

Construction Industry Workplace Law Update – Spring 2022

By Catherine A. Cano, Victor N. Corpuz, Jason C. Gavejian, Joseph J. Lazzarotti, Brian P. Lundgren, Kristina H. Vaquera,

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Meet the Authors



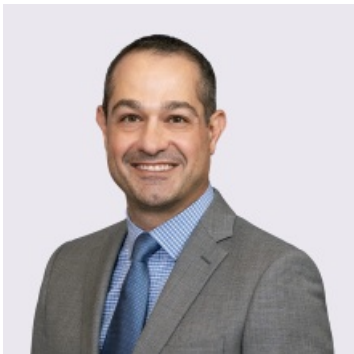
Catherine A. Cano

Principal
(402) 391-1991
Catherine.Cano@jacksonlewis.com



Victor N. Corpuz

Principal
(214) 520-2400
Victor.Corpuz@jacksonlewis.com



Construction: Labor Department Proposes Rule to Expand Coverage of Davis-Bacon Act and Regulations

The U.S. Department of Labor (DOL) has [announced](#) proposed rulemaking to update and expand the prevailing wages and other regulations under the Davis-Bacon Act, which applies to federal and federally assisted construction projects.

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Project Labor Agreements on Large-Scale Federal Construction Projects Required by Executive Order

A project labor agreement (PLA) will be required prior to awarding federal construction projects valued at \$35 million or more to any construction contractors and subcontractors under the [Executive Order on Use of Project Labor Agreements for Federal Construction Projects](#) signed by President Joe Biden while visiting Ironworkers Local 5 in Marlboro, Maryland, in February of 2022. This Order is consistent with Biden's campaign promise to be the most union-friendly president in U.S. history.

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Construction Industry: Data Security Considerations

No industry is immune to privacy and cybersecurity risks, and the construction industry is no exception. Those in the construction industry can protect against a potential cyberattack by understanding the risks and vulnerabilities and developing a plan. Ransomware costed businesses more than \$20 billion in damages in 2021, and a study by [Safety Detectives](#) found that construction was the third most common industry to experience ransomware attacks in 2021 (13.2 percent of total ransomware attacks in North America).

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OSHA Pushes Heat Standard

The Occupational Safety and Health Administration (OSHA) has made clear that heat illness is a top priority, and the forthcoming heat exposure standard is certain to affect construction firms. The standard has been on the front burner for the Biden Administration. The then-acting assistant secretary of labor for Occupational Safety and Health announced in June 2021 that OSHA would have “some very, very good, very thorough stakeholder engagement and involvement” while it develops the rule. Further, the permanent assistant secretary, in early-March 2022, highlighted that the heat standard is second only to the agency's COVID-19 strategy, emphasizing his concern that extreme heat events affect minority and elderly workers, as well as migrant workers, disproportionately.

Jason C. Gavejian

Office Managing Principal

908-795-5139

Jason.Gavejian@jacksonlewis.com



Joseph J. Lazzarotti

Principal

908-795-5205

Joseph.Lazzarotti@jacksonlewis.com



Brian P. Lundgren

Principal

206-626-6424

Brian.Lundgren@jacksonlewis.com



Kristina H. Vaquera

Office Managing Principal and Office
Litigation Manager

(757) 648-1448

Kristina.Vaquera@jacksonlewis.com

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DOL Withdrawal of Trump-Era Independent Contractor Rule Held Unlawful

The U.S. Department of Labor (DOL) violated the Administrative Procedure Act (APA) when it withdrew a Trump-era Independent Contractor Final Rule (ICFR), a Texas federal court has held. [*Coalition for Workforce Innovation et al. v. Walsh*](#), No. 1:21-cv-00130-MAC (E.D. Tex. Mar. 14, 2022). During the Trump Administration, the DOL promulgated a rule, titled “Independent Contractor Status Under the [FLSA]” (the “Independent Contractor Rule”), which sought to clarify the definition of “independent contractor” under the Fair Labor Standards Act (FLSA). Because independent contractors provide specialized skills and often are used in the construction industry, where short-term and fluctuating needs are common, the ICFR is meaningful clarification for the industry.

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Please contact a Jackson Lewis attorney if you have any questions about any of these developments.

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