

MEDIA MENTION

Eric Leonard Discusses 6th Circuit Decision Affirming Judgment Under the False Claims Act for False Certifications Under the Davis-Bacon Act

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Eric W. Leonard, a partner in Wiley Rein's Government Contracts Practice, was interviewed by *Law360* for an article about the Sixth Circuit's reading of the False Claims Act (FCA) jurisdiction to cover situations where contractors fail to pay the required wages under the Department of Labor's (DOL) Davis-Bacon Act and provide false certified payroll records. The Sixth Circuit affirmed a ruling that Circle C Construction LLC was liable under the FCA for subcontractor wage violations and that the DOL did not have primary jurisdiction over the claims by the plaintiff.

Significantly, qui tam cases proceeding under the federal FCA can subject a contractor to trebled damages awards (and a result in a share of the award to the qui tam plaintiff) whereas suits resolved under the Davis-Bacon Act from the DOL do not implicate treble damages. However, matters that proceed under DOL's jurisdiction still can result in other onerous sanctions including contract termination, back wage payment and, in some cases, debarment. As a result, companies and their subcontractors must carefully consider whether a matter involving a violation of the Davis-Bacon Act also may give rise to a FCA case—something that can occur even in situations where a prime contractor itself has not violated the Davis-Bacon Act. Mr. Leonard remarked, "It is important that prime contractors keep in mind that under Davis-Bacon and the Service Contract Act, you as a prime contractor are [jointly] and severally liable for any violation by your subcontractor. It's not just looking after your own payroll

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certifications and employees: You have to look over the payroll certifications of your subcontractors to ensure they are accurate before presenting them to the government.”

Additionally, Mr. Leonard warns that, “even if a relator's FCA suit succeeds, the DOL will likely still want to investigate...the DOL's potential involvement could put a contractor at risk of a two-front war.” He also stated that varied methods for calculating damages under FCA can create uncertainty for contractors, adding, “This can sometimes make it difficult for contractors to fully gauge and mitigate the potential risks for these types of FCA cases.” Furthermore, Mr. Leonard noted that this decision has potential implications for projects funded by the American Recovery and Reinvestment Act and for cases involving violations of other federal labor standards laws beyond the Davis-Bacon Act.