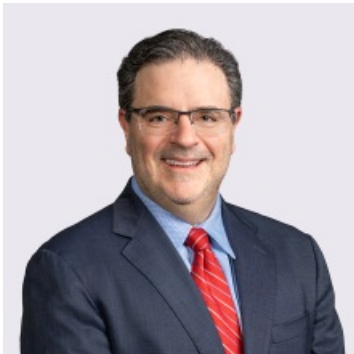


Exercise Caution With Mandated Construction Project Labor Agreements

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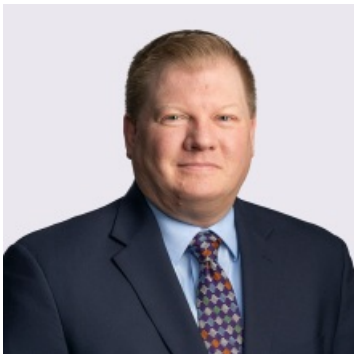


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A project labor agreement (PLA) is a type of collective bargaining agreement that covers multiple unionized trades working on a single defined project. While advocates emphasize the advantages of PLAs, construction owners and contractors should be aware of the drawbacks.

Basics

PLAs typically cover prime and subcontractors performing work at the site of construction, who all agree to abide to the terms of the PLA until completion. PLAs often provide uniform work rules and hours for the various building trades working on a covered project, uniform procedures to resolve contract and jurisdictional disputes, and broad prohibitions on strikes and picketing to enable work on the project to proceed without disruption. They also may provide some cost relief to employers, such as consistent premium pay for overtime work.

Although private sector projects occasionally use PLAs, they are often required in taxpayer-funded public construction projects. Mandated use of PLAs on public construction projects has been challenged under constitutional and National Labor Relations Act-preemption grounds. Those challenges have argued that public entities may not regulate labor relations matters or impose labor agreements on private entities. In 1993, the U.S. Supreme Court, in *Boston Harbor*, sanctioned PLA use by not only private companies but by public entities. Public PLAs still must conform to federal law, however, and so cannot contain provisions requiring application outside a project or other provisions, such as employer contributions to job targeting funds that would foster union organizing objectives outside a particular project. Governmental agencies also cannot discriminate against non-union contractors for access to public projects so long as they agree to be bound to the PLA throughout the project.

State, Local Regulations and Other Issues

States and local entities routinely mandate the use of PLAs in various contexts, including in heavily regulated industries and where public money is used to finance the project. A recent example of regulation mandating the use of project labor agreements is Connecticut's new recreational marijuana law. In June, [Connecticut](#) became the 19th state to legalize recreational marijuana use by adults. The law mandates the use of PLAs for the construction of any cannabis establishment with building costs of at least \$5 million dollars. It also requires regulated employers ultimately utilizing the facility to enter labor peace agreements with labor unions concerning non-construction (*i.e.*, retail) staff. As of this writing, no employer group has challenged the new law's requirements.

Advocates may tout the advantages of PLAs, such as access to a skilled workforce and protection from workplace disruptions (*e.g.*, strikes and picketing). However, there are

several downsides to them. Although a construction PLA may offer some reduced cost compared to all individual trade collective bargaining agreements as a whole (assuming the site would otherwise be built with union labor exclusively), there may be higher project costs brought about by work rules that limit flexibility, added administrative costs stemming from contract administration, and other costs resulting from staffing requirements and shift differentials and premiums. PLAs also usually require contributions to union-sponsored Taft-Hartley benefit funds (including underfunded pension funds) with their attendant liabilities. For union-free employers, PLAs can create new administrative burdens that require extra vigilance to ensure compliance with complicated contractual requirements. Labor unions also may use private PLAs as an organizing tool, since legal prohibitions on off-site coverage do not apply. Finally, many private PLAs require employers to agree to be bound by a local, area, or master collective bargaining agreement that creates ongoing contractual obligations beyond the PLA's scope, including traveler's provisions that facially may seek to bind an employer to national affiliates of the local PLA sponsor.

Given the likelihood of increased government investment in infrastructure projects and new regulated industries (like recreational cannabis), construction employers should be aware of labor regulations, including the requirements of PLAs and labor peace agreements, particularly in labor-friendly regions. Employers should be fully informed of the benefits, risks, and obligations before taking on work subject to these requirements and should seek the advice of experienced labor counsel.

Please contact a Jackson Lewis attorney with any questions.

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