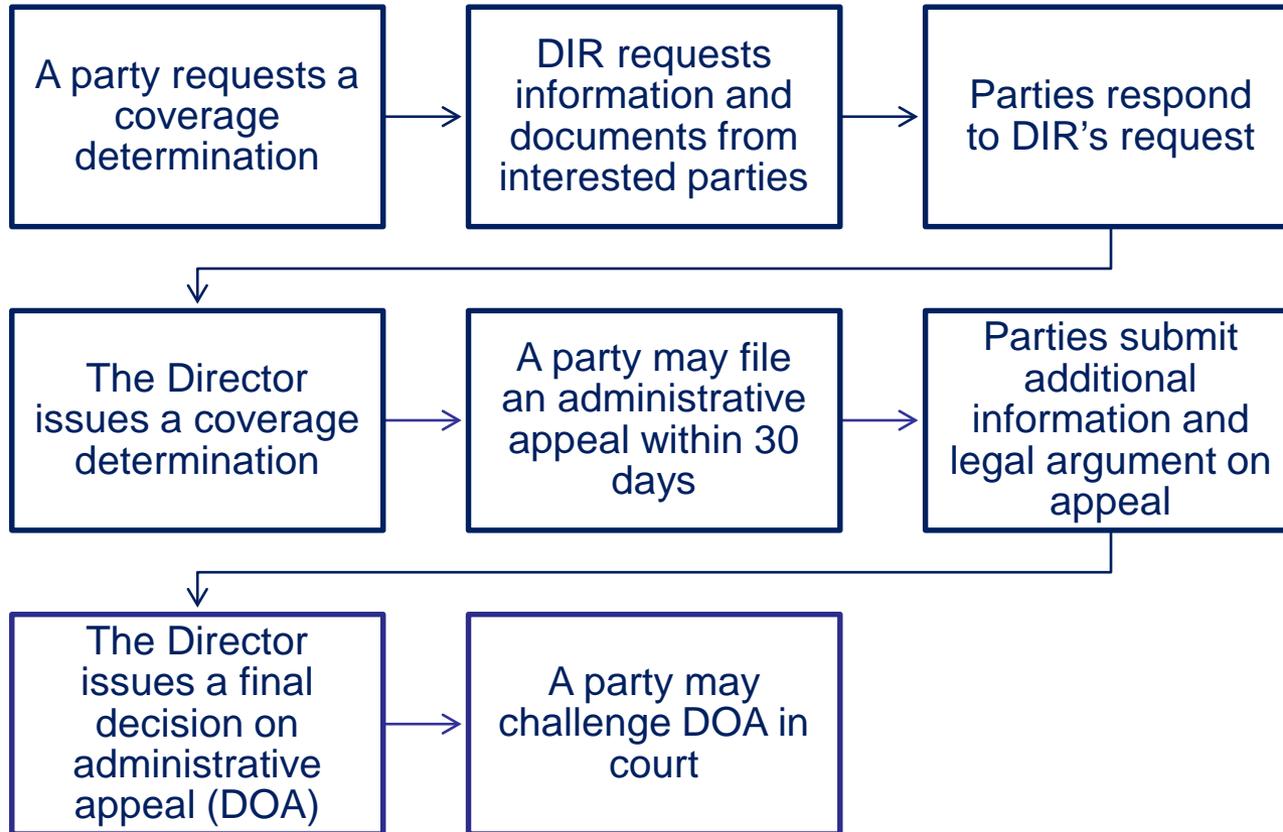
- Two types of coverage determinations
 - Whether a project is covered
 - Whether a type of work is covered.

What is a coverage determination?

Section 1773.5 and Cal. Code Regs., Title 8, Sections 16001-16002.5

- The Director has the power to determine that a project or a type of work is public work through issuing what is known as a coverage determination.
- The administrative process consists of an initial coverage determination and a final determination on administrative appeal.
- Depending on when the parties make their submissions, the entire process can take many months.

Coverage Determination Process



Coverage Determination Process: Suggestions

- Request the coverage determination as early as possible!
- Provide a complete description of the nature of the work and the funding sources, along with all pertinent documents. If you are aware of other interested parties, identify them to DIR. The more complete your submission, the more promptly DIR can respond.
- DIR staff can answer questions by telephone or e-mail, but only the Director can issue coverage determinations.
- Check DIR's website for coverage determinations from 2001 to the present. Such determinations may provide guidance in your situation, although different facts may produce different results.



New California Laws



New California Laws Effective 1/1/2016



New categories of work subject to prevailing wage.

- “Construction, alteration, demolition, installation, or repair work on the electric transmission system located in California” (SB 350)
- “Construction, alteration, demolition, installation, or repair work done **under private contract**” on “general acute care hospitals” funded by conduit revenue bonds issued after 1/1/2016. (AB 852)



New California Laws Effective 1/1/2016



- AB 327 extends exemptions for volunteers from 2017 to 2024.
- SB 432 repeals statutory provisions that refer to “aliens” and preferences in awarding public works contracts to “non-aliens”
- AB 219 (Ready-Mixed Concrete discussed previously)

Noteworthy California Court Cases on Public Works

- *Sheet Metal Workers' International Association, Local 104 v. Duncan* (2014) 229 Cal.App.4th 192 (*Russ Will*)
 - “Offsite fabrication is not covered by the prevailing wage law if it takes place at a permanent, offsite manufacturing facility and the location and existence of that facility is determined wholly without regard to the particular public works project.”



Noteworthy California Court Cases on Public Works

- *Reliable Tree Experts v. Baker* (2011) 200 Cal.App.4th 785 (*Reliable Tree*).
 - “Reliable, the prime contractor for the Project, contracted with Caltrans . . . to perform tree pruning and removal work on [state-owned] highway rights-of-way at various locations ... [which] included brush removal, tree trimming and tree removal.” The court found that such work was maintenance work subject to prevailing wage requirements.



Noteworthy California Court Cases on Public Works

- *Div. of Lab. Stds. Enforcement v. Ericsson Info. Sys., Inc.* (1990) 221 Cal.App.3d 114 (**Ericsson**).
 - Contractor must pay prevailing wages even if “no classification had been published by the department to precisely cover the employees on the project.”



Noteworthy California Court Cases on Public Works

- *Morillion v. Royal Packing Co. (2000) 22 Cal. 4th 575*
 - As interpreted in the Director's Decision in *In the Matter of Kern Asphalt Paving & Sealing Co., Inc.* (March 28, 2008), Case No. 04-0117-PWH.
 - Found that workers "were entitled to be paid prevailing wages for all work performed on the Project, including time designated as travel time between Kern Asphalt's shop and the construction site."
 - Unless otherwise specified, travel time is paid "at the same prevailing rates that apply to the classification."

Useful Links

- DIR's Public Works Home Page
 - <http://www.dir.ca.gov/Public-Works/PublicWorks.html>
- The Director's Public Works Coverage Determinations
 - <http://www.dir.ca.gov/OPRL/PubWorkDecision.htm>
- The Director's General Prevailing Wage Determinations
 - <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>
- DLSE's Public Works Manual
 - <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>
- California Labor Code
 - <http://leginfo.legislature.ca.gov/faces/codes.xhtml>
- California Code of Regulations
 - <http://www.oal.ca.gov/>