

# Legal-Related News



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## PREVAILING WAGE & CELL PHONE USAGE WHILE DRIVING

This new column in our chapter's monthly newsletter will discuss recent case law, legislative activities or other legal-related issues of interest to the construction industry with a focus on Washington State issues. This month I will briefly discuss new case law concerning prevailing wages and new legislation regarding cell phone usage while driving.

### Labor and Industries Held to Previous Opinion That Work Was Not Subject to Prevailing Wage Rule

Contractors, who at bid time rely on Department of Labor & Industries (L&I) publicly available memorandum that certain work is not subject to prevailing wage, are not obligated to pay prevailing wages when

L&I later reverses its position. See, *Silverstreak, Inc. v. L & I*, 154 P.3d 891 (2007)

In *Silverstreak*, before submitting a bid, City Transfer, Inc. (CTI) requested clarification from L&I whether certain work would be subject to prevailing wage requirements. In response, L&I provided CTI with a 1992 Policy Memorandum in which L&I interpreted its own regulation as follows:

"Delivery of materials using a method in which the truck does not roll while the material is placed, or rolls only enough distance to allow the materials to exit the truck, does not include incorporation of

Policy Memorandum, had made a publicly available statement interpreting its own administrative regulation indicating otherwise and CTI relied upon L&I's statement to its detriment, the Court found L&I could not enforce the regulations against CTI.

The moral of the story is that L&I has broad discretion in interpreting its regulations. Without the written Policy Memorandum, even though L&I's interpretation was harsh, the Court would have upheld the prevailing wage determination.

### Law Restricting Cell Phone Use In Vehicles To Take Effect Next Year

Beginning July 1, 2008, it will be a traffic infraction to use a cell phone or other wireless apparatus without a hands free device while operating a motor vehicle (certain exceptions apply). Enforcement may only be accomplished as a secondary action, i.e. if a driver is stopped for another offense.

Employers should take care to ensure employees do not utilize cell phones without hands free devices while driving for work-related activities. While such a policy is prudent, merely insisting employees use hands-free devices while driving on the job does not guarantee an employer will escape liability for accidents caused by employees using cell phones at the time of an accident.

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materials into the job site."

CTI bid the Project in reliance on the L&I Memorandum. Many years later, after completion of the construction project, contrary to its 1992 Policy Memo, L&I issued a "Notice of Violation of Prevailing Wages" to CTI.

In the ensuing lawsuit, the Washington Supreme Court deferred to L&I's current interpretation of its own regulation that the end dump drivers were entitled to prevailing wages. However, because L&I, in its 1992