



PREVAILING WAGE POLICY MEMORANDUM

DATE: November 22, 2011
TO: All Interested Parties
FROM: L. Ann Selover, 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 This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.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, filling it out as if it were being completed by the contractor on whose behalf you are acting, with the following exceptions:

- a. Insert your own company information in the "Company Name" section located at the top 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.

Please be sure to list the "Craft/Trade/Occupation," "Rate of Hourly Pay" and "Rate of Hourly Fringe Benefits" (if provided). Supply as much information as you have available from payroll records and/or daily log sheets, etc. Use Addendum A if there is not enough room to list all the information in this section. If an Owner/Operator(s) performed all of the work, be sure to list the names of those individuals in this section. If the form does not include this information, it will not be approved.

- c. Because the standard form requires you to certify that all workers were paid no less than the prevailing wage rate, and you may have no basis for providing this certification, at the Signature Block, add a note: **"See attached Assumption of Liability Statement in lieu of this certification"** and attach the referenced statement. See item "e" below and the attached "Assumption of Liability Statement."
4. **You must submit the Assumption of Liability statement on your company letterhead using the exact language prescribed by the department. The statement provides that the company filing on behalf of a contractor/subcontractor assumes full liability for any worker wage claims (see page 4).**
5. 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

L&I may issue a Notice of Violation (NOV) against the contractor on whose behalf you are requesting to file, and assess a penalty against the contractor in the amount of \$500.00 for its failure to file. A violator with unpaid penalties due after a final order will not be permitted to bid public works or have any public works bid considered. 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 may 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.

Company Letter Head

ASSUMPTION OF LIABILITY STATEMENT

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 of Wages Paid on behalf of _____ (contractor/subcontractor). I, _____ (company name), accept full liability for any unpaid wages owed by _____ (contractor/subcontractor on whose behalf you are filing) _____ to workers on this project for three years from the date of performance of the work.

Signed this _____ (date) day of _____ (month), _____ (year), at _____ (county), Washington.

_____(Company Name)_____

By _____
(SIGNATURE OF AUTHORIZED REPRESENTATIVE)