



# LOZANO SMITH ALERT

November 2010

Number 16

## DEPARTMENT OF INDUSTRIAL RELATIONS' EMERGENCY REGULATIONS AFFECTING LABOR COMPLIANCE REGULATIONS HAVE BEEN APPROVED

Last summer, the Department of Industrial Relations (DIR) issued new regulations on Labor Compliance Program (LCP) services for school and community college construction projects, as we reported in our [Client News Brief No. 28, July 2010](#). Those new regulations, which applied to contracts effective on and after August 1, 2010, created the Compliance Monitoring Unit (CMU). The CMU was intended to take the place of third party LCP providers, and was to be financed by a fee imposed on school and community college construction projects funded by state bonds in the amount of one quarter of one percent of the funds apportioned by the State. However, in the last month, the DIR proposed emergency regulations to repeal the regulations it adopted just last summer, and to suspend the operation of the CMU, as we reported in our [Client Alert No. 13, October 2010](#).

Recently, the State Office of Administrative Law gave notice that the DIR's emergency regulations have been approved, and took effect on November 4, 2010. They will expire on May 4, 2011, unless they are extended or superseded by permanent regulations before then. *As a result of these emergency regulations, the operation of the CMU has been suspended by the DIR, along with the collection of the CMU fee.*

For school districts and community college districts with construction and modernization projects funded by the 2002 or 2004 Kindergarten-University Public Education Facilities Bonds Acts, and where the contracts were approved after August 1, 2010, this means that those districts will be required to institute in-house or third-party LCP compliance programs, as they were required to do for projects whose contracts were signed before that date. Although there has been some disagreement based on the fact that the now-suspended regulations referred broadly to all state bond funds, it appears that projects funded by the 2006 Kindergarten-University Public Education Facilities Bonds Act (Proposition 1D) are not subject to LCP requirements at all as long as the emergency regulations remain in effect, since such projects were not expressly required prior to the regulations to have an LCP.

# LOZANO SMITH ALERT

November 2010

Number 16

We anticipate that the DIR will be drafting new permanent regulations between now and May 4, 2011, and it is possible that the CMU, and its associated fee, will be reinstated. In the meantime, LOZANO SMITH will continue to monitor this situation, and will provide further updates as future developments occur. Agencies should continue to consult with their legal counsel before making changes regarding LCP requirements to any existing construction contracts. Construction contracts that were approved before August 1 should not be affected by these new developments. If contracts that became effective after August 1 included language addressing the CMU requirements, amendment of those contracts may now be appropriate.

If you have any questions regarding labor compliance requirements or construction matters in general, please do not hesitate to contact one of our [seven offices](#) located statewide or consult our [website](#).

*Written By:*

[Harold M. Freiman](#)

Shareholder

Walnut Creek Office

[hfreiman@lozanosmith.com](mailto:hfreiman@lozanosmith.com)

Michael Dunne

Paralegal

Fresno Office

[mdunne@lozanosmith.com](mailto:mdunne@lozanosmith.com)



*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*