Labor and Employment Policies

Davis-Bacon and Related Acts

Issue Overview

The Davis-Bacon Act establishes wage rates for a given area for nearly all construction projects that receive public funds, among other requirements. In the home building industry, the Davis-Bacon and its Related Acts (DBRA) primarily affect multifamily builders who participate in certain HUD and Federal Housing Administration (FHA) Multifamily Mortgage Insurance programs.

In 2023, the Department of Labor (DOL) issued a rulemaking that revised the prevailing wage determination process, expanded coverage for DBRA requirements and included needless paperwork requirements for contractors. Unfortunately, rather than making any needed improvements, the rule requires the payment of wages that are unrepresentative of the actual wages paid in a given market and fails to acknowledge the fact that wage rates can change between a contractor submitting an application for funding assistance on a project and the start of the project. As a result, the rule is overly burdensome.

Solutions

- Revise the current DBRA policies to:
  - Develop and implement a new scientifically sound methodology for determining prevailing wages;
  - Remove provisions expanding the definition of "site of the work;"
  - Reduce administrative requirements that burden employers and deter them from participating in DBRA-covered projects;
  - Lock in prevailing wages for covered residential projects that are effective on the date of the borrower's application; and
  - Rescind the DOL's split wage determination policy and assign the residential construction category for all construction activity performed on apartment properties covered under the DBRA.

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Heat Injury and Illness Prevention Standard

Issue Overview

In August 2024, the Occupational Safety and Health Administration (OSHA) published a proposed rule to establish a federal standard for preventing heat-related injuries and illnesses for indoor and outdoor work settings. Notably, the standard would enforce certain year-round requirements regarding heat-specific safety plans and recordkeeping obligations, as well as two levels of requirements for jobsites that reach a certain heat index or temperature threshold. If finalized, the same requirements would apply to all employers conducting outdoor and indoor work in all general industry, construction, maritime and agriculture sectors, with some limited exceptions.

OSHA estimates the standard would impact roughly 36 million workers, or one-third of the total full-time workers in the U.S. For the construction industry, the agency expects 725,200 total entities to be affected by the standard. Annualized costs for the industry are expected to be $3.1 billion ($1.8 billion in cost savings), with nearly $2 billion in costs alone from the Southern region of the U.S.

Solutions

- Abandon the current federal rulemaking.
- If OSHA continues with the rulemaking, ensure the rule:
  - Creates industry-specific standards that promote flexibility and recognize the uniqueness, challenges and best practices of the different regulated industries;
  - Creates a standard for construction that promotes the main tenets of “water, rest, shade” and establishes reasonable care for employees without overly prescriptive requirements and undue administrative and compliance burdens for employers; and
  - Expands the exemptions to include construction operations as part of disaster recovery efforts in areas under disaster or emergency declarations.

Labor and Employment Policies

Independent Contractor and Joint Employer Status

Issue Overview

The residential construction industry relies on subcontractors to complete much of the on-site work. As a result, these specialty trade independent contractors are an essential part of the industry and its ability to meet housing demand and keeping costs low. Unclear definitions on how to classify independent contractors and joint employers, however, have translated into regulatory burdens for businesses and higher costs for home buyers, while also jeopardizing home builders' operations.

In January 2024, the DOL issued a final rule to change the way it determines independent contractor status under the Fair Labor Standards Act (FLSA). While the rule issued under the first Trump administration focused on two of the five factors used to determine worker status, the latest rulemaking considers six unweighted factors. This policy introduces more subjectivity on the part of the investigating entity to determine worker status, adds undue confusion for employers trying to comply with the more complicated system and threatens to impact many industries that rely on the subcontractor business model.

Similarly, recent policies from the National Labor Relations Board (NLRB) determining joint employment status could have the same costly impact on builders who hire various self-employed specialty tradespeople for providing several services throughout the lifetime of a project. Restrictive policies, such as the NLRB's 2023 rulemaking, further complicate the regulatory landscape that employers must navigate due to its vague requirements and consideration of indirect control over a worker as evidence of joint employment. Although the NLRB rule was struck down nationwide in March 2024, any future policies must recognize the ubiquity of the contractor-subcontractor relationship in residential construction.

Solutions

- Revert to the policies established by the first Trump administration for determining employee or independent contractor status under the January 2021 "Independent Contractor Status Under the Fair Labor Standards Act" rulemaking.
- Create clear and discernible guidelines for the use and classification of independent contractors, with the same rules applied throughout federal and state governments.
- Oppose any legislative or regulatory effort that would restrict the ability of subcontractors to qualify as independent contractors, including efforts to repeal Sec. 530 of the Revenue Act of 1978, which provides relief to employers who utilize independent contractors.
- Adopt joint employment policies under the DOL, NLRB and other agencies that provide a clear, reasonable employment status determination process for employers to follow.

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Overtime Rules

Issue Overview

Under the FLSA, salaried workers classified as executive, administrative, professional, outside sales and computer employees are exempt from overtime pay requirements if a worker earns at or above a defined salary level called the "standard salary." The salary level for determining the overtime exemption has been in flux over the past three administrations, as each attempted to redefine it.

In April 2024, the DOL issued a rule to increase the salary level from $35,568 to $43,888, and then to $58,656 on Jan. 1, 2025, marking a nearly 65% increase from the salary threshold issued before this rule. A coalition of business groups challenged those changes and in November, the Eastern District of Texas issued a nationwide injunction to block the current and future requirements from being in effect. However, the DOL has appealed the judgment.

Solutions

- As a result of the nationwide injunction, the salary level is currently set back to $35,568. The DOL should abandon attempts to appeal the court decision and maintain enforcement of the regulation issued in September 2019.
- Any future rulemaking to revise the overtime pay requirements for the categories of salaried employees mentioned above should maintain the longstanding methodology from the 2004 rulemaking that is generally accepted by employers. DOL should also refrain from implementing automatic updates and instead engage in the rulemaking process for any subsequent salary-level increase.