



## PREVAILING WAGE POLICY MEMORANDUM

**DATE:** February 28, 2013

**TO:** All Interested Parties

**FROM:** *AS* L. Ann Selover, Industrial Statistician, Prevailing Wage Program Manager

**SUBJECT:** How to Calculate the Hourly Rate of Contribution for Usual (Fringe) Benefits as Part of the Prevailing Rate of Wage.

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### Policy Disclaimer

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries (L&I) on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Prevailing Wage should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

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**PREVAILING WAGE RATE:** The prevailing wage required under [chapter 39.12 RCW](#) to be paid on public work projects is defined under [RCW 39.12.010\(1\)](#) to include a “rate of hourly wage, **usual benefits**, and overtime.” As a result, usual benefits are recognized as part of the total wage rate when publishing the prevailing wage, and when gauging compliance with prevailing wage law. This document is intended to provide guidance to employers in determining which contributions qualify as usual benefits and how to calculate such benefits as part of the prevailing wage rate.

**USUAL BENEFITS:** Usual benefits are defined in [RCW 39.12.010\(3\)](#) and [WAC 296-127-014](#) and include employer payments for medical insurance, pensions, approved apprenticeship training programs, vacation and holiday pay, and other bona fide benefits. Deductions from workers’ paychecks are not usual benefits. Usual benefits are employer paid. Benefits that are required by law (Industrial Insurance, Social Security, State Unemployment Compensation taxes, etc.) do not qualify as usual benefits.

Employers must pay a wage and usual benefit package that adds up to the published prevailing rate of wage for the work performed. Employers are not required to provide usual or fringe benefits, and if they do not, the total prevailing wage rate must be paid as an hourly wage. In any event, employer paid usual benefits cannot be applied to reduce the hourly wage paid to less than the state minimum wage. Please note special overtime and holiday rates may also be established for some trades and occupations.

- A. Insurance (medical, dental, life, etc.):** Insurance premiums include **employer paid portions** of medical, dental, vision and life insurance benefits. Do not include insurance benefits that are employee paid through payroll deduction, workers' compensation premiums, unemployment insurance, or any other federally or state mandated payroll deductions.
- B. Pension or retirement plans:** Pension and retirement contributions include **employer paid portions** of pension and retirement plans which are irrevocably made to a trustee or to a third person pursuant to a fund, plan, or program. Do not include pension or retirement benefits that are employee paid through payroll deductions.
- C. Vacation and/or holiday:** Report **employer paid** vacation and/or holiday benefits. Do not include vacation fund deposits that are employee paid through a payroll deduction.
- D. Apprenticeship programs:** Report **employer paid** contributions made to apprenticeship or training programs recognized by the Washington State Apprenticeship and Training Council.
- E. Other bona fide programs:** Other **employer paid** programs may qualify as "usual benefits." Please consult with L&I prior to including payments to such programs in your reported wage rate.

See [RCW 39.12.010](#), [WAC 296-127-014](#) and [WAC 296-127-01410](#).

**POSTING AND DOCUMENTATION:** 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&I upon request, copies of all documents concerning usual benefits identified in [WAC 296-127-014](#). See [WAC 296-127-01410](#). See also U.S. Department of Labor (U.S. DOL) Employee Benefits Security Administration [Reporting and Disclosure Guide for Employee Benefit Plans](#).

**CALCULATING BENEFIT AMOUNTS – APPORTIONING BENEFITS TO HOURS WORKED:** Although "usual benefits" are defined under [RCW 39.12.010\(3\)](#), certain plans will require additional information on how benefit payments should be apportioned to hours worked. It has been the long-time position of L&I, consistent with the approach adopted by many other states and by the U.S. DOL with respect to most plans, that contributions made to a fringe benefit plan for public works should be based on the effective annual rate of contributions for all hours, public and private, worked during the year by an employee. In order to apportion benefits to hours worked, L&I will generally look at contributions and hours worked over the course of a year, assuming 2,080 hours per worker per year, unless an employer provides an alternate schedule and can document actual hours worked. This approach is sometimes called "annualization."

As the U.S. DOL manual explains the analogous principle under the Davis-Bacon Act (federal prevailing wage law), "...contributions made to a fringe benefit plan for government work generally may not be used to fund the plan for periods of non-government work." See [Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act Field Operations Handbook – 10/25/2010](#) at 15f11(b). For a basic example, if an employer places \$5,000 a year into a health plan for an employee, and the employee works a full time schedule of 2,080 hours, the credit is \$2.40/hr. Thus, the employer cannot say that the plan is *only* for public works, even if contributions are tied to public hours.

### **Examples Illustrating the Use of Different Annual Hours**

Suppose that an employer places \$5,000 a year into a health plan for an employee, and the employee works a full time schedule of 2,080 hours on a combination of public and private work. In order to obtain an hourly credit, the total contribution is divided by the total hours worked. Thus, at these rates, the hourly contribution is \$2.40/hr.

$$\$5,000 / 2080 = \$2.40$$

Alternatively, the worker may be a part time employee, and only slated to work 1600 hours in the year. In that case, the employer may use the employee's actual hours, with a resulting credit of \$3.13/hr.

$$\$5,000 / 1600 = \$3.125$$

The use of a full year is not possible for all benefit calculation situations. In these cases, another period may be allowed if an employer uses a consistent rate of contribution into a bona fide benefit plan, but has difficulty forecasting either the total worker hours or the total contributions for the year. Please contact L&I regarding such situations.

### **Special Provisions for Certain Defined Contribution Plans – "DOL Exception"**

For defined contribution pension plans that provide for a higher hourly rate of contributions to be made for prevailing wage covered work than for non-covered work, the higher rate paid for covered work will be fully credited toward satisfaction of the required prevailing wage rate only if the plan provides for immediate participation and an immediate or essentially immediate vesting schedule (e.g., 100% vesting after an employee works 500 or fewer hours). For such plans the hourly rate of credit is arrived at by calculating the total contributions made on behalf of each worker during the course of the public works project, and dividing that number by the number of hours worked by the same worker on the public works project. This exemption mirrors an exemption provided by the U.S. DOL in its administration of the Davis-Bacon Act.

**TIMELY DEPOSIT OF CONTRIBUTIONS TO BENEFIT PLANS:** Benefit plan contributions must be made on a regular basis, and no less often than quarterly.

**PERIOD USED ("YEAR") FOR ANNUALIZATION PURPOSES:** If your plan does not specify a time frame to calculate the credit toward the prevailing wage rate, in most instances L&I will use a calendar year. Otherwise, L&I may look to the time frame you use (e.g., a fiscal year, calendar year, plan year, etc.). The period you adopt must be reasonably consistent over time.

**CONTACT L&I FOR ANSWERS TO YOUR PLAN-SPECIFIC QUESTIONS:** If this explanation and the above examples do not cover your specific situation, please contact L&I for guidance on the appropriate calculation. Please direct your questions to the Prevailing Wage Office at (360) 902-5335 or by e-mail at [PW1@Lni.wa.gov](mailto:PW1@Lni.wa.gov).

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## **How to Calculate Benefit Contributions Based on L&I's Annualization Policy**

### **Example: Health, Pension and Apprenticeship Contributions Calculation**

An employer contributes \$10,000 towards a full-time employee's health care coverage from January 1, 2011 to December 31, 2011. A full-time employee works a total of 2,080 hours in a full-time year (52 weeks x 40 hours a week).

Calculation: \$10,000 paid during the year / 2,080 hours worked = **\$4.81**

**The amount to be reported for health coverage in this example is \$4.81 per hour. If the employer contributed an equivalent amount to an employee's pension plan during the year (except those plans that meet the "DOL Exception" noted above), the same calculation method would be used to obtain the rate to report for pension benefits.**

### **Example: Vacation and Holiday Calculation**

An employee works a total of 1,750 hours in a year and receives 2 weeks (80 hours) of paid vacation time from January 1, 2011, to December 31, 2011. The total amount received in paid vacation is \$1,050.

Calculation: \$1,050 total vacation pay / 1,750 total hours worked = **\$0.60**

**The amount to be reported for vacation in this example is \$0.60 per hour. If the employee received paid holidays during the year, the same calculation method would be used to obtain the rate to report for the holiday pay.**

L&I will assume 2,080 hours per year, per employee, in the absence of evidence to the contrary. If actual hours worked are substantially more than 2,080, or can be reasonably anticipated to be more than 2,080, actual hours must be used for the calculation. If an employer calculates using less than 2,080 hours per employee per year, it must be able to document the reduced schedule which provides the basis for the calculation.

## SUMMARY

- 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&I upon request, copies of all documents concerning usual benefits as identified in [WAC 296-127-014](#). See [WAC 296-127-01410](#).
- 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.