The Worker Shortage Challenge: 5 Labor-Related Risks that Would Arise from Infrastructure Legislation

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The moment President Donald Trump released his proposal for a $1.5 trillion infrastructure plan, it left many legislators on both sides of the aisle with plenty of questions to answer. The most common among them, which we have addressed in a number of articles over the past couple months, is how state and local governments will cover the 80% in funding support the federal government is mandating they provide for any project.

While this is the most pressing challenge that the proposal faces in getting off the ground, if it were to make its way through Congress, there are an entirely new set of questions that would arise once it went into effect. In fact, there is one notable issue that would be a problem for any infrastructure plan, regardless of the funding sources.

Specifically, a ramp-up of infrastructure work on a national scale would severely stretch the already shrinking pool of skilled craft workers needed to build the roads, bridges, pipes, and tunnels that would be part of any final plan. At this point, it's legitimate to ask whether or not the country even has enough skilled labor available right now to bring a massive infrastructure bill to life, and if not, how we can become prepared.

According to the *USG and Chamber of Commerce Commercial Construction Index*, 91% of large and small contractors have either difficult or moderate trouble finding skilled workers as of Q1 2018. Additionally, 90% have either high or moderate concern about adequate worker skill level.[1] While the details of any infrastructure bill will, at least to a point, determine how much demand for labor increases and where that demand will be most significant, it's clear that companies will have difficulty finding the labor they need to complete infrastructure projects.

With that said, no matter when an infrastructure bill passes, construction companies have plenty to consider when it comes to filling their workforce gaps in a way that complies with all state and local laws and ensures they don't place undue legal risk on their company by taking shortcuts to find that labor.

Here are five potential areas of risk that companies should consider when hiring in a tight labor market.

[1]https://www.uschamber.com/sites/default/files/q1_2018_cci_2-28_final.pdf

Increased Liability

With a shortage of labor, companies could be tempted to relax their hiring requirements in order to ensure they have enough workers to complete projects. Everything from skill requirements to drug testing policies could be eased to try and generate enough job candidates. While this may provide relief in the short term, lack of proper training and worker experience could lead to greater loss exposure on the project, potential third-party liability, and more worker injuries, which, in turn, lead to higher workers' compensation claims and other liability issues. Additionally, higher workers' comp claims not only increase costs and project delays but can damage the reputation of the company for much longer than it would take to adequately staff the initial job.

In these instances, it's always best to expand a labor pool by providing more training opportunities earlier in the process or by broadening the distance labor needs to travel to work on a given job, not by reducing the requirements to qualify for a construction job.

Maneuvering Project Labor Agreements

With most infrastructure projects that receive government funding, construction companies likely will be required to sign onto a project labor agreement (PLA). Additionally, companies may also be forced to comply with community workforce agreements (CWA), which are provisions in PLAs that mandate the creation of employment and other career paths for low-income and under-represented people. While PLAs do ensure uniform wages, benefits, overtime pay rules, hours, working conditions, and other work rules for major construction projects, they can be somewhat complex and restrictive.

PLAs can increase costs by mandating prevailing wages be used and complicate projects by requiring that specific work and union jurisdiction rules be followed. These agreements can also be seen as prohibitive for nonunion contractors, who may choose not to bid on a project because their members would be required to join a union if the bid was won or the contractor would not be able to use its own labor if the PLA required hiring through a local union hiring hall.

With a PLA in place, it's important to consult with legal counsel to ensure a company can meet the requirements set forth in the agreement before choosing to bid on a project.

Competing State Employment Laws

During times of significant labor shortages, many companies will be required to source labor from neighboring states to fulfill a project's labor needs or contractors will be called upon from across state lines to work on a project. However, when bringing in labor from a different state or working in an unfamiliar state, it's important to know the labor and employment rules in each location and how they vary. Aspects such as training requirements, wage payment laws, workplace safety, sexual harassment training, limitations on salary and criminal history questions in the recruitment process, paid sick leave, paid family leave, unemployment insurance requirements and more can all differ greatly once the state border is crossed. Knowing those differences will be key to ensuring compliance and avoiding liability and potential lawsuits.

Possible I-9 Audits

Though most construction companies are quite familiar with I-9 audits, and this is purely speculative, it's possible that President Trump's policies on immigration could lead to greater scrutiny from the Department of Homeland Security's Immigration and Customs Enforcement (ICE), especially on the construction industry. Regardless of whether there is an ICE crackdown or not, the organization still has the power to examine a company's records at will, so it's wise to undergo regular I-9 compliance self-audits biannually to prevent any unanticipated fines or project stoppages.

Training Programs

In an effort to combat labor shortages, some companies are partnering with local schools and colleges. For example, some companies have worked with schools to develop specific, job-related courses, and some companies have even provided employees to teach these courses. Additionally, coalitions of state and local governments and businesses have been formed to help address this growing need for skilled workers. Companies that anticipate the need for skilled labor should explore these opportunities.

While it still remains unclear whether Congress can pass any meaningful legislation on infrastructure in the near future, construction may already be facing labor shortages. For that reason, these risks should be evaluated regardless of how soon an infrastructure bill is passed.

Learn more about our insights on Trump's Infrastructure Plan at BIPC.com