



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
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360/902-5335 Fax 360/902-5300

November 13, 2012

Ernie Walters, Fire Chief
Snohomish County Fire Protection District 28
512 Avenue A
Index, Washington 98256

Dear Chief Walters:

Thank you for your recent letter requesting a determination of whether residential construction prevailing wage rates may be paid to workers installing a fire protection sprinkler system at a facility that will house up to four participants in the Resident Volunteer Firefighter Program. The work in question will require regular, commercial prevailing wages, not the residential construction rates.

All determinations of the prevailing rate of wage are made by the industrial statistician of the Department of Labor and Industries (L&I), according to RCW 39.12.015. See the attached document entitled *Prevailing Wage Determination Request and Review Process*.

The limitations of residential construction for prevailing wage purposes are outlined in [WAC 296-127-010\(9\)](#) as follows:

(9) "Residential construction" means construction, alteration, repair, improvement, or maintenance of single family dwellings, duplexes, apartments, condominiums, and other residential structures not to exceed four stories in height, including basement, when used solely as permanent residences. It does not include the utilities construction (water and sewer lines), or work on streets, or work on other structures (e.g., for recreation and business.)

In addition to the relevant statutes, I have appreciated the opportunity to review various documents you provided. Most recently you provided additional information which included floor plan drawings and information about the distinction between this fire protection sprinkler system compared to systems approved for commercial use. Previously you provided a copy of your *Resident Volunteer Firefighter Program Manual* and other information via email.

The residential construction definition in WAC 296-127-010(9) includes both structural and usage limitations. The building that forms the subject of your inquiry appears to be fewer than four stories in height, which fits the structural limitation set forth in the rule.

The purpose and planned usage of the facility however, are different from that of a single family dwelling used solely as a permanent residence. It appears, for example, that the Residential Landlord Tenant Act, chapter 59.18 RCW, does not apply to the relationship between the Snohomish County Fire Protection District (District) and the participants in the Resident Volunteer Firefighter Program (Volunteers). Other differences cited from the "Resident Volunteer Firefighter Program Manual" (Manual) will also distinguish the temporary, program enrollment dependent "living quarters" in the Firefighters program from "typical residences":

- Volunteers must live in the quarters provided by the District during their participation in the program, "normally...limited to a maximum participation period of three (3) years." [Manual, "Terms of Residency"]
- Each Volunteer must sign a "Resident Firefighter Agreement" which sets forth a number of restrictions on the use of the living quarters, and the signed document becomes part of the Volunteer's *personnel* file. [Manual, "Agreement"]
- The quarters are provided for the cited government functions of public safety, health and welfare and to assure immediate response to emergencies by qualified fire/EMS personnel. [Manual, Appendix A, Item #8]
Occupancy is provided to Volunteers for the convenience of the District, not the Volunteers. [Manual, Appendix A, Item #8]
- Volunteers may be terminated from the program at any time with or without cause. One situation which would result in immediate termination and eviction from the quarters is failure to maintain actual (exclusive) residency in the quarters. [Manual, Appendix A, Item #3]
- The facility is public property, subject to visitation and inspection by District citizens, and custody and control of the property is retained by the District. [Manual, Appendix A, Item #9]
- Volunteers have no rights of contract, no liberty or property interests and no proprietary or exclusive rights, nor right of residency upon district property. [Manual, Appendix A, Item #4]
- Volunteers are at one point in the manual referred to as "*at-will employees*" who may be terminated at any time with or without cause. [Manual, Appendix A, Item #3]
- Alcohol, firearms and controlled substances (except authorized prescriptions) are prohibited on District property, including 519 "A" Avenue. [Manual, Appendix A, Item #6] Guest visitations to the Volunteer quarters are limited to 1-2 hours on a weeknight and not more than 3 hours on the weekend. [Manual, Appendix A, Item #10]
- Guests to the Volunteer quarters may not be left unattended and must leave the buildings by 10:00 pm unless prior approval of the District is granted. [Manual, Appendix A, Item #10]
- Under no circumstances will guests be permitted to stay the night in the Volunteer quarters; doing so will result in immediate termination of the Volunteer. [Manual, Appendix A, Item #10]

Ernie Walters
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Page 3 of 3

These elements of the Program create an institutional environment that differs from that of a single family dwelling used solely as a permanent residence. Indeed, the facility is primarily used as a method to provide qualified firefighter/EMS personnel in or near the station for emergency response, and the terms of occupancy reflect this primary purpose.

For these reasons, construction on the facility cannot be paid at the residential construction prevailing wage rates.

This determination is based upon the facts you provided. If the facts vary or new facts are introduced, the answer could be different.

Washington State prevailing wage information, including the WACs, is available on L&I's web site: <http://www.lni.wa.gov/TradesLicensing/PrevWage/>.

I appreciate this opportunity to respond to your request for a prevailing wage determination, and wish you success in your Program. If you have further questions, please let me know.

Sincerely,



L. Ann Selover
Industrial Statistician/Program Manager
Ann.Selover@Lni.wa.gov
(360) 902-5330

Attachment

Prevailing Wage Determination Request and Review Process

RCW 39.12.015 is the basis for requesting a determination, since it provides:

All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.

If you disagree with a determination the industrial statistician provides, WAC 296-127-060(3) provides for a review process:

(3) Any party in interest who is seeking a modification or other change in a wage determination under RCW [39.12.015](#), and who has requested the industrial statistician to make such modification or other change and the request has been denied, after appropriate reconsideration by the assistant director shall have a right to petition for arbitration of the determination.

(a) For purpose of this section, the term "party in interest" is considered to include, without limitation:

(i) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any worker, laborer or mechanic, or any council of unions or any labor organization which represents a laborer or mechanic who is likely to be employed or to seek employment under a contract containing a particular wage determination, and

(ii) Any public agency concerned with the administration of a proposed contract or a contract containing a particular wage determination issued pursuant to chapter [39.12](#) RCW.

(b) For good cause shown, the director may permit any party in interest to intervene or otherwise participate in any proceeding held by the director. A petition to intervene or otherwise participate shall be in writing, and shall state with precision and particularity:

(i) The petitioner's relationship to the matters involved in the proceedings, and

(ii) The nature of the presentation which he would make. Copies of the petition shall be served on all parties or interested persons known to be participating in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.



Snohomish County Fire Protection District 28
512 Avenue A • P.O. Box 64 • Index, Washington 98256

Ms. Selover,

This is a formal request of determination for the appropriate L&I prevailing wage rate for the installation of a **Residential** Sprinkler system in a **Residential** house that is owned by Snohomish County Fire Protection District #28.

The Fire District bought a house across the street from the fire department back in October of 2011 for the sole purpose of having four Resident Firefighters live there. These firefighters would live there full time and the house would be their primary place of residency. They would be required to do a certain amount of day and night shifts to compensate the district for living in the house rent free.

The only thing that I can see that would even make this close to a commercial prevailing wage job is that the house is owned by the Fire department. The house is zoned Residential and the sprinkler system installed in the house is a Residential System and not a Commercial system, the house will be used by firefighters that will live there Full Time and will not live anywhere else. They will have to sign a contract with the department that states that and will be let go if they violate that rule.

"Volunteering To Serve Our Community"
(360)-793-0866 • Fax (360)-793-6776 • fd28@indexfire.org



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I have talked to Nathan Peppin and Reasa Pearson about this matter and have sent Mrs. Pearson the Resident Manual that states all the rules and has a copy of the contract the Resident Firefighters would sign. I would like a formal decision from you and if possible the RCW, WAC or department policy that was used to make the determination.

I do not have a problem paying for the prevailing wage, I just believe that if I have a residential house with a residential sprinkler system installed in it, I should not have to pay a commercial prevailing wage and waste the taxpayer's money.

If you require more information or would like to speak with me on the phone, please do not hesitate to call me at (360)793-0866 or (425)330-3894

Yours in Public Service,

Ernie Walters

Fire Chief/SCFPD#28

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