

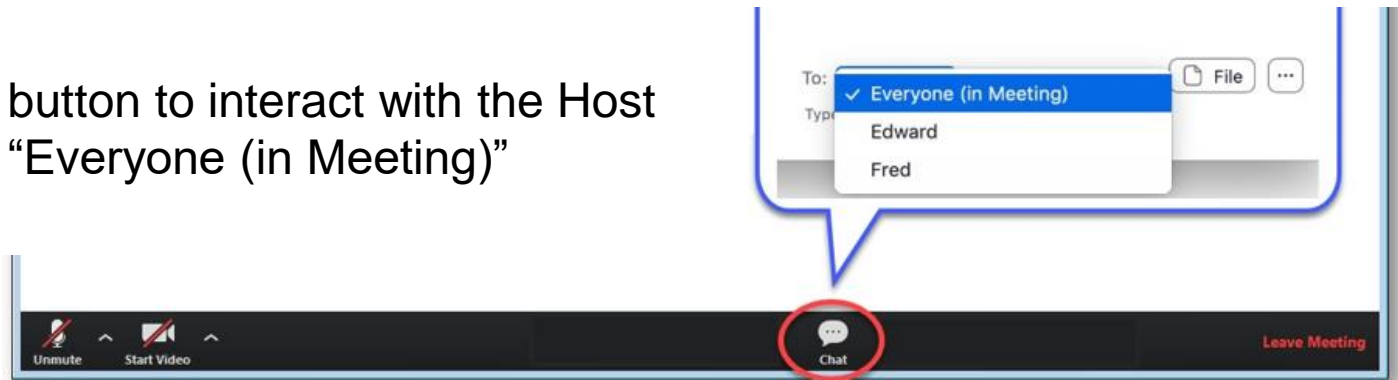


Contractor Training

Prevailing Wage on Public Works

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The Washington State
Prevailing Wage Law



*Understand your responsibilities and
rights when performing public work.*

Contractors on public works

June 2022

Public Works

Prevailing Wage Law

Chapter 39.12 RCW

Chapter 296-127 WAC

Washington State Law - Federal Law

- This presentation is on the Washington State prevailing wage law, chapter 39.12 RCW and chapter 296-127 WAC.
- There is also a federal prevailing wage law: The Davis-Bacon Act applies to federally funded projects.
- **The laws apply to publicly funded contracts for trades work**
- The two laws have similarities and significant differences
 - Overtime (state law has daily overtime and prevailing overtime)
 - Paperwork (Intents & Affidavits and certified payroll records required for state law - weekly certified payroll records required for Davis-Bacon)
 - Off-site work (covered under state law when specific to the project)
 - Zone pay (federal but not state)
- If you encounter a project where both the state and federal laws apply, you must meet the more demanding of the wage standards under the two laws and do the paperwork for both laws. WAC 296-127-025

What is a “Public Work”?

RCW 39.04.010(4): "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, **executed at the cost of the state or of any municipality**, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with chapter [39.12](#) RCW. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW [36.102.060](#)(4) or under development agreements entered into under RCW [36.102.060](#)(7) or leases entered into under RCW [36.102.060](#)(8).

WAC 296-127-010(7)(a): The term "public work" shall include:

- (7)(a) The term "public work" shall include:
 - (i) All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed by contract, purchase order, or any other legal agreement and that is executed at the cost of the state of Washington or of any municipality. The source of the funding shall not determine the applicability of the statute, and may include, but is not limited to, such sources as those payments made through contracts with insurance companies on behalf of the insured state or municipality;
 - (ii) All work, construction, alteration, enlargement, improvement, repair, and/or demolition which, by law, constitutes a lien or charge on any property of the state or of a municipality;
 - (iii) All work, construction, alteration, repair, or improvement, other than ordinary maintenance that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities, pursuant to RCW [39.04.260](#);
 - (iv) Maintenance, except ordinary maintenance as defined by (b)(iii) of this subsection, when performed by contract. Maintenance is defined as keeping existing facilities in good usable, operational condition;
 - (v) Janitorial and building service maintenance as defined by WAC [296-127-023](#), when performed by contract, on public buildings and/or assets; and
 - (vi) The fabrication and/or manufacture of nonstandard items produced by contract specifically for a public works project as defined by (a)(i) through (v) of this subsection.

What is the prevailing wage?

- The hourly rate of wage, usual benefits & overtime
- Paid in the “locality”
(largest city in the county)
- **To the majority of workers, laborers, or mechanics**
- in the same Trade and Occupation
 - RCW 39.12.010
- **Scope of work descriptions:** WAC 296-127-01301 to 01398
 - The scopes describe the work performed under the various trade and occupation classifications
 - Employee *job titles* are not used to select the correct wage
 - The type and nature of the work performed by the employee will be used to identify the correct scope of work and trade and occupation classification
- **Prevailing Rates of Pay are published by trade and occupation, county, and effective date**

Prevailing Wages on Public Work

- The laborers, workers or mechanics working upon a public work must be paid not less than the prevailing rate of wage.
 - RCW 39.12.020
- The Industrial Statistician of the Dept. of Labor & Industries makes all determinations of the prevailing rate of wage.
 - RCW 39.12.015

Washington State Law – Prevailing Wage on Public Works

RCW 39.12.020

- Prevailing wages are required for work upon a public work.
- “The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed”

When does the law require prevailing wages?

- Work upon a “public work”

RCW 39.04.010(4), WAC 296-127-010(7), & RCW 39.12.020

- Public work performed by a “laborer, worker, or mechanic”

- Performing publically funded (grants, etc.) contracts for “construction, reconstruction, maintenance or repair”

RCW 39.12.030

- Building service maintenance (janitorial) contracts

RCW 39.12.020

- Turn-Key projects – Private Construction caused by public agreements to rent, lease, or purchase

RCW 39.04.260

- Small works (no threshold or minimum dollar amount)

- Off-site work specific to the public work – manufacturing a non-standard item specifically for the public work

Locality

- “...the locality within the state where such labor is performed...” RCW 39.12.020.
- The county (or counties) in which the work is performed.
- WAC 296-127-020(3): The definition of "locality" in RCW [39.12.010](#)(2) contains the phrase "wherein the physical work is being performed." [The department interprets this phrase to mean the actual work site.](#) For example, if nonstandard items specifically produced for public works projects are prefabricated in a county other than the county wherein the public works project is to be completed, the wage for the offsite prefabrication shall be the applicable prevailing wage for the county in which the actual prefabrication takes place. [Workers who deliver such nonstandard items, as well as materials pursuant to the terms of WAC \[296-127-018\]\(#\), shall be paid the applicable prevailing wage for the county in which the public works project is located.](#)
- Select all the counties you need to list.

The Applicable Prevailing Rate of Wage

- The correct prevailing wage rate will depend on three criteria:
 - The county (or counties) in which the work is performed (the “*locality*”);
 - The trade and occupation classification using *scope of work descriptions*; and
 - The *effective date* for prevailing wages.
- Look-up wages at this link:

<https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>

Scope of Work Descriptions

Trade and Occupation Classifications

- The scope of work descriptions describe the work performed in each trade and are adopted as rule WAC 296-127-01301-01398
- It's what the worker does - the *type and nature of the work* that matters (not a title) WAC 296-127-013(3)
- All determinations of the prevailing rate of wage (including the correct scope and wage to use) are made by the Industrial Statistician of the Department of Labor and Industries. RCW 39.12.015
- The applicable scope is the one in effect on the bid due date or contract award date WAC 296-127-013(4)

Usual Benefits

Overtime and Holiday Codes

- Usual Benefits.
 - *Medical, pension, vacation, holiday and apprenticeship training*
RCW 39.12.010(3), WAC 296-127-014
- The hourly rate actually paid to the worker must be not less than the prevailing rate of wage minus the annualized hourly rate of the cost of Usual Benefits.
- Overtime.
 - *Prevailing Overtime – Check the OT & Holiday codes*
 - *Daily: Over 8 hours in a day on public work*
 - *4 – 10 overtime agreements – WAC 296-127-022*
 - *Weekly: Over 40 hours in the work week*
- Certified Payroll (CP) requirements.

State CPs became mandatory on January 1, 2020.

Submit weekly CPs at least once a month using the L&I on-line system.

WAC 296-127-320 allows a request for CPs by an interested party

Federal law requires weekly CPs under the Davis-Bacon Act

USDOL Davis-Bacon Act – http://www.dol.gov/whd/FOH/FOH_Ch15.pdf

Ordinary Maintenance – Small Contracts

- The state law has no minimum dollar amount or threshold – Even small public contracts require prevailing wages.
- Contracted maintenance work requires prevailing wages.
- The Washington Prevailing Wage on Public Works Act is remedial and should be construed liberally to effect the purpose of the statute. The purpose of the Act is "to protect the employees of governmental contractors from substandard wages and to preserve local wage standards. ..." The purpose of preserving the local wage structure is achieved when "maintenance performed by contract" is public work. All maintenance, when performed by contract is public work, and subject to prevailing wage. Maintenance is "ordinary" under the statute, when it is performed by in house employees of the public entity, and excluded.

City of Spokane v. Dept. of Labor & Industries, 100 Wn. App. 805, 810 (2000) (emphasis added).

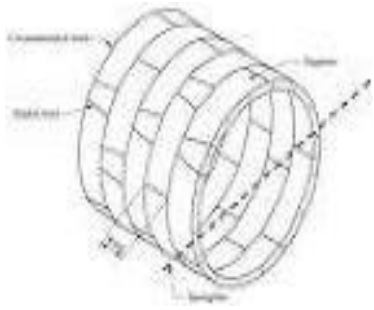
What about off-site work?

Off-Site Manufacture or Fabrication of a non-standard item made specifically for a public work requires prevailing wages.

- *Everett Concrete Products* – 1988 State Supreme Court case - 109 Wn.2d 819 (1988).
- The concrete tunnel liners (in the *Everett case*) were made to specifications (custom made) for the public work – Prevailing Wages were required.
- The manufacture of standard items for sale on the general market will not require prevailing wages.
- Only work “within the state” per RCW 39.12.020.

Locality for off-site work - County

- The prevailing rate of wage may vary by county (locality) and trade
- On-site: Use the county where the project is located
- Off-site fabrication: Use the county in which the work is performed
- Delivery of non-standard items manufactured off-site: Use the county where the project is located (the delivery point)
- Multiple counties may be listed on an Intent or Affidavit.



Off-Site Work

Pre-cast Concrete Tunnel Liners

1/1 slide



Everett Concrete Products v. L&I, 109 Wn.2d 819 (1988).

- Off-Site Manufacture or Fabrication of a non-standard item made specifically for a public work requires prevailing wages.
- A Standard or Non-Standard checklist was developed by PWAC and can be found on the WSDOT web site.

<https://www.wsdot.wa.gov/sites/default/files/2007/07/31/Wage-Rate-Supplemental-State-2020-03-04.pdf>

Standard vs. Non-Standard Check List

Below is the list of criteria developed by the Prevailing Wage Advisory Committee in the 1990s to assist in distinguishing whether a prefabricated item is "standard" or "non-standard"

Off-site production of non-standard items for a public work is covered by the prevailing wage requirements of RCW 39.12.

The production of any item outside the State of Washington is not covered by RCW 39.12.

1. Is the item fabricated for a public works project? If not, it is not subject to RCW 39.12. If it is, go to question 2.
2. Is the item fabricated on the public works jobsite? If it is, the work is covered under RCW 39.12. If not, go to question 3.
3. Is the item fabricated in an assembly/fabrication plant set up for, and dedicated primarily to, the public works project? If it is, the work is covered by RCW 39.12. If not, go to question 4.
4. Does the item require any assembly, cutting, modification or other fabrication by the supplier? If not, the work is not covered by RCW 39.12. If yes, go to question 5.
5. Is the prefabricated item intended for the public works project typically an inventory item which could reasonably be sold on the general market? If not, the work is covered by RCW 39.12. If yes, go to question 6.
6. Does the specific prefabricated item, generally defined as standard, have any unusual characteristics such as shape, type of material, strength requirements, finish, etc? If yes, the work is covered under RCW 39.12.

Anyone with questions or needing guidance on covered and non-covered workers can contact L&I at PW1@Lni.wa.gov.

WSDOT has a predetermined list of their common products posted on their web site based on these criteria:

<https://www.wsdot.wa.gov/sites/default/files/2007/07/31/Wage-Rate-Supplemental-State-2020-03-04.pdf>

Federal and State Law Differences

Federal law (the Davis-Bacon Act) only covers the work performed on the site of the public work

State law: Chapter 39.12 RCW applies prevailing wages to work specific to the public work including off-site work

State law: Work “contemplated” by the contract for public work requires prevailing wages See RCW 39.12.030

State law: Materials delivery: WAC 296-127-018

Trucking and off-site fabrication or manufacture specific to the public work when performed anywhere within the State of Washington are covered under the state prevailing wage law

State and Federal Prevailing Wage Laws

Joint Application

- The federal Davis-Bacon Act, and the state prevailing wage law, Chapter 39.12 RCW

What if both Federal and State prevailing wage requirements apply to the same contract and project? - WAC 296-127-025

- Perform to the higher standard to comply with both of the prevailing wage laws.
- Don't forget the overtime requirements in the state prevailing wage law! OT can alter which wage rate is higher!

Grants & Public Work

A Cost to the Public Agency

- “Public work”
 - “Public work” includes work executed at a cost to the state or a municipality (such as the county)
- Grant money from the state or local government?
- These *grants* are a cost to the governmental entity
- State or local government grant money (a “cost” to the state or any municipality) for the construction type project makes that work “public work” with a prevailing wage requirement
- Relevant laws and rules:
 - RCW 39.04.010
 - RCW 39.12.020
 - WAC 296-127-010(7)

What if it's warranty work or an emergency?

- **Warranty Work – More work on the public work**
 - Warranty work involves additional work on the same public works contract for no additional payment
 - *The same prevailing rates and the original Intent still apply*
 - The Affidavit will need to be updated for total hours worked and any new trades
- **Emergency Work - Exception to Competitive Bid**
 - *Prevailing wages apply*
 - *Not awarded by competitive bid*
 - No exceptions to the contract bond, the contract retainage, or the prevailing wage law under RCW 39.04.280
 - *First, deal with the emergency*
 - *Then do the paperwork – Intent, Affidavit, and Certified Payroll Records*

Residential Rates

RCW 39.12.017(3) provides a definition of residential construction:

(3) For purposes of this section:

(a) "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 the basement, in the following categories:

(i) Affordable housing, including permanent supportive housing and transitional housing, which may include common spaces, community rooms, recreational spaces, a management office, or offices for the purposes of service delivery;

(ii) Weatherization and home rehabilitation programs for low-income households; and

(iii) Homeless shelters and domestic violence shelters.

(b) "Residential construction" does not include the utilities construction, such as water and sewer lines, or work on streets, or work on other structures unrelated to the housing.

RCW 39.12.030 places responsibility on the awarding agency for stating if residential rates can be used: "If the awarding agency determines that the work contracted for meets the definition of residential construction, the contract must include that information." RCW 39.12.030.

Owners

- Certain owners of at least 30% of the business do not have to pay themselves prevailing wages (all other provisions of the law such as the paperwork still apply)
WAC 296-127-026
- WAC 296-127-026 Exemptions for sole owners and their spouses, partnerships, corporations, and employees of public agencies
- The prevailing wage requirements of chapter [39.12](#) RCW do not apply to:
 - (1) Sole owners and their spouses.
 - (2) Any partner who owns at least thirty percent of a partnership.
 - (3) The president, vice-president and treasurer of a corporation if each one owns at least thirty percent of the corporation.
 - (4) Workers regularly employed on monthly or per diem salary by the state or any political subdivision created by its laws.
- *NOTE: the exception is to the wage requirement, the Intent and Affidavit paperwork is still required by RCW 39.12.040*

Supervisors

- Supervisors may need to be paid prevailing wages depending on the percentage of their time working with tools. WAC 296-127-015
- (2) Supervisors (e.g., foremen, general foremen, superintendents, etc.,) are entitled to receive at least the journey level prevailing rate of wage for performing manual or physical labor:
 - (a) For each hour spent in the performance of manual or physical labor if it is for more than twenty percent but less than fifty percent of their hours worked on a public works project during any given week.
 - (b) For all hours worked in any given week if they perform manual or physical labor for fifty percent or more of their hours worked on a public works project during such week.
- (3) If supervisors subject to the journey level prevailing wage rate are paid a salary, the compensation (salary divided by number of hours worked) must be equal to or greater than the prevailing wage rate for the type of work performed.

Apprentices on Public Works

- RCW 39.12.021

Apprentice workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council pursuant to chapter 49.04 RCW, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers.

Apprenticeship

- State-registered apprentices can be paid reduced apprentice wages on public works – All other workers are paid full journey-level wages
RCW 39.12.021
- The use of apprentices is detailed on the Affidavit and certified payroll and wages are checked for each individual apprentice during the approval process
- Contractors must be a registered apprenticeship program, or a training agent for a registered apprenticeship program to use apprentices
- Apprenticeship questions? Contact L&I Apprenticeship Staff:
 - James Kaltenbaugh James.Kaltenbaugh@Lni.wa.gov 360-902-5373

Apprenticeship Utilization Requirements (AURs)

- The legislature created AURs for certain large public works:
 - State agencies that report to the Governor (DES)
 - School districts
 - Four-year institutions of higher education
 - WSDOTRCW 39.04.320(1&4).
- Apprenticeship ensures the supply of qualified construction crafts workers for future public works projects.
- Apprenticeship is a pathway to creating family wage careers in our communities.
- Apprenticeship is the most cost effective training method for hands on occupations for all parties (workers, employers and government).
- State registered apprentices have a lower, apprentice wage on public works.

Applicable Statutes – Apprenticeship Utilization

- RCW [39.04.300](#) –
 - Defines why apprentice utilization is required
- RCW [39.04.310](#) –
 - Defines Apprenticeship as “registered Apprenticeship”
 - Defines the utilization requirement as applying to all labor hours on a project and defines which hours count
- RCW [39.04.320](#) –
 - Defines the requirement as 15% of all labor hours have to be performed by apprentices
 - Defines who the utilization requirement applies to
 - Defines reporting requirements, and allowable adjustments to the utilization requirement

APPRENTICESHIP RESOURCES & TECHNICAL ASSISTANCE Tracking & Reporting

- Contract awarding agencies with apprentice utilization requirements track apprentice utilization using the L&I on-line certified payroll system.
- Online public Apprenticeship Registration & Tracking database – ARTS:

<https://lni.wa.gov/licensing-permits/apprenticeship/apprenticeship-registration-and-tracking-system>

- **LNI Apprenticeship Staff:** apprentice@lni.wa.gov
James Kaltenbaugh James.Kaltenbaugh@lni.wa.gov **360-902-5373**

L&I Responsibilities Under the Prevailing Wage on Public Works Act, Chapter 39.12 RCW

- Establish prevailing wage rates.

RCW 39.12.015

- Determine classifications of labor.

(scope of work descriptions)

Chapter 296-127 WAC, WAC 296-127-01301-01398

- Process and certify Intent & Affidavit forms.

RCW 39.12.040

- Investigate all timely complaints alleging violations of the Public Works Act.

RCW 39.12.065

Contract Awarding Agency Responsibilities

- Award only to a “Responsible” Contractor RCW 39.04.350
 - Verify registration, workers comp: <https://secure.lni.wa.gov/verify/>
 - Award contracts only to properly registered or licensed contractors

RCW 39.06.010, RCW 18.27 (contractor reg.) and RCW 19.28 (electrical licensing)

- Do not award contracts to contractors not allowed to perform public work. Check the debarred contractor list on-line:

<https://lni.wa.gov/licensing-permits/public-works-projects/strike-and-debar/contractors-not-allowed-to-bid>

- RCW 39.12.050; RCW 39.12.065; RCW 39.12.055

- Obtain an approved Statement of Intent to Pay Prevailing Wages from each and every contractor and subcontractor at all tiers of subcontracting prior to any payment for work by that contractor

RCW 39.12.040

- Obtain an approved Affidavit of Wages Paid from each and every contractor and subcontractor at all tiers of subcontracting prior to release of retainage held under RCW 60.28.011

RCW 39.12.040

Contractor Duties

- Be eligible to bid on public work (not debarred)

RCW 39.12.050, RCW 39.12.055, RCW 39.12.065

- Pay prevailing wages to the laborers, workers, and mechanics employed on public works RCW 39.12.020

- Be a registered or licensed contractor as required

RCW 18.27 (contractor registration), RCW 19.28 (electrical), or RCW 18.106 (plumbing)

- Award subcontracts only to “responsible” subcontractors eligible to bid public work and properly registered or licensed

RCW 39.06.020 & RCW 39.04.350

- Include contract provisions to all subcontractors stating the prevailing wage rates and requirements WAC 296-127-011(5)

- Projects over \$10K: Post the Statement of Intent

RCW 39.12.020 Effective 1/1/2020 a failure to post is a violation of RCW 39.12.050

Responsible Contractors on Public Works

RCW 39.04.350

- Before awarding a contract, the public agency must verify a prime contractor is “responsible”

RCW 39.04.350

- The contractor must meet experience requirements (completing three public works projects) or have L&I training on public works and prevailing wages. This workshop satisfies that training requirement.
- Contracts with unregistered contractors are prohibited:
RCW 39.06.010
- A hiring contractor must verify the subcontractor’s responsibility RCW 39.06.020
 - This applies to all tiers of subcontracting on a public work

RCW 39.06.020

RCW 39.06.020

Verification of subcontractor responsibility criteria.

A public works contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW [39.04.350\(1\)](#) and possesses an electrical contractor license, if required by chapter [19.28](#) RCW, or an elevator contractor license, if required by chapter [70.87](#) RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

RCW 39.06.010

Contracts with unregistered or unlicensed contractors and with other violators prohibited

No agency of the state or any of its political subdivisions may execute a contract:

(1) With any contractor who is not registered or licensed as may be required by the laws of this state other than contractors on highway projects who have been prequalified as required by RCW 47.28.070, with the department of transportation to perform highway construction, reconstruction, or maintenance; or

(2) For two years from the date that a violation is finally determined, with any person or entity who has been determined by the respective administering agency to have violated RCW 50.12.070(1)(b), 51.16.070(1)(b), or * 82.32.070(1)(b). During this two-year period, the person or entity may not be permitted to bid, or have a bid considered, on any public works contract.

*Reviser's note: RCW 82.32.070 was amended by 1999 c 358 § 14, changing subsection (1)(b) to subsection (2).

Title 50 RCW is on unemployment compensation (Employment Security Dept.)

Title 51 RCW is on Industrial Insurance (L&I Workers Comp)

Title 82 RCW is on Excise Taxes (Dept. of Revenue)

Responsible Contractors RCW 39.04.350

2017 legislation: SSB 5301 and 2018 legislation E2SHB 1673 amended the law adding to the responsible bidder requirements

- ***Before entering into a subcontract, first determine if the subcontractor meets the “bidder responsibility” criteria of RCW 39.04.350:***
 - Is the contractor a registered contractor or licensed electrical contractor?
<https://secure.lni.wa.gov/verify/>
 - Does the contractor have a UBI?
 - If the contractor has employees does it have industrial insurance coverage?
 - Does the contractor have an employment security department number?
 - Does the contractor have a state excise tax registration number?
 - Is the contractor debarred (not eligible to bid on any public works contract);
<https://lni.wa.gov/licensing-permits/public-works-projects/strike-and-debar/contractors-not-allowed-to-bid>
 - If the public works project has apprenticeship utilization requirements in RCW 39.04.320, has the contractor been found out of compliance by the Washington state apprenticeship and training council for the one-year period preceding the date of the bid solicitation?
 - Has the contractor violated RCW 39.04.370 (reporting off-site pre-fab) more than one time as determined by the department of labor and industries?
 - Does the contractor have any final L&I Notice of Assessment for willful violations of chapters 49.46, 49.48, or 45.82 RCW in the three years prior to bid solicitation?
 - **Have experience completing three public works projects or have this training on public works and prevailing wages. Use the L&I *Verify a Contractor* tool to check this status.**
 - <https://secure.lni.wa.gov/verify/>

Contracts and Subcontracts

Duty to Communicate Requirements for Prevailing Wages

- The parties involved in public works, prevailing wage contracts have a duty to communicate the prevailing wage requirements – This includes:
 - The Public Agency
 - The Prime Contractor
 - Subcontractors at all tiers
- When hiring a contractor or subcontractor on public works, the prevailing wage requirements must be shared and communicated.
 - Relevant statute and rule:
 - RCW 39.12.030
 - WAC 296-127-011(5)

Contract Specifications – Prevailing Rates of Pay

Duty to Communicate Requirements for Prevailing Wages

RCW 39.12.030, WAC 296-127-011(5)

- Include a schedule of the applicable prevailing wages in your subcontract documents, or...
- *The bid and contract specifications may provide the required prevailing wage rate information in this alternate format:*
- **Provide the URL to the Dept. of L & I's prevailing wage rates**
- Identify the exact wage publication date to use (the effective date)
- **State the county in which the public works project is located**
Note: off-site work will use the rates for the county where that off-site work is performed
- **Providing a copy of the prime contractor's Intent or its number is helpful.**

Prevailing Wage Tools

- Contractor Strike and Contractor Debarment Lists
 - Searchable app. with sort and download capability
 - <https://lni.wa.gov/licensing-permits/public-works-projects/strike-and-debar/>
- PWIA Project Dashboard
 - Your Intent and Affidavit searches are assisted by the project dashboard showing project details (*based on the Intent & Affidavit filings*)
 - Intents and Affidavits filed on the project
 - A list of the contractors and subcontractors on the project
 - Possible identification of missing forms
- PWIA Portals
 - Awarding Agency Portal
 - Contractor Portal

Paperwork

Intents & Affidavits

Certified Payroll Records

- File the Statement of Intent to Pay Prevailing wages at the beginning of the work - Public agencies need an approved Intent to legally begin to pay you for your work. RCW 39.12.040
- The Affidavit of Wages Paid is required at the end of the work – A prerequisite to release of any retainage held. RCW 39.12.040
- On public works, all the contractors and subcontractors including owner/operators must file Intent & Affidavit forms. RCW 39.12.040
- List all the subcontractors you hired on your Affidavit of Wages Paid.
- Effective January 1, 2020 certified payroll records are required to be submitted to L&I. RCW 39.12.120. By rule, certified payroll records can be requested by an interested party. WAC 296-127-320
- State Certified Payroll records must be filed on-line through your Prevailing Wage Intent and Affidavit (PWIA) system Contractor Portal.
- Step by step instructions for on-line forms filing (certified payroll instructions start on pg. 17):
- <https://lni.wa.gov/licensing-permits/docs/February2017PWIAInstructions.pdf>

Statement of Intent to Pay Prevailing Wages

- To begin any payment for a contractor or subcontractor's work, the contract awarding agency needs an approved Intent.
RCW 39.12.040.
- On projects over \$10,000 the contractor or subcontractor is required to post the Intent to inform the workers of the prevailing wage requirement.
- Effective January 1, 2020, a failure to post is a violation of RCW 39.12.050 with a \$500 fine. Multiple violations cause debarment.

Filing

Intent & Affidavit Forms – Certified Payrolls

- Getting started - Create a “My L&I” account:

<https://secure.lni.wa.gov/home/>

- Sign up for “PWIA portal access” instructions:

https://lni.wa.gov/licensing-permits/_docs/February2017PWIAInstructions.pdf

- Use that same link for step by step instructions for on-line filing (includes Intents, Affidavits and state certified payroll records):

https://lni.wa.gov/licensing-permits/_docs/February2017PWIAInstructions.pdf

- The public works contract employer must file the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid form online using the Prevailing Wage Intent & Affidavit (PWIA) system (once you've registered).
- Use this same L&I on-line system to file your certified payroll records. Since January 1, 2020, by law the weekly CPs must be filed online with L&I. Most employers will do that each payday. Laws require paydays and submittals of the weekly CPs to be not less often than once a month.

Intent and Affidavit Filing Fees

*Intent & Affidavit filing fee:
\$40 each*

Errors on the Statement of Intent to Pay Prevailing Wages

No New Intent Required - Correct These Errors on the Affidavit:

- Inaccurate Contract dollar amount
- Wrong Start Date
- Incorrect “Yes” or “No” answer to use of subcontractors
- Incorrect “Yes” or “No” answer to owners performing work
- Missing or incorrect trade

New Intent Filing Required to Correct Errors misstating these details:

- Project Name
- Contract Number
- Awarding Agency Information
- Bid Due Date
- Contract Award Date
- “No” to having employees, but will have employees

Affidavit of Wages Paid

- *The Affidavit is filed after the work is completed.*
- All the approved Affidavits are required for the release of contract retainage or the formal acceptance of the contract. RCW 39.12.040
- All the Affidavits are required for Contract release by ESD, DOR, and L&I. RCW 60.28.051.
- False filing or a failure to file is a violation of RCW 39.12.050.
- More work performed after the filing (such as warranty work)? File an updated Affidavit with the new totals of hours worked, number of workers, and trade and occupation classifications used.

Affidavit Filing Fee

Certain Forms Will Not Require Any Filing Fee!

Exceptions to the filing fee:

- No Employees to report on the Affidavit
- The Owner-operator performed all the work without any employees
- All work was subcontracted
- Contract dollar amount was less than \$750

For these specific situations, the contractor can file the Affidavit without any filing fee

- Filing fees will apply to the Intent and to any Affidavits that do not qualify for these exceptions

Failure to File the Affidavit?

Subcontractor fails to file?

- Filing On Behalf Of (FOBO):
- By statute and policy, the hiring contractor can assume liability for any unpaid wages, *document an allowable basis for the FOBO*, and get a FOBO Affidavit.
- The policy is on the L&I web site at:
https://lni.wa.gov/licensing-permits/_docs/FOBOPolicyWithAddendum.pdf
- Because FOBOs involve a compliance investigation (failure to file) , they take longer to process. Please do encourage the hiring contractor to request the FOBO ASAP.

Contractor violations: What are the consequences?

- **Fines and Penalties**
- RCW 39.12.050 & RCW 39.12.065
- **Responsible Contractor**
- RCW 39.04.350
- **Notice of Violation**
- WAC 296-127-150
- **Liens - Notice of Claim** (against bond and retainage)
- Chapters 39.08 & 60.28 RCW; WACs 296-127-190; 200; 210; & 220
- **Debarment** Contractors not eligible to bid public work because of prior violations.
- RCW 39.12.055, RCW 39.12.050, & RCW 39.12.065

What kind of violations cause a Debarment?

- **Debarment – Contractors not eligible to bid public work.**

Multiple violations of these issues will result in debarment:

- **Failure to pay the prevailing rate of wage - RCW 39.12.065**
 - Two violations in five years results in a two year debarment.
- **Failure to post or file, or false filing of prevailing wage paperwork - RCW 39.12.050**
 - Two violations in five years results in a one year debarment.

Violations of RCW 39.12.055

- (any two violations in five years results in a one year debarment)
- **Industrial Insurance account violations - RCW 39.12.055**
 - Violation of RCW 51.48.103 (also at least a gross misdemeanor – certain violations are class C felonies)
- **False reporting or failure to pay Workers' Comp. premiums RCW 39.12.055**
 - Violation of RCW 51.48.020(1) (certain violations are class C felonies)
- **Violations of the contractor registration law - Chapter 18.27 RCW**
- **Apprenticeship violations - RCW 39.12.055**
 - Violation of chapter 49.04 RCW as determined by the State Apprenticeship Council

Contract Close-Out

- All the contractor and subcontractor Affidavits are required before the release of retainage RCW 39.12.040
- For contracts over \$35,000, the contract awarding agency submits a Notice of Completion to three state agencies, the Departments Of Revenue (DOR), Employment Security (ESD), and L&I (industrial insurance/workers comp) RCW 60.28.051
- The three state agencies check to see if the contractors are current in taxes and premiums – If everything checks out, releases are issued that, along with having all the Affidavits, allow the awarding agency to release retainage. RCW 60.28.060
- To avoid claims against retainage and be paid promptly, good practices will carefully follow all the subcontractors to find and correct any problems early on.

Contract Retainage

- The contract awarding agency holds back up to 5% retainage on *public improvement contracts* – *Except, federally funded transportation projects do not have retainage and instead rely on the contract bond.*

RCW 60.28.011

- Retainage serves as a trust fund for the protection and payment of claims of any person arising under the contract and for unpaid taxes, increases and penalties owed to the state under Title 50 RCW (Employment Security Dept.), Title 51 RCW (L&I Workers Comp), and Title 82 RCW (Dept. of Revenue)

RCW 60.28.011

Retainage Exceptions

- *Federal transportation funds (full or partial funding) – an exception to retainage requirements in RCW 60.28.011(1)(b) – claims rely on the chapter 39.08 RCW contract bond instead of retainage*
- RCW 39.04.155 Small Works Roster - Effective July 28, 2019: The public contract awarding agency (AA) *may* waive the RCW 60.28 contract retainage, but then the AA assumes liability for any claims and will seek recovery from the contractor
- RCW 39.04.155(3): Limited Public Works: The public contract awarding agency (AA) *may* waive the RCW 39.08 contract bond and the RCW 60.28 contract retainage, but then the AA assumes liability for any claims and will seek recovery from the contractor

Combined Intent/Affidavit - Small Works \$2,500 or less

- *Combined Intent/Affidavit form*
- The public agency decides if this form can be used
- This method makes the public contract awarding agency directly liable to workers for unpaid prevailing wages
- RCW 39.12.040(2)(d)
- Dividing a project to come under the dollar limit is prohibited
 - – RCW 39.12.040(2)(e)
- Online authorization and approval by the contracting agency required
- Form fee waived by L&I policy

Limited Public Works Projects up to \$50,000

(Prior to July 28, 2019 that was up to \$35,000)

Contracts awarded under RCW 39.04.155(3)

- *Limited Public Works Combined Intent/Affidavit form*
- The public agency decides if this form can be used
- The contract public awarding agency is liable to the workers for unpaid prevailing wages
See RCW 39.12.040(2) and also see RCW 39.04.155(3)
- Breaking in units or phasing projects to come in under the dollar limit is prohibited RCW 39.04.155(4)
- Online authorization and approval by the contract awarding agency
- The temporary reduction to \$40 ended
- Effective Oct. 29, 2021, \$80 filing fee

Restrictions on use of alternative combined forms

- **The contract awarding agency decides** if the alternative process may be used. Note: Non-governmental organizations (NGOs) may not use combined forms since they are not subject to the relevant laws that control public agency use of the combined forms and assign liability for wages.
- **Liability to the public agency** for unpaid wages is a condition of using an alternative filing process. See RCW 39.12.040(2)(d) and RCW 39.04.155(4)
- **No subcontractors.** No subcontractors are allowed in this alternative process. This helps control exposure to possible liabilities.
- **Single payment.** Multiple payments require using a separate (regular) Intent before any initial payment and a separate (regular) Affidavit before the final payment is made. See RCW 39.12.040
- **No time and materials.** State the total contract amount with tax. Total must be within the form's dollar limit.
- **No dividing or phasing of projects.** The law prohibits breaking the project into units or phases to avoid the maximum dollar limit.
- **The public agency must authorize and approve** the combined forms online.
- **No payment may be made** until the form is approved by the public agency.

Contract Bond - Chapter 39.08 RCW

Limited Exceptions

- Public works contracts require a contract bond (*payment and performance bond*) that guarantees contract performance; payment to workers and material suppliers; and payment of taxes increases and penalties to the state – Commonly called the performance bond RCW 39.08.010
- **RCW 39.08.015: Failure to obtain the contract bond as required makes the awarding agency liable for claims**
- **RCW 39.08.010(3): For contracts of \$150,000 or less, the awarding agency may permit and retain 10% of the contract amount in place of the contract bond**
- **RCW 39.04.155(3): Limited Public Works: The awarding agency may waive the RCW 39.08 contract bond and the RCW 60.28 contact retainage, but the AA assumes liability for any claims**

Overtime on Public Works

- **Prevailing Overtime** –Part of the “prevailing rate of wage” publication
 - Check when you look up wages!
 - Overtime code (check for OT requirements for certain days or hours of work)
 - Holiday Code (list of holidays)
 - Will vary by trade and occupation and county
- **Daily** – Over 8 hours in a calendar day on public works
RCW 49.28.010, 040, 050, & 060
 - **4-10 agreements**
RCW 49.28.065 WAC 296-127-022
- **Weekly**
RCW 49.46.130, WAC 296-126, WAC 296-128, L&I policy ES.A.8.1

4-10 Agreements

- WAC [296-127-022](#) Overtime according to RCW [49.28.065](#).
- If there is a collective bargaining agreement,(CBA), the 4-10 agreement must be in that CBA (not in individual agreements with workers).
- If there is no applicable CBA, the agreements must be voluntary agreements between the employer and each individual worker. These individual agreements can be annual or by the specific project.
- L&I has example forms for both the annual and the project 4-10 agreements:
 - Annual 4-10 Agreement: [F 700-176-000](#)
(<https://www.lni.wa.gov/forms-publications/F700-176-000.pdf>)
 - Specific Project 4-10 Agreement: [F700-177-000](#)
(<https://www.lni.wa.gov/forms-publications/F700-177-000.pdf>)

RCW 39.30.060 - Anti-Bid Shopping Law

Contract Award to the Prime Contractor

- For contracts expected to cost one million dollars or more, RCW 39.30.060 requires identification of certain subcontractors:
- Within one hour of the bid submittal time, the prime contractor must state the HVAC (heating, ventilation, and air conditioning) subcontractor; the plumbing subcontractor (as described in chapter 18.106 RCW); and the electrical subcontractor (as described in chapter 19.28 RCW), or to name itself for the work.
- *Within 48 hours of the bid submittal time, the prime contractor must state the structural steel and rebar contractor - ESSB 5457 effective June 11, 2020.*
- Substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract is prohibited.
- Certain circumstances are listed as exceptions that allow a substitution.

Contract Type

Effective Date & Filing Requirements!

- If you are the prime contractor you may need to know the contract type to complete your Intent .
- Please ask the awarding agency for guidance: The prime will be asked what type of contract it is when filing their Intent.
- The contract type will affect the effective date for prevailing wages and also define how many and how often Intents and Affidavits must be filed on that contract.

Effective Date for Prevailing Wage

WAC 296-127-011(3&4):

- (3) The applicable prevailing wage rates for a given public works contract will be determined as follows:
 - (a) For all public works contracts, except janitorial or building service maintenance contracts, the applicable prevailing wage rates shall be the rates that are in effect on the date when bids by prime contractors are due for submission to contract awarding agencies. These rates shall remain in effect for the duration of the contract.
 - (b) If contracts are not awarded within six months of the date bids are due, the applicable prevailing wage rates shall be those that are in effect on the date the contract is awarded. These rates shall remain in effect for the duration of the contract.
 - (c) For work orders issued under job order contracts pursuant to chapter 301, Laws of 2003, the appropriate prevailing wage rates shall be the rates that are in effect on the date when the individual work order is issued.
- (4) If a contract for public work is not awarded pursuant to bids, the applicable prevailing wage rates shall be those that are in effect on the date when the contract is executed. These rates shall remain in effect for the duration of the contract.

Effective Date - Contract Types

Process overview with Effective Date and Intent & Affidavit Requirements

- **Bid-Build Contracts under chapter 39.04 RCW**
- *Use the prime contractor's bid due date unless the contract award is not within six months of the bid due date (then use the award date instead).*
- When all the work is fully defined in the contract with no unspecified future work, one Intent for the contract and one Affidavit for the one project.

Effective Date - Contract Types

Process overview with Effective Date and Intent & Affidavit Requirements

- **Small Works Roster Contracts under RCW 39.04.155; and**
- **Limited Public Works Contracts under RCW 39.04.155(3)**
- Small Works Roster and Limited Public Works both use the prime contractor's bid due date (date of quote) unless the contract award is not within six months of the bid due date (then use the award date).
- When all the work is fully defined in the contract with no unspecified future work, one Intent for the contract and one Affidavit for the one project.

Effective Date - Contract Types

Process overview with Effective Date and Intent & Affidavit Requirements

■ Purchased Service Contracts

- If pursuant to bids: Use the prime contractor's bid due date (date of quote) unless the contract award is not within six months of the bid due date (then use the award date).
- If not awarded pursuant to bids: The date the prime contract was executed.
- When all the work is fully defined in the contract with no unspecified future work, one Intent for the contract and one Affidavit for the one project.

Effective Date - Contract Types

Process overview with Effective Date and Intent & Affidavit Requirements

- **Design-Build Contracts under chapter 39.10 RCW**
 - Awarded through RFP – Use the award date (date the contract was executed).
 - The Intent should state that contract award date under both the bid due date and the award date fields.
 - Affidavit for the “project” (usually one Intent and one Affidavit for Design-Build).

Effective Date - Contract Types

Process overview with Effective Date and Intent & Affidavit Requirements

- **Job Order Contracts under chapter 39.10 RCW**
 - Use the date that each work order is awarded per RCWs 39.10.440 and 39.10.450.
 - Intent and Affidavit by work order (there is an Intent and an Affidavit specific to each individual work order).

Effective Date - Contract Types

Process overview with Effective Date and Intent & Affidavit Requirements

- **General Contractor/Construction Manager under chapter 39.10 RCW**
 - GC/CM may have a pre-construction design phase contract and later the construction contract executed after the Maximum Allowable Construction Cost (MACC) has been *negotiated* (not an award pursuant to bids). If the MACC negotiations are not successful, the law allows a change to negotiate with the next most qualified contractor. The date the contract with the MACC is executed with the winning finalist/construction contractor is the prevailing wage effective date for that construction phase contract.
 - Two distinct sets of the Intent and the Affidavit are required. One set for the design phase, and another set for the construction phase. Both use their respective award dates.

Effective Date - Contract Types

Process overview with Effective Date and Intent & Affidavit Requirements

- **On-call Contracts (not specifically authorized in any state statute or law!)**
 - Use the date the contract was bid unless the contract award is not within six months of the bid due date – When that occurs, use the award date instead.
 - If not awarded pursuant to bids, the date the contract was executed.
 - Intent for the contract.
 - Affidavit for each call-out (task or project). Note: A call-out may be formal (e.g., a purchase order) or informal (e.g., a phone call).

Effective Date - Contract Types

Process overview with Effective Date and Intent & Affidavit Requirements

- **Unit Priced Contracts (authority in law may either be in the agency's own enabling statute or in chapter 39.04 RCW)**
 - For contracts after July 28, 2019, annual wage updates with annual filing of the Intent and the Affidavit.
- **PUDs, Ports, Cities, Counties, Sewer-Water Districts, and Transit Agencies are authorized in law to use unit priced contracts**

Effective Date - Contract Types

Process overview with Effective Date and Intent & Affidavit Requirements

- **Building Service Maintenance (Janitorial) Contracts**
- See WAC 296-127-023.
- The first contract year of a janitorial contract must use the prevailing wage rates in effect on the date when the bids are required to be submitted to the contract awarding agency. In a multi-year janitorial contract, subsequent contract years use the prevailing rates of wage in effect at the beginning of that contract year.
 - Annual wage updates by *contract year*
 - Annual filing of the Intent and the Affidavit by *contract year*

Effective Date - Contract Types

Process overview with Effective Date and Intent & Affidavit Requirements

- **Emergency Contracts issued without competitive process under RCW 39.04.280**
- *Use the date the contract was awarded or executed (the date the call to answer the emergency occurred).*
- Generally, one Intent filed as soon as possible after the emergency is under control with one Affidavit when work is complete.

Interpretations of the Prevailing Wage Law

- “All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.” RCW 39.12.015.
- Sources used to make determinations include:
- Statute (RCW) (*Laws as adopted by the legislature*)
- *Understanding the language of the statute may involve these factors:*
 - Actual Language
 - Legislative History
 - Legislative Intent
- Rule (WAC) *Adopted under the Administrative Procedures Act chapter 34.05 RCW*
 - Administrative rules help apply the law but do not override the statute
- Case Law
 - The Courts tell us how the statutes and rules function.

Significant Prevailing Wage Court Cases

Case law informs us on how the law works.

DISCLAIMER:

This presentation covers some selected, significant issues for prevailing wages under Chapter 39.12 RCW.

The presentation is not a comprehensive analysis of the cases identified nor is it a full set of relevant case law on Chapter 39.12 RCW.

Everett Concrete Products

1988 State Supreme Court case - 109 Wn.2d 819 (1988).

This case law provides important details on how this prevailing wage law works.

- Chapter 39.12 RCW is a worker protection law
 - The law is “remedial”
 - The law is to be liberally interpreted for its purpose
 - The purpose is: Protecting local worker wages
 - The state law is broader than the federal law.
- This case law tells us off site work, specific to the public work, will require prevailing wages.
- This off-site coverage is limited to “within the state” RCW 39.12.020.

Silverstreak, Inc. v. L&I, 159 Wn.2d 868 (2007).

- Two conditions had to be satisfied to reach a prevailing wage requirement: (1) The drivers must deliver the materials, and (2) the drivers must perform an additional task that involves incorporation of the materials into the project.
- Although the court ruled prevailing wages should be required for this work the court also ruled that because of the employers' reliance on a 1992 L&I memo, the department was estopped from collecting the workers' wage claim.
- To eliminate such reliance on old communications, the rule on materials delivery, (sand, gravel, crushed rock, concrete, asphalt, and similar materials) WAC 296-127-018 was revised.

Materials Delivery – WAC 296-127-018

- Delivery of sand, gravel, crushed rock, concrete, asphalt and similar materials requires prevailing wages unless the delivery meets the narrow definition of a “stockpile” in WAC 296-127-018.
- To have a “stockpile” and the exception to prevailing wages, the conditions of the rule need to be satisfied including:
 - The materials supplier delivers material to only one location on the job;
 - The one stockpile is located away from where the material will be placed and used on that project;
 - The materials supplier performs no other work on the project; and
 - In order to use the stockpiled materials on the project, someone else who *is* working on that project must be pick up, move, and place the materials where they will be used and remain in the project

WAC 296-127-018 - Materials Delivery

Coverage and exemptions of workers involved in the production and delivery of gravel, concrete, asphalt, or similar materials.

(1) The materials covered under this section include but are not limited to: Sand, gravel, crushed rock, concrete, asphalt, or other similar materials.

(2) All workers, regardless of by whom employed, are subject to the provisions of chapter [39.12](#) RCW when they perform any or all of the following functions:

(a) They deliver or discharge any of the above-listed materials to a public works project site:

(i) At one or more point(s) directly upon the location where the material will be incorporated into the project; or

(ii) At multiple points at the project; or

(iii) Adjacent to the location and coordinated with the incorporation of those materials.

(b) They wait at or near a public works project site to perform any tasks subject to this section of the rule.

(c) They remove any materials from a public works construction site pursuant to contract requirements or specifications (e.g., excavated materials, materials from demolished structures, clean-up materials, etc.).

(d) They work in a materials production facility (e.g., batch plant, borrow pit, rock quarry, etc.,) which is established for a public works project for the specific, but not necessarily exclusive, purpose of supplying materials for the project.

(e) They deliver concrete to a public works site regardless of the method of incorporation.

(f) They assist or participate in the incorporation of any materials into the public works project.

(3) All travel time that relates to the work covered under subsection (2) of this section requires the payment of prevailing wages. Travel time includes time spent waiting to load, loading, transporting, waiting to unload, and delivering materials. Travel time would include all time spent in travel in support of a public works project whether the vehicle is empty or full. For example, travel time spent returning to a supply source to obtain another load of material for use on a public works site or returning to the public works site to obtain another load of excavated material is time spent in travel that is subject to prevailing wage. Travel to a supply source, including travel from a public works site, to obtain materials for use on a private project would not be travel subject to the prevailing wage.

(4) Workers are not subject to the provisions of chapter [39.12](#) RCW when they deliver materials to a stockpile.

(a) A "stockpile" is defined as materials delivered to a pile located away from the site of incorporation such that the stockpiled materials must be physically moved from the stockpile and transported to another location on the project site in order to be incorporated into the project.

(b) A stockpile does not include any of the functions described in subsection (2)(a) through (f) of this section; nor does a stockpile include materials delivered or distributed to multiple locations upon the project site; nor does a stockpile include materials dumped at the place of incorporation, or adjacent to the location and coordinated with the incorporation.

(5) The applicable prevailing wage rate shall be determined by the locality in which the work is performed. Workers subject to subsection (2)(d) of this section, who produce such materials at an offsite facility shall be paid the applicable prevailing wage rates for the county in which the offsite facility is located. Workers subject to subsection (2) of this section, who deliver such materials to a public works project site shall be paid the applicable prevailing wage rates for the county in which the public works project is located.

Supporters of the Center, Inc. v. Moore, 119 Wn. App. 352 (2003).

- The center received a \$2.97 million CTED Building for the Arts grant (almost half of the project construction cost).
- The city paid \$700K in “advance rent” to SOC for use of the center.
- CTED & city funds paid for 52% of the project.
- The appellate court looked to both the source of funding and the character of the project and found that prevailing wages were required.
- State or local government funding (grants, etc.) brings a prevailing wage requirement to otherwise private projects.

City of Spokane v. L&I, 100 Wn. App. 805 (2000).

- The “Wheelabrator” case.
- Issue: Were prevailing wages required for the contractor’s annual maintenance shutdown at the City’s waste to energy facility (that burns garbage and generates electricity) or was this work exempt as “ordinary maintenance”?
- “All maintenance, when performed by contract is public work, and subject to prevailing wage. Maintenance is "ordinary" under the statute, when it is performed by in house employees of the public entity, and excluded.” *City of Spokane* at 810.
- Public agency employees are already exempted in RCW 39.12.020(2).
- Prevailing wages must be paid for contracted public maintenance work.

Lockheed Shipbuilding Co. v. L&I, 56 Wn. App. 421 (1989).

- Project: Construction of a Wastewater treatment plant and its outfall pipe.
- Scope of Work Issue: The correct prevailing rate of wage for welding a waste water treatment plant outfall pipe off-site in a shipyard: Shipyard Boilermaker or Construction Plumber/Pipefitter?
- The “...work performed... was of the same type and similar nature as work done by pipefitters in the construction industry.”
- The type and nature of the work (*not an employee’s title*) is important in determining which scope of work description (and prevailing rate of wage) applies to the work.

Heller v. McClure, 92 Wn. App. 333 (1998).

- On-site repair of equipment used to perform the public work.
- The court focused on the phrase “upon all public works” in its analysis. See RCW 39.12.020.
- The employer argued the mechanic’s work was not prevailing wage work because it was not “incorporated into the project.”
- **The court did not require such incorporation in this fact set.**
- *“Heller’s work was both directly related to the prosecution of the contracted work and necessary for its completion.”*
- The appellate court found that prevailing wages were required for this on the site of the public works equipment.
- **The on-site repair of equipment being used to perform the public work will require prevailing wages.**
- Off-site equipment repair may have a different answer – Check with L&I about your facts.

Legislation

ESSB 5035 (2019 session) became effective on January 1, 2020

- ESSB 5035 An Act relating to enhancing the prevailing wage laws to ensure contractor and owner accountability and worker protection.
- The legislature found that the law needed some enhancements to effectively provide the Department of Labor & Industries with the ability to utilize its civil remedies to both discourage and penalize repeat and willful violations of the law.

ESSB 5035 became effective January 1, 2020

- Certified payroll records required to be submitted to L&I (but not to the awarding agency).
- “Unpaid prevailing wages” defined. A failure to pay all of the prevailing wage rate by the regularly established pay day.
- Usual benefits must be paid by the regularly established deadline for such payments.
- Time period to file a wage complaint now 60 days from the acceptance date of the public works project.
- L&I may still investigate when a complaint is not timely filed but L&I may only recover wages owed (no sanctions or penalties).
- L&I may not investigate or recover unpaid prevailing wages if the complaint is filed after two years (private action may still occur).
- L&I may issue a notice of violation for unpaid wages, penalties, and interest on all wages owed at 1 percent per month.
- Increased civil penalty on violations: \$5,000 or 50 % of the wages owed, whichever is greater, plus interest at 1 percent per month.
- An inadvertent filing or reporting error is a mistake and is made in spite of the use of due care by the contractor or employer.
- Burden of proof: A preponderance of the evidence (inadvertent error - not subject to civil penalties).
- An inadvertent filing or reporting error includes good faith reliance on written L&I communications.
- Notices of violation not timely appealed are final and binding and not subject to further appeal.
- The director of L&I may waive or reduce a penalty or additional sanction, but may not waive or reduce wages due or interest.
- L&I must submit a report of the waivers granted, including the justification for any waiver, upon request of an interested party.
- Contractors & subcontractors must keep accurate payroll records for three years from the date of acceptance of the public works contract.
- Employers must pay all wages, other than usual benefits, owing to its employees not less than once a month.
- After a complaint is filed and before a final determination is made, if the contractor or subcontractor pays the unpaid wages, interest of 1 percent per month, and penalties of \$1,000 or an amount equal to 20 percent of the total prevailing wage violation, the matter is resolved without further penalty.
- If a contractor or subcontractor uses this option (above) twice in a five-year period, the contractor is subject to the higher penalty amounts and is barred from bidding on public works contracts for two years.

WA State Dept. of Labor & Industries Website

<https://lni.wa.gov/>

Verify a Contractor - Check Registration and More!

<https://secure.lni.wa.gov/verify/>

Look Up Prevailing Wages

<https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>

Scope of Work Descriptions

<https://lni.wa.gov/licensing-permits/public-works-projects/scopes-of-work>

Approved Intents & Affidavits

<https://secure.lni.wa.gov/wagelookup/searchforms.aspx>

Prevailing Wage Policies & Determinations

<https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-policies> Use Ctrl F to search

Debarment List

<https://lni.wa.gov/licensing-permits/public-works-projects/strike-and-debar/contractors-not-allowed-to-bid>

Prevailing Wage Resources

- Sign up for the Prevailing Wage Electronic Mailing Lists:

https://public.govdelivery.com/accounts/WADLI/subscriber/new?topic_id=WADLI_40

Scroll down to “Trades and Licensing” and select any or all of these three options as needed:

- ✓ Prevailing Wage
- ✓ Prevailing Wage – Awarding Agencies
- ✓ Prevailing Wage – Intents & Affidavits

- Debarment list (check for contractors not eligible to bid):

<https://lni.wa.gov/licensing-permits/public-works-projects/strike-and-debar/contractors-not-allowed-to-bid>

- L&I on-line: <https://www.lni.wa.gov/>

Prevailing Wage information is found under:

- “Licensing & Permits” and
- “PUBLIC WORKS PROJECTS”:

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