
THIRD READING

Bill No: AB 889
Author: Hadwick (R)
Introduced: 2/19/25
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-0, 7/9/25
AYES: Smallwood-Cuevas, Cortese, Durazo, Laird
NO VOTE RECORDED: Strickland

ASSEMBLY FLOOR: 69-0, 5/8/25 (Consent) - See last page for vote

SUBJECT: Prevailing wage: per diem wages

SOURCE: California-Nevada Conference of Operating Engineers
District Council of Iron Workers

DIGEST: This bill makes several changes to the annualization requirement for fringe benefits on both public and private construction projects. AB 889 (1) requires employers to annualize all employer payments not made directly to the worker, except as specified; (2) voids any exemptions to the annualization requirement issued by the Director of the Department of Industrial Relations (DIR) prior to January 1, 2026 and revokes the Director's ability to issue exemptions in the future; and (3) requires employers to, upon request of the Labor Commissioner, produce records sufficient to verify that they adhered to the annualization requirement.

ANALYSIS:

Existing federal law:

- 1) Establishes the Davis-Bacon and Related Acts (DBRA), applicable to contractors and subcontractors performing work on federally-funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings or public works. DBRA contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the local

prevailing wages and fringe benefits for corresponding work on similar projects in the area. (40 United States Code (U.S.C.) §3141)

- 2) Specifies that the DBRA prevailing wage is the combination of the basic hourly wage rate and any fringe benefits rate listed for a specific classification of workers in the applicable Davis-Bacon wage determination. The contractor's prevailing wage obligation may be met by either paying each laborer and mechanic the applicable prevailing wage entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits. (40 U.S.C. §3141)
- 3) Requires contractors, except under limited circumstances, to annualize their fringe benefit contributions or costs to determine the hourly credit that may be claimed towards their prevailing wage obligation. (29 Code of Federal Regulations (C.F.R.) §5.25(c))
- 4) Provides that contributions to defined contribution pension plans are excepted from the annualization requirement if the plan is not continuous in nature, does not compensate both non-DBRA and DBRA-covered work, and provides for both immediate participation and essentially immediate vesting. (29 C.F.R. §5.25(c))
- 5) Requires contractors to annualize the costs of contributions to apprenticeship programs registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship (OA), or with a state apprenticeship agency recognized by the OA to determine the amount of hourly credit that can be claimed. A contractor may only take credit for amounts reasonably related to the costs of the apprenticeship benefits actually provided to the contractor's employees. (29 C.F.R. §5.29)

Existing state law:

- 1) Establishes within the DIR the Division of Labor Standards Enforcement under the direction of the Labor Commissioner (LC), and empowers the LC to ensure a just day's pay in every work place and to promote justice through robust enforcement of labor laws. (Labor Code §79-107)
- 2) Defines "per diem wages," as it relates to public works, to include employer payments for the following:
 - a) Health and welfare.
 - b) Pension.

- c) Vacation.
- d) Travel.
- e) Subsistence.
- f) Apprenticeship or other training programs, as specified, to the extent that the cost of training is reasonably related to the amount of the contributions.
- g) Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), as specified.
- h) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are made pursuant to a collective bargaining agreement to which the employer is obligated.
- i) Other purposes similar to those specified above. (Labor Code §1773.1(a))

3) Defines employer payments for purposes of annualization to mean:

- a) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.
- b) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.
- c) Payments to the California Apprenticeship Council by contractors employing journeymen or apprentices that are equal to the prevailing amount of apprenticeship training contributions in the area of the public works site as determined by the director of DIR (Director). (Labor Code §1773.1(b))

4) Provides that employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. Credits for employer payments shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing. However, an increased employer payment contribution that results in a lower hourly straight time or overtime wage shall not be considered a violation of the applicable prevailing wage determination if specified conditions are met. (Labor Code §1773.1(c))

5) Requires the credit for employer payments to be computed on an annualized basis when an employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, unless one or more of the following occur:

- a) The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer
 - b) The higher rate of payments is required by a project labor agreement.
 - c) The payments are made to the California Apprenticeship Council by contractors employing journeymen or apprentices that are equal to the prevailing amount of apprenticeship training contributions in the area of the public works site as determined by the director.
 - d) The Director determines that annualization would not serve the purposes of this chapter. (Labor Code §1773.1€)
- 6) Provides that a contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council (CAC) the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the CAC any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract. (Labor Code §1777.5(m)(1))

This bill:

- 1) Makes various finding and declarations regarding annualization.
- 2) Requires all employer payments not made directly to the worker to be computed on an annualized basis, regardless of whether any contributions are made or benefits are provided with respect to private construction, with the exception of contributions to defined contribution pension plans that provide for both immediate participation and immediate vesting.
- 3) Specifies that an employer may take full credit for the hourly amounts contributed to defined contribution pension plans for public works projects even if the employer contributes at a lower rate or does not make contributions for private construction.
- 4) Removes the ability for the Director to issue exemptions from the annualization requirement if the Director determine that annualization does not further the purpose of public works law.

- 5) States that an employer has the burden of demonstrating that the credit for employer payments was properly calculated.
- 6) Requires an employer to, upon request of the LC, produce records of employee hours and employer payments on private construction sufficient for the LC to verify that the credit for employer payments was properly calculated on an annualized basis.
- 7) Authorizes the LC to deny an employer credit for employer payments if the records in 5), above, are not produced.
- 8) Revokes any exemptions to the annualization requirements of these provisions issued by the Director prior to January 1, 2026.
- 9) Requires prevailing wage fringe benefit credit issues not addressed by California statutes or regulations to be governed by the version of the United States Department of Labor Field Operations Handbook in effect on January 1, 2023.

Background

The prevailing wage in both federal and California law consists of two parts, 1) the basic hourly rate of pay; and 2) employer payments for fringe benefits, such as health insurance, vacation, and pension contributions, among others. Employers receive a credit towards the prevailing wage rate in exchange for providing specified fringe benefits. With few exceptions, this credit must be annualized. Annualization is generally necessary for computing the fringe benefit credit when a contractor employs workers on both public works and private projects. To annualize the per hour cost of providing a benefit, a contractor must divide the total cost of the fringe benefit by the total number of hours worked on both public and private work. This requirement prevents contractors from subsidizing private projects with public funding and it ensures workers are paid actual prevailing wages on public projects by preventing contractors from taking credit against the required prevailing wage for expenses not actually associated with the covered work.

Davis-Bacon and Related Acts (DBRA) Annualization Requirements. The DBRA and federal regulations exempt contributions to defined benefit pension plans from the annualization requirement as long as the plan is not continuous in nature, does

not compensate both non-DBRA and DBRA-covered work, and provides for both immediate participation and vesting. Immediate vesting means the benefit vests within the first 500 hours worked. Additionally, employers can request an exemption from the annualization requirement for other benefits that meet both of the following conditions:

- The benefit provided is not continuous in nature.
- The benefit does not compensate both private work and DBRA-covered work. A benefit does not compensate both private and DBRA-covered work if any benefits attributable to periods of private work are wholly paid for by compensation for private work.

The DBRA and federal regulations allow employers to take credit for payments to apprenticeship programs registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. Unlike credits for contributions to defined benefit pension plans, credits for apprenticeship programs *must be annualized*. An employer may only take credit for amounts reasonably related to the costs of the apprenticeship benefits actually provided to their employees. Benefits include instruction, books, tools and other materials.

California Annualization Requirements. Section 1773.1 of the Labor Code outlines California's annualization rules. State law requires credit for employer payments to be computed on an annualized basis when an employer seeks credit for payments that are higher for public works projects than for private construction. There are four exemptions from this requirement:

- The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.
- The higher rate of payments is required by a project labor agreement.
- The payments are made to the California Apprenticeship Council pursuant to Section 1777.5 of the Labor Code.
- The Director determines that annualization would not serve the purposes of public works law.

In the decades since the above-mentioned exemptions were codified, DIR has issued contradictory public guidelines, private rulings, and enforcement decisions regarding what benefit payments are exempt from annualization. For example, the Labor Code only explicitly exempts payments made to the California Apprenticeship Council, but DIR's *Public Works Manual (Manual)* extends this

exemption to payments made to approved apprenticeship programs. Complicating matters, the *Manual* states that for enforcement purposes, DIR follows federal enforcement guidelines. However, any exemption for payments for apprenticeship programs is inconsistent with federal guidelines.

AB 889 (Hadwick 2025) AB 889 would make the following changes to state law in an effort to clarify which fringe benefits are subject to annualization:

- Require employers to annualize all employer payments not made directly to the worker, except as specified.
- Exempt employer contributions to defined contribution pension plans that provide for both immediate participation and immediate vesting. This change mostly conforms state law to the DBRA and federal regulations.¹
- Require an employer to, upon request of the LC, produce records of employee hours and employer payments on private construction sufficient for the LC to verify that the credit for employer payments was properly calculated on an annualized basis.
- Authorize the LC to deny an employer credit for employer payments if the requested records are not produced.
- Void any exemptions to the annualization requirement issued by the Director prior to January 1, 2026 and revoke the Director's ability to issue exemptions in the future.

Related/Prior Legislation

AB 2182 (Haney) of 2023 would have made several changes to California's public works law. Among other things, AB 2182 contained annualization provisions nearly identical to AB 889. These provisions were later amended out of the bill before its final vote in the Legislature. Governor Newsom vetoed this bill.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

Senate Rule 28.8

SUPPORT: (Verified 8/18/25)

California-Nevada Conference of Operating Engineers (Source)

¹ AB 889 would maintain the existing exemption from annualization requirements for payments to the California Apprenticeship Council. This exemption is unique to California as the DBRA and federal regulations require all employers to annualize payments to apprenticeship programs.

District Council of Iron Workers (Source)
California Legislative Conference of Plumbing, Heating & Piping Industry
California State Association of Electrical Workers
California State Pipe Trades Council
International Union of Painters and Allied Trades, District Council 16
National Electrical Contractors Association
Northern California Allied Trades
Southern California Glass Management Association
State Building & Construction Trades Council of California
United Contractors
Wall and Ceiling Alliance
Western Painting and Coating Contractors Association
Western States Council Sheet Metal, Air, Rail and Transportation
Western Wall and Ceiling Contractors Association

OPPOSITION: (Verified 8/18/25)

Associated Builders and Contractors of California
Associated General Contractors, San Diego Chapter
Western Electrical Contractors Association

ARGUMENTS IN SUPPORT: The sponsors of this bill, the California-Nevada Conference of Operating Engineers and the District Council of Iron Workers, argue:

“Annualization is a principle adopted by the federal Department of Labor in enforcing the Davis-Bacon Act for crediting contributions made to fringe benefit plans based on the effective rate of contributions for all hours worked during a year by an employee on both public construction projects and private construction. The annualization principle requires that when converting an employer’s fringe benefit contribution into an hourly amount, the amount of employer payments must be divided by the total number of hours worked in a year on all projects, public and private, not just the number of hours worked during that year on public projects.

Simply put, the annualization rule prevents a contractor from using prevailing wage work as the disproportionate or exclusive source of funding for benefits...

Under a state law passed in 2000 (AB 1646, Steinberg, Ch. 954, Statutes of 2000), contractors must use the annualization rule to calculate the hourly value of their paid fringe benefits, however, the Department of Industrial Relations (DIR) has yet to issue conforming regulations on annualization. Instead, DIR has issued public

guidelines, private rulings, and enforcement decisions; actions that have sometimes contradicted each other dependent on the administration overseeing DIR and have at times also conflicted with federal prevailing wage rules. Legislation is needed to ensure the States annualization process is clearly codified and contractors are aware of their obligation to ‘annualize’ their fringe benefit contributions.

In an effort to ensure clarity in statute and to prevent workers on public works projects from experiencing fringe benefit fraud, AB 889 (Hadwick) would conform State law with federal Department of Labor rules on annualization and provide clarity with respect to the type of contributions made. Specifically, the bill would specify that annualization calculations must be made for all employer payments that are not directly made to a worker, regardless of whether the employer provides benefits on private construction projects.

The bill would additionally revoke previous exemptions from annualization requirements and clarify that employers must be capable of demonstrating that the hourly credit they are taking for employee fringe benefit payments was properly calculated. Further, the bill would authorize the labor commissioner to deny employer fringe benefit credits for failure to provide proof of accurate calculations.”

ARGUMENTS IN OPPOSITION: The Western Electrical Contractors Association argues:

“AB 889 revises existing public works law regarding the calculation of wage credits for employer payments to employee fringe benefits for meeting prevailing wage requirements. As drafted, AB 889 will have several adverse effects:

- It routes vitally needed workforce development funds from apprenticeship programs, preparing tomorrow’s workforce, to state bureaucrats.
- It prohibits the director of DIR from making determinations about the annualization of benefit payments without a reason.
- It arbitrarily revokes any exemptions to annualization requirements issued by the director before January 1, 2026.

WECA and its contractor members agree with the author and the bill sponsors that all construction workers are entitled to promised pay and benefits. More specifically, in the public works arena, workers should be protected by robust enforcement of prevailing works law by the Division of Labor Standards Enforcement.

However, the author hasn't offered compelling evidence that a 'lack of clarity [in existing law] has weakened enforcement, enabling underpayment schemes through excessive fringe benefit credits to become more widespread.'

Worse, WECA believes that this bill introduces ambiguity into the labor code, which will jeopardize the ability of some state-approved apprenticeship programs to collect the training contributions they rely on to train apprentices."

ASSEMBLY FLOOR: 69-0, 5/8/25

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Bonta, Bryan, Calderon, Caloza, Castillo, Chen, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Fong, Gabriel, Garcia, Gipson, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Ward, Wicks, Wilson, Zbur, Rivas

NO VOTE RECORDED: Arambula, Boerner, Carrillo, Flora, Gallagher, Jeff Gonzalez, Irwin, Celeste Rodriguez, Sanchez, Wallis

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