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## AB 3018: Amendments to the Skilled and Trained Workforce Requirements on California Public Projects

### What California Contractors Need To Know About AB 3018

California contractors used to face limited consequences for non-compliance with the state's skilled and trained workforce requirements on public works projects. A sea-change to the statutory landscape went into effect on January 1, 2019 as a result of Assembly Bill No. 3018 ("AB 3018").<sup>1</sup> The Code re-defines what constitutes a skilled/trained workforce by eliminating existing exemptions, strengthens monthly reporting guidelines and agency oversight, and empowers the Labor Commissioner and public agencies with enforcement tools that include monetary penalties and debarment. Contractors who fail to institute a program to comply with AB 3018's reporting requirements do so at their peril.

### What Does The 30% Requirement Mean?

Previously, in order to comply with the skilled workforce requirements<sup>2</sup>, 30% of skilled journeypersons had to be *graduates of an apprenticeship program*, except for certain listed trades which were exempt from the apprenticeship percentage requirement<sup>3</sup>. AB 3018 eliminates this exception for the listed occupations and requires 30% of all trades to be comprised of apprenticeship program graduates.

Under AB 3018, the increases to the graduation requirement of 50% for work performed on or after January 1, 2019, and 60% for work performed on or after January 1, 2020, remain in place. However, in both instances, the revised exemption will carry forward in that those occupations specifically listed in the Code will now need to comply with the requirement that 30% of its skilled journeypersons be graduates of an apprenticeship program. These requirements apply to every contractor and each of its subcontractors, regardless of tier.

### Complying With The Skilled Workforce Requirements

Contractors on public works projects can meet the requirements of AB 3018 in one of two ways if, during a particular month, either:

<sup>1</sup> Codified at Public Contract Code §§2600-2602 (the "Code").

<sup>2</sup> 30% in 2017, 40% in 2018, 50% in 2019, and 60% in 2020.

<sup>3</sup> Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

1. The required percentage of the skilled journeypersons on the project meet the percentage requirement; or
2. For the hours of work performed by skilled journeypersons on the project, the percentage of hours performed by skilled journeypersons who met the graduation requirement is at least equal to the required graduation percentage.

An exemption to the graduation requirements applies to a contractor or subcontractor who, during a calendar month, employs skilled journeypersons to perform fewer than 10 hours of work on the project. There is a further exemption for subcontractors to comply with the graduation requirements where the subcontractor was not a listed subcontractor under §4104 of the Public Contract Code or was substituted for a listed subcontractor and the subcontract does not exceed one-half percent of the value of the prime contract.

### **Contractor Reporting Obligations And The Cost Of Non-Compliance**

The public policy underlying AB 3018 and its predecessor statutes<sup>4</sup> is the notion that everyone stands to benefit through the use of a safe, skilled and well-trained workforce on construction projects.

Under existing statutes, contractors have been required to submit monthly reports to the contracting agency demonstrating compliance with the Code's skilled and trained workforce requirement. If the contractor failed to provide a monthly report, or provided a report that was incomplete, the public agency would withhold further payments until a complete report was provided.

AB 3018 instituted a favorable change: If a monthly report is incomplete due to a subcontractor's failure to timely submit information, the public agency will only withhold an amount equal to 150% of the value of the monthly billing for that subcontractor. AB 3018 also has given teeth to the agencies with oversight responsibility. Now, if a monthly reports fails to demonstrate compliance with the Code, the public agency is required to (1) withhold further payments until the contractor provides a plan to achieve substantial compliance with the Code; (2) forward a copy of the monthly report to the Labor Commissioner for issuance of a penalty; and (3) forward to the Labor Commissioner a copy of the compliance plan.

Under AB 3018, things can get worse for non-complying contractors or ones who intentionally submit a misleading report: Penalties of up to \$5,000 per month will be imposed by the Labor Commissioner (increasing to \$10,000 per month for a second violation within 3 years), and the contractor faces debarment from public works projects for one to three years.

### **What To Do Before The Labor Commissioner Comes Calling**

In light of the changes to the Code, contractors should consider taking the following steps beginning now:

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<sup>4</sup> Beginning with SB 54 in 2013 and continuing through AB 566, AB 1358 and AB 1290 in 2015, requiring contractors to use a skilled and trained workforce in the construction of certain projects, including chemical manufacturing facilities (private projects), as well as public works design-build, lease-leaseback and "best value" projects. It is also worth noting that the previously enacted statutory exceptions for the percentage application of a skilled and trained work force continues in effect for public entities that require contractors to enter into a project labor agreement. See, e.g., California Public Contract Code §22164(c)(2).



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Updating subcontracts to include a: (a) copy of the Code; and (2) declaration to be signed by the subcontractor under penalty of perjury, and prior to making final payment, that the subcontractor has met the requirements of the Code.

Putting protocols in place for monitoring subcontractors use of a Code compliant skilled and trained workforce.

Preparing a standard form for the monthly report that is to be submitted to the public agency in compliance with the Code and training project teams to obtain the required information from trade contractors and report the information correctly to public agencies.

P&A will continue to keep our clients and friends of the firm informed as California state agencies begin to implement the revised regulations in 2019.

*The information provided in this Client Alert does not, nor is it intended to, constitute legal advice. Readers should not take or refrain from taking any action based on any information contained in this Client Alert without first seeking legal advice.*

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