Washington State Department of
Labor & Industries

Index of Selected Prevailing Wage Topics

You will find a select list of scopes of work, types of jobs and other areas pertaining to prevailing wage. Each topic includes a brief summary and link to the full policy or determination document.

Department of Labor & Industries
Prevailing Wage Program

PW1@LNI.WA.GOV
360-902-5335

March 23, 2016

*The **Contents** items are links. Click on a link to navigate directly to that topic.*

Contents

Note on Court Cases 4
Disclaimer 4
Application of Federal, State or Other Laws 4
Application of Prevailing Wages to Professionals 5
Brick Paver Pathways 5
Bridge Barriers for Pedestrians 5
Collective Bargaining Agreements (CBAs) 5
Conservation Districts – Types of Work for Prevailing Wage 6
Construction site surveyor 6
Conveyor Construction Testing 7
Data Cabling 7
Door Systems Installation 7
Drywall Installation – Debris Cleanup 8
Electrical Control Panel Fabrication 8
Electrical Equipment Handling, Loading, and Unloading 9
Electrical Power Pole (Wood) Inspection & Testing 10
Electrical Substation Maintenance 10
Electrical Systems in Tunnels 10
Erosion Control Work 11
Fiber-optic Cable Installation 12
Filing on Behalf of a Subcontractor – Affidavit 12
Filing Intents and Affidavits 13
Fire Alarm Testing 13
Fire Extinguisher Service and Maintenance 14
Funding Source – Federal 14
Funding Source – Grants and State Funds 15
Funding Source – Municipality vs. Private 15
Gas Meters – Installation of Automated Meter Interface Units 16
Geothermal Drilling and Piping 17
Grass Paver Systems 18

Heating, Ventilation and Air Conditioning (HVAC) Duct Cleaning 18
Heating, Ventilation and Air Conditioning (HVAC) Testing, Adjusting and Balancing Work..... 18
Herbicide Application (via Backpack Sprayers or Truck-Mounted Systems) 19
HUD Housing Federal Preemption Exemption 19
Inconsistent Scopes of Work – CBAs..... 20
Inconsistent Scopes of Work – Plumber Certification..... 20
Landscape Construction 20
Landscape Restoration for Utilities Construction..... 22
Law Independent of Electrical Licensing Law 22
Marine Vessel Construction for City..... 22
Material Delivery (Sand, Gravel, Crushed Rock, Concrete, Asphalt, or Similar Materials) 23
Metal Fabrication – In-shop 23
Mixed Public-Private Buildings..... 24
Modular Buildings 24
Monitoring devices for construction site 25
Out-of-State Production 25
Overtime Calculation – Usual Benefits..... 25
Overtime for Mixed Public and Private Work 25
Overtime Requirement Differences – CBA and Prevailing Wage Rates..... 26
Potholing – Vacuum Excavation..... 26
Power Equipment Operators/Operating Engineers 26
Pre-Cast Concrete Manufacturing..... 26
Pre-Engineered Metal Buildings..... 27
Professionals on Design-Build Projects – Intents and Affidavits 28
Reclamation and Restoration of Waste or Undeveloped Lands..... 28
Recycle Drop Box Truck Drivers 29
Residential vs. Commercial – Dormitories 29
Residential vs. Commercial – Farm Worker Housing..... 30
Residential vs. Commercial – Group Homes 30
Residential vs. Commercial – HUD Letter of Wage Determination..... 31
Residential vs. Commercial – Mixed Use Building..... 31
Residential vs. Commercial – Resident Volunteer Firefighter Program 31
Residential vs. Commercial – Transitional Housing 32

Retaining Wall Systems – Keystone 32
Security Guards 32
Sheet Metal Roofing 32
Sheet Metal Wall Panels/Flashing, Reglet and Drip Edge 33
Sheet Metal Worker 33
Shipbuilding and Ship Repair (SBSR) Sub-classifications and Rates 33
Silt Fencing 34
Social Security Numbers on Certified Payroll Record Reports 34
Survey Firms as "Contractors" on a Public Work 35
Technical or Professional Support 35
Telecommunications 35
Tennis Court Surfacing (Seamless) 36
Tree Removal in an Irrigation District 36
Truck Driving 37
Tunnel Liner Segments – Delivery 37
Tunnel Liner Segments – Manufacture 37
Usual Benefits for Prevailing Wage – Calculations 38
Usual Benefits for Prevailing Wage – Posting and Documents 38
Usual Benefits for Prevailing Wage – Types of Payments 38
Water Meter Replacement 39

Note on Court Cases

Though the excerpts in this document do not usually include the reference, multiple determination letters refer to two court cases which are important for the application of prevailing wage laws:

- *Lockheed Shipbuilding Company v. Department of Labor and Industries*: This case from 1989 provides instruction for the application of prevailing wage law to products built off of the primary construction site. The decision states that "the determination of whether work is 'in the same trade or occupation' depends upon the 'type of work rather than where the work was performed or by whom it was done'."
- *Everett Concrete Products, Inc. v Department of Labor & Industries*: According to this 1988 case, prevailing wage law is remedial in nature and must be liberally interpreted in favor of worker protection.

Disclaimer

All prevailing wage determinations are based on the specific facts presented by the requestor. These excerpts are presented as a guide but, if the facts differ, the answers may be different.

Application of Federal, State or Other Laws

In *Everett Concrete,* the Washington State Supreme Court rejected an argument that prevailing wage law, chapter 39.12 RCW, should be interpreted and applied in the same way as the federal prevailing wage law (the Davis-Bacon Act) because that principle does not apply when the statutes have different wording. … Here, given the broader language used in chapter 39.12 RCW, your reliance on how other laws with different language will function is not persuasive or controlling on how the Washington State prevailing wage law is interpreted.

> Letter to B. Thorp, Land Surveyor's Association of Washington, February 17, 2012 - upheld when appealed to governor, April 30, 2012
> *See also "Survey Firms as "Contractors" on a Public Work*

Nothing in the regulation of the prevailing rate of wage will modify or circumvent applicable environmental regulations, worker or contractor certifications or licensing requirements, or other state or federal laws that may apply to such work.

> Letter to L. Gregory, Gregory Drilling, Inc. August 28, 2012

Application of Prevailing Wages to Professionals

The terms "professional" and "laborer, worker, or mechanic" are not defined in the prevailing wage law. … [*Black's Law Dictionary*] has a definition for "labor" which begins with "[w]ork of any type, including mental exertion." *Black's* also defines a "professional" as "[a] person who belongs to a learned profession or whose occupation requires a high level of training and proficiency." Using *Black's* definitions, a "professional" performs work in his or her occupation and therefore is a "worker." … The legislature could have, but did not provide [an] exclusion from prevailing wage requirements for professionals. … The surveyor employed on a public works construction site that performs work necessary to or contemplated by the contract for public work, fits the statute's requirements under which the worker must be paid at least the prevailing rate of wage.

> Letter to B. Thorp, Land Surveyor's Association of Washington, February 17, 2012 - upheld when appealed to governor, April 30, 2012

Brick Paver Pathways

The Landscape Construction scope specifies that this wage is not appropriate for constructing foot paths or roads. On the other hand, the Laborer scope specifically encompasses both hand leveling and the laying of brick pavers.

> Letter to J. Brady, Hidden Rivers Sprinkler, Inc., October 15, 1999

See also "Landscape Construction"

Bridge Barriers for Pedestrians

Excerpt from letter: [T]he fact you may characterize the barrier as "not structural in any manner" does not change our position that the barrier installation substantially augments the bridge structure and is the work of Ironworkers (WAC 296-127-01339). …

All of the types of activities listed in the Fence Erectors scope of work anticipate establishing a fence as part of a surrounding for a school, playground, residence, farm, or along a highway, and none of the activities described are as substantial as the structural enhancement under consideration here. This installation is a substantial addition to a bridge, augmenting the structure so as to create a barrier preventing pedestrians from jumping from it.

> Letter to M. Massman, Massana Construction, Inc., November 30, 2011

Collective Bargaining Agreements (CBAs)

See "Conflicting Scopes of Work – CBAs," "Overtime Requirement Differences – CBA and Prevailing Wage Rates,"

Conservation Districts – Types of Work for Prevailing Wage

Excerpt from letter: The exclusions from the definition of "municipality" which are identified in RCW 39.04.010(3) … apply to certain stated districts and "other districts authorized by law for the reclamation or development of waste or undeveloped lands." … Certain work that conservation districts may contract to have performed will not involve the reclamation or development of waste or undeveloped lands. Such work includes building construction, reconstruction, and repair or maintenance of improvements to property including janitorial work, and landscape maintenance work such as mowing the lawn. That work will be subject to the prevailing wage requirements of chapter 39.12 RCW.

Some work by conservation districts including the partial reimbursements to private landowners for conservation actions consistent with the reclamation work identified in RCW 89.16.040 will not require prevailing wages under chapter 39.12 RCW since those actions are for the reclamation or development of waste or undeveloped lands.

Letter to J. Carpita, Municipal Research and Services Center, June 8, 2012

Construction site surveyor

Electronically receiving and processing of data from monitoring devices which does not include manual labor will be outside the parameters of work that requires the payment of prevailing wage rates. Software installation work will be similarly exempt. Computer technology workers also fall outside the "workers, laborers, and mechanics" class of workers who are entitled to prevailing wages.

Excerpt from letter: [T]he installation of monitoring devices and the manual adjustment and removal of the devices will require the payment of prevailing wages. This work, including minor incidental drilling, bolting and epoxy fastening associated with the setting of devices and monitoring points, is properly classified as Construction Site Surveyor for prevailing wage purposes, as described in WAC 296-127-01396. Surveying skills will also be needed on an ongoing basis to re-check, adjust, maintain and otherwise ensure that monitoring devices remain in proper position; this, too, requires payment at prevailing wage rates.

Placement and/or finishing of concrete will be required, and, depending on the specifics of the tasks associated with that effort, prevailing wages such as that of Laborers, WAC 296-127-01344, Cement Masons, WAC 296-127-01315, and Iron Workers, WAC 296-127-01339 will be required. Drilling that requires the use of drilling rig, such as the placement of monitoring devices underground, is properly classified under Power Equipment Operators as described within WAC 296-127-01354.

Letter to J. Swanson, International Union of Operation Engineers Local 302,August 7, 2013

Conveyor Construction Testing

Excerpt from letter: The work in question is the testing work in connection with the construction of the baggage conveying systems. ...

The testing work in question, and before me, is limited to the placement of test baggage on the conveyors and is work assisting the craft that is doing the actual testing of the conveyors and dispensers. The actual testing is done by the millwrights as they observe the bags traversing the conveyors and dispensers and evaluating whether or not the system is performing as designed. The millwrights would then make any adjustments necessary to enable the system to perform as intended. ... The process of lifting the bags and placing them on the conveyor is more akin and a better fit to the laborers' scope of work which states: "...lift, carry and hold building material tools and supplies."

Therefore it is my determination that the work would fall under either the Scope of Work for laborers or the Scope of Work for millwrights and that either craft can place the test baggage on the conveyors with the millwrights performing the actual testing to evaluate the systems mechanical operation and making any adjustments or modifications.

Letter to D. Cannon, Hod Carriers and General Laborers Union, Local 242, August 28, 2006

Data Cabling

As a point of clarification, there are some limits to the data cabling work that may be performed at the prevailing rate of pay for the Telecommunication Technicians, WAC 29b-127-01378. The work inside the building to do data cabling and fiber optic lines, may be performed at the prevailing rate of pay for the Telecommunications Technicians as long as: (1) the system does not contain any functions that are specific to the Electronic Technicians scope of work (WAC 296-127-01322); and (2) the work is within the work allowed as telecommunications under the electrical licensing law, chapter 19.28 RCW.

Letter to N. Williams, Reed Longyear Malnati & Ahrens, PLLC, April 17, 2013

Door Systems Installation

Excerpt from letter: According to the information you provided, these manufactured Door Systems include aluminum doors, frame and operator housing plus an electric drive system, control board and an electronic activation system which is installed into a pre-constructed (by another contractor) opening.

For the installation of door units into the framed opening:
- Carpenters (WAC 296-127-01310)

For the work on electrical components and wiring:
- Inside Wireman Electricians (WAC 296-127-01323)
- Electronic Technicians (WAC 296-127-01322)

For work on glass:
- Glaziers (WAC 296-127-01331)

For service work to automatic doors:
- Service of low-voltage devices and components is performed by Electronic Technicians (WAC 296-127-01322).
- Service of 115 volt systems and components are performed by Inside Wireman Electricians (WAC 296-127-01323).
- Repairs of hinges, door frames and the door structure are performed by Carpenters (WAC 296-127-01310).
- Glaziers (WAC 296-127-01331) select, cut, prepare, handle, install or remove all types of glass or equivalent materials (e.g. plastic) in the doors.
- Mere testing, and adjustments made without the use of any tools, normally would not require a laborer, worker or mechanic and, in that limited fact pattern would not be subject to RCW 39.12.

Letter to C. Davis, Stoner Electric, Inc., March 19, 2007

Drywall Installation – Debris Cleanup

Excerpt from letter: As you accurately note, labor classifications do clean-up work. Significantly, one of the labor classifications is carpenter tender. Carpenter tender meets the requirements noted in being able to clean-up after drywall applicators.

… You suggest that carpenter tenders work is limited to wooden structures and fixtures. This is incorrect. Carpenter tenders assist carpenters with various duties which may include materials other than wood (see WAC 296-127-01310 and WAC 296-127-01312.) Therefore, as a designated classification under the carpenter trade, their clean-up falls under the carpenter classification and carpenters have tenders, carpenter tenders do the clean-up for both.

I believe that creating another scope or even a wage rate under an existing scope is not needed.

Letter to R. Robblee, Rinehart and Robblee, PLLP, December 21, 2006
Reaffirmed: Letter to D. Strand, Laborers Local 242, January 26, 2007

Electrical Control Panel Fabrication

Excerpt from letter: Case law has provided direction on the application of prevailing wage requirements to off-site work for a public works project. … The court held that the prevailing wage law does apply to off-site work where the work is production of a "nonstandard item specifically for a public works project." …

Some years ago, the department, the Washington State Department of Transportation, and the Prevailing Wage Advisory Committee (PWAC) worked to better define the issue of standard and non-standard. A six part checklist was developed. …

The list provides a framework of thought for analyzing if and when prevailing wage requirements may attach to work such as your production of panels. As you note, the mere

furnishing of standard hardware is not covered. However, the production of a non-standard item out of such hardware is covered by the requirement to pay the prevailing rate of wage.

As you describe the work, your workers read prints and construct panels for a specific design and application. … [P]revailing wages are required for your shop manufacture of what is now a non-standard panel although it is manufactured out of standard components.

The appropriate trade and occupation classifications (scopes of work) for your work may include Electronic Technicians (WAC 296-127-01322) and Inside Wireman Electricians (WAC 296-127-01323).

Letter to B. Kotjan, Technical Systems, Inc., November 27, 2007

Electrical Equipment Handling, Loading, and Unloading

Excerpt from letter: For the facts described in this situation, loading onto a truck of items that are later incorporated into the project site requires the payment of prevailing wage rates. In this situation the items that will be incorporated into the site are electrical equipment. WAC 296-127-01323 specifically provides that the work of an Inside Wireman Electrician includes "the handling and moving of any electrical materials, equipment and apparatus on the job site." … Following the reasoning in [*Everett Concrete Products v. L&I*, 109 Wn.2d 819 (1988)], the loading of the equipment onto the truck from the temporary site is regarded as part of the "job site" for the purpose of interpreting and applying the Inside Wireman Electrician and/or Inside Wireman Electrician/Construction Stock Person wage rates, and those rates apply to the work at issue.

When the truck driver got out of the truck and operated the forklift to load the equipment onto the pad, this limited operation of the forklift for moving the electrical equipment could appropriately be paid at the Inside Wireman Electrician and/or Inside Wireman Electrician/Construction Stock Person rates of pay. It could also be paid at the rate of pay for Operating Engineers (Equipment Operators), WAC 296-127-01354. It would be inappropriate, however, to pay for this task at the Truck Drivers rate of wage. … In this instance as well, when the truck driver attached the electrical equipment to the crane, that task constituted work of an Inside Wireman Electrician and/or Inside Wireman Electrician/Construction Stock Person and must be paid at those wage rates.

Letter to M. Moses, REBOUND, March 7, 2012

Electrical Power Pole (Wood) Inspection & Testing

Excerpt from letter: The rule reads, in part, "[f]or the purpose of the Washington state public works law, chapter 39.12 RCW, power line **construction electricians erect, maintain and repair transmission poles (whether built of wood, metal or other material)…"** (emphasis added). The correct classification for workers performing your maintenance and treatment work on wood power poles is the Power Line Construction Electrician.

Letter to J. Roberts, Snohomish County PUD, February 26, 2008

Intec agreement

Excerpt from letter: Memorandum of Understanding establishes the ratio and working relationship between the journey level Powerline Construction Electrician and the Powerline Construction Electrician Groundperson crew.

Intec_Prevailing Wage https://lni.wa.gov/licensing-permits/_docs/IntecMemorandumOfUnderstanding.pdf- Memorandum of Understanding.pdf

Electrical Substation Maintenance

Maintenance work, or any work on electrical transmission or distribution systems between the generating stations and consumers, must be paid at the prevailing wage rate for Power Line Construction Electricians. The fact that the work is performed on a system that is "off-line" or "de-energized" does not change the application of the Power Line Construction Electricians scope of work since no such distinction exists in WAC 296-127-01320.

Letter to M. Moses, REBOUND, September 13, 2012

Electrical Systems in Tunnels

Excerpt from letter: The prevailing wages for Inside Electricians working in Clallam, Jefferson, King and Kitsap counties establishes a separate wage rate for Inside Electrician working in a tunnel. This separate wage rate is established because the union wage rate prevailed when establishing the prevailing wage rate for the majority of Inside Electricians in King County (as well as other counties stated above). … However, the determination the department has been asked to make is whether this wage rate also applies to work in shafts.

… The agreement clearly excludes the wage rates applicability to cut and cover operations, and also is silent on other underground construction operations and structures such as shafts. The omission of a reference to shafts and the exclusion of cut and cover tunnels would suggest that the author recognized different types of below ground excavations and purposely excluded shafts. …

Based on the above, the tunnel rate established for Inside Electricians in the counties as specified above will apply to work performed in a tunnel but would not be applicable to work performed in the shafts questioned.

Letter to M. Moses, REBOUND, April 20, 2006
Reaffirmed: Letter to K. Schlosser, Mass. Electric Construction Company, November 13, 2012

Excerpt from letter: Your question specifically asks for a delineation of when the tunnel pay differential no longer applies to the work within the tunnels. …

Since the wage rate in question is one based on IBEW Local 46's CBA, we look to that agreement for the correct application of the Electrician's Tunnel wage rate. As stated above, that language in the agreement is specific to "new tunnel construction." Therefore, the tunnel rate established for Inside Electricians in the counties identified above will apply to work performed in a new tunnel.

Several possible end points for new construction were considered. …

The bright line at which the prevailing rate of pay for the new tunnel construction stops and is no longer required is directly linked to the tunnel no longer being new and under construction. "New" can be defined as freshly made and unused. The Sound Transit Beacon Hill tunnels will be used once (1) most work is complete and there has been successful operation of train(s) that will ultimately make use of the tunnel through both tunnels or, (2) final acceptance of the project by the contract awarding agency (Sound Transit) has occurred; whichever event happens first. Either of those criteria will be sufficient to end the requirement for tunnel pay for work within the (now used) tunnels.

Letter to B. Peters, Elcon Corporation, July 14, 2008

Erosion Control Work

According to the scope of work description, Landscape Construction "involves the beautification of a plot of land by changing its natural features through the addition or modification of lawns, trees, bushes, etc."… Erosion control does not involve the "beautification of a plot of land … ", but rather it includes activities that are necessary to ensure for and limit erosion during the course of the construction project.

If however the primary purpose of the activity is erosion control, than the appropriate classification would generally be Laborer or Operating Engineer depending on the actual equipment used and work being performed.

Letter to P. Ingham, Northwest Fair Contractor's Association, January 19, 2005

See also "Landscape Construction"

Fiber-optic Cable Installation

The scope of work for Inside Wireman Electricians (WAC 296-127-01323) applies to some installation of fiber-optic cable: "The installation of conduit and interduct raceways for fiber optic cable and the pulling of fiber optic cable through these raceways, except telephone conduit and cable." Note the limited exception for "telephone conduit and cable." The Inside Wireman Electrician rates will apply to fiber-optic cable work that does not fit within the specific exception.

The scope of work for Outside Telephone Line Construction (WAC 296-127-01377) may be used for telephone lines not inside of buildings including fiber-optic telephone lines. By definition, telephone must include transmission of voice over distance. It may also carry data, television, internet, and other signals so long as it has the required voice over distance transmission.

The Sound Transit fiber-optic cable systems not within buildings that carry voice transmissions may be installed by an Outside Telephone Line Construction Worker. The fiber-optic cable that does not carry voice transmissions must be installed by workers paid at the prevailing rate of pay for the Inside Wireman Electrician.

This determination does not address fiber-optic telephone cable inside of buildings.

Letter to L. Petersen and D. Petersen, The Fiber Guys, LLC, April 25, 2008

Filing on Behalf of a Subcontractor – Affidavit

Excerpt from policy memorandum: There are occasions when a subcontractor may fail to file an Affidavit for reasons outside the control of the hiring contractor. Pursuant to RCW 39.12.040(1)(b), a contractor may file an Affidavit on behalf of a nonresponsive subcontractor that has ceased operations or failed to file as required under prevailing wage law. … An Affidavit cannot be filed unless a corresponding Statement of Intent to Pay Prevailing Wages (Intent) form was filed by the subcontractor.

If your company meets the above conditions, and wants to file on behalf of a subcontractor, the following documentation must be provided in order for L&I to permit the filing:

- A copy of the contract between you and the subcontractor …
- A copy of a letter sent Certified Mail by your company to the subcontractor giving them 10 business days to file the required form(s) …

In addition to the referenced documentation, complete and submit to L&I a hard copy (paper) Affidavit form using the subcontractor's information. …

You must submit the Assumption of Liability statement on your company letterhead using the exact language prescribed by the department. The statement provides that the company filing on behalf of a contractor/subcontractor assumes full liability for any worker wage claims, consistent with the provisions of RCW 39.12.040(1)(b).

Prevailing Wage Policy Memorandum, August 11, 2013

Filing Intents and Affidavits

The law requires a contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work contemplated by a public works contract to file a Statement of Intent to Pay Prevailing Wages (Intent) and an Affidavit of Wages Paid (Affidavit).

All tiers of contractors and subcontractors on a public works project must file Intent and Affidavit forms.

Public agencies may not release even the initial payment on a public works project without an approved Intent. Following the final acceptance of a public works project, the public agency must have an approved Affidavit from all contractors and all subcontractors at all tiers before the funds retained (retainage held) under RCW 60.28.011 may be released. Failure to follow this requirement of RCW 39.12.040 creates a liability for the agency for any unpaid wages under RCW 39.12.042.

Excerpt from policy memorandum: ... [I]f you hire subcontractors it is recommended that you use the standards in RCW 39.12.040 that apply to the public agencies as a guide: Do not pay any money to a subcontractor until they have an approved Intent; and do not pay the final payment to a subcontractor until they have an approved Affidavit.

Prevailing Wage Policy Memorandum, May 11, 2009

Fire Alarm Testing

Excerpt from letter: The scope of work for Electronic Technicians, WAC 296-127-01322, includes "(1) The installation, operation, inspection, maintenance, repair and service of: ... (c) Fire alarm and burglar systems." (emphasis added). ...

If your "testing" is the work of a "laborer, worker, or mechanic," then prevailing wages are required on a public work. Some professional/technical work that does not involve the use of tools may be exempt from prevailing wage requirements since the work is not that of a laborer, worker or mechanic. ...

Your employees, in performing tests, when some part of that work requires working with tools, or involves some manual labor, must be paid the prevailing rate of pay on public works. ...

If your employees are merely looking, not using any tools, and not performing work (such as the tasks listed above), the requirement to pay the prevailing rate of pay will not be activated.

Letter to B. Nelson, INTELLISYSTEMS, Inc., April 15, 2008

Fire Extinguisher Service and Maintenance

Excerpt from policy memorandum:

(1) Where the fire extinguisher is serviced at a cost to the state or a municipality (the awarding agency) and any of the following circumstances are present, the prevailing wage requirements of RCW 39.12 apply to this work:
   a. The fire extinguisher is serviced on the awarding agency's jobsite, or
   b. The fire extinguisher is serviced at a facility and the primary use of the facility is to provide this service to the awarding agency, or
   c. The fire extinguisher service for the awarding agency is performed with a mobile facility (such as service vehicle), or
   d. The fire extinguisher service involves custom assembly, cutting, modification, fabrication, or other steps specific to the requirements of the awarding agency.

(2) The fire extinguisher service has no prevailing wage requirement from RCW 39.12 if all of the criteria below apply with no deviations or exceptions:
   a. None of the circumstances in (1) above are present, and
   b. The fire extinguisher service is performed in an established service facility that performs the same type of service for numerous customers public, and private, and
   c. The service performed is of a standard nature for the customers with no distinguishing factors for the work done for the awarding agency.

Prevailing Wage Policy Memorandum, March 10, 2009

Funding Source – Federal

Excerpt from letter: While the NSP funds originate with the federal government, the City of Spokane (with respect to NSP I and II funds) and Commerce (with respect to NSP III funds) after receiving the funds exercise discretion and control in allocating the funds through an application and award process. This constitutes a "cost" to the City of Spokane and Commerce requiring that the project which receives the funds is subject to state prevailing wage requirements.

Letter to D. Reber, Inland Empire Residential Resources, August 1, 2012

Excerpt from letter: There is federal funding for this fireboat. You noted that the federal Davis-Bacon Act did not apply to building an item that is personal (not real) property. This factor also illustrates one of several instances in which Washington's prevailing wage law is broader than federal law. Additionally, the source of funding would not be determinative for application of the state prevailing wage law, even if the entire project were funded with federal dollars.

Letter to Martha Lantz, Deputy City Attorney, City of Tacoma, April 16, 2013

Funding Source – Grants and State Funds

Excerpt from letter: The Monroe YMCA applied for a grant from the Washington State Department of Community, Trade and Economic Development (CTED). … In that grant application, the YMCA made a commitment that the prevailing rate of wages would be paid to workers building the project. …

First, where the grant application is specific to funding for construction, and the grant applicant, in the application, commits to the payment of the prevailing rate of wage to the construction workers on the project, the receipt of the grant money would activate a requirement to pay the prevailing rate of wage…

Second, the payment of state funds for construction of a project … will require the payment of the prevailing rate of pay…

> Letter to R. Robblee, Robblee Brennan & Detwiler, January 4, 2008

Excerpt from letter: Where a private non-governmental organization (NGO) uses state or municipal funds to execute a construction project, the prevailing wage provisions of Chapter 39.12 RCW will apply to that NGO's project. … The relevant factor isn't the NGO status of the organization, at issue is the source of the money. Here, funds are from the state, and the construction work is executed at a cost to the state. The prevailing wage requirements of Chapter 39.12 RCW do apply to this set of facts.

> Letter to J. Slothower, Lathrop, Winbauer, Harrel, Slothower and Denison, January 28, 2010

Funding Source – Municipality vs. Private

Excerpt from letter:…[Y]ou ask about whether some telecommunications work on the site of a public entity but only on equipment that is owned by the telecommunications company and leased to the public entity (such as a state agency or municipality) requires compliance with chapter 39.12 RCW. …

… the best answer I can give you based on the information you provided is that if: (a) your client enters into a contract with a public agency to provide telecommunication services, (b) installs a termination panel on the premises in order to transmit the telecommunications service to equipment located on the public premises that the public agency leases from your company, and (c) you charge no fee for the installation, maintenance or removal of the termination panel and other equipment, then I would regard the work performed on the termination panel and the other leased equipment as only incidental to the service your client provides and not subject to prevailing wage requirements.

> Letter to Christian Linville, Linville Law Firm, PLLC, March 28, 2013

Excerpt from letter: Thank you for your December 18, 2012 letter on behalf of Puget Sound Energy (PSE) regarding the quest of whether prevailing wages must be paid to workers employed by a subcontractor to PSE for moving and supplementing PSE's street and area lighting. The project involved a request by Kitsap Transit for PSE to perform this specific work. The work was billed to and paid by Kitsap Transit according to the PSE tariff for such work under the Washington Utilities and Transportation Commission (WUTC). …

The PSE tariffs established by such WUTC orders regulate the amounts that PSE will charge for certain services. The tariffs do not regulate the wages PSE may pay to employees or the wages that PSE subcontractors may pay to their employees. Moreover, the tariffs do not regulate the minimum rate of wage that is established under Washington State law. …

To have a prevailing wage requirement under chapter 39.12 RCW, it is not necessary for PSE to be a party to a public entity's contract, nor is it required that the project be procured through a public entity's competitive bid process. …

The prevailing wage requirement does not depend on the public entity owning the facilities, nor does it require there be a public entity contract for the work, only that the work be executed at a cost to the public entity. …

For the facts presented, there is a cost to Kitsap Transit (a municipality) for this work to relocate and supplement the PSE utilities (area lighting). Since the work is executed at a cost to a municipality, it meets the definition of "public work" in WAC 296-127-010(7)(a)(i).

Letter to R. Prentke, Perkins Coie, April 19, 2013

Gas Meters – Installation of Automated Meter Interface Units

Excerpt from letter: This letter is in response to your request for a determination of scope of work and wage rate classifications for the installation of Cellnet automated Meter Interface Unit (MIU). According to the information you provided, these transmitters are battery operated devices connected to your gas meters that transmit the readings to Cellnet's receivers. … It is my determination that this work is within the scope of work of an Electronic Technician.

Letter to P. Lay, City of Enumclaw, December 20, 2006

Geothermal Drilling and Piping

Excerpt from letter: The drilling at issue here, drilling for construction of a closed loop geothermal system, is not covered by the Water Well Drilling scope of work or trade. … In this instance it does not matter that the work was performed by workers who generally drill water wells. … Clearly, the work performed by Cascade Drilling as described in this instance was not for the drilling of a water well for "water supplies for any other purposes" within the meaning of WAC 296-127-01391, nor was it "for the installation of water wells …" The drilling that occurred here is outside the scope of WAC 296-127-01391 and in this instance, by its nature, falls within the provisions of WAC 296-127-01354, Power Equipment Operators. Please note also that the work of placing the pipe into the bores/shafts requires payment at the Plumbers, Pipefitters, and Steamfitters (WAC 296-17-01364) rate of wage, and filling the bores/shafts with concrete slurry requires payment at the Laborers (WAC 296-127-01344) rate of wage.

Letter to R. Beattey, Spencer Law Firm, LLC, August 11, 2011
Reaffirmed: Letter to L. Gregory, Gregory Drilling, Inc., August 28, 2012

Excerpt from letter: Based on the facts presented here it is my determination that installing pipe for a geothermal closed loop heating and cooling system may be compensated under either of two scopes of work:
Plumbers, Pipefitters, and Steamfitters, WAC 296-127-01364, and Refrigeration Mechanic, WAC 296-127-01367. …

Refrigeration mechanics install systems for cooling, heating, air conditioning, etc. This includes work to lay-out, cut, thread, bend, and connect pipe in such systems, and the method used to fuse the pipe involves a process with specialized tools which constitutes a form of welding, as described under the scope of work for Refrigeration Mechanic. …

The nature of the work here is the installation of a geothermal heating and cooling system and it is not a utilities system such as the water or sewer mains that a public or private utility might run down a street or road, which is the coverage contemplated by the Laborers In Utilities Construction scope of work. …

For the piping system under consideration here, the excavation or backfilling by shovel may be performed at the Laborers rate of wage. The hole boring, and excavation or backfilling by power equipment (such as backhoe, drilling, etc.) must be paid at the Operating Engineers, WAC 296-127-01354 prevailing wage rate.

Letter to S. Snorsky, Geo Loop Tec Company, May 28,2013

Grass Paver Systems

Excerpt from letter: As I understand it the work in question relates to establishing a compacted subgrade; installing irrigation; installing grass pavers; installing topsoil and sand; and planting grass. Based on the information that you provided it is also my understanding that the purpose and application of the grass paver system is to provide parking lots, driveways, emergency access, etc. …

The purpose of the activity establishes the appropriate scope of work to be used. For instance, if the primary purpose of the activity is for the beautification of a plot of land (e.g., planting grass or shrubbery) then the Landscape Construction classification would apply. If however the primary purpose of the activity is not beautification of a plot of land (e.g., the construction of a parking lot utilizing grass pavers), then the appropriate classification would generally be Laborer or Operating Engineer depending on the actual equipment used and work being performed.

Letter to P. Ingham, Northwest Fair Contractor's Association, April 7, 2005

Heating, Ventilation and Air Conditioning (HVAC) Duct Cleaning

Excerpt from letter: You have asked for a determination of the requirement for prevailing wages to be paid for service work to HVAC ducting, including cleaning, cutting and sealing of access holes, application of sealant coating, work to remove and replace registers, placing protective plastic covers and cleanup. … A Sheet Metal Worker (WAC 296-127-01372) performs the fabricating, handling, assembling, installing, servicing and dismantling of HVAC duct work as well as clean-up. So, the Sheet Metal Worker can perform most of the tasks on your list. Some of the tasks you asked about may also be performed by other trade and occupation classifications including Laborers (WAC 296-127-013) and one particular task would be work performed by Painters (WAC 296-127-01356). … Industrial Power Vacuum Cleaners perform duct cleaning work that normally requires the utilization of a specialized truck or trailer with power vacuum equipment, which removes or cleans out mold, fungi, dust and other contaminants from HVAC systems. *(See letter for a breakdown by task.)*

Letter to J. Boland, Indoor Air Technologies, April 27, 2007

Heating, Ventilation and Air Conditioning (HVAC) Testing, Adjusting and Balancing Work

Excerpt from letter: [T]his determination states that testing, adjusting, and balancing of HVAC systems performed prior to occupancy falls under the Sheet Metal Scope of Work. In addition, the enclosed Scope of Work description for Sheet Metal Workers, WAC 296-127-0 1372 speaks directly to the fact that this work is covered under this classification. White collar workers who utilize computer equipment to gather information to provide new instructions to the computer that operates the air handling system, after occupancy, is work that falls outside the blue collar construction work to which prevailing wages are applied.

Letters to J. Ensminger, TESTCOMM, LLC, October 20, 2004 and March 17, 2006, and J. Maiani, Maiani Construction Services, Inc., March 17, 2006

Excerpt from letter: The regulation explicitly states that the testing and balancing of HVAC systems is within the scope of work for sheet metal workers. It makes no distinctions or exceptions. … The fact that Testcomm's employees use computers and perform complex calculations in the performance of their work does not remove it from the sheet metal scope of work. In their work, the employees make adjustments, either mechanically with tools or electronically, to the HVAC systems they are balancing. … Testcomm's work is part of the entire public works project irrespective of whether a tenant is in the space or not.

Arbitration Decision In Re: Testcomm, LLC, June 27, 2008 – reaffirming decision of Office of Administrative Hearings from December 3, 2007

Herbicide Application (via Backpack Sprayers or Truck-Mounted Systems)

Excerpt from letter: [F]or herbicide application via truck mounted or power operated systems and equipment you should be mindful that the Landscape Construction classification may not be used for work that requires the use of power equipment with more than ninety horsepower or trucks with more than one rear axle. …

[T]he application of herbicides on actual landscaped surfaces … is a maintenance type function associated with the landscape that would be covered under the Landscape Construction classification. However, the use of herbicides on non-landscaped surfaces would not be covered under the Landscape Construction classification, unless the work is preparatory to landscape construction.

The use of herbicides or other chemicals on non-landscaped surfaces could be that of the Laborer (WAC 296-17-127-01344) category, the Operating Engineer (WAC 296-127-01354), or the "Other Trucks" classifications under the Truck Driver pay rate depending on the application method used.

Letter to D. Capper, DeAngelo Brothers Incorporated, April 30, 2004

HUD Housing Federal Preemption Exemption

Although the Housing Act of 1937 and 24 CFR 965.101 exempt contractors from paying state prevailing wage rates, they do not exempt the application of other prevailing wage requirements. … For all contracts with a bid due date of May 15, 2011 or later, when a contractor claims an exemption from state prevailing wage requirements on HUD projects, they must file an Intent and an Affidavit for the project. If they claim an exemption based on federal preemption, they must also include with the Intent a statement that the project is exempt from the payment of state prevailing wage rates based on The Housing Act of 1937 and 24 CFR 965.101, and stating that they will pay the workers properly in accordance with Davis-Bacon wage requirements. A similar statement must accompany the Affidavit.

Prevailing Wage Policy Memorandum, April 20, 2011

Inconsistent Scopes of Work – CBAs

Excerpt from letter: Your letter also highlights the provisions of the Washington and Northern Idaho District Council of Laborers Western/Central Washington Master Labor Agreement. … While there are situations for which we will consider the contents of a CBA, we do not rely on such private agreements to establish the limits of a prevailing wage scope of work. … For our determinations, the primary and controlling authority in determining the applicable rate of wage is our scope of work descriptions.

Letter to S. Snorsky, Geo Loop Tec Company, May 28, 2013

Inconsistent Scopes of Work – Plumber Certification

Nothing in the prevailing wage scope of work for Plumbers, Pipefitters, and Steamfitters indicates that it is limited to work requiring a plumber certification. Nor is there any reference to RC W 18 106.010 or the requirement for plumber certification in the Refrigeration Mechanic scope of work. For prevailing wage payment purposes, the work description in WAC 296-127-01364 is controlling regarding work payable at the wage rate for Plumbers, Pipefitters, and Steamfitters. And, of course, for plumber certification purposes, RCW 18 106 and its corresponding body of law are controlling.

Letter to S. Snorsky, Geo Loop Tec Company, May 28, 2013

Landscape Construction

Excerpt from letter: The projects in question are the Granite Falls New High School Phase I Athletic Fields and the Tree Farm Park Improvements in Snoqualmie. The work includes such tasks as subgrade preparation, erosion control, storm drainage, sanitary sewer, domestic water, electric service, chain link backstops, asphalt and concrete work, building construction and demolition.

Those tasks do not appear in the Landscape Construction scope of work description, WAC 296-127-01346, except in the "Landscape construction does not include" section. Accordingly, those tasks may not be paid at the Landscape Construction wages. Near the end of the project, there will be tasks that properly fall under the Landscape Construction scope. …

Work associated with soils mixed off site, which are specifically for the prevailed project should be paid at the prevailed rate.

Letter to Paul Brothers, Inc., September 25, 2002

Excerpt from letter: You have asked for a determination of the appropriate work classification to be used for spreading four (4) inches of organic soil (a top sand mix) and reseeding a natural turf area. You ask whether the landscape operator's wage may be used for this work using equipment of less than 80 horsepower. …
So long as the facts are as stated above and the work is not in the context of some other or additional work that would require the payment of construction rather than Landscape rates, the Landscape Construction scope may be used for the limited horsepower equipment you described while performing the limited tasks you described of four inches of topsoil and reseeding.

Letter to J. Curcio, Pacific Earth Works, Inc., November 19, 2007

Excerpt from policy memorandum: "Land Clearing" that cannot be performed as Landscape Construction [includes]:

- Clearing preparatory to other construction;
- Use of equipment over 90 horsepower;
- Tree falling and bucking; and
- Dirt or materials work beyond the up to six (6) inches of topsoil allowed to be graded in the Landscape Construction scope of work.

Erosion control work … cannot be performed as Landscape Construction. … **Note:** Seeding or hydroseeding, mulch/bark application, sod installation, planting vegetation, and landscape maintenance associated with erosion control activities may still be performed under the Landscape Construction scope unless the work is exclusive to another scope of work such as the scope for Utility Construction, WAC 296-127-01389.

Except for those tasks allowed as Landscape Construction in WAC 296-127-01346, stream or river channel modification, wetlands creation or enhancement projects, as well as construction of environmental mitigations, habitat improvements, swales, etc. *cannot* be performed as Landscape Construction.

Except for spreading up to six (6) inches of topsoil, and mulches, and planting, golf course construction (land grading and contouring not permissible under the Landscape Construction scope of work) *cannot* be performed as Landscape Construction.

Prevailing Wage Policy Memorandum, May 19, 2010

See also "Brick Paver Pathways," "Erosion Control Work," "Grass Paver Systems," "Herbicide Application (via Backpack Sprayers or Truck-Mounted Systems)," and "Tree Removal in an Irrigation District"

Landscape Restoration for Utilities Construction

Excerpt from letter: These contracts are for construction of a water supply system. They are not contracts to perform landscaping.

… [T]he Utilities Construction scope of work description clearly applies those (utility) wage rates to the restoration of the disturbed right-of-way, including landscaping. Therefore, even the landscaping portion of these contracts are required to be paid at the Utilities Construction prevailing wages.

… In this case, the enclosed scope of work description precludes the use of Landscape construction prevailing wages on water system construction contracts. …

Even if we were to conclude that the work in dispute is similar to a commercial or agricultural sprinkler system, those systems are specifically excluded from the Landscape Construction scope description. They certainly are not similar to the lawn or landscape irrigation systems for which the Landscape Construction wages are intended.

> Letter to B. Volk, Kennewick Irrigation District, August 5, 1999
> ***Reaffirmed:*** Letter to B. Emory, Allstar, Inc., October 18, 2000

Law Independent of Electrical Licensing Law

Excerpt from letter: You note that the prevailing wage scope of work description for Telecommunication Technicians, WAC 296-127-01378, differs from the definitions in chapter 19.28 RCW and WAC 296-46B-920. However, the prevailing wage categories are not based on the electrical licensing categories nor are the electrical licensing categories based on the prevailing wage categories. Each of these regulations has its own application. … Their use of similar or identical terminology makes thinking separately about those distinct regulations vital to the correct understanding and use of each standard.

> Letters to M. Sutton, The Integrated Technologies Group, Inc., July 15, 2013 and to M. Schnabel, INSI, Intracommunication Network Systems, Inc., July 11, 2013, *see also "Telecommunications"*

Marine Vessel Construction for City

Excerpt from letter: The work you describe to build, to City of Tacoma specifications, a new fifty-foot marine vessel that will serve as a "fast attack fireboat" will be executed at a cost to the City of Tacoma. Those facts meet the prevailing wage law definition of "public work" in WAC 296-217-010(7)(a)(i). We know that for many years prevailing wages have been required for construction of vessels for the Washington State Ferry system. If this were a standard item for sale on the general market rather than being custom built to your specifications, such facts could affect my answer.

> Letter to Martha Lantz, Deputy City Attorney, City of Tacoma, April 16, 2013

Material Delivery (Sand, Gravel, Crushed Rock, Concrete, Asphalt, or Similar Materials)

For a single delivery trip to a public work with the stated incorporation of the product, all the time spent performing work that is contemplated by or necessary to complete the public work will require the prevailing rate of pay. …

For example: A trip from your shop to a gravel pit is compensable but does not require prevailing wage unless some task related to performing the public work is added. The loading at the gravel pit, travel time to the public works project, all work on or near the public works project including spreading, rolling, and even any waiting time will require the payment of the prevailing rate of pay. When the truck has left the public work and will not return to any public work project or projects but, rather, goes to perform private work, the prevailing wage requirement does not apply to the private work portion of the work day. If no work, cleaning, material pickup, etc. related to any public work is performed after the single delivery to the public works project, the prevailing wage requirement stops upon leaving the public works project and does not apply to a trip back to the shop or a trip to a private project.

For multiple round trips to public works project(s), prevailing wage requirements apply to the entire round trip including the empty leg. For the first empty trip from the shop in the morning and the last empty trip back to the shop at night, the answers are the same as those stated in the paragraph above.

Letter to J. McPhee, Workland & Witherspoon, PLLC, August 12, 2008

Metal Fabrication – In-shop

Excerpt from letter: Your concern was a misclassification of sheet metal work as metal fabrication work. …

There are a number of parameters that define the scope of work for in-shop Metal Fabricators. This trade and occupation classification is only for work in established fabrication shops, not for any on-site work, and not for temporary facilities.

… The Sheet Metal Worker may perform work in-shop or on-site. The in-shop Metal Fabricator (WAC 296-127-01352) does not do architectural sheet metal or HVAC duct work, and does not do the Sheet Metal Work described within the scope of work for the Sheet Metal Worker. Certainly, the in-shop Metal Fabricator never performs work outside of an established shop facility. …

… Only the Ironworker rates are appropriate for the work on packaged pre-engineered metal buildings. Since all the components are part of the engineered structure's integrity, siding and roofing on these structures is done by Ironworkers, not by Carpenters or Sheet Metal Workers, and not by Roofers.

The in-shop Metal Fabricators (WAC 296-127-01352), for the purpose of the Washington State Public Works Law Chapter 39.12 RCW, fabricate and assemble structural or ornamental metal

products, such as frame work or shells for machinery, tanks, stacks, and metal parts for buildings and bridges. …

Note that the work described for the in-shop Metal Fabricator (WAC 296-127-01352) is limited to parts for buildings and bridges. This separates the in-shop Metal Fabrication Scope of Work from other work that might be for boat or shipbuilding and repair, aerospace products and applications, as well as the vast majority of precision machine work and manufacturing. …

Letter to E. Martinson, Sheet Metal Workers Local 66, November 1, 2007

Mixed Public-Private Buildings

Excerpt from letter: WWWDC [Western Washington Workforce Development Council] will lease approximately 13,500 sq. ft. of the 18,000 sq. ft. in the building. In turn ESD [Employment Security Department] will sub-lease approximately 70% of the 13,500 sq. ft. or about 9,450 sq. ft. This 9,450 sq. ft. comprises more than 50% of the building.

You have three questions. Is the entire building then covered by 39.12 RCW? If not, is the ESD portion covered by 39.12 RCW? If the building is covered, is the approximately 4,500 sq. ft. not occupied by any of the consortiums and 100% private ownership covered?

… I conclude that the Public Entity (ESD) caused the construction to be performed per 39.04.260 RCW. Therefore, the building is subject to 39.12 RCW. Likewise, the 9,450 sq. ft. occupied by ESD would also be subject to 39.12 RCW. The remaining 4,050 sq. ft. may also be subject to 39.12 RCW depending on the configuration of the area(s). … As for the remaining 4,500 sq. ft., they would also be prevailed for roofing, siding, painting and core because more than 50% of the 18,000 sq. ft. are contracted for by a qualifying agency (ESD).

However, you then asked if it was possible to write separate contracts for the two separate portions of the building. … It appears this is possible as long as two criteria are met. You must have two separate contracts for the two portions of the building. The work on one portion of the building must be completely separate from the work on the other portion. This means that the work cannot be done simultaneously or concurrently.

Letter to J. Morris, MPH Holdings, LLC, December 28, 2006

Modular Buildings

Excerpt from letter: Public work performed to manufacture modular building units that are built to pre-approved plans in an established factory assembled structure facility, when those modular units are inspected by and bear the insignia of approval of the Department of Labor and Industries under the provisions of Chapter 43.22 RCW, may be performed at the prevailing wage rate for Modular Buildings. Again, that is only for the work in the factory. On-site work is performed at construction rates.

Letter to M. Riker, Sheet Metal Workers' Local 66, February 14, 2008

Monitoring devices for construction site

See "Construction site Surveyor"

Out-of-State Production

Excerpt from letter: The principal statute involved in your question as to whether items fabricated solely in your Hillsboro, Oregon, shop are subject to the prevailing wage rates is RCW 39.12.020…

It is quite clear that the prevailing rate of wage requirement of RCW 39.12.020…is only applicable to work performed within the state of Washington. Be advised however, that if employees of your firm deliver these items that have been fabricated specifically for a public works project, .i.e., non-standard items as defined by WAC 296-127-010(7)(a)(vi), your workers who drive the vehicle into Washington State are entitled to prevailing wages as prescribed in WAC 296-127-020(3).

Letter to R. Marshall, M/D Control Systems, Inc., May 30, 2008

Overtime Calculation – Usual Benefits

Excerpt from letter: Overtime calculations under the state law are based on the entire wage paid including any so called "cash payment of benefits." The only credit for payment of usual benefits is the actual payment of usual benefits as defined in WAC 296-127-014. That rules reads, in part: "If an employer chooses not to provide such benefits, however, wages paid must be at the full prevailing wage rate…" Overtime will be calculated on the full wage rate pair, not just a portion of the wage rate paid.

Letter to K. Walsh, Schwabe, Williamson & Wyatt, April 15, 2008

Overtime for Mixed Public and Private Work

Excerpt from letter: The over eight, or over ten, hour requirements govern the public work but not the private work. Given that, we would be looking for any overtime codes that might apply to the public work such as Saturday, Sunday, or holiday previsions. Absent a prevailing overtime requirement, the four hours on public work could likely be straight time and the hours of private work could be straight time so long as the total hours worked in the work week were less than forty hours.

Letter to J. McPhee, Workland & Witherspoon, PLLC, August 12, 2008

Overtime Requirement Differences – CBA and Prevailing Wage Rates

Excerpt from letter: It is the overtime code language associated to the applicable prevailing wage rate that is of concern regarding prevailing wage compliance. … The referenced project agreement and other terms of the applicable CBA that were not adopted as part of the overtime code associated with the applicable rate may exceed the requirements in chapter 39.12 RCW with respect to the applicable wage rate, but they cannot create a standard which is lower than what the law requires. Whether and how you are able to reconcile what you have identified as an apparent contradiction between the project agreement and the CBA has no bearing upon the prevailing wage requirement that ICON must, pursuant to the published overtime code, pay at least the double time rate for all work performed after 6:00 pm Saturday to 6:00 am Monday.

Letter to L. Pinard, ICON Materials, August 23, 2011

Potholing – Vacuum Excavation

Excerpt from letter: The SUE process combines several disciplines including some professional/technical engineering work outside the definition of "laborer, worker, or mechanic" as those terms are used in Chapter 39.12 RCW and some site work that is the work of a laborer, worker or mechanic, and requires the payment of the prevailing rate of pay under RCW 39.12. This includes any pavement breaking and excavation work – That work will require the payment of the prevailing rate of pay. The Laborer category is correct for the air/vacuum excavation (WAC 296-127-01344).

Letter to T. Seaborn and S. Brown, Applied Professional Services, Inc., December 19, 2007

Power Equipment Operators/Operating Engineers

See "Erosion Control Work," "Geothermal Drilling and Piping," "Grass Paver Systems," and "Herbicide Application"

Pre-Cast Concrete Manufacturing

Excerpt from letter: The department received a request from the Iron Workers Local Union 86 for a determination as to the appropriate prevailing wage rate for work being performed at Bethlehem Construction Inc.'s, (BCI) Cashmere site in constructing the foundations for Sound Transit's Central Link Light Rail Project. …

After reviewing the matter, I conclude that this work should be paid at the construction-worker rate. …

… The foundations are custom-made, individually designed segments and are not standard off-the-shelf items. This work typically requires construction craft workers with skills unique to the trade. Moreover, the work is of the same type and of a similar nature to work that has historically been performed by construction craft workers.

Letter to S. Pendergrass, Iron Workers Local Union 86, January 5, 2007

Excerpt from letter: The concrete segments are sophisticated in their engineering and given their ultimate use are complex and relatively unique. While some segments are alike it is clear that the structure varies from one to the next as required by the engineering of the transit spans. … Fabricated Pre-Cast Concrete classification covers work not requiring specialized skills of construction workers. Because the work on the Sound Transit project required knowledge above and beyond simple and repetitive tasks associated with prefabrication, it is clear that the Fabricated Pre-Cast Concrete rate is not appropriate.

> Letter to A. Roblan, Bethlehem Construction, Inc., April 30, 2008
> *See also "Tunnel Liner Segments – Delivery" and "Tunnel Liner Segments – Manufacture"*

Public work performed to manufacture pre-cast prison cells that are built to pre-approved plans in an established pre-cast facility, when those cells are inspected by and bear the insignia of approval of the Department of Labor and Industries under the provisions of Chapter 43.22 RCW, may be performed at the prevailing wage rate for fabricated pre-cast concrete. Again, that is only for the work in the factory. On-site work is performed at construction rates.

> Letter to M. Leininger, Northwest Fair Contracting Association, August 12, 2008

Pre-Engineered Metal Buildings

Packaged

Excerpt from letter: [T]he only clear reference to packaged pre-engineered metal buildings appears in the Ironworkers scope of work. … The scope of work for Ironworkers clearly includes the erection of steel and metal houses, packaged and pre-engineered buildings. The scopes of work for Carpenters and Sheet Metal Workers just as clearly omit that work. …

Several factors support the use of a single trade including the close integration of the structural shapes, structural bracing, shaped siding, end panels and roof panels along with the specific fastening and bracing methods, and the described methods of simultaneous erection of the component parts to create a monocoque structure.

Therefore, in response to your question, it is my determination that the erection of packaged pre-engineered metal buildings falls under the scope of work for Ironworkers, WAC 296-127-01339.

> Letter to D. Patterson, Ironworkers Local No. 14, May 8, 2006

Non-packaged

Excerpt from letter: You submit that the pre-engineered metal building system you installed at the WSLIP differs from a packaged pre-engineered metal building in three ways: In the pre-engineered metal building system you installed at WSLIP, the main framing system is designed and engineered by one Pre-Engineered Metal Building (PEMB) company. Also, the secondary wall sheeting and or roofing systems are designed and engineered by a separate company and

the wall sheeting is attached to metal studs outside the secondary framing. Finally, the secondary wall sheeting, roofing and miscellaneous screws, nuts and bolts are supplied by another separate company. None of these apply to a packaged pre-engineered metal building. A non-packaged PEMB system has numerous engineers, designers, fabricators and suppliers from different manufacturers as opposed to one manufacturer that designs, engineers and fabricates a "packaged" building.

Therefore, in response to your question, as long as all three of the above facts are present, it is my determination that the erection of a non- packaged, pre-engineered metal building system, as described above, falls under the scope of work for Ironworkers, WAC 296-127-01339, Sheet Metal Workers, WAC 296-127-01372 and Carpenters, WAC 296-127-01333 depending on the work performed. As always, the structural steel framing is Ironworker work, and the sheet metal roofing belongs to the Sheet Metal Workers unless the roof sheets are attached directly to the purlins and then it is Iron worker work.

Letter to R. Cotner, Pre-Fab Installations, Inc., May 8, 2006

Professionals on Design-Build Projects – Intents and Affidavits

Excerpt from letter: You have asked for a determination of requirements to file the Statement of Intent to Pay Prevailing Wages (Intent) and Affidavit of Wages Paid (Affidavit) forms for professionals working on public works projects using the design-build process. You note that in traditional design-bid-build projects the contract for a design professional is separate and has not typically required the filing of the Intent or Affidavit forms.

For the design-build process, the design work has been co-mingled with the construction work in one contract with the prime contractor. …

Professional/technical services providers on design-build public works may not be required to file Intent and Affidavit forms under specific circumstances. Contractors and subcontractors must file the Intent and Affidavit forms. …

Professional/technical service providers are not required to file Intent and/or Affidavit forms when no work that could be included in the definition of contractor (above) is performed.

If work that requires the filing of the Intent and Affidavit forms is performed and professional exempt work is also performed, the craft workers and wages (not less than the prevailing rate) are listed on the forms and the professional/technical employee is also listed by their appropriate category, e.g. "architect" and the wage rate would be listed as: "exempt."

Letter to R. Dubigk, Washington State Department of Transportation, April 12, 2007

Reclamation and Restoration of Waste or Undeveloped Lands

See "Conservation Districts" or "Tree Removal in an Irrigation District"

Recycle Drop Box Truck Drivers

Excerpt from letter: Based on my review of this information, it is my determination that the work in question, as described, is not subject to prevailing wage. In the very narrow circumstance presented, ReNu drivers merely deliver an empty container, leave, and return when called and told the container is full; they do no other work on the site. The drop off and pick up is of new construction debris only. Neither ReNu nor its parent company is a construction contractor or sub-contractor performing other work on the sites in question. ReNu drivers deliver and remove containers from both public and private sites, and do not spend a substantial portion of their day delivering and removing containers from public work sites. "Timing" is not critical to ReNu's work on the public works project; the containers can be removed at a time convenient to ReNu and its drivers. ReNu does not conduct its business through site-specific contracts. The "drop boxes" are only distributed at a customer's request. Here, this activity is considered a service and the drivers would not be covered by RCW 39.12.

Drivers are entitled to prevailing wages when they are employed by a contractor or sub-contractor performing other work on the site, they remove containers that do not result from new construction debris, they perform work on the public work site in addition to removing the debris, or they remove the debris at a particular time to accommodate other work on the site. … According to your letter, on behalf of ReNu Recycling, the work performed by ReNu drivers does not meet any of the above factors. The determination that the ReNu drivers are not subject to the Prevailing Wage Act is limited to the specific facts presented.

This determination in no way relates to driver activities pertaining to any "drop boxes" that collect demolition or land clearing debris resulting from the demolition of a structure, a strip and gut action, a selective demolition process, a land clearing operation or excavation.

Letter to T. Dooley, Principled Solutions, May 30, 2006

Residential vs. Commercial – Dormitories

Excerpt from letter: [The] characteristics of the agreement and terms of occupancy (or licensure, if occupancy is not the correct term) contrast sharply with common residential tenancy. … In order for a project to qualify for residential construction prevailing wage rates, the facility must be used "solely as permanent residences," which does not seem to be the case for university housing facilities. … Apparently, a licensee's (student's) stay in a particular room or apartment at Stevens Court Building C or D cannot be considered "permanent" by the licensee (student), even for the duration of a school year or a quarter. … Stevens Court buildings and "apartments" are not single family dwellings, duplexes, apartments or condominiums nor are they permanent residences and, therefore, they do not meet the definition of Residential Construction in WAC 296-127-010(9).

Letter to J. Gana, University of Washington Housing and Food Services, August 6, 2012

Residential vs. Commercial – Farm Worker Housing

Excerpt from letter: Although you stated your project is under four stories, you did not state whether your structure was under four stories in height, including basement. That is crucial. A project exceeding the height limits cannot be residential. Provided that your project meets the residential criteria for height, further analysis is required. …

… The residencies that you describe are complete units; their sole, permanent use is only for residences; they are not motels or hotels; and no non-residential uses will be present. With your specific fact set, to the extent residential rates may be used for public works, those residential rates are appropriate. If any facts vary, this answer could be different.

Letter to D. Spurlock, Office of Rural and Farm Worker Housing, July 28, 2008

Excerpt from letter: You describe a project of less than four (4) stories that will be used for housing. The occupancy durations will range from approximately one (1) month to six (6) months. … The residencies that you describe are complete units; their sole, permanent use is only for residences; they are not motels or hotels; and no non-residential uses will be present. With your specific fact set, to the extent residential rates may be used for public works, those residential rates are appropriate.

Letter to A. Holmes, Office of Rural and Farm Worker Housing, October 27, 2008

Excerpt from letter: ***Modified****:* You describe a project with dwelling units that do not have full kitchens but have a refrigerator, microwave and hot plate. You do not include either a stove or a sink. You also state that La Posada had to purchase a hotel/motel license due to its location and zoning. … The residencies that you describe are not complete dwelling units as we define them. The communal kitchen is more in keeping with a dorm than a single family dwelling. If the units had full kitchens and a communal kitchen we might have been able to still conclude the project was residential. However lacking full kitchens precludes us from considering the units residential. As I do not need to reach the issue of hotel/motel, I will reserve determination on this issue until it is necessary. With your specific fact set, the commercial rates are appropriate.

Letter to A. Holmes, Office of Rural and Farm Worker Housing, November 24, 2008

Residential vs. Commercial – Group Homes

Excerpt from letter: 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. … 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. … [T]his project, the rehabilitation of the West Unit of the duplex, is a residential project for purposes of chapter 39.12 RCW. Please note, however … 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).

Letter to K. Lerner, DSHS – OSSD, August 23, 2012

Residential vs. Commercial – HUD Letter of Wage Determination

Excerpt from letter: This letter pertains only to application of federal law and in the absence of a clear statement of preemption has no bearing on how the department applies the different and more limited state prevailing wage residential construction definition. … HUD, in applying federal regulations, looks at whether the commercial use of a structure is only "incidental to the residential aspects of the design" from a cost and construction standpoint, and if it finds that to be the case, it characterizes the entire project as "residential." State prevailing wage law contains no similar provisions regarding "incidental" commercial use, but rather very specifically states that the structure must be used "solely as permanent residences" to qualify for application of the residential rate.

Letter to D. Reber, Inland Empire Residential Resources, August 1, 2012

Residential vs. Commercial – Mixed Use Building

Excerpt from letter: The structure at issue here is a mixed use structure, not used solely as permanent residences. Based on that description, and other details I've referenced concerning the nature of the structure, the department correctly returned Intent #509882 for correction, requesting that the applicable rate be changed to reflect the mixed use of the building, which would require payment to workers based on commercial wage rates.

Letter to D. Reber, Inland Empire Residential Resources, August 1, 2012

Residential vs. Commercial – Resident Volunteer Firefighter Program

Excerpt from letter: The residential construction definition in WAC 296-127-010(9) includes both structural and usage limitations. The building that forms the subject of your inquiry appears to be fewer than four stories in height, which fits the structural limitation set forth in the rule. The purpose and planned usage of the facility however, are different from that of a single family dwelling used solely as a permanent residence. … Indeed, the facility is primarily used as a method to provide qualified firefighter/EMS personnel in or near the station for emergency response, and the terms of occupancy reflect this primary purpose. For these reasons, construction on the facility cannot be paid at the residential construction prevailing wage rates.

Letter to E. Walters, Snohomish County Fire Protection District 28, November 13, 2012

Residential vs. Commercial – Transitional Housing

Excerpt from letter: ...[T]he absence of a specific limitation on the length of occupants' residencies, the absence of a treatment or other commercial purpose served within the residence, and the absence of a commercial or institutional dining system, are consistent with the definition of residential construction for prevailing wage purpose. Residential construction prevailing wage rates may therefore be used for the project.

Letter to Terry Pottmeyer, Friends of Youth, April 5, 2013

Retaining Wall Systems – Keystone

Excerpt from letter: The department's position has been, and continues to be, that those retaining wall systems are installed by Construction Laborers and Power Equipment Operators, as opposed to the Ironworker and the Landscape Construction classifications.

Letter to M.A. Schrawyer, Summit Construction, November 23, 1993

Security Guards

Excerpt from letter: Security guards are not considered laborers, workers or mechanics under 39.12.20 RCW and therefore are not required to be paid the prevailing rate of wage. Nor are you required to submit the Intent and Affidavit forms normally required by all contractors and sub-contractors. This, of course, presumes that the only persons working under the contract are security guards.

Letter to A. Ross, Western Washington Merchant Patrol, Inc., July 9, 2007

Sheet Metal Roofing

Excerpt from letter: It has been the Department's long standing practice and position that the appropriate classification for the installation of a sheet metal roof is that of Sheet Metal Worker on public works projects. ...

The plain language contained in the Scope of Work for Roofers (WAC 296-127-01370) states that Roofers apply and install *all* types of roofing materials, *other than sheet metal*. It is clear from this language that the Scope of Work for Roofers is not the appropriate classification for this work.

You expressed your concern and belief that contactors installing sheet metal roofs on public works are compensating workers at prevailing wage rates established for carpenters. ...

Carpenters, Sheet Metal workers and Ironworkers can do metal siding or metal roof decking. The reference to "roof decking" is not referring to the actual roofing material itself.

However, Sheet Metal Worker would not be the appropriate classification if the sheet metal roof is being installed in connection with the erection of a pre-engineered packaged metal building.

The appropriate classification for the erection of a pre-engineered packaged metal building is that of Ironworker (WAC 296-127-01339).

Letter to E. Martinson, Sheet Metal Workers Local 66, June 8, 2006

Sheet Metal Wall Panels/Flashing, Reglet and Drip Edge

Excerpt from letter: With the limits noted below, metal siding (metal wall panels) can be installed at the prevailing wage rates for Carpenters (WAC 296-127-01310), Ironworkers (WAC 296-127-01339) and/or the Sheet Metal Workers (WAC 296-127-01372). All three of those WACs state, in part, "Install metal roof decking and metal siding, regardless of the fastening method, or what it is fastened to."

Please note some limits:

(1) … The reference to "roof decking" is *not* referring to the actual roofing material itself. This means that the Sheet Metal Worker rate is the correct rate for *metal roofing*.
(2) Roofers (WAC 296-127-01370) do not install metal roofs or siding. …
(3) Only the Ironworker rates are appropriate for the work on packaged pre-engineered metal buildings. …

Flashings, including reglets and drip edge are installed by Sheet Metal Workers (WAC 296-127-01372).

Letter to M. Johnson, ICON Corporation, March 30, 2007

Sheet Metal Worker

See "Heating, Ventilation and Air Conditioning (HVAC) Testing, Adjusting and Balancing Work," "Heating, Ventilation and Air Conditioning (HVAC) Controls," and "Heating, Ventilation and Air Conditioning (HVAC) Duct Cleaning"

Shipbuilding and Ship Repair (SBSR) Sub-classifications and Rates

Excerpt from letter: It has been L&I policy that in very limited situations, mostly dealing with the trade of Power Equipment Operators, L&I has applied a "wage band" approach to determining a prevailing wage rate for a sub-classification where there is no published rate for that specific sub-classification. …

Companies may list SBSR/Shipfitter and the corresponding wage rate for SBSR/Pipefitter work performed in Snohomish County on Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid forms filed with the L&I. Hours paid at the SBSR/Shipfitter rate for SBSR/Pipefitter work and those hours paid at the SBSR/Shipfitter wage rate attributable to actual SBSR/Shipfitter work should be listed separately. Companies using this approach must provide an explanation in the "notes" section of the forms indicating which hours listed as SBSR/Shipfitter were for SBSR/Pipefitter work. In permitting this band adoption of the SBSR/Shipfitter rate for this work, we are not stating that the work is the same, only that there

is an apparent skill level correlation for each type of work that permits application of the same wage rate. …

This determination regarding Snohomish County SBSR/Pipefitters rates is limited to that specific issue. Any request to apply a band rate approach to any other worker classification or sub-classification must be directed to the L&I industrial statistician.

Letter to S. Dean, Vigor Industrial, LLC, August 15, 2012

Silt Fencing

Excerpt from letter: Fence Erector is not the appropriate classification. Construction Laborer should apply. …

The Fence Erector scope begins by saying that "FENCE ERECTORS AND FENCE LABORERS erect and repair metal and wooden fences and fence gates …" A silt fence is neither a wooden nor a metal fence, and is also not a fence gate. …

Construction Laborers, according to the scope, perform a variety of tasks. … Incidental and miscellaneous work not falling into another craft typically is performed by the Laborer. Driving stakes is a part of silt fence placement, according to my understanding, and is mentioned in the Laborer scope.

Letter to P. McNeil, Washington & Northern Idaho District Council of Laborers, September 9, 1998
Reaffirmed: Letter to H. Weber, Ohno Construction Company, March 10, 2004

Social Security Numbers on Certified Payroll Record Reports

Excerpt from policy memorandum: A contractor, in responding to L&I's request for certified payroll records on behalf of an interested party, need provide only the last four digits of employee Social Security numbers, along with the other required information.

A contractor, in responding to a request for certified payroll records as part of L&I's investigation of a potential violation of prevailing wage law, must provide complete employee Social Security numbers, along with the other required information.

Prevailing Wage Policy Memorandum, November 29, 2011

Survey Firms as "Contractors" on a Public Work

Excerpt from letter: It is not essential to be a "contractor" for prevailing wage requirements to apply to work performed upon a public work. Further, the prevailing wage rules define "contractor" to include entities that are required to pay industrial insurance as a construction company. … The non-construction risk class 4901-17 that survey firms may use for work not otherwise classified if not correct for work on construction projects where the construction industrial insurance rates will apply.

Surveying work not related to the public works construction does not have a prevailing wage requirement. *See* WAC 296-127-01396(2). Under the rule and consistent with the requirements in law, survey work in support of the performance of the public works construction contract (work upon the public work) does have a prevailing wage requirement.

> Letter to B. Thorp, Land Surveyor's Association of Washington, February 17, 2012 - upheld when appealed to governor, April 30, 2012
> *See also "Application of Federal or Other State Laws" and "Application of Prevailing Wages to Professionals"*

Technical or Professional Support

Excerpt from letter: In regards to the professional work you outline, workers from your firm who provide technical, professional support of the product(s) you have sold do not meet the definition of a laborer, worker , or mechanic as defined by RCW 39.12.020. Thus, such work would not be covered under the statute.

> Letter to R. Marshall, M/D Control Systems, Inc., May 30, 2008

Telecommunications

Excerpt from letter: There are many prevailing wage scopes of work, including some that apply to certain electrical work. The prevailing wage electrical scopes include Electronic Technicians (WAC 296-127- 01322), Outside Telephone Line Construction (WAC 296-127-01377), Telecommunication Technicians (WAC 296-127-01378), Power Line Construction Electricians (WAC 296-127- 01320), Inside Wireman Electrician (WAC 296-127-01323), and Electrical Fixture Maintenance Workers (WAC 296-127-01325).

The Telecommunication Technicians prevailing wage scope of work is often referred to as the "inside telephone line" construction scope. Generally, the wage rates that correspond to that scope of work are used for work performed on telephone (voice over distance) and data (bits and bytes) systems located inside the point of demarcation within a building, but only if the system is not a system specifically assigned to the Electronic Technicians wage rates by WAC 296-127-01322. The attached guidance document on distinctions between those scopes explains those differences.

The Outside Telephone Line Construction prevailing wage scope is used for telephone (voice over distance) and data (bits and bytes) systems work outside the point of demarcation, but only

if the system is not a system specifically assigned to the Electronic Technicians wage rates by WAC 296-127-01322.

Letters to M. Sutton, The Integrated Technologies Group, Inc., July 15, 2013, and to M. Schnabel, INSI, Intracommunication Network Systems, Inc., July 11, 2013,

See also "Data Cabling"

Tennis Court Surfacing (Seamless)

Excerpt from letter: The work at issue is the installation of a seamless tennis court surface designed for its performance in tennis play. The installation process involves the application of an acrylic surface which may or may not be mixed on site with silica sand. … The work process begins with preparation of the underlying surface, primarily to patch cracks or depressions with a cement-based product and trowels. To install the tennis court surface, the mixed product is poured out of buckets and smoothed over the playing surface. The smoothing process involves the use of a long-handled squeegee. …

… My determination is not that the installation of Beynon's product falls under the scope for Cement masons because it amounts to finishing of the underlying surface. Rather, my conclusion, based upon a review of the tools and materials employed, and the composition of the surface, is that the process appears to be more than the application of a sealant. It involves the *installation of a new surface* in a manner which falls within the scope for Cement masons.

Letter to J. Lee, Attorney at Law, Williams, Katsner, & Gibbs PLLC, June 19, 2013

Tree Removal in an Irrigation District

Excerpt from letter: Reading the language of RCW 89.08.010(3) in conjunction with WAC 296-127-030 … the "irrigation district exemption" is a narrow exception. Even so, the activities that you describe for the irrigation district project at issue, tree removal, seeding, mulch, and erosion control, all seem to clearly fall within the scope of "reclamation or development of waste or undeveloped lands." … Thus, given the specific tasks at issue here, the activities are included within the parameters of the narrow exception of WAC 296-127-030 and do not require prevailing wage compliance.

Letter to J. Slothower, Lathrop, Winbauer, Harrel, Slothower, & Denison, LLP, April 4, 2013
See also "Conservation Districts – Types of Work for Prevailing Wage"

Truck Driving

See "Handling, Loading and Unloading of Electrical Equipment," "Herbicide Application (via Backpack Sprayers or Truck-Mounted Systems)," "Roundtrips for Deliveries to Public Works" or "Tunnel Liner Segments – Delivery"

Tunnel Liner Segments – Delivery

Excerpt from letter: Prevailing wages are required for the delivery of tunnel liner segments according to WAC 296-127-020(3), and the proper prevailing wage for this work would be the prevailing wage for King County. This means you will not be required to track and calculate drivers' time within each county. … The proper classification of labor for prevailing wage purposes would be that of Truck Driver – Other Trucks. If a driver delivers segments in successive trips, driving north carrying segments … and then driving empty south to the Puyallup facility to pick up additional loads of segments, then prevailing wages will be required to be paid for the complete round trip.

Letter to J. Sorenson, EnCon Washington, LLC, April 18, 2013
See also "Pre-Cast Concrete Manufacturing Requiring Specialized Skills"

Tunnel Liner Segments – Manufacture

Excerpt from letter: Based on the new information I have received during this review, I have determined that neither the fabrication plant nor Traylor-Technopref exists for the sole purpose of fabricating segments for the U-220 and U-230 projects. Given this new information, I believe the fabrication of the tunnel liners by Traylor-Technopref on the U-220 and U-230 projects may be compensated at the fabricated precast concrete products rate.

Letter to J. Payne, Davis Grimm Payne & Marra, June 30, 2011

Excerpt from letter: Prevailing wages are required for off-site fabrication of precast segmented tunnel liners. … The correct trade and occupation is Fabricated Precast Concrete Product Workers. Based on the description you provided, the manufacture of the tunnel liner segments can be distinguished from on-site construction in design, engineering, and the nature of the complexity of the work.

Letter to J. Sorenson, EnCon Washington, LLC, July 26, 2012
See also "Pre-Cast Concrete Manufacturing Requiring Specialized Skills"

Usual Benefits for Prevailing Wage – Calculations

Excerpt from policy memorandum:

- Usual benefits are credited on an hourly basis and are expected to accrue at a regular rate. Employers may not count benefits associated with public and private work as if they were only associated *with* public work projects. L&I will generally apportion or annualize benefit contribution or costs to all hours worked over the course of a year unless an employer provides an alternate schedule and can document actual hours worked. Certain defined contribution pension plans (DOL exception) do not need to meet this annualization requirement.
- Benefit contributions must be deposited on at least a quarterly basis.
- Basic Annualized Calculation Method: Divide the total yearly contributions made by the employer for each individual worker by 2,080 hours (40 hours per week X 52 weeks = 2,080 hours).
- Generally a calendar year is used in calculating credits toward the prevailing wage rate, but there may be instances when calculations are appropriately based on a fiscal year or plan year.

Prevailing Wage Policy Memorandum, February 28, 2013

Usual Benefits for Prevailing Wage – Posting and Documents

Excerpt from policy memorandum: Employers must comply with all posting and employee notification requirements provided by applicable federal and state laws concerning usual benefits plans. Employers must also have and make available to L&J upon request, copies of all documents concerning usual benefits as identified in WAC 296- 127-0 14. *See* WAC 296- 127-01410.

Prevailing Wage Policy Memorandum, February 28, 2013

Usual Benefits for Prevailing Wage – Types of Payments

Excerpt from letter: Under certain circumstances, a "clean card" service may provide a benefit to a worker which extends beyond any single employer, in the form of that employee's increased qualifications to work on certain kinds of jobs. … On the other hand, drug testing on an individualized basis would be unlikely to qualify as a usual benefit for the worker, since the benefit falls predominantly to the employer and relates to issues that are traditionally an employer's responsibility. …

Plans going by the title of "Industry Fund" or "Organizational Trust" may suit disparate purposes. … Certain purposes, such as training, may qualify. However, one use of such funds that has been observed is the awarding of monies to union signatory employers for the sake of increasing their competitiveness in the bidding process. Such funds may be negotiated on behalf of employees, and in the past, the prevailing wage program has allowed these payments as a "bona fide" usual benefit. …

The statute refers specifically to "defraying costs of apprenticeship or other similar programs." Although such programs are required to be approved by the State Apprenticeship Council for purposes of using the apprenticeship wage scales on public works contracts (see RCW 39.12.021), the statute suggests that supplementary funds to assist with defraying the costs of such programs are usual benefits. For training that is entirely unrelated to an approved apprenticeship plan, individualized review may be necessary.

Letter to K. Cowin, Bulldog Plumbing & Design, LLC, February 28, 2013

Water Meter Replacement

Excerpt from letter: When replacing water meters in a public utility easement, the use of the General Laborer or Topman (within Laborers in Utilities Construction) or the use of the Plumbers & Pipefitters prevailing rates of pay will comply with the wage requirements in chapter 39.12 RCW, the state prevailing wage law.

Letter to M. Scott, HCMP Law Offices, April 17, 2014