

Wyoming Administrative Rules

Workforce Services, Department of

Labor Standards

Chapter 6: Prevailing Wages

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CHAPTER 6

PREVAILING WAGES

Section 1. Authority.

This Chapter is promulgated by the authority of Wyoming Statute § 27-4-404 of the Wyoming Prevailing Wage Act of 1967, as amended.

Section 2. Purpose.

This Chapter is adopted to establish procedures for computing and determining Wyoming's prevailing wage rates, to set forth contested case hearing procedures, and to establish investigation and enforcement procedures, in accordance with the Prevailing Wage Act.

Section 3. Definitions.

(a) "Affected Person" means any individual or entity who may be affected by Labor Standards' determination.

(b) "Base Wage Rate" means the prevailing hourly rate of wages, less fringe benefits.

(c) "Building Construction" means the construction generally needed to perform construction, reconstruction, improvement, enlargement, alteration, or repair of any public building fairly estimated to cost one-hundred thousand dollars (\$100,000.00) or more.

(d) "Fringe Benefits" means the usual and customary benefits paid to workers in addition to wages.

(e) "Heavy and Highway Construction" means the construction generally needed to perform construction, reconstruction, improvement, enlargement, alteration, or repair of any heavy or highway project fairly estimated to cost one-hundred thousand dollars (\$100,000.00) or more.

(f) "Journeyman Level Worker" means a worker with sufficient experience and training in his or her trade to be proficient in the skills necessary to perform all aspects of the trade.

(g) "Labor Standards" means Labor Standards, a program within the Wyoming Department of Workforce Services.

(h) “Moving Average Wage Adjustment” means an adjustment made to the prevailing hourly rate of wages to allow for economic fluctuations when sufficient data has not been provided for a certain job classifications.

(i) “Prevailing Wage Act” means the Wyoming Prevailing Wage Act of 1967, as amended, Wyoming Statute §§ 27-4-101 through 413.

(j) “Survey” means an instrument to ascertain the prevailing hourly rate of wages for the construction trades through data collection of relevant hourly wages paid to workmen.

Section 4. Annual Surveys.

(a) Labor Standards may engage the services of an independent contractor to distribute surveys and determine the annual prevailing rate of wages.

(b) Surveys shall be sent annually to the appropriate employers and employee organizations for purposes of determining the annual prevailing hourly rate of wages.

(c) For the purposes of determining the annual prevailing hourly rate of wages for the Building Construction trades and the Heavy and Highway Construction trades, surveys shall be conducted in September to collect total number of hours worked by classification of worker for the period of September 1 of the previous year through August 31 of the current year, plus the most recent rate of pay, to include fringe benefits, by classification of worker for the survey period.

Section 5. Survey Types.

There shall be two separate surveys constructed to determine the prevailing hourly rate of wages; one survey for Building Construction and another for Heavy and Highway Construction, as follows:

(a) A survey to determine the prevailing hourly rate of wages for Building Construction shall be sent to employers and employee organizations engaged in construction, reconstruction, improvement, enlargement, alteration, or repair of public works projects or other large commercial projects.

(b) A survey to determine the prevailing hourly rate of wages for Heavy and Highway Construction shall be sent to employers and employee organizations engaged in construction, reconstruction, improvement, enlargement, alteration, or repair of major heavy and/or highway projects.

Section 6. Who is to be Surveyed.

For the purpose of determining the prevailing hourly rate of wages, surveys shall collect data on wages paid to journeymen.

Section 7. Computation of Base Wage Rate.

The base wage rate shall be computed according to the formula and considerations set forth below:

(a) The rate of wages paid in the locality in which the work is to be performed, to the majority of those employed in that classification in construction in the locality similar to the proposed undertaking. A distinction shall be recognized, based on area practice within the State, between Building Construction and Heavy and Highway Construction, and the job classifications typically associated with them.

(b) When fifty percent (50%) or more of those employed in a classification are paid at the same rate, that rate shall be the base wage rate for that job classification.

(c) In the event that not more than fifty percent (50%) of employees in a classification are paid at the same rate, then the rate paid to the greater number shall be used. The greater number must be at least thirty percent (30%) of those employed.

(d) In the event that the thirty percent (30%) threshold of Subsection(c) above is not met, then an average rate shall be used. The average rate for each classification in a locality shall be the rate obtained by:

(i) Adding the hourly rates paid to all workers in the classification and dividing by the total number of such workers.

$$\text{Ex: } \text{AVERAGE RATE 1} = \frac{\text{TOTAL HOURLY RATES PAID}}{\text{TOTAL NUMBER OF WORKERS}}$$

(ii) Dividing the total wages paid by the total number of hours worked in the classification.

$$\text{Ex: } \text{AVERAGE RATE 2} = \frac{\text{TOTAL DOLLAR WAGES PAID}}{\text{TOTAL HOURS WORKED}}$$

(iii) Then the Base Wage Rate will be the average of AVERAGE RATE 1 and AVERAGE RATE 2:

Ex: BASE WAGE RATE = $\frac{\text{AVERAGE RATE 1} + \text{AVERAGE RATE 2}}{2}$

Section 8. Moving Average Wage Adjustment.

In establishing a prevailing hourly rate of wages, Labor Standards shall provide for a moving average wage adjustment as follows:

$$\frac{\text{WCLI (current year)}}{\text{WCLI (previous year)} \times 100}$$

Section 9. Fringe Benefits.

(a) The prevailing hourly rate of wages shall include bona fide fringe benefits set forth as follows:

(i) Medical and dental payments or hospital care;

(ii) Pensions on retirement or death;

(iii) Disability benefits and life insurance;

(iv) Vacation and holiday pay;

(v) Apprenticeship or other United States Bureau of Apprenticeship and Training approved training program or as approved by the Department of Transportation and Federal Highway Administration; and,

(vi) Annuity or other 401K plans.

(b) An employer who pays more than the minimum required fringe benefits shall not be permitted to reduce or offset the excess amount from the required base wage rate.

Section 10. Objection to Prevailing Hourly Rate of Wages and Request for Hearing.

(a) Any affected party may submit to Labor Standards its written objection to the determination of the prevailing hourly rate of wages and request for a hearing. A hearing shall be initiated as set forth in Wyoming Statute § 27-4-407(a).

(b) An affected party's written notice of objection and request for hearing shall contain the following:

- (i) The affected party's name, mailing address, and telephone number;
- (ii) A list of the crafts or types of workmen and their hourly rate of wages being objected to;
- (iii) The hourly rate of wages the affected party believes should prevail for each craft or type of workman listed in the objection;
- (iv) The specific grounds for the objection; and
- (v) A description of how the affected party would be affected by the wage determination.

Section 11. Independent Hearing Officer.

Upon receipt of a timely submitted written objection and request for hearing, Labor Standards shall contract with an independent hearing officer to conduct a hearing on the matter.

Section 12. Hearing Procedure.

The hearing officer shall conduct the hearing in accordance with the Wyoming Administrative Procedures Act, Wyoming Statute §§ 16-3-107 through 115, and the Wyoming Office of Administrative Hearings' rules for Contested Case Proceedings, which are hereby incorporated by reference and can be found at:

<https://rules.wyo.gov/Search.aspx?RefNum=270.0001.2.07202017>

(a) The rules for Contested Case Proceedings were adopted by the Wyoming Office of Administrative Hearings and in effect on July 20, 2017.

(b) No later amendments to the rules for Contested Case Proceedings are incorporated by reference.

Section 13. Default.

In the event the objecting party fails to appear at the hearing, the prevailing wage determination shall be deemed valid and final, and shall not be subject to review by the hearing officer.

Section 14. Record of Proceeding.

Labor Standards shall make an audio recording of the hearing proceedings. Any party requesting a transcript of the recorded hearing shall be provided one at his/her own expense.

Section 15. Final Determination.

Within ten (10) days of the close of the hearing, the hearing officer shall issue a written ruling on the objection(s) to the prevailing wage determination(s). The hearing officer's decision shall constitute Labor Standards' final determination.

Section 16. Investigation.

(a) Labor Standards shall investigate a contractor or subcontractor to determine compliance with the provisions of the Prevailing Wage Act if there is reason to suspect noncompliance or upon receipt of a complaint.

(b) Labor Standards' investigation shall include whether the contractor or subcontractor properly classifies its workmen and pays workmen the correct prevailing hourly rate of wages, including the base wage rate and fringe benefits, as applicable.

(c) In determining whether a workman is properly classified, Labor Standards may utilize the 2018 Standard Occupational Classification System, which is hereby incorporated by reference and can be found at: https://www.bls.gov/soc/2018/major_groups.htm

(i) The 2018 Standard Occupational Classification System was adopted

(ii) by United States Department of Labor, Bureau of Labor Statistics, and in effect on May 14, 2018.

(iii) No later amendments to the 2018 Standard Occupational Classification System are incorporated by reference.

(d) For the purpose of any investigation under this Chapter, Labor Standards may issue subpoenas requiring the attendance and testimony of witnesses and the production of any books, papers, documents, or records which Labor Standards deems relevant or material to the inquiry.

Section 17. Enforcement.

(a) Where Labor Standards' investigation reveals a contractor's or subcontractor's noncompliance with the provisions of the Prevailing Wage Act, Labor Standards may:

(i) consult with the noncompliant party and allow for a reasonable opportunity to come into compliance; and

(ii) direct the public entity letting the contract, or the general contractor, to withhold further payment to the noncompliant party until prevailing wages are paid, pursuant to Wyoming Statute § 16-6-117.

(b) Where Labor Standards' investigation reveals a contractor's or subcontractor's intentional and willful violation of the Prevailing Wage Act, or where a noncompliant party fails to come into compliance, Labor Standards shall petition the appropriate district court for enforcement the Prevailing Wage Act and assessment of penalties as set forth in Wyoming Statute § 27-4-412.