



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
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September 14, 2016

Logan T. Bohman
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601 West Main Avenue, Suite 714
Spokane, WA 99201-0677

Re: Request for Determination: Subcontractor Filing Multiple Prevailing Wage Intents and Affidavits When Performing Work Under Multiple Entities in a Single Public-Works Project

Dear Mr. Bohman:

Thank you for your letter dated January 16, 2016. You asked: When a company is a subcontractor contracted by multiple subcontractors, or by a contractor and a subcontractor on a single public-works project, does that company have to file, with L&I, an intent form and a related affidavit for each subcontractor?

The answer to your question is yes: a statement of intent to pay prevailing wages must be filed for each subcontractor on a public works project. As the agency responsible for administering and enforcing the Public Works Act, we interpret the statute to require public works contractors, and the subcontractors they hire, to file a separate intent to pay prevailing wages for each contract, and each subcontract, entered to perform work at a cost to the state.

The filing of separate Intent and Affidavit forms for each contractual relationship results in more and better information than would exist if only one Intent and one Affidavit form per project, per employer were filed. In instances in which an employer has filed an Intent for a project and subsequently enters into additional contractual relationships, the absence of those additional Intent forms would understate the scope of that employer's role(s) on the project. Further, those additional subsequent contractual relationships might involve the work of trades and occupations not listed on the first Intent form.

This absence of information would affect various groups, most notably the workers. Persons working within subsequent contractual relationships who were not reported on the initially-filed Intent form would be undocumented. Monitoring the employer's compliance with wage law would be more challenging since there may be no public document showing the work is being performed. If the trades and occupations for that work are different from those reported on the initial Intent form, then there would be wages required to be paid that are not documented. RCW 39.12.020 requires that Intent forms be posted at job sites, presumably so that workers can know the wages to which they are entitled. If no Intent form existed showing those wages, the intent of this law would remain unsatisfied.

The Prevailing Wage Act (chapter 39.12 RCW) is remedial legislation to be interpreted broadly to affect its purpose, and that the worker is the beneficiary of this law. Those workers are better informed and better protected through the filing of separate Intent and Affidavit forms for each contractual relationship on a project. There are other groups who also benefit.

Prime contractors and contract awarding agencies benefit from better information about contractual relationships on a project. Compliance organizations such as L&I (and others, both public and private) also benefit. In a broader sense, courts have resoundingly promoted maximum transparency in public matters. The public has a right to know how its governmental agencies are behaving, how their tax monies are being spent, what businesses are being paid what amounts of those public funds and what activities those amounts underwrite.

We read RCW 39.12.040(1) with these themes in mind. There, the legislature imposed a duty, "before payment is made by or on behalf of the state... of any sum or sums due on account of a public works contract, it is the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a 'Statement of Intent to Pay Prevailing Wages.'"

Next, the phrase "each and every" placed immediately preceding the phrase "subcontractor from the contractor or a subcontractor" establishes the broad mandate to require a separate Intent to be filed each time a contractor serves as a subcontractor to another contractor, regardless of whether the contractor has multiple contractual relationships on the same project. The word "each" is significant here. "Each" refers to every one of two or more things, regarded and identified separately.

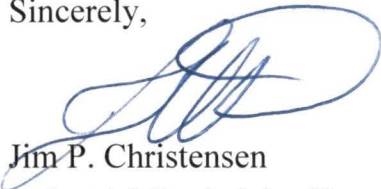
“Every” refers to “all the individual members of a set without exception.” “Each and every” placed together reinforce and magnify the separate, individual obligation created, without exception, whenever payments are due to workers from public accounts.

Disbursement of public funds is contingent upon the contractor/subcontractor satisfying the filing requirement. Intent forms must be filed before any funds are disbursed. RCW 39.12.040. In instances in which public funds are disbursed for work not described on the Intent form, we believe the intent of that law is not satisfied.

Similarly, “following the final acceptance of a public works project, it shall be the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an ‘Affidavit of Wages Paid’ before the funds retained ... are released to the contractor.” The parallel Intent and Affidavit requirements for “each and every subcontractor from the contractor or a subcontractor” establishes that the specific requirements must be followed for each contract and project.

Thank you for your interest in Washington prevailing wage matters, and for giving me this opportunity to outline the procedures required by RCW 39.12.040.

Sincerely,



Jim P. Christensen
Industrial Statistician/Prevailing Wage Program Manager
Department of Labor & Industries
jim.christensen@lni.wa.gov

RCW 39.12.040

Statement of intent to pay prevailing wages, affidavit of wages paid—Alternative procedure.

(1)(a) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it is the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages must include:

- (i) The contractor's registration certificate number; and
- (ii) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

(b) Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate must state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it is the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an affidavit of wages paid before the funds retained according to the provisions of RCW 60.28.011 are released to the contractor. On a public works project where no retainage is withheld pursuant to RCW 60.28.011(1)(b), the affidavit of wages paid must be submitted to the state, county, municipality, or other public body charged with the duty of disbursing or authorizing disbursement of public funds prior to final acceptance of the public works project. If a subcontractor performing work on a public works project fails to submit an affidavit of wages paid form, the contractor or subcontractor with whom the subcontractor had a contractual relationship for the project may file the forms on behalf of the nonresponsive subcontractor. Affidavit forms may only be filed on behalf of a nonresponsive subcontractor who has ceased operations or failed to file as required by this section. The contractor filing the affidavit must accept responsibility for payment of prevailing wages unpaid by the subcontractor on the project pursuant to RCW 39.12.020 and 39.12.065. Intentionally filing a false affidavit on behalf of a subcontractor subjects the filer to the same penalties as are provided in RCW 39.12.050. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less and for projects where the limited public works process under RCW 39.04.155(3) is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency must retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency must require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW **60.28.011**. Within thirty days of receipt of the affidavit of wages paid, the awarding agency must submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid must be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in this subsection (2), the awarding agency must pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section may be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by subsection (1) of this section.

[2013 c 113 § 5; 2012 c 129 § 1; 2009 c 219 § 2; 2007 c 210 § 4; 1991 c 15 § 1; 1982 c 130 § 2; 1981 c 46 § 2; 1975-'76 2nd ex.s. c 49 § 1; 1965 ex.s. c 133 § 3; 1945 c 63 § 4; Rem. Supp. 1945 § 10322-23.]

Prevailing Wage Determination Request and Review Process

RCW 39.12.015 is the basis for requesting a determination, since it provides:

All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.

If you disagree with a determination the industrial statistician provides, WAC 296-127-060(3) provides for a review process:

(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 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.

If you choose to utilize this review process, you must submit your request within 30 days of the date of the applicable industrial statistician's determination or response to your request for modification or other change. Include with your request any additional information you consider relevant to the review.

Direct requests for determinations, and for modification of determinations via email or letter to the prevailing wage industrial statistician:

Jim P. Christensen
Industrial Statistician/Program Manger
Department of Labor & Industries
Prevailing Wage
P O Box 44540
Olympia, WA 98504-4540
Jim.Christensen@Lni.wa.gov

Prevailing Wage Determination Request and Review Process

Direct requests via email or letter seeking reconsideration (redetermination) by the assistant director to:

Elizabeth Smith, Assistant Director
Department of Labor & Industries
Fraud Prevention and Labor Standards
P O Box 44278
Olympia, WA 98504-4278
Elizabeth.Smith@Lni.wa.gov

Direct petitions for arbitration to:
Joel Sacks, Director
Department of Labor & Industries
P O Box 44001
Olympia, WA 98504-4001

If you choose to utilize this arbitration process, you must submit your request within 30 days of the date of the applicable assistant director's decision on reconsideration (redetermination). Submit an original and two copies of your request for arbitration to the Director personally, or by mail. The physical address for the Director is 7273 Linderson Way, SW, Tumwater, WA 98501.

WAC 296-127-061 also contains the following provisions regarding petitions for arbitration:

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,
 - (b) The industrial statistician, 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 counsel (or other authorized representative), and
 - (b) Identify clearly the wage determination, location of project or projects in question, and the agency concerned, 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, and
 - (d) Contain a short and plain statement of the grounds for review, and
 - (e) Be accompanied by supporting data, views, or arguments, and
 - (f) Be accompanied by a filing fee of \$75.00. Fees shall be made payable to the department of labor and industries.