

Prevailing Wage Laws

*Overview for Contractors
and Awarding Agencies
on ARRA Funded
Weatherization Projects*



NOTE: This presentation is general in nature. For help with specific situations, please contact L&I's Prevailing Wage Program for assistance.



Federal Prevailing Wage Law Davis-Bacon Act (1931)



UNITED STATES
DEPARTMENT OF LABOR

- Protects employees of contractors performing public works construction from substandard earnings and preserves local wage standards
- Requires prevailing wages on federally funded construction projects over \$2,000
- Affects about 20% of U.S. construction projects
- Administered by U. S. Department of Labor



Washington State Prevailing Wage On Public Works Act (1945)

- Also known as the “prevailing wage law” or Chapter 39.12 RCW
- Modeled after the Davis-Bacon Act in protecting workers
- Administered by Department of Labor & Industries, Prevailing Wage Program



Worker Protection Act

- Chapter 39.12 RCW requires that laborers, workers, or mechanics employed on public works projects and public building service maintenance contracts receive prevailing wages
- Employees, not the contractor or its assignee, are protected by the law



Remedial Legislation

Washington's prevailing wage law is
remedial

- Provides a remedy to enforce worker rights and correct worker injuries
- The Act is to be liberally interpreted for its purpose of worker protection



How does this relate to ARRA funds?

- Grant money, when routed through the state or a local governmental agency for allocation to projects, becomes a cost to the state or local government
- The discretion that the agency exercises over allocation of the funds triggers state prevailing wage requirements when used for work, construction, alteration, repair or improvement that utilizes the work of a laborer, worker or mechanic



Laborer, Worker, or Mechanic?

- Manual labor?
- Hands-on work?
- Work with tools?
- Operate power equipment?

Laborers, workers, and mechanics on all public works and public building service maintenance contracts must be paid prevailing wages



Professional/Technical Services?

- Architects and engineers
- Computer software
- Inspectors

BUT –

It's not what you call the person, it's the nature of what they do that's important.



Owner? WAC 296-127-026

- Requirements to pay prevailing wage do not apply to:
 - 1) Sole owners and their spouses
 - 2) Any partner who owns at least 30% of a partnership
 - 3) The president, vice-president, and treasurer of a corporation if each owns at least 30% of the corporation
- These individuals must still comply with prevailing wage filing requirements



Independent Contractor? Misclassified?

- New law! RCW 39.12.100 defines independent contractor for prevailing wage purposes
- The law adopts the Industrial Insurance six-point check list and adds a seventh point regarding contractor registration or licensing



What about apprentices?

- To pay a worker as an apprentice, there must be in place an apprenticeship agreement, registered and approved by the Washington State Apprenticeship and Training Council (WSATC)
 - Worker must be registered
 - Employer must be a registered training agent
- Any other “helper” or “assistant” must be paid a full journey-level wage rate



What does Chapter 39.12 RCW cover?

- Work performed at a cost to the state, or any municipality, including, but not limited to, every city, county, town, port district, district, or other public agency



What type of work is covered by Chapter 39.12?

- “Public work” – All work, construction, alteration, repair, or improvement. . . maintenance performed by contract (RCW 39.04.010)
 - Building Service Maintenance (RCW 39.12.020)
 - Construction, reconstruction, maintenance, or repair (RCW 39.12.030)

- Turn-Key (RCW 39.04.260)



What's a contract for purposes of chapter 39.12?

- Did the awarding agency pay for the work?
- Is the awarding agency obligated to pay for the work?
 - If so, there is a contract



Service Maintenance

- Maintenance when performed by contract shall comply with the provisions of RCW 39.12.020
 - See RCW 39.04.010(4)
- What's a contract? Did the public agency make payment for the work or is it obligated to make payment for the work? If so, there is a contract.



Ordinary Maintenance

- What about the words “other than ordinary maintenance” in the definition of “public work”?
- Case law guides on “ordinary maintenance”:
 - Maintenance is “ordinary” under the statute, when it is performed by in-house employees of the public entity, and excluded. *City of Spokane v. Dept. of Labor & Industries*, 100 Wn.App. 805, 810 (2000)



What is Prevailing Wage? RCW 39.12.010(1)

- Hourly wage, usual benefits and overtime
- Laborers, workers, or mechanics
- Same trade or occupation



What is a “usual benefit”?

- Employers are not required to provide usual benefits under state prevailing wage laws

RCW 39.12.010(3)

- WAC 296-127-014
 - Health care (medical, hospital, dental, vision, life insurance)
 - Retirement
 - Vacations and holidays
 - Costs for apprenticeship



How is the prevailing wage rate established?

- By survey – WAC 296-127-019
- Rate includes the hourly wage, usual benefits, and overtime
- Based on locality – largest city in the county
- Majority wage for the same work
- Average wage is used if there is no majority wage
- Updates published twice annually – WAC 296-127-011



Scope of Work Descriptions

- Adopted as rule in WAC 296-127-01301 to 01396
- The Industrial Statistician determines wage and scope -- see RCW 39.12.015
- Misclassification into a lower paid scope of work is a failure to pay the prevailing rate of pay
- [Scope of work descriptions](#) are available online



Does state prevailing wage law require that I submit weekly certified payroll records?

- See WAC 296-127-320
- Unlike Davis-Bacon, L&I does not generally require filing of weekly payroll records
- An “interested party” may request copies – Public Records Request – RCW 39.12.010(4)
- The contractor must submit copies upon request to L&I and to the contract awarding agency (not directly to the interested party)
- L&I redacts confidential information prior to sending the records to an “interested party”
- L&I may request the records as part of an investigation



What are my responsibilities as a contractor?

- Comply with chapter 39.12 RCW on public work
- Pay prevailing rate of pay to laborers, workers, and mechanics on public works (RCW 29.12.020)
- Provide Intents and Affidavits
- Ensure that each and every subcontractor (lower tier contractor) files their Intent and Affidavit
- Keep accurate work and pay records and submit a certified copy of payroll records upon request



Are there other filing requirements?

- Each and every contractor and subcontractor at all tiers must file:
 - A Statement of Intent to Pay Prevailing Wages (Intent) form at the beginning of a public works project
 - An Affidavit of Wages Paid (Affidavit) form when the project is completed
- File the forms with L&I and after L&I approves them, submit them to the awarding agency



Do these forms affect how I am paid?

- The awarding agency cannot make any progress payments until you provide them with an approved Intent
- The awarding agency cannot release retainage until you provide them with an approved Affidavit upon completion of the project



How do I file the forms?

- You may file the forms manually, using paper forms
- Most employers file their Intents and Affidavits using L&I's Prevailing Wage Intents and Affidavits (PWIA) system
- If you are new to the L&I PWIA system, visit the [New User](#) section of L&I's web site for help in getting started
- See the [PW Weatherization web site](#) for details about special weatherization filing options



Intents and Affidavits Basics

- You may use only forms approved by the Industrial Statistician
- Regular, separate Intent and Affidavit forms may be used for any public work, including small or limited public work
- The Intent states intentions
- The Affidavit states what actually occurred



Some Intent and Affidavit Specifics

- Work completion date is on the **Affidavit only**
- The contract amount can be indicated on a time and materials basis on the **Intent only**
- The “Do you intend to use Apprentices?” question is on the **Intent only**
- List all apprentices who worked on the project on the **Affidavit only**
- If you subcontract out any work, list those subcontractors on Addendum B for the **Affidavit**



Are there any posting requirements similar to Davis-Bacon?

- See RCW 39.12.020
- Contracts over \$10,000
- Intent must be posted on-site
- Road, street, sewer, pipeline construction, batch plants, etc. – may post at contractor's office



Are there awarding agency responsibilities under prevailing wage law? Slide 1 of 2

- Award contracts only to properly registered or licensed contractors – see RCW 18.27 (contractor registration) and RCW 19.28 (electrical contractor licensing)
- Do not award contracts to contracts on L&I's [debarred contractor list](#)
- Do not pay contractors without obtaining an Intent & Affidavit from each and every contractor – failure to comply makes the agency liable for any prevailing wages due



Are there awarding agency responsibilities under prevailing wage law? Slide 2 of 2

- When awarding a contract, determine whether the contract involves:
 - “public work”
 - “residential” work

- Communicate that information to the contractors in bid specifications and contracts



Projects Covered by Davis-Bacon and State Prevailing Wage Law

- Applies to most ARRA funded projects, including “weatherization” projects
- Contractors and subcontractors must pay the higher of the state or the federal wage rate on a classification by classification basis
- Both sets of reporting requirements must be followed
- L&I has available on its “weatherization” web site comparison tables to assist contractors in applying work classifications and rates typically used for weatherization projects



Residential Rates

- Some trades and occupations have “residential” rates
- WAC 296-127-010(9) defines “residential” for prevailing wage purposes as construction, alteration, repair, improvement of . . .
 - Residential structures
 - Not to exceed four stories (including basement)
 - Used solely as permanent residences



Residential Rates Application

- If the work meets the “residential” definition but there is no residential rate for a particular trade (i.e., Roofer) then the commercial rate is used for both residential and commercial work for that trade
- For projects subject to both Davis-Bacon and state prevailing wage laws
 - Apply the state definition for “residential construction”
 - If there is no state residential rate for a particular trade, apply the state commercial rate if it is higher than the federal commercial or residential rate



Residential Rates – Awarding Agency Responsibilities

- If the awarding agency determines the work meets the definition of “residential construction,” the contract must include that information
- If the awarding agency determines that residential rates apply and it is later determined the work is commercial, the awarding agency must pay to the workers the difference between the residential and commercial rates



Which rate applies – federal or state?

*Always
check for
wage
updates!

#1 Identify Task/Nature of Work

- Light Bulb Installation – Lewis County

#2 Find Worker Classification

- Federal – Weatherization Worker
- State – Laborer

#3 Look Up Rate By County

- Federal – Weatherization Worker, Lewis County, \$27.02* (eff. 04/19/2010)
- State – Laborer, Lewis County, \$20.32* (eff. 03/03/2010)

#4 Compare State & Federal Rates

- Which rate is higher?
- Here, the Federal rate is higher than the state rate – pay the Federal rate

#5 Pay The Higher Rate

- In this example, pay \$27.02*

#6 Complete Required Paperwork for Both Laws

- Federal - Certified Payroll Records
- State - Intent and Affidavit



Prevailing Wage Weatherization Web Site

- [Basic Filing Requirements](#)
- Weatherization [“Streamlined” Filing Process](#)
- Filing Instructions – [Flow Chart](#)
- [Federal/State Rates Table](#)
- Federal/State Worker Classifications/Tasks Tables
- [Prevailing Wage Overview](#) (this presentation)
- [Prevailing Wage Law/Scopes Summary](#)



Washington State Department of
Labor & Industries



Questions?

Contact L&I's Prevailing Wage Program for Assistance



Prevailing Wage Weatherization Primary Contacts in Central Office

- L. Ann Selover, Prevailing Wage Program Manager & Industrial Statistician
SELA235@LNI.WA.GOV
- Ramona Christensen-Russell, Industrial Relations Specialist, Prevailing Wage
CHRR235@LNI.WA.GOV (360) 902-5334
- Nathan Peppin, Economist, Prevailing Wage
PEPN235@LNI.WA.GOV
- Reasa Pearson, Industrial Relations Agent, Prevailing Wage
NOTR235@LNI.WA.GOV

THANK YOU!