

**WAC 296-127-010 Definitions for chapter 296-127 WAC.** (1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department or his or her duly authorized deputy or representative.

(3) "Industrial statistician" means the industrial statistician of the ~~((department's employment standards, apprenticeship, and crime victims (ESAC) division))~~ department.

(4) "Assistant director" means the assistant director of the ~~((employment standards, apprenticeship, and crime victims (ESAC)))~~ fraud prevention and labor standards (FPLS) division or his or her duly authorized deputy or representative.

(5) "Contractor" means:

(a) The prime contractor, and each and every subcontractor, required to be registered under chapter 18.27 RCW and/or licensed under chapter 19.28 RCW, that performs any work on a public works project site, and/or is required to pay industrial insurance premiums as a construction company.

(b) Employers engaged in shipbuilding and ship repair, building service maintenance, and any fabricator or manufacturer that produces nonstandard items specifically for a public works project.

(c) Employers that contract with contractors or subcontractors for the purpose of the production and/or delivery of materials pursuant to the terms of WAC 296-127-018.

(6) The term municipality shall include every city, county, town, district, political subdivision, or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

(7)(a) The term "public work" shall include:

(i) All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed by contract, purchase order, or any other legal agreement and that is executed at the cost of the state of Washington or of any municipality. The source of the funding shall not determine the applicability of the statute, and may include, but is not limited to, such sources as those payments made through contracts with insurance companies on behalf of the insured state or municipality;

(ii) All work, construction, alteration, enlargement, improvement, repair, and/or demolition which, by law, constitutes a lien or charge on any property of the state or of a municipality;

(iii) All work, construction, alteration, repair, or improvement, other than ordinary maintenance that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities, pursuant to RCW 39.04.260;

(iv) Maintenance, except ordinary maintenance as defined by (b)(iii) of this subsection, when performed by contract. Maintenance

is defined as keeping existing facilities in good usable, operational condition;

(v) Janitorial and building service maintenance as defined by WAC 296-127-023, when performed by contract, on public buildings and/or assets; and

(vi) The fabrication and/or manufacture of nonstandard items produced by contract specifically for a public works project as defined by (a) (i) through (v) of this subsection.

(b) The term "public work" shall not include:

(i) Work, construction, alteration, enlargement, improvement, repair, demolition, and/or maintenance for which no wage or salary compensation is paid, consistent with the requirements of RCW 35.21.278;

(ii) ~~((The construction, alteration, repair, or improvement of any municipal street railway system;~~

~~(iii))~~ Ordinary maintenance ~~((which))~~ is defined as maintenance work ((not)) performed by ((contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semi-annually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary)) the regular employees of the state or any county, municipality, or political subdivision created by its laws.

(8) "Contract" means a contract, purchase order, or any other legal agreement in writing for public work to be performed for a fixed or determinable amount, which is duly awarded after advertisement and competitive bid. A contract that is awarded from a small works roster, or under the emergency provisions of state law, need not be advertised.

(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.)

AMENDATORY SECTION (Amending WSR 04-10-083, filed 5/4/04, effective 6/4/04)

**WAC 296-127-011 Time for determining prevailing wage.** (1) Prevailing wage rates for all public work contracts will be determined by the industrial statistician and published on the first business day of February and the first business day of August of each year. These rates shall become effective thirty days after the date of publication. However, the industrial statistician may revise an established prevailing wage rate in response to an administrative or judicial finding overturning the established rate, or at any time necessary to correct an error, with such revision becoming effective thirty days after the date of publication. However, in the event of an emergency as determined by the director of the department, such revised rate shall take effect upon publication.

(2) The department shall establish deadlines for the submission of:

(a) Completed wage surveys, for inclusion of submitted data in the survey computations;

(b) Newly ratified collective bargaining agreements for inclusion in the semiannual prevailing wage publication;

(c) Notice of collectively bargained wage and benefit adjustments, and/or relevant contractual changes, for inclusion in the semiannual prevailing wage publication; and

(d) Notice of changes in apprenticeship standards and incremental wage rates for inclusion in the semiannual prevailing wage publication.

(3) The applicable prevailing wage rates for a given public works contract will be determined as follows:

(a) For all public works contracts, except janitorial or building service maintenance contracts, the applicable prevailing wage rates shall be the rates that are in effect on the date when bids by prime contractors are due for submission to contract awarding agencies. These rates shall remain in effect for the duration of the contract.

(b) If contracts are not awarded within six months of the date bids are due, the applicable prevailing wage rates shall be those that are in effect on the date the contract is awarded. These rates shall remain in effect for the duration of the contract.

(c) For work orders issued under job order contracts pursuant to chapter (~~301, Laws of 2003~~) 39.10 RCW, the appropriate prevailing wage rates shall be the rates that are in effect on the date when the individual work order is issued.

(4) If a contract for public work is not awarded pursuant to bids, the applicable prevailing wage rates shall be those that are in effect on the date when the contract is executed. These rates shall remain in effect for the duration of the contract.

(5) A schedule of the applicable prevailing wage rates must be included by:

(a) Contract awarding agencies, in the bid specifications and contract documents for each contract.

(b) Contractors, in the bid and/or contract documents provided to subcontractors.

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

**WAC 296-127-019 Survey methodology.** (1) The industrial statistician shall establish prevailing wage rates by:

(a) Conducting wage and hour surveys for established trades and occupations;

(b) Adopting the wage and benefit adjustments established in collective bargaining agreements for those trades or occupations where the most recently established prevailing wage rates were derived from a collective bargaining agreement; and/or

(c) In instances when the procedures established in (a) and (b) of this subsection are not feasible, employing other methods deemed appropriate by the industrial statistician as set out in subsection (8) of this section.

(2) The department will determine the identity of employers to be surveyed for a specific trade or occupation by:

(a) Mailing trade and occupation questionnaires to all contractors whose registration under chapter 18.27 RCW or license under chapter 19.28 RCW is active;

(b) Mailing trade and occupation questionnaires to Washington state department of transportation prequalified contractors; and

(c) Compiling and maintaining lists of employers that are not required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, but that employ workers in building service maintenance, in shipbuilding or ship repair, in the fabrication and/or manufacture of nonstandard items produced specifically for a public works project, and/or in the production and delivery of materials as defined in WAC 296-127-018. Trades and occupations utilized by the shipbuilding and ship repair industries shall not have their survey data combined with their construction counterparts, for the purpose of establishing prevailing wage rates for that industry.

(3)(a) Wage survey forms will be mailed to:

(i) Those contractors and employers whose businesses currently are active and were active during the established survey period, and whose response to the trade and occupation questionnaire indicates that they employ one or more of the trades or occupations being surveyed; and

(ii) Labor unions representing workers in the trades or occupations being surveyed.

(b) The department annually shall mail to statewide trade associations and statewide labor organizations a proposed schedule of trades intended to be surveyed during the upcoming fiscal year. In addition, the department shall notify those statewide trade associations and labor organizations, reasonably known to be affected, of the mailing of wage surveys.

(4) Data reported on survey forms may be verified by the department, and will be used only when submitted on behalf of or by:

(a) Individual contractors identified by a contractor registration number that currently is valid, and was valid during the established survey period;

(b) Employers that are not required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, that directly employ and supervise workers as employees in building service maintenance, in shipbuilding or ship repair, in the manufacture of nonstandard items specifically produced for a public works project, or in the production and delivery of materials, as defined in WAC 296-127-018;

(c) Labor unions submitting wage and hour data on behalf of contractors and/or employers who are signatory to those unions' collective bargaining agreements covering the trade or occupation being surveyed; or

(d) Interested parties providing wage and hour data by trade and occupation from certified payroll records and/or from hours reported by trade and occupation on affidavits of wages paid, according to guidelines established by the department.

(5) The department shall use affidavit forms that include a requirement that contractors report the actual number of hours worked by each trade and occupation utilized on the public works project for which the affidavit is filed.

(6) Valid data reported on wage surveys shall be calculated, as follows:

(a) If the majority of hours reported for a trade or occupation in the largest city in a county is paid at the same wage rate, then that rate shall be established as the prevailing wage rate.

(b) If the same wage rate is not reported to have been paid for the majority of hours reported in the largest city in a county for a trade or occupation, then the average wage rate shall be established as the prevailing wage rate, based on a weighted average of the hours, wages, and benefits reported in the largest city.

(c) If a statistically significant number of hours fails to be reported for the largest city in a county, then the average wage rate for the county is established as the prevailing wage, based on a weighted average.

~~((d) If there fails to be reported for an entire county, sufficient hours to validate the survey data, that county's hours shall be combined with those reported for other counties that are adjacent, until the established hours threshold for validation has been met.))~~

(7) Survey data will not be accepted if the data report the hours and wages of those who are exempt from the prevailing wage requirements of chapter 39.12 RCW, as defined in WAC 296-127-026.

(8)(a) The industrial statistician may utilize alternative methods to establish prevailing wage rates consistent with the terms of (b) of this subsection. These methods include, but are not limited to:

(i) The use of wage and hour data from the department of employment security;

(ii) The use of wage and hour data from the industrial insurance division of the department of labor and industries;

(iii) The use of data from surveys performed by the United States Department of Labor, wage and hour division; or

(iv) The use of wage and hour data reported to the department on affidavits of wages paid.

(b) These alternative methods will not be used for trades or occupations for which surveys had been completed as of the effective date of this section unless a subsequent survey produces insufficient data. In addition, these alternative methods may be used under circumstances that include, but are not limited to, the following:

(i) To establish prevailing wage rates for a new trade or occupation where a survey is not immediately feasible;

(ii) In response to an administrative or judicial determination of invalid wage rate or scope of work description;

(iii) In response to changes or additions in licensing, safety, or other requirements of other state agencies, departments or divisions; or

(iv) To establish rates for industries and trades and occupations generally not surveyed, in order to meet the requirement of having established wage rates for publication in contract or bid specifications as required by RCW 39.12.030.

(9) Any party that submits false information under this section shall, after a determination to that effect has been issued by the director after a hearing pursuant to chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars.

AMENDATORY SECTION (Amending WSR 88-22-046, filed 10/31/88)

**WAC 296-127-026 Exemptions for sole owners and their spouses, partnerships, corporations, and employees of public agencies.** The prevailing wage requirements of chapter 39.12 RCW do not apply to:

(1) Sole owners and their spouses.

- (2) Any partner who owns at least thirty percent of a partnership.
- (3) The president, vice president and treasurer of a corporation if each one owns at least thirty percent of the corporation.
- (4) Workers regularly employed (~~on monthly or per diem salary~~) by the state or any county, municipality, or political subdivision created by its laws.

AMENDATORY SECTION (Amending WSR 82-18-041, filed 8/27/82)

**WAC 296-127-060 Director of department of labor and industries to arbitrate disputes—General provisions.** (1) The contract executed between a public authority and the successful bidder or contractor and all of his or her subcontractors shall contain a provision that in case any dispute arises as to what are the prevailing rates of wages for a specific trade, craft or occupation and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director, and his or her decision shall be final, conclusive, and binding on all parties involved in the dispute.

(2) In exercising his or her authority to hear and decide disputes the director shall consider among other things, timeliness, the nature of the relief sought, matters of undue hardship or injustice, or public interest. A "timely" request for arbitration is one received within thirty days after the contract has been awarded.

(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 or she 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.

AMENDATORY SECTION (Amending WSR 82-18-041, filed 8/27/82)

**WAC 296-127-061 Requests for arbitration.** (1) The petition for arbitration (original and ~~((four))~~ two copies) shall be filed with: Director, Department of Labor and Industries, (~~(General Administration Building, Olympia, Washington 98504)~~) 7273 Linderson Way Southwest, Tumwater, Washington, or by mail to: Post Office Box 44001, Olympia, WA 98504-4001. In addition, copies of the petition shall be served personally or by mail upon each of the following:

(a) The public agency or agencies involved~~((τ))~~; i  
(b) The industrial statistician~~((τ))~~; i and  
(c) Any other person (or the authorized representatives of such person) known to be interested in the subject matter of the petition.

(2) The director shall under no circumstances request any administering agency to postpone any contract performance because of the filing of a petition. This is a matter which must be resolved directly with the administering agency by the petitioner or other party in interest.

(3) A petition for arbitration of a wage determination shall:

(a) Be in writing and signed by the petitioner or his or her counsel (or other authorized representative)~~((τ))~~; i and

(b) Identify clearly the wage determination, location of project or projects in question, and the agency concerned~~((τ))~~; i and

(c) State that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request~~((τ))~~; i and

(d) Contain a short and plain statement of the grounds for review~~((τ))~~; i and

(e) Be accompanied by supporting data, views, or arguments~~((τ))~~; i and

(f) Be accompanied by a filing fee of ~~((\\$75.00))~~ seventy-five dollars. Fees shall be made payable to the department of labor and industries.

AMENDATORY SECTION (Amending WSR 82-18-041, filed 8/27/82)

**WAC 296-127-062 Conduct of arbitration hearing.** (1) Interested persons other than the petitioner shall have a reasonable opportunity as specified by the director in particular cases to submit to the director written data, views, or arguments relating to the petition. Such material (original and four copies) shall be filed with the: Director, Department of Labor and Industries, (~~(General Administration Building, Olympia, Washington 98504)~~) 7273 Linderson Way Southwest, Tumwater, Washington, or by mail to: Post Office Box 44001, Olympia, WA 98504-4001 and be accompanied by a filing fee of ~~((\\$35.00))~~ thirty-five dollars. Fees shall be made payable to the department of labor and industries. Copies of any such material shall be served on the petitioner and other interested persons.

(2) Each party in interest shall have the right to appear in person or by or with counsel or other qualified representatives in any proceeding before the director. If all parties agree, oral testimony may be waived and arguments submitted in writing.

(3) Upon his or her own initiative or upon motion of any interested person or party, the director may consolidate in any proceeding or concurrently consider two or more appeals which involve substantially the same persons or parties, or issues which are the same or closely related, if he or she finds that such consolidation or concurrent review will contribute to an efficient review and to the ends of justice, and it will not unduly delay consideration of any such appeals.

(4) The director shall prescribe the time and place for hearing. The director shall schedule the hearing within forty-five days of the request. For good cause shown, the director may allow a continuance at the request of a party in interest.

(a) With respect to any proceeding before ~~((him))~~ the director, the director may upon his or her own initiative or upon the request of any interested person or party direct the interested persons or parties to appear before the director at a specified time and place in order to simplify the issues presented or to take up any other matters which may tend to expedite or otherwise facilitate the disposition of the proceeding.

(b) All papers submitted to the director under this section shall be filed with the: Department of Labor and Industries, ~~((General Administration Building, Olympia, Washington 98504))~~ 7273 Linderson Way Southwest, Tumwater, Washington, or by mail to: Post Office Box 44001, Olympia, WA 98504-4001. An original and ~~((four))~~ two copies of all papers shall be submitted. Service under this part shall be by the filing party or interested person; service may be personal or may be by mail. Service by mail is complete on mailing.

(5) The final disposition shall be by the director.

(a) The director may decline review of any case whenever in his judgment a review would be inappropriate or because of the lack of timeliness, the nature of the relief sought, or other reasons.

(b) The director shall decide the case upon the basis of all relevant matter contained in the entire record before him or her but the director may utilize his or her experience, technical competence, and specialized knowledge in evaluating the evidence.

(c) Upon reasonable notice to the parties or interested persons, the director may vary the procedures specified in this part in particular cases.

(6) The director may allow all parties a period of ten days for filing post-hearing briefs prior to closing the record and concluding the hearing.

(7) The director shall issue a written decision within ~~((30))~~ thirty days of the conclusion of the hearing. A copy shall be sent to each party in interest.

AMENDATORY SECTION (Amending WSR 86-03-063, filed 1/17/86)

**WAC 296-127-170 Hearing on notice of violation.** (1) The director may hear the appeal personally or may delegate the authority to hold the hearing and draft a proposed decision to an administrative law judge pursuant to chapter 34.12 RCW. The plaintiff in the hearing shall be the department, and the defendants shall be the violator and its interested sureties. The department shall have the burden of proving, by a preponderance of the evidence, that the violations occurred and that any wages were unpaid as stated in the notice.

(2) Any interested party may upon motion, be allowed to intervene as a plaintiff in the hearing. "Standing" shall be construed broadly to effectuate the remedial purposes of the prevailing wage law. An interested party, whether or not admitted as a plaintiff, may submit written arguments and affidavits. The parties shall be given an opportunity to respond to or rebut any arguments and affidavits before the person presiding over the hearing makes his or her decision.

(3) The hearing shall be conducted in accordance with (~~the Uniform procedure rules, chapter 1-08 WAC~~) chapter 34.05 RCW.

(4) If the director presides over the hearing, the director shall issue a final decision that includes findings of fact and conclusions of law, and if appropriate an order to pay unpaid prevailing wages, a penalty, or both.

(5) If an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate an order to pay unpaid prevailing wages, a penalty, or both. The proposed decision shall be served by certified mail or personally on the violator, the interested sureties, the department, and any interested parties who have intervened as plaintiffs. Any of these parties, if aggrieved by the proposed decision, may appeal to the director within thirty days after the date of issuance of the proposed decision. If none of the parties appeals within thirty days, the proposed decision may not be appealed either to the director or the courts.

(6) An appellant must file with the director an original and (~~four~~) two copies of its notice of appeal. The notice of appeal must specify which findings and conclusions are erroneous. The appellant must attach to the notice the written arguments supporting its appeal.

The appellant must serve a copy of the notice of appeal and the arguments on the other parties. The respondent parties must file with the director their written arguments within thirty days after the date the notice of appeal and the arguments were served upon them.

(7) The director shall review the proposed decision in accordance with the Administrative Procedure Act, chapter (~~34.04~~) 34.05 RCW. The director may: Allow the parties to present oral arguments as well as the written arguments; require the parties to specify the portions of the record on which the parties rely; require the parties to submit additional information by affidavit or certificate; remand the matter to the administrative law judge for further proceedings; and require a departmental employee to prepare a summary of the record for the director to review. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision.

(8) The director shall serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW (~~34.04.130~~) unless the final decision affirms an unappealed proposed decision. If no party appeals within the period set by chapter 34.05 RCW (~~34.04.130~~), the director's decision is conclusive and binding on all parties.

AMENDATORY SECTION (Amending WSR 86-03-063, filed 1/17/86)

**WAC 296-127-190 Filing of lien against retainage or bonds.** (1) Upon receipt of a timely complaint that a contractor has violated RCW 39.12.065, and that the contractor owes unpaid prevailing wages, the

department may file a lien against the retainage or bond obtained by the contractor under RCW (~~(60.28.010)~~) 60.28.011.

(2) Upon issuance by the director of a final decision that finds that a contractor has violated RCW 39.12.065 or 39.12.050, and that sets a civil penalty for the violation, the department shall file liens for the penalty amount against the retainage and bonds the contractor obtained under RCW 39.12.065 (2)(c), 39.08.010, and (~~(60.28.010)~~) 60.28.011.

AMENDATORY SECTION (Amending WSR 86-03-063, filed 1/17/86)

**WAC 296-127-200 Surety bond payable to director.** (1) RCW 39.12.065 (2)(c) authorizes the director to require a contractor to obtain a surety bond "running to the director in the amount of the violation found." The intent and wording indicates that the director may require such a bond only after issuing a final decision finding that the contractor has violated RCW 39.12.065.

(2) The director may demand that a violating contractor post the bond when:

(a) The director has issued a final decision that finds that the contractor owes unpaid prevailing wages or a penalty, whether or not the decision has been appealed to the courts; and

(b) The retainage or bonds provided under RCW (~~(60.28.010)~~) 60.28.011, 18.27.040, and (~~(19.28.120)~~) 19.28.041 are or may be insufficient to pay the amount of prevailing wages or the penalty owed.

(3) A contractor may at any time voluntarily obtain a bond running to the director to guarantee the payment of the prevailing wages and any penalty. The contractor may allow the director to satisfy any claim for unpaid wages or the penalty from this bond instead of from the retainage or bonds obtained under RCW (~~(60.28.010)~~) 60.28.011, 18.27.040, (~~(19.28.120)~~) 19.28.041, and 39.08.010.

AMENDATORY SECTION (Amending WSR 86-03-063, filed 1/17/86)

**WAC 296-127-300 Filing and service.** All papers required to be filed with the director under this chapter or chapter 39.12 RCW shall be addressed to: Director, Department of Labor and Industries, (~~General Administration Building, Olympia, WA. 98504~~) 7273 Linderson Way Southwest, Tumwater, Washington, or by mail to: Post Office Box 44001, Olympia, WA 98504-4001.

Filing and service shall be (~~made as allowed by WAC 1-08-090 through 1-08-140~~) in accordance with chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 86-03-063, filed 1/17/86)

**WAC 296-127-310 List of violators.** The department shall maintain a list of all contractors who are forbidden to bid on a public works project, or to have a bid accepted, pursuant to RCW

39.12.065(3), 39.12.055, or 39.12.050. To the extent required by RCW 39.12.065(3), 39.12.055, and 39.12.050, the industrial statistician shall refuse to certify any statement of intent to pay the prevailing wage or affidavit of wages paid that he or she determines was submitted by a contractor on the list. Because the department receives a large number of requests for certification, the department shall not be liable to any person or entity for certifying a statement or an affidavit of a contractor on the list.

The industrial statistician shall make the list available (~~upon request~~) electronically.

AMENDATORY SECTION (Amending WSR 90-19-061, filed 9/17/90, effective 10/18/90)

**WAC 296-127-400 Applicability.** WAC 296-127-400 through 296-127-470 are issued pursuant to RCW 39.12.022, authorizing the director of the department of labor and industries, to the extent necessary in order to prevent curtailment of opportunities for employment, to issue special subprevailing wage certificates for employment of individuals whose earning capacity is impaired by physical or mental (~~deficiency~~) disability or injury at wages lower than the prevailing rate applicable under RCW 39.12.020. Subprevailing wage certificates shall be subject to the conditions prescribed in these regulations.

AMENDATORY SECTION (Amending WSR 90-19-061, filed 9/17/90, effective 10/18/90)

**WAC 296-127-410 Definitions.** For the purposes of WAC 296-127-400 through 296-127-470:

(1) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary of social and health services to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual.

(2) "~~(Handicapped)~~ Worker with a disability" means an individual whose earning capacity for the work to be performed is impaired by physical or mental (~~deficiency~~) disability or injury.

(3) "Prevailing rate" means the prevailing rate of wage as defined in RCW 39.12.010 and as determined by the industrial statistician.

AMENDATORY SECTION (Amending WSR 90-19-061, filed 9/17/90, effective 10/18/90)

**WAC 296-127-420 Application for a subprevailing wage certificate.** (1) Nonprofit vocational rehabilitation programs may apply for a subprevailing wage certificate authorizing the employment of one or more ((handicapped)) workers with a developmental disability at less than the prevailing rate. An application for each worker shall be filed with the office of the industrial statistician not less than annually upon forms approved by the director or an authorized representative of the director.

(2) The application shall be signed jointly by the employer, the ((handicapped)) worker with a disability for whom such application is being made, and by the parent or guardian of the ((handicapped)) worker with a disability except as otherwise authorized by the director or an authorized representative of the director.

AMENDATORY SECTION (Amending WSR 90-19-061, filed 9/17/90, effective 10/18/90)

**WAC 296-127-430 Conditions for granting a subprevailing wage certificate.** (1) A subprevailing wage certificate may be issued to a nonprofit vocational rehabilitation program if the application is in proper form and sets forth facts showing:

(a) A wage below prevailing rate is necessary to prevent curtailment of the ((handicapped)) worker's with a disability opportunities for employment;

(b) The ((handicap)) disability impairs the earning capacity of the worker for the work to be performed;

(c) The percentage of full productivity at which the ((handicapped)) worker with a disability functions; and

(d) A description of the duties to be performed by each ((handicapped)) worker with a disability;

(e) The nature of the disability; and

(f) An addendum containing a detailed explanation of the nature of the disability.

(2) The industrial statistician shall not require a nonprofit vocational rehabilitation program to provide the information required in subsection (1)(f) of this section if it provides a notarized copy of a federal certificate granted by the United States department of labor under section 14(c) of the Federal Fair Labor Standards Act and any documentation deemed necessary by the industrial statistician identifying the workers with a developmental disability, a description of the duties to be performed, and the percentage of productivity at which each worker functions.

(3) The director or an authorized representative of the director may require the submission of additional information to that required by subsection (1) or (2) of this section shown on the application and may require the ((handicapped)) worker with a disability to take a medical examination where it is deemed necessary in order to determine whether or not the issuance of a certificate is justified.

AMENDATORY SECTION (Amending WSR 90-19-061, filed 9/17/90, effective 10/18/90)

**WAC 296-127-440 Issuance of a subprevailing wage certificate.**

If the application and other available information indicate that the requirements of this regulation are satisfied, the director or an authorized representative of the director may issue a subprevailing wage certificate. If issued, copies of the subprevailing wage certificate shall be mailed to the employer, the ~~((handicapped))~~ worker with a disability, and to the parent or guardian of the ~~((handicapped))~~ worker with a disability. If denied, the employer, the ~~((handicapped))~~ worker with a disability, and the parent or guardian of the ~~((handicapped))~~ worker with a disability shall be given written notice of the denial.

AMENDATORY SECTION (Amending WSR 90-19-061, filed 9/17/90, effective 10/18/90)

**WAC 296-127-450 Terms of subprevailing wage certificate.** (1) A

subprevailing wage certificate shall specify, among other things, the name~~((s))~~ of the ~~((handicapped))~~ worker~~((s))~~ with a disability, the name of the employer, the duties to be performed by the ~~((handicapped))~~ worker with a disability, the percentage of the prevailing rate authorized to be paid, and the period of time during which that percentage of the prevailing rate may be paid. A certificate shall also indicate that the percentage of the prevailing rate to be paid a ~~((handicapped))~~ worker with a disability shall change to reflect an increase or decrease in the worker's productivity when the worker's productivity is determined to change.

(2) A subprevailing wage certificate shall be effective for a period of one year or less as designated by the director or an authorized representative of the director. A ~~((handicapped))~~ worker with a disability employed under such certificate may be paid at the specified percentage of the prevailing rate only during the effective period of the certificate.

(3) Notwithstanding the requirements of chapter 49.46 RCW and its administrative regulations, the percentage of the prevailing rate authorized to be paid shall be fixed at a figure designed to reflect adequately the percentage of productivity at which the ~~((handicapped))~~ worker with a disability functions.

(4) Any money received by a ~~((handicapped))~~ worker with a disability by reason of any state or federal pension or compensation program for ~~((handicapped))~~ persons with a disability shall not be considered as offsetting any part of the wage or remuneration due the ~~((handicapped))~~ worker with a disability by the employer.

(5) A ~~((handicapped))~~ worker with a disability shall be paid not less than one and one-half times the rate specified in the subprevailing wage certificate for hours worked in excess of forty hours per workweek or eight hours per day.

(6) The terms of any subprevailing wage certificate, including the percentage of the prevailing rate authorized to be paid, may be amended by the director or an authorized representative of the direc-

tor upon written notice to the parties concerned, if the facts justify such amendment.

AMENDATORY SECTION (Amending WSR 90-19-061, filed 9/17/90, effective 10/18/90)

**WAC 296-127-460 Renewal of subprevailing wage certificate.** Application for renewal of any subprevailing wage certificate shall be filed in the same manner as an original application. An application for renewal shall include the most recent evaluation conducted within the past year of the productivity level at which the ((handicapped)) worker with a disability functions. If such application has been filed prior to the expiration date of the certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.