



PREVAILING WAGE POLICY MEMORANDUM

DATE: August 17, 2009
TO: All Interested Parties
FROM: David J. Soma, Industrial Statistician, Prevailing Wage Program Manager
SUBJECT: Filing an Affidavit Form "On Behalf Of" a Subcontractor

Policy Disclaimer

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Prevailing Wage should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

Note: An Affidavit cannot be filed unless a corresponding Statement of Intent to Pay Prevailing Wages (Intent) form was filed.

1. In the very limited circumstances described below, Department of Labor & Industries (department) policy may permit a contractor to file an Affidavit on behalf of their subcontractor when the subcontractor failed to file because:
 - a. The subcontractor's business entity has gone out of business,
 - b. The subcontractor's business entity has filed for Bankruptcy and will not continue in business, or
 - c. The subcontractor has refused to file.
2. If you have one of the circumstances listed in #1 then the following is the backup documentation (depending on the circumstance) that is necessary for you to provide to request authorization to file on behalf of another business entity:

- a. The subcontractor's business entity has gone out of business:
- 1) A copy of the letter sent Certified Mail to the business entity giving them 10 business days to file required form(s), and
 - A copy of the Certified Mail Receipt and returned letter and envelope that has been refused or unclaimed, or
 - A copy of the signed green Certified Mail Return Receipt.

And

- 2) A copy of **one of the following:**
 - Contractor Registration showing expired/suspended status and one report from either the Department of Licensing or Department of Revenue web sites showing the company is no longer in business,
 - A letter from the closed firm, stating the firm is no longer in business, or
 - A newspaper article stating the closed business entity's status.

- b. The subcontractor's business entity has filed Bankruptcy and no longer does business:
- 1) The case number and date of the bankruptcy filing,
 - 2) A letter from bankrupt firm stating bankruptcy has been filed and the date of filing, or
 - 3) A newspaper article regarding the business entity's bankruptcy status.

- c. The subcontractor has refused to file:
- 1) A copy of the letter sent Certified Mail to the business entity giving them 10 business days to file required form(s), and
 - A copy of the Certified Mail Receipt and returned letter and envelope that has been refused or unclaimed, or
 - A copy of the signed green Certified Mail Return Receipt.

3. Once you have the backup documentation in order based on your circumstance then you will need to fill out a hard copy form (paper). You cannot file on behalf of a subcontractor using the online PWIA system.

Please follow these instructions for completing the paper form:

- a. The company or entity filing the form on behalf of another will indicate their own company information in the "Company Name" section located on the bottom left of the form. **DO NOT** indicate the "filed on behalf of" subcontractor's business entity name in this section.
- b. In the Craft/Trade/Occupation section located in the middle of the form, write the following statement: (Your COMPANY NAME) is filing on behalf of (SUBCONTRACTOR'S BUSINESS ENTITY NAME) due to (indicate one of the four acceptable "limited circumstances"). **You must also provide the subcontractor's business entity address, phone number, contractor registration number, if applicable, and the subcontractor's business entity UBI number in this section.**

- c. The rest of the form must be completed. No form will be approved that does not list the “Craft/Trade/Occupation,” “Rate of Hourly Pay” and “Rate of Hourly Fringe Benefits” (if provided).
- d. **The company filing on behalf of must submit an Assumption of Liability statement on their company letterhead using the exact language prescribed by the department. The statement provides that the signing party assumes full liability for any worker wage claims (see attached).**
- e. Mail completed forms and all documentation along with payment of filing fees to:

Management Services
Department of Labor & Industries
P.O. Box 44835
Olympia, WA 98504-4835

The department may issue a Notice of Violation (NOV) and assess a penalty in the amount of \$500.00 for each false filing. The violator will not be permitted to bid, or have a bid considered, on any public works project for any legally upheld NOV until the penalty is paid in full. A violator who files a false statement or fails to file a statement or record required to be filed for a second time within a five-year period will be barred from bidding on public works projects for one year.

Please direct any questions regarding this policy to the Prevailing Wage Office at 360/902-5335 or by e-mail at PW1@Lni.wa.gov.

Attachment: Assumption of Liability

Company Letter Head

ASSUMPTION OF LIABILITY

I, _____ (company name), declare under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

I _____ (Company Name) am filing an Affidavit on behalf of _____ (subcontractor). I hereby certify in doing so that the information is correct and that all workers employed on this public works project _____ (project name) for _____ (awarding agency) have been paid no less than the Prevailing Wage Rate(s) as determined by the Industrial Statistician of the Department of Labor and Industries. _____ (company name), accepts full liability for any unpaid wages to workers on this project for three years from the date of the signature below.

Signed this _____ day of _____, at _____,
(DATE) (MONTH & YEAR) (COUNTY)
Washington.

(SIGNATURE)