



PREVAILING WAGE POLICY MEMORANDUM

DATE: July 23, 2009

TO: All Interested Parties

FROM: David J. Soma, Industrial Statistician, Prevailing Wage Program Manager

SUBJECT: Landscape Construction

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 This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

The Landscape Construction scope of work, WAC 296-127-01346, is a very limited scope of work specific to certain instances of beautification of a plot of land through addition to or modification of lawns, trees, and bushes. The scope contains both detailed limits on its use and broad exclusions from its application.

Case law provides us further guidance. It provides that the correct identification of the proper scope(s) of work to use is not limited to the task performed, but instead is also tied to the nature of the work or project. This was illustrated in *Lockheed Shipbuilding Company v. Labor and Industries*, 56 Wn. App. 421 (1989). The Lockheed court ruled that the Pipefitter construction rate (under the scope of work for Plumber/Pipefitter) was correct based on the nature of the work, which involved welding pipe for a wastewater treatment plant project, even though the work of welding pipe sections was performed in a shipyard. The workers had been paid the lower shipyard rate for a Boilermaker. The court ruled that the nature of the work was construction of a wastewater treatment facility. That work, by its nature, required the Plumber/Pipefitter rate of pay, not the shipyard Boilermaker rate of pay.

In administering prevailing wage laws, the Department looks to statutes, legislative intent, rules, and case law. Here, case law tells us that the nature of the public works project, as well as the type of work performed, will determine the correct scope of work to be used. On a street, road, or highway project, the erosion control work will, because of the nature of the project, not be able to utilize the Landscape Construction scope of work. Rather, general construction scopes and wage rates apply to such projects. Likely scopes of work applicable to those street, road, or highway projects include Laborer, WAC 296-127-01344, Power Equipment Operator, WAC 296-127-01354, and Truck Drivers.

A. The following is a partial list of work that, by nature and/or the language of the scope, is excluded from the scope of work for Landscape Construction:

- Habitat or environmental enhancement projects;
- Footpaths or trails;
- Bridges;
- Road, alley, street, & highway projects;
- Parking lots;
- Grass pavers or paving (such as Grasscrete ®);
- Pavers (brick, stone, concrete, etc.);
- Erosion control;
- Erosion control, temporary cover (such as seeding, mulching, blankets, plastic covering, & polyacrylamide application);
- Erosion control, sediment retention (such as soil stabilizer applications, silt fence, trenching & straw wattles, sediment traps, straw bale barriers, brush barriers, construction storm water filtration, straw mulch, sand bag(s), fabrics, blankets, and jute matting);
- Erosion control, structural erosion control (such as fencing, dust control, surface roughening, water bars, pipe slope draining, outlet protection, interceptor dike & swale, check dam installation, turbidity curtain, level spreader installation, silt dikes, storm drain inlet protection, slope protection, and storm water infiltration measures);
- Golf course construction or renovation;
- Retaining walls;
- Walls made of materials other than rock such as key stone block, modular block, precast materials, cast in place material, or wood;
- Grading of anything other than up to six (6) inches of top soil;
- Fill material;
- Excavation;
- Subgrade preparation;
- Compacting subgrade;
- Tree falling or bucking;
- Impervious surfaces such as paving;
- Catch basins or drainage for impervious surfaces;
- Storm or sanitary sewer systems;
- Trucks with more than one rear axle (except hydroseeders);

- Demolition;
- Buildings or structures;
- Forms, pouring or finishing of concrete;
- Asphalt;
- Utilities construction;
- Restoration of landscaping after utilities construction;
- Custom fabrication of play, park, or other equipment and facilities; and
- Use of equipment over 90 horsepower.

B. Except for erosion control, environmental mitigation, or environmental enhancement work (including but not limited to habitat and wetlands work); the following work, by nature and/or the language of the scope, is included in the scope of work for Landscape Construction:

- Final seeding or hydroseeding;
- Mulch/bark application;
- Sod installation;
- Planting vegetation;
- Use of backpack sprayers;
- Use of truck mounted sprayers (one rear axle);
- Maintenance performed on the activities in this List B; and
- Grading of up to six inches of top soil.

Below is the Department’s list of criteria to be used in determining whether specific tasks qualify for payment at the rate of pay for Landscape Construction:

1. Does the work involve “beautification of a plot of land by changing its natural features through the addition or modification of lawns, trees, bushes, etc.”? If it does, go to question 2.
2. Is the nature of the project such that:
 - a. The sole purpose of the project is the “beautification of a plot of land by changing its natural features through the addition or modification of lawns, trees, bushes, etc.”? OR
 - b. A separate and distinct segment of the project can reasonably be determined to have as its purpose the “beautification of a plot of land by changing its natural features through the addition or modification of lawns, trees, bushes, etc.”?

If the answer to 2(a) or 2(b) is yes, go to question 3.

3. Is the work excluded by application of section (2) of the Landscape Construction scope? If not, go to question 4.
4. Is the work excluded by application of List A above? If not, go to question 5.
5. Is the work listed in section (1) of the Landscape Construction scope? If yes, it qualifies for application of the Landscape Construction prevailing wage rate of pay; if no, go to question 6.

6. Is the work listed in List B above? If yes, the work qualifies for payment at the prevailing wage rate for Landscape Construction.

These criteria provide a framework of thought for analyzing whether specific work falls within the Landscape Construction scope of work. The Industrial Statistician determines the prevailing rate of pay (RCW 39.12.015). In any public work, the facts are crucial to identify the correct scopes of work to be used. If the facts vary, the answer could be different.

Whenever your fact set is less than a perfect match from those specifically addressed above, check with the Industrial Statistician/Prevailing Wage Program Manager for specific answers. The Department is happy to provide guidance on your fact set. Please identify the actual circumstances and describe them in full to the Department. You may contact us by phone: 360-902-5335 or by e-mail at: PW1@LNI.WA.GOV