

The Saiber Construction Law Column: March 2024

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Source: MetroBuilders' Construction Law Column

Many construction companies, landscaping businesses and even homeowners hire “day laborers” – people, often immigrants, employed on a temporary basis. These workers are often found outside home improvement stores, through temporary agencies or at designated locations in a town. While it is not illegal per se to hire day laborers and there could be benefits to hiring them, contractors should consider the serious potential risks of hiring day laborers, particularly if those who hire day laborers are paying these workers in cash.

First, the potential benefits: By paying day laborers “off the books” or “under the table,” employers avoid payroll taxes, unemployment costs, Social Security deductions, and the expense of workers compensation insurance. Employers may also save the time and expenses associated with processing paperwork for employment records and payroll.

However, are these potential benefits worth the risks associated with paying a day laborer under the table? To answer this question, a contractor needs to be aware of the potential concerns. It is illegal for a contractor to pay a day laborer in cash to avoid paying taxes, unemployment, workers compensation, etc. Penalties, fines, payment of back taxes and even criminal prosecution can result if the undisclosed cash payments are discovered.

Similarly, if the cash payments violate federal or state wage laws, a contractor may also face penalties. State and federal laws regulate minimum wages, hours worked and record-keeping, including the completion of the Department of Homeland Security’s Form I-9 which requires employment eligibility verification even if an employee works for only one day.

There is also a risk of potential liability if a day laborer being paid off the books is injured on the job. If there is no workers compensation insurance in place to cover an injury to a day laborer, that worker could file a personal injury action against the company that hired him/her and recover damages beyond what might have been compensable if the case had been handled as a workers compensation claim. An injured day laborer might also report the company to OSHA, the federal Occupational Safety and Health Administration.

Thus, while hiring a day laborer and paying that worker in cash is not illegal and could result in some cost-savings to a company, paying the day laborer in cash to avoid legal obligations is illegal and could prove costly – and embarrassing -- if discovered.

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Each issue's Saiber Construction Law Column will discuss a recent decision by New Jersey courts or courts from other states which may be of interest to people in the construction industry.

The information in each article is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to ensure this information is up-to-date. The article is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.

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