



CLIENT NEWS BRIEF

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NEW LABOR COMPLIANCE REQUIREMENTS SET TO TAKE EFFECT IN 2012

On September 30, 2011, Governor Brown signed into law Assembly Bill 436 (AB 436), which was enacted to address certain concerns about the labor compliance monitoring program established last year by the Department of Industrial Relations (DIR). As a result of this new bill, school districts, community college districts and other public agencies undertaking construction projects using state bond proceeds will again be subject to new labor compliance requirements, which may include monitoring by, and the payment of a fee to, the DIR. These changes are expected to take effect early next year.

Previously, in 2009 the Legislature enacted Senate Bill X2 9 (SBX2 9), which mandated significant changes to how Labor Compliance Program (LCP) services are provided for school and community college construction projects. (Please see [Client News Brief No. 16, March 2009](#).) Those changes were to go into effect when implementing regulations were adopted by the DIR. In the summer of 2010, the DIR adopted the regulations provided for by SBX2 9. Those regulations established a Compliance Monitoring Unit (CMU) within the DIR and provided for the collection of a mandatory fee to be imposed on all construction projects financed by any state-issued bond, in addition to certain design-build projects. (Please see [Client News Brief No. 28, July 2010](#).) Those new regulations went into effect on August 1, 2010. Shortly after that, however, concerns were raised by state bond counsel and others as to the imposition of the fee, which resulted in the DIR adopting emergency regulations suspending the operation of the CMU and the collection of the fee. (Please see 2010 [Lozano Smith Alert No. 13](#) and [Lozano Smith Alert No. 16](#).) Those emergency regulations were subsequently extended twice, but are set to expire on November 1, 2011. (Please see 2011 [Lozano Smith Alert No. 8](#) and [Lozano Smith Alert No. 21](#).)

AB 436 was enacted following discussions between the DIR, the Department of Finance and other agencies as to how to address the concerns about the CMU fee provided by the 2010 regulations. The primary changes made by AB 436 are (1) to change the effective date of the CMU program and fee from August 1, 2010 to January 1, 2012, or later, and (2), instead of a flat rate fee set by the DIR (which the 2010 regulations had set at ¼ of one percent of the bond proceeds), a charge will be assessed by the DIR, in consultation with the Department of Finance, to reimburse the DIR for its "reasonable and directly related costs," not to exceed ¼ of one percent of the state bond proceeds used for the project. This new fee, and the monitoring activities of the CMU, will take

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effect on January 1, 2012, or on the effective date of the new implementing regulations being prepared by the DIR, whichever occurs later.

The DIR is currently finalizing the new regulations, which will repeal and replace portions of the 2010 regulations to conform to AB 436. The new regulations are expected to be submitted to the Office of Administrative Law (OAL) on or before the end of October. If the OAL approves the new regulations, they are expected to take effect on January 1, 2012. Construction projects where the contract was awarded prior to the effective date of the new regulations will not be subject to the new requirements. Agencies which have approved in-house LCP programs should still be able to continue using those programs. Other, limited exemptions may also apply in certain circumstances.

It is expected that additional details will be provided by the DIR/CMU prior to the effective date of the new regulations, including more information on how the fee will be determined and assessed, as well as specifics regarding the monitoring services to be conducted by the CMU. Lozano Smith will continue to monitor these developments and will provide further information when it is available.

In the meantime, if you have any questions regarding labor compliance requirements or construction matters in general, please contact one of our [eight offices](#) located statewide or consult our [website](#).

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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.