



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
360/902-5335 Fax 360/902-5300

August 23, 2012

Kelly Lerner
DSHS - OSSD
Leased Facilities Unit
1313 N Atlantic, Ste 4500
Spokane, WA 99201

Re: Residential Prevailing Wage Rates and Community-Based Homes for Children with Disabilities, 14121 E 3rd, Spokane Valley, Washington

Dear Ms. Lerner:

Thank you for your inquiry concerning whether a privately owned duplex unit which is leased and operated by the Department of Social and Health Services (DSHS) as a community-based home for children with disabilities can be rehabilitated using residential wage rates under chapter 39.12 RCW. I apologize for the delay in responding to your request and hope I've caused you no inconvenience.

Within certain limits, the residential rates may be used for a privately owned duplex leased and operated by the Department of Social and Health Services (DSHS) as a community-based group home for children with disabilities.

Determinations of the prevailing rate of wage are made by the industrial statistician of the Department of Labor & Industries (L&I). See the attached document, "*Prevailing Wage Determination Request and Review Process.*"

This determination is based on the information you provided. References to the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC) are included.

The privately owned duplex which is the subject of your request is subject to prevailing wage requirements based upon the provisions of [RCW 39.04.260](#). According to that statute:

Any work, construction, alteration, repair, or improvement...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 shall comply with chapter 39.12 RCW.

The "project" in this instance is the rehabilitation of one side of a duplex structure, 14121 E 3rd, Spokane Valley, Washington, which I will refer to for purposes of this discussion as the "West Unit." Since DSHS is a state agency causing the work to be performed, and DSHS occupies 100% of the project at issue, all work that is performed as part of this West Unit project is subject to prevailing wage requirements. Additionally, since DSHS occupies at least fifty percent of the total structure, all work on the common areas of the structure, such as work on or replacement of the roof, landscaping of common areas, etc. is subject to prevailing wage requirements.

Regarding whether residential or commercial rates apply to work on the duplex, [WAC 296-127-010\(9\)](#) states:

(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.)

Both sides of the duplex are owned by the same entity and the West Unit is leased to DSHS. The other side of the duplex, which I refer to as the "East Unit," is occupied by independent adults with disabilities who may not be able to plan and cook meals for themselves. For that reason, they receive 24-hour DSHS assistance with meal preparation, laundry, and similar needs, but not assistance rising to the level of skilled nursing care. The East Unit residents independently have renewable one-year leases with the owner. The East Unit home has three bedrooms, a full kitchen and two full bathrooms shared only by the adults who occupy the unit. There is no commercial or retail operation conducted from the premises.

Shifting our attention back to the West Unit which is the subject of the immediate inquiry, DSHS, as part of its Aging and Disability Services Administration, Developmental Disabilities, State Operated Living Alternative Program (SOLA), is rehabilitating this side of the duplex home which consists of three bedrooms, two bathrooms, and one kitchen. The West Unit will serve as the permanent, full time residence for up to three developmentally disabled children until the children reach adulthood. Adulthood for these children is age 18 if they quit school at age 18 or until the end of the school year in which they turn 21 if they stay enrolled in school. DSHS employees will provide around-the-clock care in shifts at all times except when all the children are away from home attending school. No skilled nursing care is provided. The home is constructed to code without any conditional use or code exceptions in a multi-family medium density district. Each child resident makes the West Unit their permanent home in which a room, meals, laundry, and supervision are provided. Bedrooms are not shared. There are varying levels of 24-hour assistance provided but not skilled nursing care. The children share a non-commercial kitchen and meals are provided to them.

The criteria “solely for permanent residences” in the WAC 296-127-010(9) definition of “residential” cited above excludes certain types of facilities such as hotels, motels, student dormitories, etc. For dormitories, the facilities and, typically, the bedrooms are shared. Dormitories generally have neither a separate bathroom nor a full kitchen for each dwelling unit. Rather, the facilities are communal and, functionally and structurally include “institutional” or “public” bathrooms, not what one would expect to find in “single family dwellings, duplexes, apartments, condominiums, and other residential structures...when used solely as permanent residences.” Usually, for dormitories there is one commercial kitchen to sell meals to the residents. Further, the students generally have a permanent home address in addition to the temporary school (dormitory) address and typically do not live at the dormitory throughout the year.

In the situation before us, unlike dormitories and similar temporary living accommodations, both sides of the duplex home described provide long term homes for permanent residents. Neither unit is a transitional facility, nor a nursing home, nor is it a rehabilitation facility. The fact that the home may be built in a multi-family zone without any conditional use permitting is not, in itself, decisive in the analysis of whether the house is used “solely for permanent residences,” but does assist in the analysis of the totality of the circumstances. Usually a full kitchen per housing unit is expected in “residential” construction, and that is the case for each duplex unit here.

For this particular situation, where the East Unit of the duplex is occupied by adults with disabilities who use the home as their permanent residence as described above, and where the West Unit of the duplex:

- 1) is operated by DSHS as a children’s family home;
- 2) serves as a permanent, non-transitional home for up to three resident children, each with their own bedroom;
- 3) does not provide any skilled nursing care;
- 4) is built in a multi-family zone without any variance;
- 5) has a non-commercial kitchen that serves no more than three residents; and
- 6) is a home for children who are developmentally disabled persons not capable of safely cooking their own meals and they rely on a small family home environment for meals;

the totality of these circumstances leads to a conclusion that the duplex is used solely as a permanent residence.

Since the complete set of facts described above meets the definition of “residential” in WAC 296-127-010(9), this project, the rehabilitation of the West Unit of the duplex, is a residential project for purposes of chapter 39.12 RCW. Please note, however, as with all instances when residential wage rates may be used for work performed upon a structure that qualifies for application of residential wage rates, the residential wage rates cannot be used for utilities construction (water and sewer lines), nor can the residential wage rate be used for work on streets, or work on other structures (e.g., for recreation and business.)

I understand that the current lease draft for the West Unit contains provisions that address the need for prevailing wage compliance. Please also be sure to provide the owners of the property, George and Lawrence Hritsco, with a copy of this determination as an additional effort to ensure compliance with prevailing wage requirements for work performed on the premises.

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This determination is based upon the facts you have provided that are identified above. If the facts vary or new facts are introduced, the answer could be different.

Washington State prevailing wage information, including the WACs, is available on the department's web site: <http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp>.

I appreciate your interest in prevailing wage compliance and the opportunity to address your concerns. If you have further questions, please let me know.

Sincerely,



L. Ann Selover
Industrial Statistician
Program Manager
Sela235@Lni.wa.gov
(360) 902-5330

Attachment

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.