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Legislature Creates Private Lawsuit under Prevailing Wage Statute Unions Immediately Begin Targeting Contractors

By Attorneys Alec J. Beck & Corie J. Tarara

The State of Minnesota has long required state contractors to pay a “prevailing wage” on public construction projects. Determining what the “prevailing wage” is for each construction work classification has been a difficult, and politically-loaded question. The Department of Labor and Industry has created a complicated system for determining what constitutes a prevailing wage for different crafts, and in different areas of the state. Critics of the process have noted that the prevailing wage is often far above actual wages paid in certain communities, and closely mirrors or even exceeds union wages, even in areas in which merit shops dominate.

For many years enforcement of prevailing wage requirements was left to the Department, or to the County Attorney in the county where the work was performed. Construction unions have complained that there is little actual enforcement of the law. The 2007 Legislature took up this issue, and created an independent right to bring a lawsuit for violation of the Act. Under this new law, employees who believe they have not been paid the correct prevailing wage can directly sue their employer. The law provides for double damages (essentially, a penalty or punitive damage), as well as the recovery of attorney fees if successful. This new law will radically change how state contractors need to address their prevailing wage contracts.

Almost immediately after the law went into effect, the law firm representing the International Brotherhood of Electrical Workers brought a lawsuit against a Seaton, Beck & Peters client in Blue Earth County, alleging failure to pay appropriate prevailing wages. The law firm bringing the suit predictably stated that there is no connection between the union and the plaintiffs in the lawsuit. However,



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the employer in this case has been the target of union organizing attempts by the IBEW, and it seems clear that this lawsuit is the “first shot” in a campaign to target non-union contractors under the prevailing wage law. Because the law provides for backpay, double-damages, and attorney fees, judgments under the law could be substantial and could be used to “punish” employers who do not agree to sign on with the IBEW or other unions.

The new prevailing wage amendments will “up the ante” for those non-union contractors who perform public construction projects. Those contractors who do not address the new amendments by enacting protective policies can expect eventually to be targeted by union-side law firms. Seaton, Beck & Peters is conducting a breakfast seminar on the new law and defensive strategies for contractors, on February 27, 2008. Details for the seminar are listed below.

Federal Contracts Exceeding \$5 Million Have New Ethics & Conduct Requirements
A new regulation requires contractors with federal contracts exceeding \$5 million to create and maintain an “ongoing business ethics and business conduct awareness program” within 30 days after a contract award. Fraud hotline posters must be posted in common work areas and on a company website if used to communicate with employees. Certain exemptions for small businesses exist. For more information, contact Alec Beck or Doug Seaton at 952-896-1700.

BREAKFAST BRIEFING

PREPARE TO DEFEND YOUR COMPANY AGAINST THE NEW PREVAILING WAGE LAWSUITS AND OTHER WAGE AND HOUR LITIGATION

February 27, 2008

7:30 AM Registration and Continental Breakfast

8:00—10:00 AM Briefing & Questions

Cost: \$25.00 Per Person, Payable at the Door

Kaplan Training Center

7300 Metro Blvd, Suite 140, Edina, MN 55439

(first floor of office building where Seaton, Beck & Peters is located — use north side parking & entrance—classroom is behind elevators to the right)

Hwy 100 West Frontage Road—between 70th & 77th (directions on our website)

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