



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Prevailing Wage
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360/902-5335 Fax 360/902-5300

August 6, 2012

Josh Gana, Assistant Director for Facilities and Operations
University of Washington Housing and Food Services
1201 North East Campus Parkway
Seattle, Washington 98195-5610

Re: Determination of Prevailing Wage Rate Classification for Stevens Court
Buildings C and D

Dear Mr. Gana:

Thank you for your February 28, 2012 letter requesting approval to use residential construction prevailing wage rates for rehabilitation work on Stevens Court Buildings C and D. I apologize for the delay in responding to your request and hope I've caused you no inconvenience.

The appropriate prevailing wages for this work will be the commercial prevailing wage rates, not the residential wage rates.

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

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

WAC 296-127-010(9) states:

(9) "Residential construction" means construction, alteration, repair, improvement, or maintenance of single family dwellings, duplexes, apartments, condominiums, and other residential structures not to exceed four stories in height, including basement, when used solely as permanent residences. It does

not include the utilities construction (water and sewer lines), or work on streets, or work on other structures (e.g., for recreation and business.)

Dormitories are perhaps one of the most common types of structures built with public funds for living accommodation purposes. Considering that, the term “dormitory” is conspicuously absent from the definition of Washington’s prevailing wage definition of residential construction and that absence is significant and meaningful.

Taken as a whole, the definition of residential construction invokes a vision of facilities and purposes that are not commercial or institutional in nature. By contrast, the term “dormitory” connotes a more commercial, more transitory and more institutional environment and purpose.

This distinction appears to be illustrated, in the case of Stevens Court, by information offered on your website. From the Residence Hall System Agreement:

- Apparently, the relationship between the University and the student is not one of landlord and tenant but rather, one of “licensor and licensee” which may not confer certain tenants’ rights to the inhabitants and guests of Stevens Court.
- Licensees (students) do not choose rooms or apartments. They express preferences, but are assigned to rooms according to availability. Licensees (students) may be reassigned to a different room at any time with a 48-hour notice from the University. Students may be reassigned new roommates by the University with no notice to the student.
- Licensees (students) use and occupy a “room,” and use (but do not occupy) “common areas” which, presumably, include bathroom and kitchen facilities where available (such as at Stevens Court).
- The Agreement requires licensees (students) to consent to allow the University to supply certain private information (name, email address and telephone number) to other persons (roommates) whom the licensee (student) likely has never met before and with whom the student does not personally choose to live (the University assigns rooms to roommates).
- In certain circumstances students’ belongings may be packed, stored or disposed of without the licensee’s (student’s) consent and at the student’s expense.
- In certain circumstances, University staff or designees might enter licensees’ (students’) rooms without prior notice.
- Licensees (students) are made aware in the Agreement that they have no expectation of privacy in common areas which (presumably) include kitchen and bathroom facilities.
- Additionally, licensees (students) are, under Appendix A: Single Student Apartment Community Standards, required to:
 - Present their student identification card to authorized University staff upon request.

- Comply with University officials and their authorized staff or agent acting in the course of his/her duties.
- Ensure that any guest will provide identification when requested by University staff.
- And licensees (students) are prohibited from:
 - Engaging in sports activities or using recreational equipment within University Housing buildings.
 - Being intoxicated.
 - Displaying printed advertisements of alcohol in a way that is visible from outside the apartment.
 - Allow any guest to stay overnight without the prior consent of the licensee's (students') apartmentmates.
 - Prop open any door for any reason.
 - Possess candles.
 - Possess spray paint.
 - Possess any non-culinary knife with a blade longer than three inches.
 - Enter or exit through a window except in cases of emergency.
 - Use or possess air conditioners, space heaters, waterbeds or halogen lamps.
 - Cook foods in their "rooms."
 - Install their own locks or alarms.
- According to the Single Student Apartment Community Standards, if the door of a room is open, the room is considered a public place.

These characteristics of the agreement and terms of occupancy (or licensure, if occupancy is not the correct term) contrast sharply with common residential tenancy. University housing living is "institutional" living. While they do seem to include a variety of features and options, university housing facilities are dormitories and not apartments.

Permanent Duration

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. While one would not expect that occupants will actually reside in a particular residential facility throughout eternity, it is necessary to consider how long residents are expected to stay as well as how long they might or could stay. 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. A student might be reassigned to a different room at any time. Summer occupancy is not allowed in most university housing facilities, including Stevens Court Building D. While it may be possible for a licensee (student) to occupy a university housing facility continuously throughout a one year period, this appears to not be possible at Stevens Court. In other

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words, for these several reasons regarding duration considerations, Stevens Court Buildings C and D are not permanent dwelling facilities.

Physical Characteristics

Stevens Court units are physically unique, compared to common or typical residential apartments and condominiums. The bedrooms in Stevens Court are quite small as are the closets, and the bathrooms lack bathtubs, even in the six-bedroom units of Stevens Court Building D. Building D bathrooms each have two showers and two commodes. For an apartment unit, these features would seem rather curious. Commode units in Stevens Court Building D are what someone might casually term "commercial" in that the commode is visually separated from the rest of the bathroom with partitions and a door similar to commodes in a typical public building. In other words, the bathrooms in Stevens Court building D appear to be functionally and structurally "institutional" or "public" bathrooms, not what one would expect to find in "single family dwellings, duplexes, apartments, condominiums, and other residential structures...when used solely as permanent residences." See WAC 296-127-010(9).

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).

This determination is based upon the facts you have provided and additional information obtained from University of Washington web sites. If the facts vary or new facts are introduced, the answer could be different.

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

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

Sincerely,



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

Attachment

Prevailing Wage Determination Request and Review Process

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

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

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

(3) Any party in interest who is seeking a modification or other change in a wage determination under RCW [39.12.015](#), and who has requested the industrial statistician to make such modification or other change and the request has been denied, after appropriate reconsideration by the assistant director shall have a right to petition for arbitration of the determination.

(a) For purpose of this section, the term "party in interest" is considered to include, without limitation:

(i) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any worker, laborer or mechanic, or any council of unions or any labor organization which represents a laborer or mechanic who is likely to be employed or to seek employment under a contract containing a particular wage determination, and

(ii) Any public agency concerned with the administration of a proposed contract or a contract containing a particular wage determination issued pursuant to chapter [39.12](#) RCW.

(b) For good cause shown, the director may permit any party in interest to intervene or otherwise participate in any proceeding held by the director. A petition to intervene or otherwise participate shall be in writing, and shall state with precision and particularity:

(i) The petitioner's relationship to the matters involved in the proceedings, and

(ii) The nature of the presentation which he would make. Copies of the petition shall be served on all parties or interested persons known to be participating in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.



HOUSING & FOOD SERVICES

UNIVERSITY of WASHINGTON

Division of Student Life

RECEIVED

MAR 01 2012

Prevailing Wage Section

February 28, 2012

Ms. L. Ann Selover
Acting Industrial Statistician and Prevailing Wage Program Manager
Department of Labor and Industries
PO Box 44540
Olympia, WA 98504-4540

Re: Determination of Pay Classification for Stevens Court Building C and D

Dear Ms. Selover:

Thank you for engaging in conversations with me and other representatives from University of Washington Department of Housing & Food Services regarding application of residential prevailing wages on the campus. It was helpful to speak with you and Ramona regarding the Stevens Court Building B project this summer.

On July 21, 2011, you issued a decision via email indicating that project did not constitute "residential construction" for prevailing wage purposes based on a department interpretation of which categories of housing are considered "permanent residences." As timeline restrictions prevented the opportunity for further discussion about this project, we adjusted the contract on this job to the commercial prevailing wage and the contractor has completed the work.

Despite moving forward with the project, we believe that the application of the commercial prevailing wage to Stevens Court Building B is inconsistent with past precedent and represents too narrow of an interpretation of "residential construction" as defined in WAC 296-127-010(9), specifically when considering "permanent residences." While I appreciate that comparing precedents is difficult as each determination is fact specific, projects with fact patterns that are not substantively different warrant consistent application of definitions and policies. The following past applications of residential construction prevailing wages indicate a broader interpretation of "permanent residence":

1. In July 2008, the Columbia Pointe Farm Worker Housing Development was approved as residential construction. In this case, occupancy periods were described as 1 to 6 months in duration which was determined to constitute permanent residences by the department.
2. The Steve's Court Building A project from summer of 2010 was approved as residential construction, as have previous jobs in this apartment complex. Building A is in the same complex as Building B.
3. In June 2003 the department issued guidance to Western Washington University which stated, "...The department has taken a position that the residential rates can apply to construction of apartment complex's (sic) where students are housed when those apartments are self-contained and they do not exceed 4 stories in height, including basement."

Additionally, the statute indicates that the prevailing rate of wage applied must be for the same trade or occupation. The wage rate for residential construction workers employed on this job, a 3-story wood-framed apartment building containing complete units, should be compared to residential construction workers likely to be employed on similar projects, as opposed to commercial workers employed on much larger projects such as concrete, high-rise dormitory buildings with shared living facilities and commercial infrastructure or an office building.

This summer, we contemplate rehab work in two additional buildings in the Stevens Court apartment complex: Stevens Court C and Stevens Court D. I respectfully request a reconsideration of the Department of Labor and Industries position on residential apartment buildings on the UW campus and a determination of the appropriate pay classification for the upcoming project.

The following project details are relevant:

- Stevens Court C building is comprised of 24 four-bedroom, one-bathroom self-contained apartment units with full kitchens in each unit. The building is three stories in height with no basement; the sole, permanent use of the facility is as residences. No commercial activity is present in the building. The building is occupied year-round and utilities are exclusive to each unit.
- Stevens Court D building is comprised of 9 six-bedroom, two-bathroom self-contained apartment units with full kitchens in each unit. The building is three stories in height with no basement; the sole, permanent use of the facility is as residences. No commercial activity is present in the building. The building is occupied year-round and utilities are exclusive to each unit.

Time is of the essence as we prepare to solicit bids for the upcoming summer. Please contact me with should you have questions or require additional information on the projects specified, I can be reached at 206.685.8790 or jgana@uw.edu.

Respectfully,



Josh Gana
Assistant Director for Facilities and Operations

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MAR 01 2012

Prevailing Wage Section

Selover, Ann (LNI)

From: Selover, Ann (LNI)
Sent: Thursday, July 21, 2011 6:02 PM
To: 'Graham Sherwood'
Cc: Christensen-Russell, Ramona (LNI)
Subject: RE: University of Washington, Housing Agreements

Graham,

Thank you to you and the others who joined in our July 19 telephone conference. I appreciate your interest in prevailing wage compliance and your efforts in providing us with information pertinent to my decision regarding the Stevens Court Building B project.

In reviewing your July 15 statement as to why you feel that the project qualifies for treatment as a "residential" project, a couple of things are evident to me. You are correct that the project appears to satisfy the WAC 296-127-040(9) definition of "residential construction" in some important respects relating to the nature of the physical structure. However, the project falls far short of the definition with respect to its *use*. The rule clearly states that "residential construction" pertains to structures with specific characteristics only *when used solely as permanent residences*.

The department has consistently excluded dormitories from the "solely as permanent residences" use aspect of the definition. Following our phone discussion and a review of the floor plans for the project together with both rental agreements you provided, it is clear to me that this "apartment style residence hall" is just that, a residence hall or dormitory. As such, it does not qualify for application of residential prevailing wage rates.

Factors that influenced my conclusion that this project does not constitute "residential construction" for prevailing wage purposes include but are not limited to the following:

- The floor plan indicates that the six bedrooms within each "apartment" share a common bathroom that is comprised of two commodes, two sinks and two shower stalls.
- The "common areas" defined in both rental agreements include lounges, living rooms, bathrooms, balconies, hallways and kitchens "other than the student's *room*."
 - "*Room*" in the "single student apartment agreement" is defined as "A studio or space assigned to the student within an apartment."
 - "*Room*" in the "residence hall system agreement" is defined as "A single or shared assigned space in the Residence Hall System. In some cases, *Room* may apply to a temporarily assigned space such as a lounge or loft."
- Reference is made to "assigned room" at various places in both agreements.

There a number of other factors as well that contribute to my conclusion, but I believe those identified here suffice for this purpose.

I realize this is not the answer you wanted to hear, but it is the correct application of the WAC 296-127-040(9) definition, and I hope that it will provide you with sufficient guidance, not only with respect to this project, but future projects as well.

This answer is based upon the specifics facts you provided. If the facts change or are different from as stated, the answer may differ as well.

If you have questions, or if I can be of further assistance, please let me know.

Regards,

Ann

L. Ann Selover

Acting Industrial Statistician/Program Manager
Prevailing Wage
Department of Labor and Industries
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sela235@Lni.wa.gov

From: Graham Sherwood [<mailto:grams@u.washington.edu>]
Sent: Tuesday, July 19, 2011 11:17 AM
To: Selover, Ann (LNI)
Subject: University of Washington, Housing Agreements

Hi Ann,

Here are the rental agreements for your review.

Under normal circumstances, the entire Steven's Court complex is utilized as "Single Student Apartments" under this agreement: <http://www.hfs.washington.edu/WorkArea/DownloadAsset.aspx?id=2434&libID=2445>. This indicates past use and intended future use of Building B.

Currently and for at least the upcoming academic year starting autumn 2011, due to the special circumstances created by our overflow housing scenario, B is under the "Residence Hall System Agreement":

http://www.hfs.washington.edu/uploadedFiles/Housing/Housing_PDF/Residence_Halls/2011-12%20Residence%20Hall%20Sys%20Agreement.pdf. In this scenario, there is a dining plan opt out indicated in XII(d).

HFS is currently building three dormitory style facilities which will ease the overflow, at which point we contemplate returning Steven's Court in its entirety back to the "Single Student Apartment" agreement.

Thank you for your consideration,

Graham Sherwood
Contract Specialist
Housing & Food Services/Purchasing
Ph 206-685-9074
Fax 206-543-4046