

SUMMARY OF PREVAILING WAGE LAW CHANGES EFFECTIVE JANUARY 1, 2010

(This document updated 10/1/2009)

The recently approved State budget (2009 Wisconsin Act 28) includes significant changes to prevailing wage laws (§§66.0903 & 103.49, Wis. Stats.) effective JANUARY 1, 2010. Most of these changes are described below.

| Topic | Who's affected? | Brief description of requirement under §66.0903 or §103.49 |
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| Types of projects requiring a prevailing wage rate determination | Local governmental units & Contractors | <p>A prevailing wage rate determination is required for any project of public works erected, constructed, repaired, remodeled, demolished for a local governmental unit including:</p> <ul style="list-style-type: none"> • A highway, street, bridge, building or other infrastructure project. • A project completed by one local governmental unit for another local governmental unit. • A project where the completed facility is leased, purchased, lease purchased, or otherwise acquired by, or dedicated to, a local governmental unit in lieu of the local governmental contracting for the construction work. • A road, street, bridge, sanitary sewer, or water main project in which the completed work is acquired by, or dedicated to, a local governmental unit, including ownership or maintenance by the local governmental unit under §236.13(2), Stats. |
| Types of projects requiring a prevailing wage rate determination | State agency & Contractors | <p>A prevailing wage rate determination is required for any project of public works erected, constructed, repaired, remodeled, demolished for the state or a state agency, other than a highway, street, or bridge construction or maintenance project, including:</p> <ul style="list-style-type: none"> • A project completed by one state agency for another state agency. • A project where the completed facility is leased, purchased, lease purchased, or otherwise acquired by, or dedicated to, the state in lieu of the state or a state agency contracting for the construction work. • A "sanitary sewer" or water main project where the completed sanitary sewer or water main is acquired by, or dedicated to, the state for ownership or maintenance by the state. |
| Non-applicability: Threshold | All public entities | Any public works project with an estimated cost of completion of at least \$25,000 requires a prevailing wage rate determination unless it falls under one of the exceptions noted below. |
| Non-applicability: Minor service & maintenance work, Warranty work or Work under a supply & installation contract | All public entities & Contractors | If the nature of the project falls under one of these three categories & fulfills the statutory definition, then a prevailing wage rate determination for the public works project is not required. |

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| <p>Non-applicability: Minor service & maintenance work</p> | <p>Local governmental units & Contractors</p> | <p>The following projects do not require a prevailing wage rate determination:</p> <ul style="list-style-type: none"> • A project that is limited to minor crack filling, chip or slurry sealing or other minor pavement patching, not including overlays, that has a projected life span of no longer than 5 years; • The depositing of gravel on an existing gravel road applied solely to maintain the road; • Road shoulder maintenance; • Cleaning drainage or sewer ditches or structures; or • Any other limited, minor work on public facilities or equipment that is routinely performed to prevent breakdown or deterioration. |
| <p>Non-applicability: Minor service & maintenance work</p> | <p>State agencies & Contractors</p> | <p>The following projects do not require a prevailing wage rate determination:</p> <ul style="list-style-type: none"> • A project that is limited to minor crack filling, chip or slurry sealing or other minor pavement patching, not including overlays, that has a projected life span of no longer than 5 years; • Cleaning drainage or sewer ditches or structures; • Any other limited, minor work on public facilities or equipment that is routinely performed to prevent breakdown or deterioration. |
| <p>Non-applicability: Supply & installation contract</p> | <p>All public entities & Contractors</p> | <p>A contract where the material is installed by the supplier and installed by means of simple fasteners or connectors such as screws or nuts and bolts, and no other work is performed on the site of the project, and the total labor cost of installation does not exceed 20% of the total contract cost.</p> |
| <p>Non-applicability: Unpaid volunteers</p> | <p>All public entities</p> | <p>A prevailing wage rate determination is not required for a project where volunteers provide the labor.</p> |
| <p>Certified payroll record</p> | <p>Contractors</p> | <p>Every contractor on a prevailing wage project is required to electronically submit to DWD monthly a certified record of employees who worked on the project (except as noted in the next box). DWD is required to post these certified records on its Internet website.</p> |
| <p>Certified payroll record</p> | <p>Union contractors</p> | <p>If all of a contractor's employees on the project are covered by a collective bargaining agreement & the wage rates are not less than the required prevailing wage rate, the contractor does not need to file a certified record of employees but rather must submit to DWD a copy of the applicable collective bargaining agreement(s) in electronic format. DWD is required to post the collective bargaining agreement on its Internet website.</p> |

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| Penalties | Contractors & Complainants | If DWD determines that a contractor failed to pay the prevailing wage rate and/or overtime, the contractor must pay the affected employee(s) the amount of unpaid wages plus 100% of that amount as liquidated damages. |
| Complaints | 1 st party & 3 rd party complainants | If an employee complainant files a frivolous complaint, he or she will be charged for the actual cost of the investigation. If a 3 rd party complainant files a frivolous complaint, he or she will be charged at least \$250 for the cost of the investigation. |
| Frivolous complaint | Complainants & Contractors | For a complaint to be considered "frivolous," DWD must determine that: <ul style="list-style-type: none"> • the complainant made the complaint in bad faith, solely for the purpose of harassing or maliciously injuring the contractor, or • the complainant knew or should have known, that there was no reasonable basis for believing that a prevailing wage violation had been committed. |
| Court action & Penalties | Employees & Contractors | An employee can commence a court action for a violation of the prevailing wage laws & if the court determines that the contractor failed to pay the prevailing wage rate and/or overtime, the court must order the contractor to pay the affected employee(s) the amount of unpaid wages plus 100% of that amount as liquidated damages. |
| End of changes to prevailing wage laws §§66.0903 & 103.49, Wis. Stats., effective JANUARY 1, 2010. | | |

| <p>The recently approved State budget (2009 Wisconsin Act 28) created a new prevailing wage law (§66.0904, Wis. Stats.) for PUBLICLY FUNDED PRIVATE CONSTRUCTION PROJECTS effective JANUARY 1, 2010. The procedure for applying for a prevailing wage rate determination, requirements for contractors, enforcing the law, and penalties for violations all parallel the provisions of prevailing wage law §66.0903, Wis. Stats., enforced by DWD. Some of §66.0904's provisions are highlighted in the next chart.</p> | | |
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| Topic | Who's affected? | Brief description of requirement under §66.0904 |
| What is a publicly funded private construction project? | Owner, Developer of real property, Contractors, Employee & Local governmental unit | A construction project where the developer, investor, or owner of the project receives direct financial assistance from a local governmental unit for the erection, construction, repair, remodeling, demolition, including any alteration, painting, decorating, or grading, of a private facility, including land, a building, or other infrastructure. |

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| <p>What is not a publicly funded private construction project?</p> | <p>Owner, Developer, Employee & Local governmental unit</p> | <p>A publicly funded private construction project does not include: A project of public works, or a housing project involving the erection, construction, repair, remodeling, demolition of any of the following:</p> <ul style="list-style-type: none"> • A residential property, if the project is supported by affordable housing grants, home improvement grants, or grants from a local housing trust fund, • A residential property containing 4 dwelling units or less, • A residential property that contains retail, office, or commercial components, if the project is intended to increase the supply of affordable housing in a community. |
| <p>Who must apply to DWD for the prevailing wage rate determination?</p> | <p>Owner, Developer & Local governmental unit</p> | <p>Before the owner or developer of any publicly funded private construction project enters into a contract or solicits bids on a contract for the performance of any work under §66.0904, the owner or developer must apply to DWD for a prevailing wage rate determination. That DWD-issued project determination must be provided to all contractors and must be posted on the construction site.</p> |
| <p>Non-applicability: Threshold</p> | <p>Owner, Developer, Contractor, Local governmental unit & Employee</p> | <p>A publicly funded private construction project that receives less than \$1,000,000 in direct financial assistance from a local governmental unit does not require a prevailing wage rate determination.</p> |
| <p>What is direct financial assistance?</p> | <p>Owner, Developer, Local governmental unit & Contractor</p> | <p>Moneys, in the form of a grant or other agreement or included as part of a contract, cooperative agreement, or any other arrangement, including a redevelopment agreement, economic development agreement, or assistance provided under a business improvement district that a local governmental unit provides or directly makes available to assist in the erection, construction, repair, remodeling, demolition of a private facility.</p> |
| <p>What does direct financial assistance not include?</p> | <p>Owner, Developer, & Contractor</p> | <p>Direct financial assistance does not include:</p> <ul style="list-style-type: none"> • a public works contract, • a supply procurement contract, • a contract of insurance or guaranty, • a collective bargaining agreement, or • any other contract under which moneys are not directly provided or otherwise directly made available for that assistance. • money allocated by the City of Milwaukee related to the Milwaukee Riverwalk Site Plan Review Overlay District (refer to the specifics in §66.0904(1)(c)2., Stats.) |

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| Non-applicability: Unpaid volunteers | Owner, Employee & Developer | A prevailing wage rate determination is not required for a publicly funded private construction project where volunteers provide the labor. |
| Non-applicability: Minor service & maintenance work, Warranty work or Work under a supply & install- ation contract | Owner, Developer & Contractor | If the nature of the publicly funded private construction project falls under one of these three categories & fulfills the statutory definition, then a prevailing wage determination for the project is not required. |
| Non-applicability: Minor service & maintenance work | Owner, Developer & Contractor | Each of the following publicly funded private construction projects does not require a prevailing wage rate determination: <ul style="list-style-type: none"> • a project that is limited to minor crack filling, chip or slurry sealing or other minor pavement patching, not including overlays, that has a projected life span of no longer than 5 years; • depositing gravel on an existing gravel road applied solely to maintain the road; • road shoulder maintenance; • cleaning drainage, sewer ditches or structures; or • any other limited, minor work on public facilities or equipment that is routinely performed to prevent breakdown or deterioration. |
| Non-applicability: Supply & installation contract | Owner, Developer & Contractor | A contract where the material is installed by the supplier and installed by means of simple fasteners or connectors such as screws or nuts and bolts, and no other work is performed on the site of the project, and the total labor cost of installation does not exceed 20% of the total contract cost. |
| Construction contracts &/or agreements | Owner, Developer & Contractor | Any owner or developer who enters into a contract for the erection, construction, remodeling, repairing, or demolition of any publicly funded construction project shall include in the contract a stipulation about the straight & over time prevailing wage requirements. |
| Securing bids | Owner, Developer & Contractor | Any notice issued for the purpose of securing bids for a publicly funded private construction project must include a reference to the prevailing wage rate determination. |
| Penalties | Contractor & Complainant | If DWD determines that a contractor failed to pay the prevailing straight or overtime wage rate, the contractor must pay the affected employee(s) the amount of unpaid wages plus 100% of that amount as liquidated damages. |
| End of highlights of §66.0904, Wis. Stats., PUBLICLY FUNDED PRIVATE CONSTRUCTION PROJECTS effective JANUARY 1, 2010. | | |