



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
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April 17, 2012

Mr. Bob Abbott
Assistant Business Manager
Washington and Northern Idaho District Council
Laborers' International Union of North America
P.O. Box 12917
Mill Creek, WA 98082-0917

Re: Applicable Scope of Work for Scaffold Erector Apprentices; Penalties If Scaffold Erector Apprentices are Incorrectly Listed as Carpenter Apprentices on Affidavits of Wages Paid

Dear Mr. Abbott:

Thank you for your recent inquiry asking about the appropriate scope of work applicable to apprentices performing work on a public works project in conjunction with the Scaffold Erector Apprenticeship Program. You also asked what the penalty is if a Training Agent (employer) employs a Scaffold Erector Apprentice on a public works project but fails to report the worker as a Scaffold Erector Apprentice on the Affidavit of Wages Paid form, and lists the apprentice as a Carpenter Apprentice.

As you point out, these are concerns because although the Scaffold Erector Apprenticeship Program is a "stand alone" 8,000 hour program with its own apprenticeship work processes, there is no prevailing wage "scaffold erector" scope of work that directly corresponds to the program. The Department has no plan to adopt a scaffold erector scope of work and no plan to establish a wage rate for this work, since the work is already included in a number of other prevailing wage scopes of work.

1. Which scope of work applies when Scaffold Erector Apprentices work on projects subject to prevailing wage requirements?

The tasks involved in erecting scaffolding are found in multiple scope of work descriptions. For example:

Painters – WAC 296-127-01356

This scope of work includes “[e]recting of scaffolding...to perform the work above ground level.” This has been applied to authorize payment at the Painters rate of wage when scaffolding is erected for painters as part of a painting project.

Carpenters – WAC 296-127-01310

Under this scope of work, Carpenters “construct, erect, install...structures, structural members...made of...metals, using carpenter hand tools and power tools” and “build...scaffolds.” This has been applied to authorize payment at the Carpenters rate of wage when scaffolding is erected for work to be performed by Carpenters and other trades except where another scope of work dictates otherwise, i.e., if scaffolding is erected in conjunction with work encompassed under the Ironworkers scope of work (WAC 296-127-01339), the Ironworkers rate of wage would apply.

Ironworkers – WAC 296-127-01339

Ironworkers “perform all work in connection with field fabrication and/or erection, installation, removal...and dismantling of structural, architectural and reinforcing iron and steel...” and “connecting, fitting, hooking on, bolting up...” This has been applied to authorize payment at the Ironworkers rate of wage when scaffolding is erected for work to be performed by Ironworkers.

Laborers – WAC 296-127-01344

This scope of work provides that Laborers “erect scaffolding, shoring and braces.” This provision has been applied to permit payment for the erection of scaffolding at the Laborers prevailing wage rate when the erection of the scaffolding is for one or more trades and the nature of the work does not require the use of tools that would typically be used by Carpenters and others in the performance of their work.

Other scopes of work that reference scaffold building when performed in conjunction with the trade addressed by the scope include Drywall Finishers, [WAC 296-127-01318](#); and Hod Carriers, Mason Tenders, and Mortarmen, [WAC 296-127-01332](#).

Prevailing wage scope of work determinations are very fact specific. Determining which of the referenced scopes of work would apply to a given situation involves a close examination of the specific circumstances and tasks performed. Public work that is performed specific to one of the listed scopes, i.e., constructing scaffolding in connection with field installation of structural iron, would need to be compensated at the prevailing wage rate that pertains to such tasks, i.e., Ironworkers.

Since there is no scope of work for scaffolding erector, and that work is already included in various other scopes of work, a worker who is enrolled in the Scaffolding Apprenticeship Program must be paid the journey level prevailing wage rate for any one of the referenced worker classifications, depending on the nature of the specific work performed. For example, if the worker is constructing scaffolding to be used only by Painters, the worker must be paid at the

Painters journey level wage rate. If, however, the worker is constructing scaffolding in connection with drywall finishing, the worker must be paid at the Drywall Finishers journey level wage rate. See [Prevailing Wage Determination 08182011, August 18, 2011](#).

Ideally, for apprentices and employers, it would seem that apprenticeship programs would align directly with prevailing wage scopes of work. As you know, apprenticeship programs are authorized by the Washington State Apprenticeship and Training Council (WSATC), and the programs contemplate private as well as public work. The WSATC has standards that guide the council in its review and approval of apprenticeship programs. There is no requirement in those standards that the WSATC approve apprenticeship programs based only on prevailing wage worker classifications that apply to public work.

When apprenticeship programs are not aligned with prevailing wage scopes of work, employers may not fully understand that journey level, not apprentice level wage rates are required when the apprentice performs public work. The effect of this is that the employer may under pay the apprentice in violation of prevailing wage law. The penalties to the employer under prevailing wage law, chapter 39.12 RCW, for not paying a worker the correct prevailing wage rate of pay may include a requirement to pay correct wages, penalties, and a strike toward debarment. If the employer receives a second strike for wage payment violations within a five year period, the employer may be prohibited from bidding on public work contracts for two years. See RCW 39.12.065.

Any prevailing wage penalties for failure to pay a worker the correct prevailing wage rate for the work performed will depend on the facts of the particular situation.

2. What is the penalty if a Training Agent (employer) who employs a Scaffold Erector Apprentice on a public works project incorrectly lists the worker as a Carpenter Apprentice on the Affidavit of Wages Paid form?

If we find an employer falsely designated a Scaffold Erector Apprentice as a Carpenter Apprentice on an Affidavit of Wages Paid form, we may find that this constitutes a “false statement” and a violation of the provisions of RCW 39.12.050. A civil penalty and a strike toward debarment may be imposed for this violation. If the employer receives a second strike for false filing within a five year period, the employer may be prohibited from bidding on public work contracts for one year. See RCW 39.12.050. Whether we would proceed to find a violation and impose prevailing wage penalties for this situation would depend on the facts of the particular situation.

I am not aware of whether there are penalties the Apprenticeship Program may assess when an employer lists a Scaffold Erector Apprentice as a Carpenter Apprentice on prevailing wage Affidavit of Wages paid forms. That issue should be addressed to Apprenticeship Program Manager, Melinda Nichols, at 360-902-5320, or Melinda.Nichols@Lni.wa.gov.

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Recognizing that the adoption of a "stand alone" apprenticeship program that does not correlate with a prevailing wage scope of work is an area of concern to both the prevailing wage program and the apprenticeship program, the two programs are considering what steps they may take in an effort to better serve workers and employers alike. In doing so, however, we are mindful and respectful of the fact that the WSATC is an independent body, and will proceed with its efforts as it deems appropriate.

I hope this information is helpful to you. If you have further questions, please let me know.

Sincerely,



L. Ann Selover
Industrial Statistician
Program Manager

cc: Melinda Nichols, Program Manager
for Apprenticeship
José Rodriguez, Assistant Director
for Specialty Compliance Services