

PUBLICATION

You Need to Understand the Fair Labor Standards Act Part 4 Enforcing the FLSA

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The FLSA is enforced through two primary means: the United States Department of Labor (DOL) and civil litigation. The DOL is established with a broad purpose: "The purpose of the Department of Labor shall be to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment."¹ The DOL has within it a separate Wage and Hour Division dedicated to enforcement of the statutes at issue in this article.² The FLSA grants the DOL the authority to file suit against employers that fail to comply with its requirements.³

The DOL has the authority to impose monetary penalties upon willful violators of the FLSA - such penalties may be up to \$1,100 per violation.⁴ "Willful" means that the contractor knew that its conduct was prohibited by the FLSA, or it showed reckless disregard for the requirements of the FLSA.⁵ In assessing the penalty, the DOL will consider all relevant circumstances, including the contractor's actions after the violation was identified, previous history of violations, commitment to future compliance, the number of employees affected, and other relevant information.⁶ The FLSA also provides for criminal penalties to include up to a \$10,000 fine and six months imprisonment.⁷

A contractor's failure to follow the FLSA exposes the contractor to liability for the unpaid amounts, as well as a penalty equal to the amount not paid, plus attorneys' fees and costs, and even injunctive relief.⁸ These suits may be brought by the workers deprived of the amounts otherwise owed, and they can be brought in a representative capacity on behalf of similarly-situated workers.

There are other relevant federal wage and hour statutes that may apply to the construction industry, particularly if federal funds are involved on the project, such as the Davis-Bacon Act, the Service Contract Act, and the Contract Work Safety and Standards Act. There are numerous statutes and state laws that also may apply; however, they are beyond the scope of this newsletter.

1. 29 U.S.C. § 551.
2. 29 U.S.C. § 557.
3. 29 U.S.C. § 216(c).
4. 29 C.F.R. § 578.3(a).
5. 29 C.F.R. § 578.3(c).
6. 29 C.F.R. § 578.4(b).
7. 29 U.S.C. § 216(a).
8. 29 U.S.C. § 216(b).

Recent News:
Know Your State Licensure Requirements

With the current economy, you are probably considering traveling farther to work and bidding on a wider variety of projects than ever before. A decision in early August from the United States Court of Appeals for the Fifth Circuit, which has jurisdiction over Mississippi, Louisiana and Texas, underscores the importance of complying with the licensure laws of the states in which you are doing business. In *Tradewinds Environmental Restoration, Inc. v. St. Tammany Park LLC*, the Fifth Circuit affirmed the Louisiana law that an unlicensed contractor cannot recover under a contract because the contract is contrary to the public policy of the state. The unlicensed contractor is limited to the cost of materials, services, and labor incurred. This decision is even more significant because, in post-Hurricane Katrina Louisiana, some licensing requirements were not as strictly enforced.

If you travel across state lines to work on projects, be aware of the host states' licensing requirements and the consequences of not being properly licensed. Tennessee, Alabama and Georgia all have laws similar to Louisiana. In fact, in Tennessee, an unlicensed contractor can be found in violation of the Tennessee Consumer Protection Act, which opens the door to treble damages and the possibility of having to pay the other party's attorneys' fees. In Georgia, an unlicensed general contractor cannot enforce the purported contract and also cannot file a lien or bond claim for any labor, services, or materials provided under the contract.

Tradewinds Environmental Restoration, Inc. v. St. Tammany Park LLC, No. 08-30729, 2009 WL 2385391 (5th Cir. Aug. 4, 2009); Tennessee Code Annotated 62-6-103; Tennessee Code Annotated 47-18-104(b)(35); Alabama Code 34-8-6; Georgia Code 43-41-17(b).