Prevailing Wage Determinations

2016 Annual Report

December 2016
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Introduction

The Department of Labor & Industries (L&I) is pleased to provide this report as requested by members of the prevailing wage community. It summarizes the department’s review of and response to requests for prevailing wage determinations or modifications during fiscal year (FY) 2016.

L&I protects the safety, health, and welfare of Washington’s workers and citizens. The department administers the prevailing wage law to prevent substandard earnings and preserve local wage standards for workers on public works projects. By enforcing and helping employers comply with requirements of the law, L&I’s Prevailing Wage Program ensures employees of government contractors are paid prevailing wages for all public work.

Washington’s prevailing wage law (Chapter 39.12 RCW) was passed by the legislature in 1945. The law is partly modeled after the federal Davis-Bacon Act, passed by Congress in 1931 to preserve the local wages of workers hired for federal public works projects. Washington’s prevailing wage law is more expansive than federal law. It protects workers’ wages and benefits by setting a minimum hourly rate of wages, benefits, and overtime that contractors must pay workers on public projects. This ensures workers receive a standard rate of wages and benefits established for the same work in their locality. It also ensures all contractors competing for public works projects pay their workers the established local wage rate.

By compiling the information in this report, L&I hopes to provide interested parties one place to review determinations made during the course of the year.
2016 Actions

FISCAL YEAR 2016 DETERMINATIONS AND MODIFICATIONS

L&I determines prevailing wage rates for each trade and occupation involved in public works in each of Washington’s 39 counties. Prevailing wage rates are determined by administering an annual wage survey among contractors and labor unions representing workers in the trades or occupations being surveyed.

A prevailing wage determination is a formal decision by L&I’s industrial statistician. A determination decides the classification, called a “scope of work,” that applies to particular job tasks, and the wage that workers in the classification earn. Any interested party can request a determination. Should the industrial statistician decide to make a formal determination, determinations are appealable agency orders. After an initial determination is issued, a party may seek a modification. A party may also make a request for reconsideration of a determination or modification.

L&I’s industrial relations agents\(^1\) respond to informal requests from employers and workers for guidance on how to comply with the prevailing wage law. Some requests are handled over the phone, some with a quick email, and others with a letter.

In Fiscal Year (FY) 2016, L&I’s Prevailing Wage Program received six formal requests for determinations or modifications regarding prevailing wages, and provided responses to four of them; two requests were withdrawn by the requester. One request from a prior fiscal year was also answered. In total, five formal determinations, modifications, and requests for reconsideration were issued in FY 2016. Six requests from previous years remain unresolved at this time.

This report summarizes L&I’s formal determinations, modifications, and requests for reconsideration. Visit L&I’s website at http://www.lni.wa.gov/TradesLicensing/PrevWage/Policies/default.asp for more detailed information about published prevailing wage determinations and policies.

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\(^1\) Industrial Relations Agents enforce the Industrial Welfare, Public Work, Farm Labor and Minimum Wage Acts, as well as Agricultural Labor standards and Child Labor laws. An agent conducts investigations to determine an employer’s compliance with state labor laws; reviews company employment policies, fringe benefit programs (for prevailing wage compliance), work classifications of employees, and contracts; audits payroll records; mediates disputes and negotiates settlement of unpaid wages, agreed wage, improper or non-payment of overtime, and other employment issues; oversees restitution of wages; issues subpoenas, citations, and civil infraction notices; files liens; prepares case files for litigation; testifies at administrative hearings, trials, and arbitration; and makes formal presentations to business, employee, or school groups regarding state labor laws and regulations.
Application of Prevailing Wage Requirements to a Tenant Improvement Project, Coordinated by Private Lessee of a Public Lessor

Issued December 28, 2015

A union representative sought a determination of whether prevailing wage requirements apply when:

- a private entity leases property from a public agency,
- the private entity improves the property, and
- the public agency reimburses the private entity with public money to pay the cost of the improvements.

The public agency in this matter was a port district. Because the public agency was the source of the public money to make the improvements, the improvements were done at state cost.

The Industrial Statistician determined that when a private entity uses state or municipal funds to execute a construction project, prevailing wage requirements do apply.


Prevailing Wage Classification for Laying Geothermal Piping

Issued December 30, 2015

An interested party sought modification of an earlier determination, issued May 28, 2013, for the appropriate scope of work applying to work on closed loop geothermal heating and cooling systems – specifically, the installation of piping systems for a geothermal pump system.

The earlier determination found the work could be classified under two scopes of work, and that both applied because each scope has language referring to piping systems:

- Plumbers, Pipefitters, and Steamfitters, WAC 296-127-01364; or

The Industrial Statistician modified the May 28, 2013 determination. Two piping structures are used in installation of pipe for a geothermal closed loop heating and cooling system. The two piping structures create a system. The Refrigeration Mechanic scope of work clearly and specifically refers to installation of piping systems, while the Plumbers, Pipefitters, and Steamfitters scope of work does not. Refrigeration Mechanics install piping systems. Thus, the work is properly compensated at the rate for Refrigeration Mechanic.

Prevailing Wage Classification for Flushing and Filling a Hydronic Heating System

Issued January 29, 2016

A contractor inquired about a scope of work that applied to flushing a hydronic piping system and charging it with water and glycol. This work was necessitated by the replacement of seven boilers in four buildings and some pipe replacement, forming a hydronic heating system.

The boiler and the hydronic system was a piping system, and would not function properly without the correct amount of fluid and glycol. Plumbers, pipefitters, and steamfitters install piping and boiler systems. Therefore, the Industrial Statistician determined the applicable scope of work for the project was Plumbers, Pipefitters, and Steamfitters, WAC 296-127-01364.


Prevailing Wage Classification for Stay-in-Place Metal Forms

Issued March 8, 2016

A union representative requested reconsideration of a determination issued July 26, 2012 regarding the appropriate scope of work for stay-in-place metal forms used on a bridge rehabilitation project. The union representative asserted the work could be classified under the scope of work for Carpenters, WAC 296-127-01310.

The earlier determination found the work to be properly classified under the scope of work for Ironworker, WAC 296-127-01339, because the work was structural in nature. The work required the forms to be fastened to the edge of the bridge.

The Industrial Statistician reviewed new evidence, including demonstrations of work and statements from Washington State Department of Transportation officials and professional engineers experienced with stay-in-place metal forms. The statistician held discussions with representatives of the affected unions and visited the worksite before holding a meeting of interested parties to further review and discuss the issues on December 14, 2015.

Upon review, L&I declined the request for reconsideration and affirmed that the work is properly classified under the occupation of Ironworker. The factors noted in the decision to affirm the earlier determination included the fact that the work was on a structural steel bridge, the element was a metal form, the forms were intended to be a permanent component of the bridge construction, and the work is specifically mentioned in the Ironworker scope of work (WAC 296-127-01339).

Request for Redetermination of Prevailing Wage Rate for Offsite Bulldozing Work

Issued April 22, 2016

An excavating company hired by a general contractor to work on a Department of Transportation project sought review of a prior determination. The Industrial Statistician’s prior determination was that prevailing wage requirements applied to offsite bulldozing work when excavated materials were hauled away from the project worksite and disposed at a different location; that the work was paid at the prevailing rate; and that the applicable scope of work was Operating Engineers. A request for modification of the determination was denied and the excavating company filed a request for reconsideration. Upon review, the Assistant Director affirmed the Industrial Statistician’s decision. The bulldozing work was found to be expected as part of the contract between the general contractor and the Department of Transportation, and was directly related to work on the public project.

The excavating company has filed an appeal to the Assistant Director’s decision and the matter is currently awaiting a hearing date before the Office of Administrative Hearings and a decision by the L&I Director.