

Building a Better Prevailing Rate for Construction Workers

For over 100 years, long before Occupy Wall Street pointed out the problems of income inequality and the disastrous results of a “race-to-the-bottom” economy, NY State’s Prevailing Rate Law (currently, NY Labor Law, Article 8, Section 220) has existed as bi-partisan, progressive, public policy that addresses the unique dangers posed when employers in the construction industry are left entirely to their own devices. Prevailing rate requires that construction workers on public projects are paid at a wage and benefit rate for their trade that usually matches the local union’s collectively bargained rates. However, bit-by-bit the Courts have emasculated prevailing rate requirements with a series of gaping loopholes. Currently, the construction work associated with items such as affordable housing, charter schools and industrial development escapes prevailing rate coverage while allowing owners, builders and contractors to reap the benefits of significant government subsidies. These loopholes need to be closed before the exceptions entirely subsume the rule.

The Construction Industry’s Race-to-the-Bottom

Construction is a uniquely risky business for several reasons. First, many construction businesses are merely empty shells designed to shield owners from liability but with little or no capital at risk. With respect to workers, the industry can be less than kind: a hyper-competitive, lowest bid, mentality creates a constant downward pressure on wages, benefits, training, safety, and, ultimately, quality. In addition, the casual labor pool is almost always filled to overflowing with hungry workers who possess uneven skill sets and education levels. Because individual workers lack any meaningful bargaining power, non-union employers hold ALL the cards. Even in the unionized sector, employers have extensive control over shaping their workforce since nearly all construction workers are employed “at-will.” These circumstances combine to fuel the industry’s race-to-the-bottom and are especially detrimental to workers and the public -- many of the tasks and tools associated with construction are inherently dangerous and cutting corners can be deadly.

Prevailing Rate is the Industry Backstop

By setting local wage and benefit floors in the public sector at the collectively bargained rates, prevailing rate helps stabilize the entire construction workforce and ensures that the public receives quality and value for their investment. Prevailing rate makes contractors compete on creativity, efficiency, quality and safety – and not on how little they can pay their workers. Conversely, contractors competing in the public sector are thus incentivized to invest in a highly skilled, safe and efficient workforce. Prevailing rate even rewards those contractors who train their workforce through formal apprenticeship programs. These programs instill the value of hard work and have provided an indispensable pathway out of poverty for generations of workers.

On the other hand, the loopholes in prevailing rate have enriched many non-union shops working on government subsidized construction while their construction workforce earns poverty wages with no benefits and no formal training. Government subsidies help insulate builders, developers and their trade contractors from market risk. Regardless of the merits of the government program (housing, schools, etc.), the leverage created by the government subsidies shouldn’t be used to drag down the entire construction market and turn decent, middle class construction careers into dead-end jobs. Gradually, these exceptions to the prevailing rate law are consuming the rule in an industry with almost no market-driven backstops that can help protect both workers and the public. If we want to address the justifiable concerns expressed by Occupy Wall Street over the economic disparity created by unbridled capitalism, we need look no further than simply closing the loopholes and putting some teeth back in New York’s prevailing rate statute in 2012.

Brought to you by:
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