

Construction Law

2009 Utah Legislative Summary: How the Law Changed for the Construction Industry



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Mechanic's Lien Amendments (HB 154 & SB 230)

We have become accustomed to the Utah Legislature tinkering with the State's Mechanic's Lien Statute. This year, the Legislature did not disappoint. HB 154 and SB 230 change the law sufficiently that every contractor in the State should take note.

This year's changes are best understood by referring briefly to the statutory quid pro quo implemented by Utah's lien laws. Under Utah Law, a Notice of Commencement is intended to be created by the building official that issues a building permit filing with the Utah State Construction Registry (SCR). Past legislative sessions required issuing municipalities to use a uniform numbering system for building permits. However, it also allowed them to also utilize a secondary building permit numbering system. Where a proper Notice of Commencement has been filed with the SCR, a subcontractor (including suppliers) is required to timely file a preliminary notice with the SCR. If a subcontractor fails to file the preliminary notice, it waives

its lien rights and rights against a payment bond. Furthermore, a lien must be filed 180 days after "Final Completion," a term that is defined in the statute, and 90 days after a "Notice of Final Completion" is filed with the SCR.

HB 154 clarifies various aspects of the lien law that were ambiguous under the prior version of the statute. It changed the law to clarify that the filing of a Notice of Completion may not extend the time to file a lien beyond 180 days after Final Completion. It (1) clarifies the definition of "Final Completion" when a prime contract is terminated and no certificate of occupancy is issued; (2) provides that an owner may file a Notice of Commencement with the SCR; (3) requires municipalities issuing building permits to use a standardized numbering system exclusively; (4) clarifies that, if a subcontractor begins work before a notice of commencement is filed with the SCR, it has 20 days thereafter to file its preliminary notice; and (5) provides that if a preliminary notice attaches to an untimely notice of commencement, and a different notice of commencement is timely, the subcontractor's preliminary notice attaches to the timely notice of commencement.

SB 230 provides additional protection to subcontractors when an owner does not require its general contractor to obtain a payment bond.

IF:

A project is scheduled for longer than 120 days and has a value greater than 500,000, Neither the owner nor the general contractor obtained a payment bond, there is a valid notice of commencement for the project, and the owner intends to file a notice of completion on the project;

THEN:

The owner or the general contractor must file with the SCR a notice of intent to file the notice of completion 45 days before filing the notice.

THEN:

The subcontractor must amend its preliminary notice to provide: Its cost to complete, Identify downstream subcontractors, A statement of all work in dispute, within 20 days.

THEN:

The subcontractor may: Demand a statement of adequate assurance of performance from the party with which it is in privity of contract within 10 days. The subcontractor may challenge the adequacy of the assurances of performance.

IF:

The court agrees with the subcontractor that the assurances are not adequate, the court may require further collateral to support payment to the subcontractor, including a broad array of types of further assurances.

Illegal Immigration Takes Effect

Efforts to post-pone the effective date of the illegal immigration bill passed during the 2008 session failed. As a result, 2008's SB 81 takes effect July 1, 2009. Specifically, the bill provides as follows:

Contractors Required to Verify Workers

Under the bill, contractors on public jobs must electronically verify the immigration status of their workers using the federal E-Verify system. This provision applies to all contracts with public entities for "the physical performance of services within the state."

"Contractors" include subcontractors, contract employees, staffing agencies, trade unions, or any contractors regardless of tier. It does not appear that suppliers are to be included in this definition.

S.B. 81 does not require contractors to verify all workers, but does require verification of workers who meet the following three conditions:

1. new employees hired on or after July 1, 2009;
2. who are employed in the state of Utah
3. who work under contractor's supervision and direction

A contractor is only required to verify its own workers. Each subcontractor must certify its own verification by affidavit.

Unlawful Termination Provisions

S.B. 81 makes it unlawful for an employer to terminate a legal resident and replace him with or have his duties assumed by a worker who:

1. the employer knows or should know is an illegal worker hired on or after July 1, 2009; and
2. is working in Utah in a similar job category with similar skill and requirements. Employers who use the Status Verification System are exempt from civil liability for a violation of these provisions.

Transport or Concealment

The bill makes it a Class A misdemeanor to transport an illegal alien for over 100 miles for commercial advantage (with knowledge of in disregard of the alien's status) or to knowingly conceal, harbor, or shelter an alien for commercial advantage.

Contractors Required to Provide Health Insurance

HB 331 requires contractors and subcontractor who work on state contracts to offer employees qualified health insurance. The bill applies to all design and construction contract issued after July 1, 2009 that exceed \$1,500,000, for the prime contract, or \$750,000 for the subcontract.

An "employee" is defined as a worker who works 30 hours per calendar week and meets the employer's minimum insurance waiting period (a maximum of 90 days). The bill sets forth the requirements for a health plan to be "qualified."

The requirement does not apply if application would jeopardize receipt of federal funds, to sole source contracts, to emergency procurements, or to contract when change orders raise the contract price above the threshold requirement. A contractor is not subject to penalty for the failure of its subcontractors to comply with the health insurance requirements.

Other Bills of Interest

HB 206 regulates the information that employers can request from applicants and the length of time it can retain such information (specifically social security numbers, birth dates, and drivers license numbers). SB 94 imposes requirements concerning the location of sewer laterals and information regarding location of laterals. HJR 8 seeks to amend the provisions of the Utah Constitution to extend secret ballot requirements to elections regarding employee representatives. HB 290 prohibits the use of wireless devices while driving and imposes penalties for violations. <<