# Meeting Minutes Prevailing Wage Advisory Committee (PWAC) June 14, 2019 9:00am – 11:30am Tumwater, WA Location

Attendees: Lee Willeman, Candice Bock, Joe Baca, Keith Weir, Barry Fulgham, Ramona Christensen-Russell, Megan Kistler, Bonnie Dressel, Nicole Blackwood, Jim Webster, Leah Dominguez, Marilyn Kennedy, Jamie Blacksmith, Scot Anderson, Jolene Skinner, Van Hurst, Christine Brewer, Jim Hernandez, Chris Herman, Jeff Vest, Aaron Nelson, Miriam Israel Moses, Josh Swanson, Mark Riker, Laura Herman, Reasa Pearson, Jerry Vanderwood, Andy Kaplowitz, Bruce Chattin, Tom George, Earl Smith, Harly Farey, Ivan Meyen, Billy Wallace, Jack K, Joey Bolden, Leeann Snyder, Allison Drake, Celeste Monahan, Kathleen Kline.

Agenda Item	Discussion
Opening Remarks	Jim Christensen – L&I
Introductions	Welcome
	Safety Topic
PWAC Draft Meeting Minutes from November	Jim Christensen – L&I  • Asked about minutes to last meeting. Minutes approved.
9, 2018	
General Topics:	Jim Christensen – L&I
Staffing Changes	Craig Dyce joined us in February as our newest Customer Service
Performance Numbers	Specialist.
New Laws PWIA Phase III	Going to lose Customer Service Specialist Joe Carone, and possibly Jeffrey
Escalation Strategy	Vest.
Focused Investigations	
Determinations	

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# Jim Christensen - L&I

#### Performance Numbers

- Numbers look fairly usual for this last year.
- The Prevailing Wage Compliance Tracking tool will provide more information and help manage the flow of information referencing investigations.
- We are going to change certified payroll and methods to obtain the payroll records. Contractors have 10 days under the current process, then we send the second request. Then if they don't provide the records at that point we call. If no filing, we process NOV. However, with the new law we will skip the second letter to streamline the process.

#### Mariam Moses - REBOUND

• Gave acknowledgement to Bonnie Dressel for timely communications.

# Jene Webster - Secretary of State's Office

• Why are the NOV appeals as high as they are. This is the same last year and this year.

## Jim Christensen – L&I

• The NOV calls out violations of chapter 39.12 RCW. NOVs include fines and strikes toward debarment. Most are appealed.

## Josh Swanson - IUOE

• Industrial insurance violations has gone down, is it due to new processes?

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# Jolene Skinner – L&I

• We are looking into the system management and audit to see a breakdown.

# Josh Swanson - IUOE

• Certified payroll SSB 5035 makes them mandatory now. They have to submit with AA or PW hardcopy or online.

## Jim Christensen - L&I

• This takes time for contractors to get used to new rules and paperwork, but the industry will adjust and have better transparency. May take time but the law does now require payroll submissions from all contractors and subcontractors.

#### Miriam Moses - REBOUND

• They still would have to go through redaction, since you already have them online. When they are redacted, can we get a portal to directly retrieve them? So we would know if someone did or did not file them? Are we tracking intents filed vs certified payroll? What happens if we are not getting them?

## Jolene Skinner - L&I

• Over next 6 months we will be addressing those questions. Currently the process automatically redacts and offers a pdf version that they can download.

#### Miriam Moses - REBOUND

• Is that online?

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# Jolene Skinner – L&K

• Paper is different.

## Miriam Moses - REBOUND

• Is a portal available?

# Jolene Skinner - L&I

• The portal is in the discussion process now. As of 01/01/2020 it will be mandatory, it should be easier to get the copy for the public.

## Miriam Moses - REBOUND

• What about sole proprietors and owner/operators? Do they have to file something saying they are? Do sole proprietors not need to file due to being an owner, or do they need to file? If sole proprietor does not list employees, then what happens?

## Jim Christensen – L&I

• I see Bonnie Dressel is nodding her head and that owners don't have to list their hours, but do have to list employees when they have them of course.

# Miriam Moses - REBOUND

• When we have owner/operators that have employees, they are only listing owner and no employees.

# Jolene Skinner - L&I

• We will look into this. We will see what we can do.

# Jim Christensen - L&I

• We don't yet have the answers. We are looking into the whole scenario and not quite sure what all of the questions will be.

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# Van A. Hurst - Teamsters

• Trucking company owners I know of are now employees of an LLC

# Laura Herman - L&I

• Industrial Insurance has one test for who's covered under workers compensation and we (Prevailing Wage) have one that is 30% or more ownership. Historically George May issued an old policy that the law requires the owner with that level of ownership and it did not make them a worker, laborer or mechanic. This is not the same standard.

## Van A. Hurst - Teamsters

• The trucking industry is not the same anymore for owners.

#### Laura Herman – L&I

• That did not relate to 39.12 and we can get together later to see more details.

#### Jim Christensen - L&I

• Does Oregon have a law that all workers get prevailing wage no matter who, owners included, have to pay themselves prevailing wage?

## Jim Christensen - L&I

 Next agenda item – Rule-Making - 2019 legislature was the most productive in the history of the state for the bills provided and passed, as well as legislative activity for prevailing wage. They signed into law SSB 5035, which is the biggest one, HB 1743 residential bill and many others. Laura Herman is in charge of the rulemaking process and legal questions.

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# Laura Herman – L&I

• The power point packet has great information from the handout and the landscape maintenance scope is also printed out for everyone. We were very busy with bill analysis this year and we were at 82 assignments at one point. Public agencies are already following employment standards laws. SB 5566 discusses the fee reduction of intents and affidavits from \$40.00 to \$20.00 effective 07/28/2019 through the Biennium. ESSB 5418 covers unit price contracts. It changed upper dollar limits from 300k to 350k and 35k to 50k.

## Jolene Skinner - L&I

• Small works has a new possibility for waiving the fees though not sure yet how much it will be used as Awarding Agencies will have to sign liability waiver. We will add that to the Notice of Violation and Awarding Agencies will identify if a waiver was granted or not as well.

# Josh Swanson - IUOE

• Will a Lean event be needed?

#### Laura Herman L&I

• We will get with the AA if needed?

# Leeann Snyder - Pierce County

• Is the waiver for retainage mentioned?

# Miriam Moses - REBOUND

What is unit price contracting?

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# Laura Herman - L&I

• On call and unit priced are different. They are not currently in any statutes for on call. This created a lot of nervousness several years ago. More unit price authority in legislation does start to cover this and have rules to follow now. Varies by length of time.

Some now are 1 year with a 1 year extension allowed vs prior process being 3 years then 1 year extensions.

## Miriam Moses - REBOUND

• Ann Selover (former Prevailing Wage Program Manager) did a determination with a letter that may be online saying on call contracting is not ok for prevailing wage and that this is a formal process.

#### Laura Herman - L&I

• States she does not have a copy of this on hand and asks for a copy. Auditor's office has not gotten strict on this process. This process may be outdated, several years ago this was an issue. We are moving forward with the unit pricing process and this should be supported by Auditor's offices too.

## Jolene Skinner - L&I

• Small works is just the retainage but the normal process is waiver and retainage.

## Laura Herman - L&I

• HB 1743 for residential wage rates were needing to be set. Interim wage rates provided April 17th with 30 days to publish which we (Prevailing Wage) had done. Question to Sean Anderson (Prevailing Wage Economic Analysist) - Is survey state wide?

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#### Sean Anderson - L&I

• Yes we are currently working on this.

# Laura Herman - L&I

• SB 5233 continues to explain the slide, covers CBAs and sick leave issue. As long as CBA provides equal benefits. SSB 5035 with several slides, not all figured out quite yet. In the 80s this was an issue with civil penalties and now this tightens up much of the civil penalties issues. Next slide covers certified payroll. Many Awarding Agencies do. We have new duties under this law, there are no new duties for Awarding Agencies. Awarding Agencies are used to federal law, if they get money have new duties for enforcement agency and possible withholding monies, L&I is still the enforcement agency for this.

# Bruce Chattin - WACA

• Questions the difference in verbiage between duty and accountability. Says the bill says the owner has a responsibility, but many times the Awarding Agencies cause the issues.

# Laura Herman - L&I

• RCW 39.04.350 Awarding Agencies verify the subcontractor meets the bidder criteria. This duty is for Awarding Agencies to verify that mandatory requirement of the prime contractor. The rest are for the prime to verify the subcontractors. This is for verifying the prime and the duty is the Awarding Agency for the prime. The rule requires the communication to the subcontractors to be told. This has not changed under the current bill. The Awarding Agency needs approved intents before any payment on that public work. This is the obligation. All affidavits of wages paid are required before the retainage can be

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released. SSB 5035 expands on this retainage. This expanded to include all affidavits to any contractors and can't accept without this.

## Miriam Moses - REBOUND

• Has Certified Payroll question and agrees with Bruce Chattin, that this requires contractors to file certified payroll with prevailing wage and AA.

Jim Christensen and Laura Herman disagree.

#### Miriam Moses - REBOUND

• For online filing, do the Awarding Agencies have a way to verify the submission?

## Laura Herman - L&I

• There are some rulemaking details that we have not addressed yet.

## Bruce Chattin - WACA

• It says Awarding Agencies do not have obligations and wanted to clarify they do have them.

## Laura Herman - L&I

• Agreed. They do have responsibilities per 39.10 and 39.04 among many others. This is limited to those that aren't federally funded and to have to hold the affidavits before completion and to have to complete them before retainage release can occur. Unpaid prevailing wages were defined, this was not defined before. Regularly scheduled pay date is the date specified. Usual benefits have a similar requirement on the regular scheduled pay date for its payment, failure to pay these benefits timely also are addressed. Timely wage complaints currently 30 days within acceptance, this will change to 60 days from this date of acceptance.

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Prevailing wage has discretion if no timely wage complaint was filed, but comes to our attention. Prevailing wage can't investigate if after 2 years, this was included in this bill.

#### Miriam Moses - REBOUND

• Is retainage release also affected by the 30 to 60 days?

## Laura Herman - L&I

• 60.28.051 processes and retainage release to the 3 entities LNI DOR and ESD. Can't release until the certificates of release from these entries. Bruce Chattin did mention the affidavits are required and agrees. This process is not altered by this bill.

## Miriam Moses - REBOUND

• LNI has mostly declined investigations when the retainage was already released sometimes, since you can't go after the bond.

#### Laura Herman - L&I

• No, the Awarding Agencies can't use retainage release vs bond and still have release and bond statutes. L&I does have obligations for timely investigations. This 60 days gives more time to respond to this investigations, just may not be able to regain the funds if already released. Recovery of these wages gets complicated after this point.

## Miriam Moses - REBOUND

• How far have you gotten in this process?

# Laura Herman - L&I

• Asking for more Attorney Generals time for these kinds of situations to figure out options if retainage is not available.

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## Miriam Moses - REBOUND

• If you go to small claims and get a judgement for the worker, does L&I have a policy where if we get to this point then is there a Notice of Violation.

## Laura Herman - L&I

• Notice of Violation is where we move this to the Attorney General's office and is final and binding if not timely appealed. Notice of Violations not appealed are final and binding.

## Miriam Moses - REBOUND

• Notice of Violation does not give authority to get monies, but needs judgement from a court.

#### Laura Herman - L&I

• Expects some increase in NOV possibly.

## Jim Christensen - L&I

• I don't think it will be a sharp increase, but no way to quantify that yet.

# Laura Herman - L&I

• Continues with interest on wage claims owed. Discusses penalties under the law (page 4 of handout). Discusses one time reduced penalties and the law as it is currently provided. L&I has discretion under new law, inadvertent error is not subject to this penalty. The inadvertent error definition is discussed. The Director of L&I can reduce fee penalties, but not wages or interest due. L&I will need to disclose when a reduction in penalties is used and why, required under the bill. Failure to post is a now a violation under the bill. Law requires to pay wages and must post when overall project is \$10K plus. SSB 5035 says

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failure to post is now a violation and can lead to strikes and debarment. Employers must post the approved statement of intent that this is a PW job and listed PW wages as well. An NOV which is not timely appealed will become a final legal action. No fines or penalty without a timely wage complaint, we need these to be timely to allow recovery. Certified payroll starts 01/01/2020. Please support contractor groups and let us know if you need training as well. Jolene Skinner is a valuable resource for this too. Please reach out to us.

## Jolene Skinner- L&I

• Step-by-step instructions have certified payroll covered currently and working on stand-alone videos.

#### Jene Webster - ???

• Do the certified payrolls on intents filed automatically appear?

# Jolene Skinner - L&I

• Yes after they click affirm, it shows up as approved. Awarding Agency portal only shows approved. Prevailing Wage forms show submitted or correction and Prevailing Wage staff can see the form even when not approved yet.

# Jim Hernandez - Local 612

• Will certified payroll have a clickable request option?

# Jolene Skinner – L&I

We are discussing those things currently but not yet in place.

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# Bruce Chattin - WACA

• Certified payroll systems are out there, L&I has made theirs. Is L&I working to make this online version?

# Jolene Skinner - L&I

• You can upload. XML files they can upload the file to our systems. Many existing payroll systems are set up for federal not L&I. SSB 5035 calls out to encourage using L&I online certified payroll to streamline this.

#### Jim Christensen – L&I

• We encourage use of online, explosive growth even before SSB 5035 and hope for much more use and growth of use for online due to this new law and even discusses apprentice utilization as well in the new system.

#### Bruce Chattin - WACA

• This would also help identify inadvertent errors as well.

# Jolene Skinner - L&I

• Awarding Agencies can encourage this usage as well. DES mandated certified payroll and is using our system as well. WSDOT is looking to use our system as well possibly. As of June 1 over 4000 have already filed certified payroll in our system.

# Jerry Vanderwood – AGC

• Likes use of online and the timing of this. What about those paper filings? They may need more time to adjust to this too.

# Laura Herman - L&I

• SSB 5035 still says failure to file a certified payroll record leads to Notice of Violations. Continues on rulemaking page on L&I site and the

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slide 11 and 12 on page 6 of the handout about emergency rule and order adoption. Housekeeping Prevailing Wage proposed rulemaking is there as well. Landscape Maintenance scope is listed under emergency rule. If you have comments on the rulemaking process, please make the comments under the official channel to become part of the rulemaking process. Please submit what you want to have considered as well. Gives slide 14 emergency rule timeline and the deadlines. This is a proposed timeline we intend to do. Housekeeping rules don't change much. Gender neutral language, polite language for persons with disabilities as well. Changes per case law for these. Not much has really changed. Again, submit any comments through official channels. Housekeeping rules July 9th hearing for in person testimony for proposed changes. Discusses survey methodology and residential construction rates and slides through 23.

# Jolene Skinner - L&I

• Presents Power Point of Prevailing Wage IT system updates. She discusses required training implemented on May 23rd. Next week all contractors will have access to training modules in their online portals. 42 nonexempt contractors have completed the training thus far, this number is as of yesterday and does seem somewhat low.

# Josh Swanson - IUOE

• Does this deters filing of forms?

# Jolene Skinner – L&I

These are not related, responsible bidder vs form filing. We expect far more contractors taking the training very soon. All together the modules take about 2 to 2.5 hours to complete online. Similar to the 3 hour in person training as well. Due to online login we can track who has taken the training and the contractors

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can see it on verify a contractor as well. The new changes for January 1st are not yet implemented online for tracking since not yet effective.

Tom George - NW Fair Contracting

• What criteria do they need to sign up to see this?

Laura Herman - L&I

• Explains the definition of contractors and they do not always have to have contractor registration.

Jolene Skinner - L&I

• Must at least have a UBI number.

Joey Bolden - Laborers Union

• Can we see what's been filed by cert payroll for all in reports?

Jolene Skinner - L&I

• Only those filed by online. Paper filing tracking is not yet implemented. Apprentice utilization will be published on project dashboards.

Miriam Moses - REBOUND

• Will we see this?

Jolene Skinner – L&I

• Only Awarding Agencies see this screen and not a full trade breakdown.

Miriam Moses - REBOUND

• Can we make public records request for this?

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## Jolene Skinner - L&I

• These reports are strictly in the Awarding Agency portal so we don't have easy access. Awarding Agencies only see their own project.

#### Miriam Moses - REBOUND

• It's difficult to get this information from Primes. Would it be a public records request to the Awarding Agencies then? Whatever process is needed to see the full breakdown of the report for utilization.

## Jolene Skinner - L&I

- Prevailing Wage does not have any responsibility for compliance so make requests. These should go through the Awarding Agencies directly as they should eventually have the ability to view these but not quite yet.
- Jolene discusses underwriting and account manager phone calls and classifications. Made it easier for contractors to file intents and affidavit forms as well. They will need to click on the contract type as well for the AA when they prestart the project for new projects from next Thursday going forward.

# Joey Bolden -Laborers Union

• Will that be affecting the paper form?

# Jolene Skinner and Reasa Pearson - L&I

• Yes we are working on this.

# Leeann Snyder - Pierce County

• If you click on the wrong type of the project what happens?

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## Jolene Skinner - L&I

• That is a bit of a big deal so they will need to let us know so we can assist in this. We are trying to work on the ability to allow AAs to update this as well.

## Mark Riker - WSBCTC

• What is available to see for entities?

## Jolene Skinner - L&I

• We will send out a survey to get more information about what contractors have liked or not liked about certified payroll to help us in preparation for January 1. Bulk upload in .XML format we have only had one contractor use that option. We are getting with that company to get feedback for what went well or not well with them to improve the process.

# Jim Christensen – L&I

- Next on the agenda Escalation Strategy. SSB 5035 does contain substantial deference to the department and we need to implement a strategy due to the SSB 5035 clarifications.
- Regarding investigations gathering information about contractor violation can L&I use data it already has to identify contractors that are breaking Prevailing Wage law? I feel yes, we can as we proceed forward. We also are hoping to clarify investigations the department has identified as repeat violators. Example would be misclassifications or purposeful changes to forms to show the correct wage after requested corrections and may not be paying the wage they are listing. How do you feel about this?

# Andy Kaplowitz - AGC

• I think this is a great step to help cover the willful violators. This is a positive step forward.

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## Mark Riker - WSBCTC

• Follow the data as well which is a good thing.

# Miriam Moses - REBOUND

• They don't always ask for restitution of payroll when identified the forms were wrong. Now that you changed your form what now?

# Jim Christensen L&I

• The focused investigation piece is not really part of the intent and affidavit process.

# Joey Bolden - Laborers Union

• Is this going to take another FTE?

## Jim Christensen – L&I

• Great question. SSB 5035 is funded which will give some additional resources and Prevailing Wage does the best we can with what we have. We appreciate your support in helping change legislature for us to help do more.

# Harly Farey - L&I

• Who will do these investigations for Contractor Registration?

# Jim Christensen – L&I

- This is not entirely decided just yet, but we are working on it.
- Next item on the agenda Determinations. Northshore is with Chris Bowe currently. Cedar Hills is with me to make a Determination modification. When we get a determination request we make sure what is needed specifically. Clarifications are something our Specialists do daily, but the

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	determination process can be months long. So we have to ask the requestor "Is that what you want or will a clarification suffice?" Working on developing a Railing policy currently and have many interested parties. Many Ironworkers are interested in this overarching policy. Handrail is mentioned in the Carpenters scope. Parking rails are in the General Laborer scope.
PWAC 2019 Meeting	Jim Christensen – L&I
Schedule	Our next meeting is on September 24 <sup>th</sup> in Tukwila.
Wrap Up/Adjourn	Miriam Moses – REBOUND
	Thanks to Sean Anderson for so much help on the email responses.
	Josh Swanson – IUOE
	Mentions the 5566 fee waiver in exchange for resources and urges us to push that.
	Jim Christensen – L&I  • Meeting adjourned

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