



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
360/902-5335 Fax 360/902-5300

March 27, 2017

D-S Hardwood Corporation
Roger Mortensen
P.O. Box 203
Klickitat, WA 98628

RE: Refinish gymnasium floors scope of work (File 17-130-D)

Dear Mr. Mortensen:

Thank you for your email of June 27, 2016 requesting another review of the correct classifications of labor under the prevailing wage law, chapter 39.12 RCW, for the work you are doing to refinish gymnasium floors. In your e-mail, you assert the correct classification is that of Building Service Employees.

After careful review, it is the department's conclusion that the proper classification of labor that may be used for your firm's public works contract is that of Painters, WAC 296-127-01356.

Background

"All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries." RCW 39.12.015.

Enclosed is a copy of the *Prevailing Wage Determination Request and Review Process* describing the procedures for requesting and appealing prevailing wage determinations such as this one.

The applicable prevailing wage rates for workers employed on public works projects shall be determined by the scopes of work performed by those workers, and not by their specific job titles. WAC 296-127-013 (3).

Prevailing wages are required on all public works and public building service maintenance contracts. RCW 39.12.020; WAC 296-127-010(7)(a)(iv).

RCW 39.12 is remedial in nature and should be construed liberally in order to carry into effect the purpose of the statute. The purpose of Washington State's prevailing wage law is to protect the employees of government contracts from substandard earnings and to preserve local wage standards. *Everett Concrete Prods., Inc. v. Dep't of Labor & Indus.*, 109 Wn.2d 819, 823, 748 P.2d 1112 (1988).

Gym Floor Refinishing Process

The process you use to refinish gymnasium floors involves thoroughly cleaning the floor surface to remove both solids and accumulated foreign residue and materials. If sanding is necessary, you use a subcontractor to perform the sanding.

The process begins with a broom and dust pan to remove dust and dirt from the edges, corners, area under bleachers, etc. The next step involves using a wide (four foot) dust mop on all accessible floor areas. A walk-behind floor buffer is then used along the edges of the floor to scrub those areas clean. The buffer uses water to clean the floor edges and this process also incorporates a mop and bucket, and a shop vacuum. After this, the main floor area is cleaned (also using water) with a small riding or walk-behind machine that scrubs all floor areas that can be accessed by this machine. The riding machine incorporates both a scrubber and a vacuum feature.

Once the floor area is thoroughly cleaned, rinsed, and neutralized, a dust mop and towels are used to ensure the floor is utterly clean and dry. A walk-in-front lamb's wool applicator is then used to apply the new finish. Usually, two coats are required which are applied 1-2 days apart.

Analysis

The scope of work for Painter includes:

“Preparation of surfaces... [and]... [a]pplication of polyurethane elastomers, vinyl plastics, neoprene, resin, polyester and epoxy as waterproofing or protective coatings to any kind of surfaces...”. WAC 296-127-01356.

The scope of work for Operating Engineers (Equipment Operators) includes:

“operate, repair and maintain all types of self-propelled mechanically, electrically, electronically, hydraulic, automatic or remote controlled equipment...”. WAC 296-127-01354.

The scope of work for Building Service Employees includes:

“Empty trash and damp wipe containers. Dust chairs, sides of desk, top of filing cabinets, paneled walls, doors, ledges and picture frames within easy reach. Damp wipe desk tops, telephones and desk fixtures. Damp mop floors. ...” WAC 296-127-01308(1) (Janitors).

The work of Building Service Employees includes janitorial work such as routine periodic cleanings that is distinguished from the work you perform. Many of the procedures you use in refinishing a gymnasium floor, such as dusting and mopping, would fall under this classification if the purpose of the work were merely to perform routine cleanings. However, your company performs this work as preparatory to refinishing the floor. That work is specifically called out in the Painter scope description, WAC 296-127-01356 (“Preparation of surfaces...”).

Similarly, operation of self-propelled equipment falls under the Equipment Operator scope description, WAC 296-127-01354 and typically involves operation of dozers, trackhoes, cranes, scrapers, and other types of heavy equipment common to construction projects. Operating engineers also operate self-propelled cleaning and sweeping equipment, though I am not familiar with instances in which workers of that trade use small battery operated wood floor scrubbers to prepare a floor for refinishing.

Further, the operation of self-propelled construction equipment generally falls under WAC 296-127-01354 when performed to either:

- 1) Do work that is unique to Equipment Operators such as excavate and move earth;
or
- 2) Do a minor portion of work associated with other crafts, such as crane work to move an HVAC unit to a roof.

In this instance the battery operated scrubber performs a portion of the work of a Painter in preparing the floor surface to accept a new coating. As mentioned above, the Painter scope of work description (WAC 296-127-01356) includes preparation of surfaces by washing, cleaning and smoothing of those surfaces. The floor scrubber is used for this purpose. I conclude this operation of the scrubber falls within the scope of Painter. There are other examples of self-propelled equipment which performs a portion of a trade’s work and is therefore operated by members of that trade rather than by an Equipment Operator. These examples are rare, but they do exist. For example, some power trowels are riding machines that finish horizontal concrete surfaces. Cement Masons finish concrete and their scope of work includes all work where finishing tools are used. WAC 296-127-01315. In the industry, power trowels are tools used for finishing concrete and are therefore operated by cement masons. Similarly, your company uses small battery powered floor scrubbers to prepare floors for refinishing, so that work is properly classified within the Painter scope of work.

The refinishing of the gymnasium floor falls within the scope of work for Painter due to the application of a protective coating:

“...application of polyurethane elastomers, vinyl plastics, neoprene, resin, polyester and epoxy as waterproofing or protective coatings to any kind of surfaces...” WAC 296-127-01356.

The tasks included in the preparation of the floors for such refinishing also fall within the scope of Painter:

“Preparation of surfaces...” WAC 296-127-01356.

The work of refinishing gymnasium floors falls within the Painter scope and is therefore required to be paid at the prevailing rate of wage for Painters on Washington public works projects. This includes preparation of surfaces (other than sanding), including the operation of floor scrubbers which may be either walk-behind or riding-type machines, application of coatings, and all clean up required in connection with the work.

School District Maintenance and Janitorial Staff

RCW 39.12.020 states in part that the prevailing wage laws “... shall not apply to workers or other persons regularly employed by the state, or any county, municipality, or political subdivision created by its laws.” RCW 39.12.020.

I appreciate your concerns that the work you are doing is something that school districts might have a janitor or custodian perform. However, for work done by contract requiring the payment of prevailing wage the application depends on the nature of the work that is performed, regardless of the worker’s job title. Whether the duties performed by your employees are those sometimes performed by a public employee is not a dispositive factor, as we instead look at the nature of the work being performed and determine which scope of work best describes the actual tasks being completed.

Many of the duties performed by a janitor or custodian employed by a school district would require payment of prevailing wages if those services were contracted out. Plumbing, electrical fixture maintenance, and painting are all examples of tasks that may sometimes be performed by a school custodian or janitor and, where that worker is employed by the public agency, prevailing wages would not be required (RCW 39.12.020). Where this work is performed by contract, those tasks would be required to be paid at the prevailing wage, and would not fall within the prevailing wage scope of work for Building Service Employees, WAC 296-127-01308.

Conclusion

After careful review, I find that the contract work associated with preparing a gymnasium floor for refinishing, application of the new finish coatings and all cleanup work associated with gymnasium floor refinishing falls within WAC 296-127-01356 and is therefore required to be paid at the Painter prevailing wage rate on Washington public works.

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This includes use of motorized floor scrubbers of the type which you use, including the small riding machine we discussed. This determination does not address the work of floor sanding nor does it address the work of finishing a newly constructed wood floor. Floor sanding work may be otherwise classified, whether in preparation for floor finishing or for other purposes, depending on the facts presented. This determination is based on the specific facts you have presented. If the facts change, the answer may be different.

Sincerely,



Jim P. Christensen
Department of Labor and Industries
Industrial Statistician/Prevailing Wage Program Manager

Enclosures

RCW 39.12.010**Definitions.**

(1) The "prevailing rate of wage", for the intents and purposes of this chapter, shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purposes of this chapter shall be mathematically determined by the number of hours worked in such period of time.

(2) The "locality" for the purposes of this chapter shall be the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" for the purposes of this chapter shall include the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits.

(4) An "interested party" for the purposes of this chapter shall include a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, and the director of labor and industries or the director's designee.

[1989 c 12 § 6; 1985 c 15 § 1; 1965 ex.s. c 133 § 1; 1945 c 63 § 3; Rem. Supp. 1945 § 10322-22.]

NOTES:

Severability—1985 c 15: See note following RCW 39.12.065.

WAC 296-127-01356**Painters.**

For the intents and purposes of the Washington state public works law, chapter **39.12** RCW, the job description for painters is as follows:

- (1) Preparation of surfaces.
 - (a) Washing, cleaning and smoothing of surfaces, using sandpaper, brushes or steel wool.
 - (b) Removal of old paint or other coatings from surfaces, using paint remover, scraper, wire brush or by sandblasting.
 - (c) Filling of nail holes, cracks and joints with putty, plaster or other fillers.
- (2) Color matching and mixing.
- (3) Application of paint, varnish, stain, enamel, lacquer, vinyl, wallpaper and other materials of whatever kind or quality applied to walls or ceilings with paste or adhesive using brushes, spray gun or paint rollers.
- (4) Application of polyurethane elastomers, vinyl plastics, neoprene, resin, polyester and epoxy as waterproofing or protective coatings to any kind of surfaces (except roofs) when applied with brushes, spray guns or rollers.
- (5) Application of sprayed on fire retardant foam.
- (6) Texturing and decorating.
- (7) Erecting of scaffolding or setting up of ladders to perform the work above ground level.
- (8) Responsible for all the cleanup required in connection with painters work.

[Statutory Authority: Chapter **39.12** RCW, RCW **43.22.270** and **43.22.051**. WSR 00-15-077, § 296-127-01356, filed 7/19/00, effective 7/19/00.]

RCW 39.12.015

Industrial statistician to make determinations of prevailing rate.

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

[1965 ex.s. c 133 § 2.]

WAC 296-127-013

Scope of work descriptions.

(1) In order to determine applicable prevailing wage rates, the director or his/her designee will issue scope of work descriptions for each trade and occupation recognized as being involved in public work.

(2) The scope of work descriptions shall be created using authoritative sources available to the department, such as:

(a) Washington state apprenticeship and training council approved apprenticeship standards;

(b) Collective bargaining agreements;

(c) Dictionaries of occupational titles;

(d) Experts from organized labor, licensed contractors, and contractors' associations;

(e) Recognized labor and management industry practice.

(3) The applicable prevailing wage rates for workers employed on public works projects shall be determined by the scopes of work performed by those workers, and not by their specific job titles.

(4) The applicable scope of work description for a public works contract is the scope of work description that is in effect on the date that the bids are due to be submitted to the contract awarding agency. If the contract is not awarded within six months of the bid due date, then the applicable scope of work description shall be that which is in effect on the date that the contract is awarded. The same scope of work description shall remain in effect for the duration of the contract.

(5) In the event a dispute arises regarding a scope of work description following the award of a public works contract, the aggrieved party may request an arbitration hearing pursuant to the provisions of RCW **39.12.060**, WAC **296-127-060**, **296-127-061**, and **296-127-062**.

[Statutory Authority: Chapter **39.12** RCW, RCW **43.22.270** and **43.22.051**. WSR 00-15-077, § 296-127-013, filed 7/19/00, effective 7/19/00. Statutory Authority: Chapters **39.04** and **39.12** RCW and RCW **43.22.270**. WSR 92-01-104, § 296-127-013, filed 12/18/91, effective 1/31/92; WSR 88-22-046 (Order 88-22), § 296-127-013, filed 10/31/88.]

RCW 39.12.020

Prevailing rate to be paid on public works and under public building service maintenance contracts—Posting of statement of intent—Exception.

The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site:

PROVIDED, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor's local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request:

(1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW **39.12.040**; and

(2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to workers or other persons regularly employed by the state, or any county, municipality, or political subdivision created by its laws.

[2007 c 169 § 1; 1989 c 12 § 7; 1982 c 130 § 1; 1981 c 46 § 1; 1967 ex.s. c 14 § 1; 1945 c 63 § 1; Rem. Supp. 1945 § 10322-20.]

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.
- (4) "Assistant director" means the assistant director of the employment standards, apprenticeship, and crime victims (ESAC) 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 work not performed by contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, 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.

(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.)

[Statutory Authority: RCW **39.12.070**. WSR 94-01-100, § 296-127-010, filed 12/16/93, effective 1/16/94. Statutory Authority: Chapters **39.04** and **39.12** RCW and RCW **43.22.270**. WSR 92-01-104, § 296-127-010, filed 12/18/91, effective 1/31/92; WSR 88-22-046 (Order 88-22), § 296-127-010, filed 10/31/88. Statutory Authority: RCW **39.12.050**, **39.12.065**, **43.22.270** and **51.04.020**. WSR 86-03-063 (Order 85-28), § 296-127-010, filed 1/17/86. Statutory Authority: RCW **39.12.015**, **39.12.060** and HB 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-010, filed 8/27/82.]

WAC 296-127-01354

Operating engineers (equipment operators).

For the purpose of the Washington state public works law, chapter **39.12 RCW**, operating engineers operate, repair and maintain all types of self-propelled mechanically, electrically, electronically, hydraulic, automatic or remote controlled equipment on construction projects.

The work includes, but is not limited to, the following types of construction and equipment:

(1) Type of construction.

(a) Heavy and highway.

- Roads, streets, highways, grading and paving, excavation of earth and rock, viaducts, bridges, abutments, retaining walls, alleys, sidewalks, guard rails, fences, parkways, parking areas, athletic fields, railroads, airport grading, surfacing and drainage, pile driving, water supply, water development, reclamation, irrigation, drainage and flood control projects, water mains, pipe lines, sanitation and sewer projects, all common ditches, dams, aqueducts, canals, reservoirs, intakes, channels, levees, dikes, revetments, jetties, quarrying of breakwater or riprap stone, foundations pile driving piers, docks, locks, river and harbor projects, breakwaters, dredging, channel-cutoffs, duct lines, subways, shafts, tunnels, drilling, soil testing, clearing and grubbing, land leveling, quarrying, demolition and site clearing, tramways, soil stabilization, landscaping, beautification projects, hoisting or related work done by helicopters.

- Oil or gas refineries, nuclear power plants, industrial complexes and incidental structures.

- It shall also include any work relating to off-shore drilling and pipe lines.

(b) Building.

- Construction, erection, alteration, repair, modification, demolition, addition or improvement, in whole or in part, of any building structure.

- It shall include the installation, operation, maintenance and repair of equipment, and other facilities used in connection with the performance of such building construction.

(c) Material supply. Operations such as quarries, sand and gravel plants, screening plants, asphalt plants, ready-mix concrete or batch plants and prestressed concrete plants (excluding established plants) that are established at the job site.

(2) Type of equipment.

(a) Self-propelled.

- Asphalt machines, backhoes, blades, boring equipment, brooms, chippers, compactors, compressors, concrete saws, cranes, derricks, dozers, drilling equipment, hoists, lifts, loaders, motor graders, pavement breakers, paving machines, pumps, rollers, scrapers, screeds, shovels, tractors, and trenchers.

(b) Stationary.

- Asphalt plants, concrete batch plants, crushing plants, and screening plants.

[Statutory Authority: Chapter **39.12 RCW**, **RCW 43.22.270** and **43.22.051**. WSR 00-15-077, § 296-127-01354, filed 7/19/00, effective 7/19/00.]

WAC 296-127-01308

Building service employees (janitors, waxers, and window washers).

For the purpose of the Washington state public works law, chapter **39.12** RCW, the work of building service employees includes, but is not limited to:

(1) Janitors. Empty trash and damp wipe containers. Dust chairs, sides of desks, top of filing cabinets, panelled walls, doors, ledges and picture frames within easy reach. Damp wipe desk tops, telephones and desk fixtures. Damp mop floors. Vacuum upholstered furniture and draperies. Wash vinyl furniture with cleaning solution. Wash doors and other surfaces and spot wash painted walls. Clean door glass and inside partition glass. Vacuum and shampoo carpets.

(2) Utility janitors. Performs the following duties in addition to those performed by janitors: Waxing of floors (when not performed by traveling waxers), high wall and ceiling washing requiring the use of a ladder, and minor repairs and maintenance necessary to the operation of the building.

(3) Waxers. Waxing of floors.

(4) Window washers. Washing of all windows, other than inside partition glass and door glass, washing of painted walls, (when not done as a prerequisite to repainting) and wall paper cleaning.

(5) And all the cleanup required in connection with building service employees.

[Statutory Authority: Chapter **39.12** RCW, RCW **43.22.270** and **43.22.051**. WSR 00-15-077, § 296-127-01308, filed 7/19/00, effective 7/19/00.]

WAC 296-127-01315

Cement masons.

For the purpose of the Washington state public works law, chapter **39.12** RCW, cement masons perform all work where finishing tools are used.

The work includes, but is not limited to:

- The setting of screeds, the rodding (buildings), shaping, smoothing and finishing of the surfaces of freshly poured concrete floors, walls, sidewalks, curbs, steps and stairways, the finishing of extruded barrier rails, or any other concrete surface requiring finishing, using hand tools or power tools, including floats, trowels, screeds and straightedge.
- The removing of rough or defective spots from concrete surfaces, using grinder or chisel and hammer and patching holes with fresh concrete or epoxy compound preparatory to sacking. (The finishing of a large surface of patched holes.)
- The moulding of expansion joints and edges, using edging tools, jointers and straightedge.
- The application of penetrating sealer and primer protective coatings to concrete floors and steps for the first twenty-four hours after pouring, when part of the finishing process.
- The installation of seamless composition floors and the installation and finishing of epoxy based coatings or polyester based linings to all surfaces, when the coatings or linings are applied by spraying or troweling.
 - Sandblasting or waterblasting for architectural finish or preparatory to patching.
 - The setting of all forms one board high.
 - The cutting of joints with concrete saw for the control of cracks in buildings and contiguous to buildings.
 - The setting of concrete curb, gutter and sidewalk forms as a composite crew with laborers.
- All cleanup work required in connection with the above work.

[Statutory Authority: Chapter **39.12** RCW, RCW **43.22.270** and **43.22.051**. WSR 00-15-077, § 296-127-01315, filed 7/19/00, effective 7/19/00.]

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.

RCW 39.12.060**Director of labor and industries to arbitrate disputes.**

Such contract shall contain a further provision that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature 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 of the department of labor and industries of the state and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute.

[1989 c 12 § 10; 1965 ex.s. c 133 § 4; 1945 c 63 § 6; Rem. Supp. 1945 § 10322-25.]

NOTES:

Arbitration of disputes: Chapter 49.08 RCW.

Uniform arbitration act: Chapter 7.04A RCW.