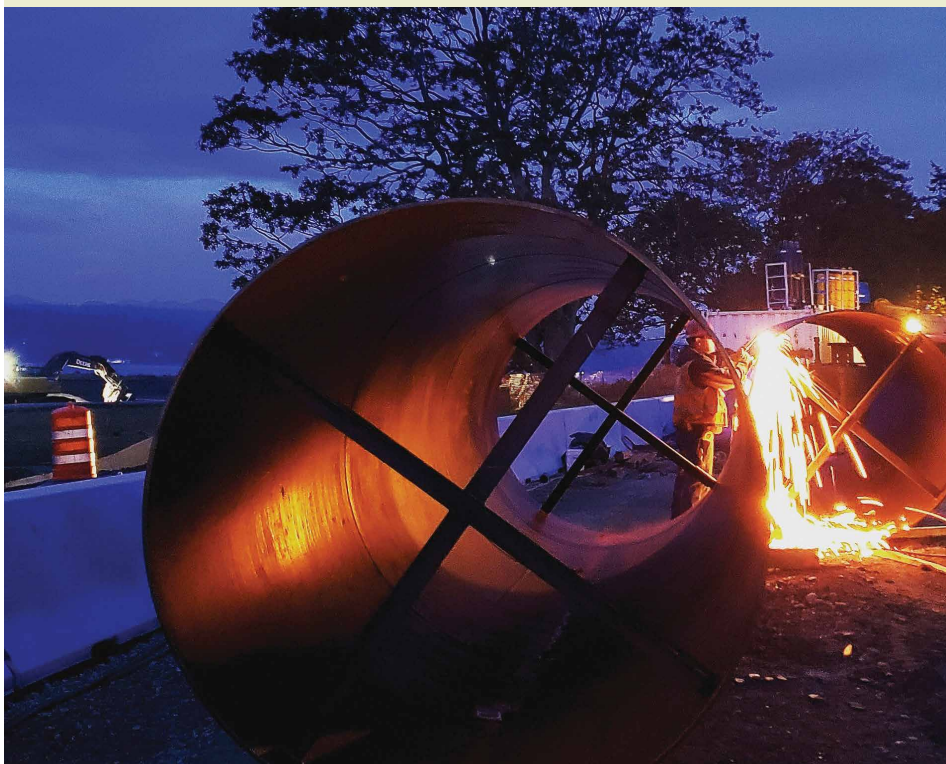


The Washington State

Prevailing Wage Law



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

October 2023 Edition



Washington State Department of
Labor & Industries

Prevailing Wage Program

NOTICE

This document contains sections of the Revised Code of Washington (RCW, laws) and the Washington Administrative Code (WAC, rules) that are current as of the date shown on the front cover. Changes to laws and/or rules may occur in legislative sessions or departmental rule activities. Please research the most current language of the laws, which is available at **search.leg.wa.gov**. Reference the site later if you are reading a paper copy of this document where WAC and RCW links are not currently accessible. You may also contact the Prevailing Wage Program to obtain the most current laws.

Contact information is available at the back of this booklet.

Cover photo courtesy of WSDOT.



STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage

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Dear Reader:

This booklet will help you understand prevailing wage paid on public works. It is meant for contractors, representatives of public agencies that award public works contracts, workers, and other interested parties.

The Prevailing Wages on Public Works Act (Revised Code of Washington Chapter 39.12), was enacted in 1945. It's triggered when construction projects use public funds to build schools, roads, and other projects.

The Washington State Department of Labor & Industries enforces the law, which protects workers from substandard wages and preserves local wage standards. The law also ensures contractors have a level playing field when bidding on public projects.

This booklet starts with a plain language description, which is divided into sections for contractors, awarding agencies, and workers and other interested parties. The other sections provide the text of the state law and rules.

The plain language chapter is provided to help you understand the laws and rules. It includes the sections from the Revised Code of Washington and Washington Administrative Code where you can get more information. Do not rely on the plain language description as a substitute for requirements under the law.

We ask that you comply with these requirements. There may also be additional changes since publication of this document. If you have questions, please contact us for assistance—that information is available at the back of this booklet.

Jody Robbins
Program Manager/Industrial Statistician

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How to Use this Booklet: The Plain Language Description chapter of this booklet is provided to help you understand the laws and regulations regarding prevailing wages. A brief explanation is provided to ease your research into the laws and WAC rules. At the end of each section, the applicable Revised Code of Washington (RCW) and Washington Administrative Code (WAC) references are given so you can directly locate, read, and understand the laws and regulations. Together, these references should help you understand your rights and responsibilities. Telephone numbers for contacting the Department of Labor & Industries (L&I) are provided at the back of this booklet, in case you have further questions. You may also email the L&I Prevailing Wage office at pw1@Lni.wa.gov to request further information.

How NOT to Use this Booklet: Do not rely on this plain language description without reading the laws and regulations. The informal discussions below are helpful when read in conjunction with the laws and WAC rules. They are not a substitute for reading and understanding the laws and rules. Don't hesitate to contact us with any questions you may have.

Plain Language Description

The Prevailing Wages on Public Works Act

Enacted in 1945, the Washington State Prevailing Wages on Public Works Act (app.leg.wa.gov/rcw/default.aspx?cite=39.12), also known as the “Prevailing Wage Law,” or the Act, is a worker protection act. It requires workers be paid prevailing wages when employed on public works projects. It is modeled after the federal Davis-Bacon Act, enacted to protect employees of contractors performing public works construction from substandard earnings, and preserve local wage standards.

Employees, not contractors or employers, are the beneficiaries of this law.

Definitions

- A. **Prevailing wage:** The hourly wage, usual benefits, and overtime paid in the largest city in each county, to the majority of workers, laborers, and mechanics performing the same work. The rate is established separately for each county.
 - B. **Scope of work:** Classifications, or “scopes” of work are adopted as prevailing wage rules in WAC Chapter 296-127. To ensure payment of the correct wage rate, the worker must be paid at the trade or occupation rate that applies to the scope, or type, of work performed. Scopes of work are available at Lni.wa.gov/ScopesOfWork.
 - C. **Usual (Fringe) benefits and overtime:** The prevailing wage rate includes usual benefits. Usual benefits include employer payments for medical insurance, pensions, approved apprenticeship training programs, and vacation and holiday pay. Deductions from worker paychecks are not usual benefits. Benefits required by law (industrial insurance, Social Security, etc.) do not qualify as usual benefits.
- Employers must pay a wage and usual benefits package that adds up to the prevailing rate of wage.
- D. **Eight-hour workday:** The Legislature has established an eight-hour workday for public works projects. An exception is provided where there is a properly executed agreement between the worker and employer for a 10-hour workday. The agreement for a 10-hour workday must be voluntary, individual with each worker, and signed and dated by both parties. Overtime rates must be paid for all hours worked in excess of 40 hours.

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Awarding Agencies

A contract Awarding Agency is an entity that includes — but is not limited to — state and local governments, fire districts, public hospital districts, port districts, and housing authorities.

This section follows the process for Awarding Agencies to determine whether they have a project requiring paying prevailing wage. It also includes the steps to hire a responsible bidder, reviewing payroll, and what to do when completing a project.

Determine whether the project requires paying prevailing wage

Is the project:

- Funded by any public dollars (direct or indirect for any portion of the project)?
 - ▶ RCWs 39.04.010(4) and 39.12.030. WAC 296-127-010(7).
- OR
- A turnkey project, private construction resulting from government agency agreements to rent, lease or purchase?
 - ▶ RCW 39.04.260 and WAC 296-127-010(7)(a)(iii).

If you answered yes to either, then answer the following:

Does the project include any construction, reconstruction, maintenance or repair?

- ▶ RCWs 39.04.010 and 39.12.030. WAC 296-127-010.

This work includes:

- Building service maintenance (janitorial) contracts;
 - ▶ RCW 39.12.020 and WAC 296-127-023.
- Landscape construction and grounds maintenance;
- Small projects (no minimum dollar amount) such as maintenance and repairs including “small works” roster contracts;
- Off-site work such as custom fabrication for the public works project;
 - ▶ RCW 39.04.010 and WAC 296-127-010(5)(b).
- Contractors subcontracting out all work.

A project that is either publicly funded or a turnkey project, and the work includes any of the tasks listed above, is a project requiring prevailing wages. The next step is to put the project to bid.

Bidding, contracting, hiring responsible contractors

Parties involved in public works contracts must include prevailing wage requirements in bid documents and contracts. The parties include: the Awarding Agency; the prime contractor; and subcontractors at all levels. Items that must be included in bidding documents include:

A. Prevailing wage rates: Wage rates can be communicated one of two ways in your bid and contract documents:

- A printed list of the wage rates that identifies the effective date and the county in which the public works project is located.

OR

- A link to the prevailing wage rates lookup page, **Lni.wa.gov/ContractorWages** on the L&I website, with the following:
 - Identify the exact wage publication date to use (the effective date).
 - List 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.)
 - Provide a statement indicating a printed copy of the wage rates are available for viewing in your office.
 - Explain that your agency will mail a hard copy upon request.
 - ▶ RCW 39.12.030 and WAC 296-127-010(9).

Retain a printed version of the rates as part of your records.

B. If you determine the project meets the definition of residential construction (RCW 39.12.017), you must state this in your bid and contract documents. As the Awarding Agency, you are responsible for the difference between residential and commercial wage rates if you make the determination it was residential and it was not.

- Note: Laborers, mechanics and those at work on public projects are paid prevailing wages. Other types of work may not require prevailing wages, such as:
 - Design (architects, and engineers, for example)
 - Software work
 - Computer programming

C. When prevailing wages are not required, employers do not need to file Intents or Affidavits. Contact us if you need guidance.

D. **Emergency work:** There is a bidding exception for emergency work but prevailing wage requirements still apply. An emergency means unforeseen circumstances beyond the control of the Awarding Agency that either:

- Present a real, immediate threat to the proper performance of essential functions.
- Will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

In the case of an emergency, tell the contractor this is a prevailing wage job. After dealing with the emergency, it will be necessary to ensure the workers were paid not less than the prevailing rate of pay and complete the required prevailing wage paperwork. This includes Intents, certified payroll, and Affidavits.

E. **Hiring responsible contractors:** A prime contractor and subcontractors must be “responsible bidders” to bid on a public works project. See RCW 39.04.350 and RCW 39.06.020. They must meet these requirements, including but not limited to:

- Valid Unified Business Identifier (UBI), [Lni.wa.gov/Verify](https://lni.wa.gov/Verify).
- Current contractor’s registration or licensing as required, [Lni.wa.gov/Verify](https://lni.wa.gov/Verify).
- Industrial insurance coverage for employees, [Lni.wa.gov/Verify](https://lni.wa.gov/Verify).
- Not currently debarred from bidding on a project that involves prevailing wage, [Lni.wa.gov/ContractorDebarList](https://lni.wa.gov/ContractorDebarList).
- Must attend L&I training on Public Works and Prevailing Wage Law unless a contractor has been in business for three or more years and has completed three or more public works projects.
 - ▶ RCWs 18.27, 39.04.350, 39.06.010, 39.12.050, 39.12.065, 51.48.020(1), and 51.48.103. WAC 296-127-310.

Note: Create a “My L&I” account to sign up for the Awarding Agency Portal. You can check the status of the items above for multiple contractors at the same time with the portal.

Required documents for starting work and paying contractors

To meet the state's prevailing wage requirements, there are forms that must be filed and approved by L&I before the Awarding Agency makes any payments.

A contractor or subcontractor must first file their Statement of Intent to Pay Prevailing Wages. Contractors should file the Intent immediately after the contract is awarded and, if possible, before work begins. You as the Awarding Agency have the option of creating the information for the project on your Awarding Agency Portal, [Lni.wa.gov/AAPortal](https://lmi.wa.gov/AAPortal).

► RCWs 39.12.030, 39.12.040, and 39.12.042.

- A. **Alternate filing process**— Combined Intent/Affidavit forms— Two options:
Up to \$2,500 small contracts, and Limited Public Works contracts (up to \$50,000).
- B. **Two choices of combined Intent to Pay and Affidavit of Wages Paid forms** may be used, when appropriate, at the option of the public Awarding Agency:
- \$2,500 or less (including tax) combined Intent/Affidavit form. No form filing fee.
 - Limited Public Work: \$2,501 to \$50,000 (including tax) combined Intent/Affidavit form. \$40 filing fee.

File the combined form online through the Awarding Agency and Contractor portals. The online system checks that the contractor is in good standing with L&I and verifies the wage rate used is at least the prevailing rate of wage for the classification the contractor will use. Please note: paper copies of the combined forms are no longer accepted.

There are limits on use of the alternative combined form filing options:

- The public Awarding Agency accepts liability for unpaid wages.
 - RCW 39.12.040(2).
- No subcontractors are allowed.
- The project must be paid for in a single payment.
- No dividing or phasing of projects for ongoing work. The law prohibits breaking the project into units or phases to avoid the maximum dollar limit.
- No payment may be made to the contractor until the form is approved by the public agency.

Review Intents and certified payroll reports

During the project, you as the Awarding Agency should review Intents as they are filed. Failure to review the Intents can lead to delays in closing out a project and releasing money that has been retained.

As part of the contract, and under law, contractors are required to file certified payroll reports. This can be a good check for you to catch errors early in a project. Sign in to your Awarding Agency Portal to review Intents, certified payroll, and Affidavits, and manage your projects.

► [Lni.wa.gov/AAPortal](https://lni.wa.gov/AAPortal)

Review Intents and certified payroll reports for the following:

- The type of work being done.
- Where the work is taking place.
- The effective date of your contract.
- Detailed information for certified payroll reports.

A. **Type of work:** Which trades and occupations (“scopes of work” or “classifications”) will be used?

- It’s the work performed, not the title of the employee, that determines the classification. See the Trade — Scopes of Work page on the Prevailing Wage Program website at [Lni.wa.gov](https://lni.wa.gov) for a description of the classifications.

► [Lni.wa.gov/ScopesOfWork](https://lni.wa.gov/ScopesOfWork)

B. **Journey level and apprentice wage rates:** There are journey level and apprentice wage rates. Trainees aren’t necessarily apprentices. If a trainee is not an apprentice, then they must be paid the journey level wage rate. To be an apprentice, the employee must be enrolled in a state-approved apprenticeship program.

► [Lni.wa.gov/FindApprenticeship](https://lni.wa.gov/FindApprenticeship)

- State registered apprentices can be paid reduced prevailing wage rates on public works projects within the appropriate prevailing wage classification. All other employees are paid full journey level prevailing wages.
 - RCW 39.12.021.
- For example: An apprentice carpenter doing carpenter work will be paid at an apprentice wage rate. If the same worker does work in another trade, such as ironworker, then they must be paid at the journey level wage rate for ironworker. Report each apprentice on the Affidavit (see Page 12).

- The contractor or subcontractor is responsible for using the correct classification. Contractors must use the classification that best fits the work being performed.

Remember, a single employee may be doing work under more than one classification. This means the employer must either track the time worked by the employee in each classification, or pay the highest rate for all hours of work.

- See Scopes of Work for a description of the trade and occupation classifications.

► [Lni.wa.gov/ScopesOfWork](https://lni.wa.gov/ScopesOfWork)

- C. **In what county is the work taking place?** Use the wage rates for the county in which the job site is located for the on-site work. For off-site fabrication or work, use the county in which the off-site work is performed. Contractors may list multiple counties on their paperwork. Look up Wage Rates.

► [Lni.wa.gov/PrevailingWageRates](https://lni.wa.gov/PrevailingWageRates)

- D. **What date do I use to decide the effective prevailing wage rate(s)?** Generally, the effective date for prevailing wage rate(s) is the date the prime contractor's bid is due, or if the contract is not awarded within six months of the bid due date, then use the contract award date. Subcontractors will use the same effective date as the prime contractor. Use the effective date in the Look up Wage Rates page.

► [Lni.wa.gov/PrevailingWageRates](https://lni.wa.gov/PrevailingWageRates)

E. **Exceptions to the effective date**

- Contracts awarded outside a bid process use the date the contract was signed.
- Janitorial contracts require annual wage updates after the initial contract effective date.
- Job Order Contracts use the issue date of each work order.
- Unit-priced contracts require annual wage updates after the initial contract effective date.
- For the construction phase effective date, General Contractor/Construction Manager (GC/CM) uses the date of the Maximum Allowable Construction Cost (MACC) negotiated agreement. The pre-construction, design contract award date is used for any construction work that precedes the MACC.
- Design-Build uses the award date of the construction contract.

- F. **About usual (fringe) benefits:** Usual (fringe) benefits are contributions included as part of the prevailing wage. Employers are not required to provide these benefits, but when they do, the amounts paid by the contractor counts as credit toward the prevailing wages paid. Benefits required by law such as sick leave or industrial insurance cannot be included in the usual (fringe) benefits.

► WAC 296-127-014.

G. **For prevailing wage, usual (fringe) benefits include employer contributions for:**

- Health care.
- Pension.
- Vacation.
- Holidays.
- Apprenticeship training funds.

Example: To calculate prevailing wage that includes usual benefit costs: The prevailing wage rate is \$30 per hour. The employer's usual benefits total \$5 per hour. The wage rate paid to the employee is \$25. The wage and benefit calculation is $\$25 \text{ wage} + \$5 \text{ benefits} = \$30 \text{ per hour}$.

- Note: Cash fringe benefits paid to the employee on the same or separate paycheck is not considered a fringe benefit, such payments are considered part of the employee's wage.

H. **Other items to consider**

- State and federal projects: For projects where both the state prevailing wage law and the federal Davis-Bacon and Related Acts (DBRA) apply, contractors must comply with both laws. For contractors, this involves meeting the most demanding pay requirement of the two laws and completing the required paperwork for each law.
- When do contractors pay overtime?
 - Any hours worked over 8 hours per calendar day on a public works project requires overtime pay.
 - If a valid 4/10 work agreement is in place, then overtime is paid after 10 hours are worked in a calendar day.
 - Any hours worked over 40 hours per week.
 - For additional overtime requirements, check the overtime, holiday and note language, which can be found in the Look up Wage Rates page.
 - [Lni.wa.gov/PrevailingWageRates](https://lni.wa.gov/PrevailingWageRates)
 - These requirements may include specific situations, such as work on a holiday or work on Sundays or during certain hours of the day.

- When must supervisors or foremen get paid prevailing wage? Supervisors and foremen need to get paid prevailing wage for time doing “hands-on” work within a work week if:
 - ▶ app.leg.wa.gov/wac/default.aspx?cite=296-127-015
 - 50 percent or more of their time is spent doing hands on-work, they must be paid the prevailing wage rate for all hours they work that week, including the hours performing their supervisory duties.
 - 20 percent but less than 50 percent of their time is spent doing hands on work, they are only paid the prevailing wage for those hours worked.
- Does an owner/operator get paid prevailing wage? No. While owner/operators that meet the specified requirements are exempt from paying themselves the prevailing rate of wage, they are still required to complete all necessary paperwork, including the Intents, certified payroll, and Affidavits.
 - Certified payroll report requirements: Contractors are required to keep for all work on a public works project for three years from the date you accept the public works project as completed. You can request and view these records within your Awarding Agency Portal.
 - ▶ RCW 39.12.120. lni.wa.gov/AAPortal
- Certified payroll report records must include the following:
 - Employee name.
 - Address.
 - Social Security Number.
 - Trades and occupations including journey level and apprentice workers.
 - Straight time rate (actual rate of wage paid).
 - Hourly rate of usual benefits.
 - Hours worked including overtime hours worked each day and week.
 - All executed 4/10 work agreements.
 - All itemized deductions taken from gross wages.

Note: The contractor/employer on a public work must file the weekly certified payroll records online with L&I at least once a month.

When the work is done

Other documents must be filed. These include:

- A. **The Affidavit.** The “Affidavit of Wages Paid” reports from a contractor all the work done on the project and the rates paid. Confirm whether the prime contractor and all subcontractors have filed their required forms in your Awarding Agency Portal.

► [Lni.wa.gov/AAPortal](https://lni.wa.gov/AAPortal)

- B. **Contract acceptance.** If no retainage is held, all Affidavits of Wages Paid forms are required prior to acceptance.

- C. **Apprenticeship utilization.** If your project includes apprenticeship utilization requirements, you may use L&I certified payroll records data to verify and report that your requirements were met.

- D. **Retainage release.**

- On public works projects costing \$35,000 or more, including tax, public agencies must withhold 5 percent of the contract amount until it is demonstrated that all the contractors on the project have paid the appropriate prevailing wages and state taxes, including workers’ compensation and unemployment insurance premiums. A certificate of release of retainage is issued by the State Department of Revenue (DOR), Employment Security Department (ESD), and L&I. You may file a *Notice of Completion of Public Works Contract* (F215-038-000) to request the retainage be released, using the Awarding Agency Portal ([Lni.wa.gov/AAPortal](https://lni.wa.gov/AAPortal)).

► RCW 60.28.051.

- Unless a lien is filed, after you receive certificates of release of retainage from all three agencies and after L&I approves all the Affidavits, you may release the contract retainage to the Prime Contractor.

► RCWs 60.28.011, 60.28.021, and 60.28.040.

Note: You can use your Awarding Agency Portal to verify all Intents and Affidavits are filed along with the Notice of Completion.

- E. **Warranty work.** Warranty work is additional work on the same public works contract. Here is what you need to know:

- Prevailing wages are still required.
- The original Intent on the contract is still effective.
- A new affidavit will be required (if the affidavit had already been filed) to report on the new total hours of work.

3

Contractors

This section follows the process for contractors and subcontractors — including L&I documents required under the law. This section also includes what contractors need to do once the project is completed.

Determine whether the project requires paying prevailing wage

Am I required to pay prevailing wage?

You should be informed if the project requires prevailing wages by soliciting party. RCW 39.12.030, and WAC 296-127-011(5). Answering these questions also helps you spot when prevailing wages are required:

Is the project:

- Funded by any public dollars (direct or indirect for any portion of the project)?
 - ▶ RCWs 39.04.010(4) and 39.12.030. WAC 296-127-010(7).
- OR
- A turnkey project, private construction resulting from government agency agreements to rent, lease or purchase?
 - ▶ RCW 39.04.260 and WAC 296-127-010(7)(a)(iii).

If you answered yes to either, then answer the following:

Does the project include any construction, reconstruction, maintenance or repair?

- ▶ RCWs 39.04.010 and 39.12.030. WAC 296-127-010.

This work includes:

- Building service maintenance (janitorial) contracts;
 - ▶ RCW 39.12.020 and WAC 296-127-023.
- Landscape construction and grounds maintenance;
- Small projects (no minimum dollar amount) such as maintenance and repairs including “small works” roster contracts;
- Off-site work such as custom fabrication for the public works project;
 - ▶ RCW 39.04.010 and WAC 296-127-010(5)(b).
- Contractors subcontracting out all work.

If you answered yes to both questions, the project requires:

- Paying prevailing wage; and
- Filing documents such as the Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid, RCW 39.12.040; and
- Keeping payroll records, and submitting Certified Payroll Records, RCW 39.12.120.
 - ▶ RCWs 39.04.010, 39.12.010, and 39.12.030. WAC 296-127-011.

Requirements to bid on public works projects

Contractors and subcontractors have several requirements, including being a “responsible bidder,” to bid on a prevailing wage project.

► RCWs 39.04.350 and 39.06.020.

You must meet these requirements, including but not limited to:

- Valid Unified Business Identifier (UBI), dol.wa.gov/business/checkstatus.html.
- Current contractor’s registration or licensing as required, [Lni.wa.gov/Verify](https://lmi.wa.gov/Verify).
- Industrial insurance coverage for employees, [Lni.wa.gov/Verify](https://lmi.wa.gov/Verify).
- Not currently debarred from bidding on a project that involves prevailing wage, [Lni.wa.gov/ContractorDebarList](https://lmi.wa.gov/ContractorDebarList).
- Must attend L&I training on Public Works and Prevailing Wage Law unless a contractor has been in business for three or more years and has completed three or more public works projects.
 - RCWs 18.27, 39.04.350, 39.06.010, 39.12.050, 39.12.065, 51.48.020(1), and 51.48.103. WAC 296-127-310.

Identify the required prevailing wage rate to pay employees

To find the correct wage rate for employees for a public works project, you will need to identify:

- The type and nature of work being done;
- The county where the work is taking place; and
- The effective date of your contract.
 - RCWs 39.04.260, 39.12.020, and 39.12.030. WAC 296-127-023.

Type of work

- A. **Which trades and occupations, (called “Scope of Work” or “classifications”) will you be using?**
- B. **It’s the work performed, not the title of the employee, that determines the classification.** See the Trade: Scope of Work Descriptions ([Lni.wa.gov/ScopesOfWork](https://lmi.wa.gov/ScopesOfWork)).
- C. **Note: There are journey-level and apprentice wage rates.** Trainees aren’t apprentices. Unless the person is an apprentice enrolled in a state-registered apprenticeship program, they must be paid the full, journey-level rates.

- D. **As the contractor, you are responsible for using the correct classification.** You need to use the classification that best fits the work being performed. L&I can help. Email questions to pw1@lni.wa.gov.
- E. **REMEMBER, a single employee may be doing work under more than one classification.** This means the employer must either track the time worked by the employee in each classification, or pay the highest rate for all hours of work.

See the Scopes of Work page for a description of the trade and occupation classifications: lni.wa.gov/ScopesOfWork.

- F. **Where the work is being done?** This is another factor in determining the prevailing wage rate for a worker. Use the wage rates for the county in which the job site is located for the on-site work. For off-site fabrication or work, use the county in which the off-site work is performed. You can list multiple counties on your paperwork. Look up Wage Rates.

► lni.wa.gov/PrevailingWageRates

- G. **The effective date of the contract:** Generally, the effective date for prevailing wage rate(s) is the prime contractor's bid due date, or if the contract is not awarded within six months of the bid due date, then use the contract award date.

► WAC 296-127-011.

- H. **There are exceptions to the effective date, including:**

- Contracts not awarded by bid use the date the contract was executed.
- Janitorial contracts require annual wage updates after the initial contract effective date.
- Job Order Contracts use the issue date of each work order.
- Unit Priced contracts (when allowed by law) use the beginning date for each contract year and are updated each contract year.
- For the construction phase effective date, General Contractor/Construction Manager (GC/CM) uses the date of the Maximum Allowable Construction Cost (MACC) (search.leg.wa.gov) negotiated agreement. The design phase contract award date is used for the contracts awarded before the MACC.
- Design-Build uses the award date of the construction contract.

About usual (fringe) benefits

Prevailing wage is made up of the wage plus the usual (fringe) benefits. Employers are not required to provide these usual (fringe) benefits, but when they do, the amounts paid by the contractor count as credit toward the prevailing wages paid. Benefits required by law such as sick leave or industrial insurance cannot be included in the usual (fringe) benefits. For prevailing wage, usual (fringe) benefits include employer contributions for:

- Health care
- Pension
- Vacation or holidays, or
- Apprenticeship training funds

For example: The prevailing wage rate is \$30 per hour. Your usual benefits total \$5 per hour. The wage rate per hour you would pay is \$25. So: \$25 wage + \$5 paid in benefits = \$30 per hour.

Note: Under state law, cash usual (fringe) benefits paid to the employee on the same or separate paycheck is not considered a fringe benefit. Such payments are considered part of the employee's wage.

Other items to consider:

A. **State and federal projects:** For projects where both the state prevailing wage law and the federal Davis-Bacon and Related Acts apply, contractors must comply with both laws. This involves meeting the most demanding pay requirement of the two laws and completing the required paperwork for each law.

► WAC 296-127-025.

B. When do I pay overtime?

- Any hours worked over 8 hours per calendar day (RCW 49.28.010) on a public works project requires overtime pay.
- If a valid 4/10 work agreement (WAC 296-127-022) is in place, then overtime is paid after 10 hours are worked in a calendar day.
- Any hours worked over 40 hours per week.
- For additional overtime requirements, check the overtime, holiday and note language, which can be found in Look up Wage Rates.

► Lni.wa.gov/PrevailingWageRates

- C. **These requirements may include specific situations**, such as work on a holiday or work on Sundays or during certain hours of the day. See example below.
- When must supervisors or foremen get paid prevailing wage? Supervisors and foremen need to get paid prevailing wage for time doing “hands-on” work (app.leg.wa.gov/wac/default.aspx?cite=296-127-015) within a work week if:
 - 50 percent or more of their time is spent doing hands-on work, they must be paid the prevailing wage rate for all hours they work that week, including the hours performing their supervisory duties.
 - 20 percent but less than 50 percent of their time is spent doing hands-on trades work, they are only paid the prevailing wage for those hours worked performing trades work.
 - Does an owner/operator get paid prevailing wage? Certain owner/operators (WAC 296-127-026) who own at least 30 percent of the business are exempt from paying themselves the prevailing rate of wage, they are still required to complete all necessary paperwork, including the Intent, certified payroll records, and Affidavits.

Required documents for doing the work

To meet the state’s prevailing wage requirements, there are steps you must take to get paid:

- Create a “My L&I” account (Lni.wa.gov/MyLNI) to sign up for PWIA portal access (Lni.wa.gov/PWIAInstructions). This will allow you to file required forms and manage certified payroll records.
- File the Intent. The “Statement of Intent to Pay Prevailing Wages” should be filed immediately after the contract is awarded and before work begins and can be done online from the PWIA portal. To complete this filing, you will need the basic information about the project— such as the who, what, where, and when of what’s involved.
- Post the Intent. For contracts over \$10,000, the approved Intent needs to be posted on the job site. If the approval is pending, the complete listing of applicable prevailing wage rates should be posted until the Intent is approved.

Note: The agency administering the contract cannot make any payments to contractors until the Intent form is submitted and approved by L&I.

- Keep track of payroll: Accurate payroll records need to be kept for all work on a public works project. The records become certified by completing a Certified Payroll Report within L&I's PWIA portal, [Lni.wa.gov/ContractorPortal](https://lni.wa.gov/ContractorPortal). The weekly certified records must be submitted at least monthly.
 - ▶ RCW 39.12.120.
- Certified payroll report records must include the following:
 - Employee name.
 - Address.
 - Social Security Number.
 - Trades and occupations.
 - Including journey level and apprentice workers.
 - Straight time rate (actual rate of wage paid).
 - Hourly rate of usual benefits.
 - Hours worked including overtime hours worked each day and week.
 - All executed 4/10 work agreements.
 - All itemized deductions taken from gross wages.

When the work is done

Other documents must be filed. These include:

- A. **The Affidavit.** The "Affidavit of Wages Paid" states the work you have done on the project and the rates paid. File the Affidavit through the PWIA portal on "My L&I".
 - ▶ RCWs 39.04.155 and 39.12.040. WACs 296-127-040, 296-127-045, and 296-127-050.
- B. **Check on your subcontractors.** Determine whether all subcontractors have filed their required forms through the PWIA portal on "My L&I."

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4

Workers, Interested Parties

The Public Works Act is a worker-protection law. The worker, not the employer, is the beneficiary. Further, local governments must be transparent when building public works projects, such as school, roads, and other facilities. This section reviews the rights under the law for workers, and those who are “interested parties.”

Rights of Workers Under the Prevailing Wage Act

The rights for workers under the Prevailing Wage Act include the following:

- A. **Posting.** For projects over \$10,000, Intent forms listing the scopes of work and wages used on the project must be posted by the contractor and the subcontractors at the job sites. In situations, such as road work, pipeline, and sewer line construction, the employer may post at their local office so long as they supply a copy of the Intent to any worker who requests it.

In the event the Intent has not been approved by L&I before work begins, a complete list of prevailing wage rates for that county may be posted and distributed. RCW 39.12.020

- B. **Wage statements.** Employers must provide an itemized statement showing time worked, pay rate, gross wages, and a list of all deductions. It must be provided with each paycheck.

► WAC 296-126-040.

- C. **Other records.** The employer is required to keep the following:

- Wage statement, including actual wages paid
- Payroll records including name, address, Social Security number, trade or occupation, straight-time rate, hourly rate of usual benefits, and overtime hours worked each day and week.
- Agreements to work up to 10-hour days

- D. **Employers must submit the weekly certified payroll records online to L&I at least once a month.** Interested parties can request copies of certified payroll records from L&I using form F700-141-000 found at Lni.wa.gov/go/F700-141-000.

► RCW 39.12.120 and WAC 296-127-320.

- E. **Filing a complaint.** If a worker feels they are not being paid the correct wage for the type of work done, a complaint can be filed with L&I. To file a complaint, complete the *Prevailing Wage Worker Complaint* form (Lni.wa.gov/go/F700-146-000).

Also, an interested party can file a complaint on form Lni.wa.gov/go/F700-129-000. The forms are available at Lni.wa.gov.

- F. If you are unsure about filing a complaint, or if you have never filed a previous wage complaint, see the *Should I Be Paid Prevailing Wage?* and *How Much Should I be Paid?* tabs available at Prevailing Wage for Workers Lni.wa.gov/PWWorkers.

G. There are several factors that impact whether L&I can successfully assist you on your complaint, including:

- Date received
- Completeness of complaint
- Alleged violation(s) are under L&I jurisdiction
- Ability to verify the violation

L&I seeks to complete prevailing wage investigations in 180 days. Complex investigations often take longer. L&I will contact the worker when the agency makes a finding regarding your complaint.

Important: If you or your attorney have already filed a complaint about these wages in court, we cannot accept your claim.

Interested Parties

A person who is a part of an “Interested Party” can file a wage complaint with L&I about a public works project. In law, “Interested Party” includes the following:

- Contractor.
- Subcontractor.
- Employee of a contractor or subcontractor.
- Organization whose members’ wages, benefits, and conditions of employment are affected by the prevailing wage law.

By going to **Lni.wa.gov** and clicking on “Licensing and Permits, “Public Works Projects,” and then “Interested Parties,” where the following documents are available, you can:

- Search approved Intents and Affidavits.
- Verify a contractor — and find out whether a company needs to undergo prevailing wage training as required under law.
- Look up wage rates.
- Request certified payroll records, which are a certified copies of the wages paid to workers on public works. See the *Interested Party Request for Certified Payroll and Instructions* (F700-141-000).
- File a complaint. Download and print out the complaint form *Prevailing Wage Interested Party Complaint* (F700-129-000). One per public works project.

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5

Selected Laws

(Revised Code of Washington)

NOTICE

This document contains sections of the Revised Code of Washington (laws) that are current as of the date shown on the front cover. Changes to laws may occur in legislative sessions. Please research the most current language of the laws, which is available at **search.leg.wa.gov**. You may also contact the Prevailing Wage Program to obtain the most current laws.

RCWs

Check the legislative website for current law: search.leg.wa.gov.

RCW	Description
39.04.010	Definitions.
39.04.155	Small works roster contract procedures — Limited public works process — Definitions.
39.04.260	Private construction performed pursuant to contract for rental, lease, or purchase by state — Must comply with prevailing wage law.
39.04.350	Bidder responsibility criteria — Sworn statement — Supplemental criteria.
39.06.010	Contracts with unregistered or unlicensed contractors and with other violators prohibited.
39.06.020	Verification of subcontractor responsibility criteria.
39.12.010	Definitions.
39.12.015	Industrial statistician to make determinations of prevailing rate.
39.12.017	Industrial statistician to establish prevailing rate for residential construction — Wage and hour surveys.
39.12.020	Prevailing rate to be paid on public works and under public building service maintenance contracts — Posting of statement of intent — Exception.
39.12.021	Prevailing rate to be paid on public works — Apprentice workers.
39.12.026	Surveys — Applicability by county — Electronic option.
39.12.030	Contract specifications must state minimum hourly rate — Stipulation for payment — Residential and commercial construction work.
39.12.040	Statement of intent to pay prevailing wages, affidavit of wages paid — Alternative procedure.
39.12.042	Compliance with RCW 39.12.040 — Liability of public agencies to workers, laborers, or mechanics.
39.12.050	False statement or failure to file — Penalty — Unpaid wages lien against bond and retainage — Prohibitions on bidding on future contracts — Hearing.
39.12.055	Prohibitions on bidding on future contracts.
39.12.060	Director of labor and industries to arbitrate disputes.
39.12.065	Investigation of complaints — Hearing — Remedies — Penalties.
39.12.070	Fees authorized for approvals, certifications, and arbitrations.
39.12.080	Public works administration account.
39.12.100	Independent contractors — Criteria.
39.12.110	Failure to provide or allow inspection of records.
39.12.120	Payroll records — Filing — Noncompliance.

RCW	Description
49.28.010	Eight hour day, 1899 act— Public works contracts— Emergency overtime— Penalty.
49.28.040	Eight hour day, 1903 act— Policy enunciated.
49.28.050	Eight hour day, 1903 act— Contracts, cancellation of, for violations.
49.28.060	Eight hour day, 1903 act— Stipulation in contracts— Duty of officers.
49.28.065	Public works employees— Agreements to work ten hour day.
49.48.040	Enforcement of wage claims— Issuance of subpoenas— Compliance.
60.28.011	Retained percentage— Public transportation projects— Labor and material lien created— Bond in lieu of retained funds— Termination before completion— Chapter deemed exclusive— Release of ferry contract payments— Projects of farmers home administration— General contractor/construction manager procedure— Definitions.
60.28.021	Excess over lien claims paid to contractor.
60.28.040	Tax liens— Priority of liens.
60.28.051	Duties of disbursing officer upon completion of contract.

RCW 39.04.010: Definitions:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Award” means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the state’s or municipality’s acceptance of the bid and intent to enter into a contract with the bidder.

(2) “Contract” means a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in RCW 39.04.155.

(3) “Municipality” means every city, county, town, port district, or other public agency authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or other districts authorized by law for the reclamation or development of waste or undeveloped lands.

(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).

(5) “Responsible bidder” means a contractor who meets the criteria in RCW 39.04.350.

(6) “State” means the state of Washington and all departments, supervisors, commissioners, and agencies of the state.

[2008 c 130 § 16; 2007 c 133 § 1; 2000 c 138 § 102; 1997 c 220 § 402 (Referendum Bill No. 48, approved June 17, 1997); 1993 c 174 § 1; 1989 c 363 § 5; 1986 c 282 § 1; 1982 c 98 § 1; 1977 ex.s. c 177 § 1; 1923 c 183 § 1; RRS § 10322-1.]

NOTES:

- Purpose — Part headings not law — 2000 c 138: See notes following RCW 39.04.155.
- Referendum — Other legislation limited — Legislators’ personal intent not indicated — Reimbursements for election — Voters’ pamphlet, election requirements — 1997 c 220: See RCW 36.102.800 through 36.102.803.
- Municipalities — Energy audits and efficiency: RCW 43.19.691.

RCW 39.04.155: Small works roster contract procedures — Limited public works process — Definitions.

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred fifty thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures

included in rules adopted by the department of enterprise services in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of enterprise services under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from two hundred fifty thousand dollars to three hundred fifty thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by at least one of the following: Telephone or electronic request.

(f) For projects awarded under the small works roster process established under this subsection, a state agency or authorized local government may waive the retainage requirements of RCW 60.28.011(1)(a), thereby assuming the liability for contractor's nonpayment of: (i) Laborers, mechanics, subcontractors, materialpersons, and suppliers; and (ii) taxes, increases, and penalties under Titles 50, 51, and 82 RCW that may be due from the contractor for the project. However, the state agency or local government has the right of recovery against the contractor for any payments made on the contractor's behalf. Recovery of unpaid wages and benefits are the first priority for actions filed against the contract.

(3)(a) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than fifty thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

(b) For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government must equitably distribute opportunities for limited public works projects among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and may waive the retainage requirements of RCW 60.28.011(1)(a), thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes, increases, and penalties imposed under Titles 50, 51, and 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5) A state agency or authorized local government may use the limited public works process in this section to solicit and award small works roster contracts to minibusinesses and microbusinesses as defined under RCW 39.26.010 that are registered contractors.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Equitably distribute opportunities" means that a state agency or authorized local government may not favor certain contractors on the appropriate small works roster over other contractors on the same roster who perform similar services.

(b) "State agency" means the department of enterprise services, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of enterprise services to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

[2019 c 434 § 5; 2015 c 225 § 33; 2009 c 74 § 1; 2008 c 130 § 17. Prior: 2007 c 218 § 87; 2007 c 210 § 1; 2007 c 133 § 4; 2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.]

NOTES:

- Finding — Intent — 2019 c 434: See note following RCW 35.23.352.
- Intent — Finding — 2007 c 218: See note following RCW 1.08.130.
- Purpose — 2000 c 138: “The purpose of this act is to establish a common small works roster procedure that state agencies and local governments may use to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property.” [2000 c 138 § 1.]
- Part headings not law — 2000 c 138: “Part headings used in this act are not any part of the law.” [2000 c 138 § 302.]
- Purpose — Captions not law — 1991 c 363: See notes following RCW 2.32.180.
- Competitive bids — Contract procedure: RCW 36.32.250.

RCW 39.04.260: Private construction performed pursuant to contract for rental, lease, or purchase by state — Must comply with prevailing wage law.

Any 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 shall comply with chapter 39.12 RCW.

[1993 c 110 § 1.]

NOTES:

- Application — 1993 c 110: “Section 1 of this act shall not apply to any project for which a call for competitive bids was made before July 25, 1993.” [1993 c 110 § 2.]

RCW 39.04.350: Bidder responsibility criteria — Sworn statement — Supplemental criteria. * CHANGE IN 2020 *** (SEE 6239.SL) *****

(1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

- (a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;
- (b) Have a current state unified business identifier number;
- (c) If applicable, have industrial insurance coverage for the bidder’s employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;
- (d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);
- (e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;

(f) Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its web site. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption; and

(g) Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.

(2) Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with chapter 5.50 RCW verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

(3) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(4) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site.

[2019 c 232 § 15; 2018 c 243 § 1; 2017 c 258 § 2; 2010 c 276 § 2; 2009 c 197 § 2; 2007 c 133 § 2.]

NOTES:

- Effective date — 2018 c 243: "This act takes effect July 1, 2019." [2018 c 243 § 2.]
- Findings — 2017 c 258: "The legislature finds that government contracts should not be awarded to those who knowingly and intentionally violate state laws. The legislature also finds that businesses that follow the law and pay their workers appropriately are placed at a competitive disadvantage to those who reduce costs by willfully violating the minimum wage act and wage payment act. In order to create a level playing field for businesses and avoid taxpayer contracts going to those that willfully violate the law and illegally withhold money from workers, the state should amend the state responsible bidder criteria to consider whether a company has willfully violated the state's wage payment laws over the previous three years." [2017 c 258 § 1.]
- Rules — Implementation — 2009 c 197: See note following RCW 39.04.320.

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.

[1997 c 54 § 1; 1984 c 7 § 43; 1967 c 70 § 3.]

NOTES:

- *Reviser's note: RCW 82.32.070 was amended by 1999 c 358 § 14, changing subsection (1)(b) to subsection (2).
- Construction building permits — Cities, towns or counties prohibited from issuing without verification of registration: RCW 18.27.110.

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.

[2007 c 133 § 3.]

RCW 39.12.010: Definitions. (Effective Jan. 1, 2020.)

(1) The “prevailing rate of wage” is the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation is the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage is mathematically determined by the number of hours worked in such period of time.

(2) The “locality” is the largest city in the county wherein the physical work is being performed.

(3) The “usual benefits” includes the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor, which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits.

(4) An “interested party” includes a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members’ wages, benefits, and conditions of employment are affected by this chapter, and the director of labor and industries or the director’s designee.

(5) An “inadvertent filing or reporting error” is a mistake and is made notwithstanding the use of due care by the contractor, subcontractor, or employer. An inadvertent filing or reporting error includes a contractor who, in good faith, relies on a written determination provided by the department of labor and industries and pays its workers, laborers, and mechanics accordingly, but is later found to have not paid the proper prevailing wage rate.

(6) “Unpaid prevailing wages” or “unpaid wages” means the employer fails to pay all of the prevailing rate of wages owed for any workweek by the regularly established pay day for the period in which the workweek ends. Every employer must pay all wages, other than usual benefits, owing to its employees not less than once a month. Every employer must pay all usual benefits owing to its employees by the regularly established deadline for those benefits.

(7) “Rate of contribution” means the effective annual rate of usual benefit contributions for all hours, public and private, worked during the year by an employee (commonly referred to as “annualization” of benefits). The only exemption to the annualization requirements is for defined contribution pension plans that have immediate participation and vesting.

[2019 c 242 § 2; 1989 c 12 § 6; 1985 c 15 § 1; 1965 ex.s. c 133 § 1; 1945 c 63 § 3; Rem. Supp. 1945 § 10322-22.]

NOTES:

- Findings — 2019 c 242: “The legislature finds:
 - (1) That from the shift in the 1980s from criminal to civil penalties for prevailing wage violations that the law needs some enhancements to effectively provide the department of labor and industries with the ability to utilize its civil remedies to both discourage and penalize repeat and willful violations of the law.
 - (2) Revisions to chapter 39.12 RCW are long overdue and are necessary to appropriately address filing and reporting procedures and penalties, which are necessary to strengthen enforcement of and deterrence from repeat and/or willful violations of the chapter.” [2019 c 242 § 1.]
- Effective date — 2019 c 242: “This act takes effect January 1, 2020.” [2019 c 242 § 6.]
- Severability — 1985 c 15: See note following RCW 39.12.065.

RCW 39.12.015: Industrial statistician to make determinations of prevailing rate.

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

(2) The time period for recovery of any wages owed to a worker affected by the determination is tolled until the prevailing wage determination is final.

(3)(a) Except as provided in RCW 39.12.017, and notwithstanding RCW 39.12.010(1), the industrial statistician shall establish the prevailing rate of wage by adopting the hourly wage, usual benefits, and overtime paid for the geographic jurisdiction established in collective bargaining agreements for those trades and occupations that have collective bargaining agreements. For trades and occupations with more than one collective bargaining agreement in the county, the higher rate will prevail.

(b) For trades and occupations in which there are no collective bargaining agreements in the county, the industrial statistician shall establish the prevailing rate of wage as defined in RCW 39.12.010 by conducting wage and hour surveys. In instances when there are no applicable collective bargaining agreements and conducting wage and hour surveys is not feasible, the industrial statistician may employ other appropriate methods to establish the prevailing rate of wage.

[2019 c 29 § 2. Prior: 2018 c 248 § 1; 2018 c 242 § 1; 1965 ex.s. c 133 § 2.]

NOTES:

- Intent — 2019 c 29: “The legislature intends that the methodology for establishing the prevailing rates of wages under this act applies only to affordable housing, homeless and domestic violence shelters, and low-income weatherization and home rehabilitation programs.” [2019 c 29 § 1.]
- Effective date — 2019 c 29: “This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2019].” [2019 c 29 § 5.]
- Publication of wage rates — Effective date — 2019 c 29: See note following RCW 39.12.017.

RCW 39.12.017: Industrial statistician to establish prevailing rate for residential construction — Wage and hour surveys.

(1) For residential construction, the industrial statistician shall establish the prevailing rate of wage by conducting wage and hour surveys. If the industrial statistician determines that information received from a survey is insufficient to determine the prevailing rate of wage for a trade under this subsection, the industrial statistician shall employ other appropriate methods to establish the prevailing rate of wage.

(a) The industrial statistician shall conduct the initial surveys required by this subsection (1) as soon as feasible after April 17, 2019. These surveys shall cover fiscal year 2018.

(b) The industrial statistician shall conduct a wage and hour survey following the initial survey or otherwise reestablish a prevailing rate of wage for each trade covered by this section at least every five years, and after the initial survey may stagger the surveys for workload purposes.

(2)(a) Until the industrial statistician has established a prevailing wage rate under subsection (1)(a) of this section and except as provided in (b) of this subsection, the industrial statistician shall establish the wage rate by:

(i) Identifying the residential prevailing wage rate in effect on August 30, 2018, for that trade (rate A);

(ii) Determining the year most recent to 2018, but not earlier than 2007, in which the wage rate for that trade was adjusted (year A);

(iii) Determining the percentage change in the annual average hourly wages reported for construction workers in Washington state, as calculated by the United States bureau of labor statistics' state and area employment, hours, and earnings estimates, from year A to 2019;

(iv) Adding the percentage change from (a)(iii) of this subsection to one hundred percent (percentage A); and

(v) Multiplying rate A by percentage A.

(b) If the residential construction wage rate in effect for a trade on August 31, 2018, is the same as the wage rate in effect on August 30, 2018, the industrial statistician must adopt the wage rate in effect for the trade on August 31, 2018, until a wage rate is established under subsection (1)(a) of this section.

(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.

[2019 c 29 § 3.]

NOTES:

- Publication of wage rates—Effective date—2019 c 29: “The industrial statistician must establish and publish wage rates under RCW 39.12.017(2) within thirty days after April 17, 2019. The wage rates take effect thirty days after publication.” [2019 c 29 § 4.]
- Effective date—Intent—2019 c 29: See notes following RCW 39.12.015.

RCW 39.12.020: Prevailing rate to be paid on public works and under public building service maintenance contracts—Posting of statement of intent—Exception.

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. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site: PROVIDED, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor’s local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request:

- (1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW 39.12.040; and
- (2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to workers or other persons regularly employed by the state, or any county, municipality, or political subdivision created by its laws.

[2007 c 169 § 1; 1989 c 12 § 7; 1982 c 130 § 1; 1981 c 46 § 1; 1967 ex.s. c 14 § 1; 1945 c 63 § 1; Rem. Supp. 1945 § 10322-20.]

RCW 39.12.021: Prevailing rate to be paid on public works—Apprentice workers.

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.

[1989 c 12 § 8; 1963 c 93 § 1.]

RCW 39.12.026: Surveys—Applicability by county—Electronic option.

- (1) In establishing the prevailing rate of wage under RCW 39.12.010, 39.12.015, and 39.12.020, all data collected by the department of labor and industries may be used only in the county for which the work was performed.

(2) The department of labor and industries must provide registered contractors with the option of completing a wage survey electronically.

[2015 3rd sp.s. c 40 § 2; 2003 c 363 § 206.]

NOTES:

- Effective date — 2015 3rd sp.s. c 40: See note following RCW 39.04.320.
- Findings — Intent — 2003 c 363 §§ 201-206: See note following RCW 49.04.141.
- Part headings not law — Severability — 2003 c 363: See notes following RCW 47.28.241.

RCW 39.12.030: Contract specifications must state minimum hourly rate — Stipulation for payment — Residential and commercial construction work.

(1) The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work to which the state or any county, municipality, or political subdivision created by its laws is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a stipulation that such laborers, workers, or mechanics shall be paid not less than such specified hourly minimum rate of wage. If the awarding agency determines that the work contracted for meets the definition of residential construction, the contract must include that information.

(2) If the hourly minimum rate of wage stated in the contract specifies residential construction rates and it is later determined that the work performed is commercial and subject to commercial construction rates, the state, county, municipality, or political subdivision that entered into the contract must pay the difference between the residential rate stated and the actual commercial rate to the contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work under the contract.

[2009 c 62 § 1; 1989 c 12 § 9; 1945 c 63 § 2; Rem. Supp. 1945 § 10322-21.]

RCW 39.12.040: Statement of intent to pay prevailing wages, affidavit of wages paid — Alternative procedure.

(1)(a) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it is the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a “Statement of Intent to Pay Prevailing Wages”. For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages must include:

- (i) The contractor’s registration certificate number; and
- (ii) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

(b) Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate must state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it is the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an affidavit of wages paid before the funds retained according to the provisions of RCW 60.28.011 are released to the contractor. On a public works project where no retainage is withheld, the affidavit of wages paid must be submitted to the state, county, municipality, or other public body charged with the duty of disbursing or authorizing disbursement of public funds prior to final acceptance of the public works project. If a subcontractor performing work on a public works project fails to submit an affidavit of wages paid form, the contractor or subcontractor with whom the subcontractor had a contractual relationship for the project may file the forms on behalf of the nonresponsive subcontractor. Affidavit forms may only be filed on behalf of a nonresponsive subcontractor who has ceased operations or failed to file as required by this section. The contractor filing the affidavit must accept responsibility for payment of prevailing wages unpaid by the subcontractor on the project pursuant to RCW 39.12.020 and 39.12.065. Intentionally filing a false affidavit on behalf of a subcontractor subjects the filer to the same penalties as are provided in RCW 39.12.050. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less and for projects where the limited public works process under RCW 39.04.155(3) is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency must retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency must require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.011. Within thirty days of receipt of the affidavit of wages paid, the awarding agency must submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid must be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in this subsection (2), the awarding agency must pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from

the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section may be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by subsection (1) of this section.

[2019 c 434 § 6; 2013 c 113 § 5; 2012 c 129 § 1; 2009 c 219 § 2; 2007 c 210 § 4; 1991 c 15 § 1; 1982 c 130 § 2; 1981 c 46 § 2; 1975-'76 2nd ex.s. c 49 § 1; 1965 ex.s. c 133 § 3; 1945 c 63 § 4; Rem. Supp. 1945 § 10322-23.]

NOTES:

- Finding—Intent—2019 c 434: See note following RCW 35.23.352.

RCW 39.12.042: Compliance with RCW 39.12.040—Liability of public agencies to workers, laborers, or mechanics.

If any agency of the state, or any county, municipality, or political subdivision created by its laws shall knowingly fail to comply with the provisions of RCW 39.12.040 as now or hereafter amended, such agency of the state, or county, municipality, or political subdivision created by its laws, shall be liable to all workers, laborers, or mechanics to the full extent and for the full amount of wages due, pursuant to the prevailing wage requirements of RCW 39.12.020.

[1993 c 404 § 3; 1989 c 12 § 11; 1975-'76 2nd ex.s. c 49 § 2.]

NOTES:

- Effective date—1993 c 404: See note following RCW 39.12.070.

RCW 39.12.050: False statement, failure to file, or failure to post document required to be posted—Penalty—Unpaid wages lien against bond and retainage—Prohibitions on bidding on future contracts—Hearing—Exception. (Effective January 1, 2020.)

(1) Any contractor or subcontractor who files a false statement or fails to file any statement or record required to be filed or fails to post a document required to be posted under this chapter and the rules adopted under this chapter, shall, after a determination to that effect has been issued by the director after hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars for each false filing or failure to file or post, and shall not be permitted to bid, or have a bid considered, on any public works contract until the penalty has been paid in full to the director. The civil penalty under this subsection does not apply to a violation determined by the director to be an inadvertent filing or reporting error. The burden of proving, by a preponderance of the evidence, that an error is inadvertent rests with the contractor or subcontractor charged with the error. Civil penalties shall be deposited in the public works administration account.

To the extent that a contractor or subcontractor has not paid wages at the rate due pursuant to RCW 39.12.020, and a finding to that effect has been made as provided by this subsection, such unpaid wages constitute a lien against the bonds and retainage as provided in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

(2) If a contractor or subcontractor is found to have violated the provisions of subsection (1) of this section for a second time within a five year period, the contractor or subcontractor is subject to the sanctions prescribed in subsection (1) of this section and shall not be allowed to bid on any public works contract for one year. The one year period runs from the date of notice by the director of the determination of noncompliance. When an appeal is taken from the director's determination, the one year period commences from the date the notice of violation becomes final.

The director shall issue his or her findings that a contractor or subcontractor has violated the provisions of this subsection after a hearing held subject to the provisions of chapter 34.05 RCW, unless a notice of violation is not timely appealed. A notice of violation not timely appealed is final and binding, and not subject to further appeal.

[2019 c 242 § 3; 2009 c 219 § 3; 2001 c 219 § 1; 1985 c 15 § 3; 1977 ex.s. c 71 § 1; 1973 c 120 § 1; 1945 c 63 § 5; Rem. Supp. 1945 § 10322-24.]

NOTES:

- Effective date — Findings — 2019 c 242: See notes following RCW 39.12.010.
- Severability — 1985 c 15: See note following RCW 39.12.065.

RCW 39.12.055: Prohibitions on bidding on future contracts.

A contractor shall not be allowed to bid on any public works contract for one year from the date of a final determination that the contractor has committed any combination of two of the following violations or infractions within a five-year period:

- (1) Violated RCW 51.48.020(1) or 51.48.103;
- (2) Committed an infraction or violation under chapter 18.27 RCW for performing work as an unregistered contractor; or
- (3) Determined to be out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW.

[2009 c 197 § 3; 2008 c 120 § 3.]

NOTES:

- Rules — Implementation — 2009 c 197: See note following RCW 39.04.320.
- Conflict with federal requirements — Severability — 2008 c 120: See notes following RCW 18.27.030.

RCW 39.12.060: Director of labor and industries to arbitrate disputes.

Such contract shall contain a further provision that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the department of labor and industries of the state and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute.

[1989 c 12 § 10; 1965 ex.s. c 133 § 4; 1945 c 63 § 6; Rem. Supp. 1945 § 10322-25.]

NOTES:

- Arbitration of disputes: Chapter 49.08 RCW.
- Uniform arbitration act: Chapter 7.04A RCW.

RCW 39.12.065: Investigation of complaints — Notice of violation — Hearing — Exception — Remedies — Penalties — Waiver or reduction. (Effective January 1, 2020.)

(1) Upon complaint by an interested party, the director of labor and industries shall cause an investigation to be made to determine whether there has been compliance with this chapter and the rules adopted hereunder, and if the investigation indicates that a violation may have occurred, the department of labor and industries may issue a notice of violation for unpaid wages, penalties, and interest on all wages owed at one percent per month. A hearing shall be held following a timely appeal of the notice of violation in accordance with chapter 34.05 RCW. The director shall issue a written determination including his or her findings after the hearing unless a notice of violation is not timely appealed. A notice of violation not timely appealed is final and binding, and not subject to further appeal. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees.

A complaint concerning nonpayment of the prevailing rate of wage shall be filed with the department of labor and industries no later than sixty days from the acceptance date of the public works project. The department may not charge a contractor or subcontractor with a violation of this section when responding to a complaint filed after the sixty-day limit. The failure to timely file such a complaint does not prohibit the department from investigating the matter and recovering unpaid wages for the worker(s) within two years from the acceptance of the public works contract. The department may not investigate or recover unpaid wages if the complaint is filed after two years from the acceptance of a public works contract. The failure to timely file such a complaint also does not prohibit a claimant from pursuing a private right of action against a contractor or subcontractor for unpaid prevailing wages. The remedy provided by this section is not exclusive and is concurrent with any other remedy provided by law.

(2) To the extent that a contractor or subcontractor has not paid the prevailing rate of wage under a determination issued as provided in subsection (1) of this section, the director shall notify the agency awarding the public works contract of the amount of the violation found, and the awarding agency shall withhold, or in the case of a bond, the director shall proceed against the bond in accordance with the applicable statute to recover, such amount from the following sources in the following order of priority until the total of such amount is withheld:

- (a) The retainage or bond in lieu of retainage as provided in RCW 60.28.011;
- (b) If the claimant was employed by the contractor or subcontractor on the public works project, the bond filed by the contractor or subcontractor with the department of labor and industries as provided in RCW 18.27.040 and 19.28.041;
- (c) A surety bond, or at the contractor's or subcontractor's option an escrow account, running to the director in the amount of the violation found; and
- (d) That portion of the progress payments which is properly allocable to the contractor

or subcontractor who is found to be in violation of this chapter. Under no circumstances shall any portion of the progress payments be withheld that are properly allocable to a contractor, subcontractor, or supplier, that is not found to be in violation of this chapter.

The amount withheld shall be released to the director to distribute in accordance with the director's determination.

(3) A contractor or subcontractor that is found, in accordance with subsection (1) of this section, to have violated the requirement to pay the prevailing rate of wage is subject to a civil penalty of not less than five thousand dollars or an amount equal to fifty percent of the total prevailing wage violation found on the contract, whichever is greater, interest on all wages owed at one percent per month, and is not permitted to bid, or have a bid considered, on any public works contract until such civil penalty has been paid in full to the director. If a contractor or subcontractor is found to have participated in a violation of the requirement to pay the prevailing rate of wage for a second time within a five-year period, the contractor or subcontractor is subject to the sanctions prescribed in this subsection and as an additional sanction is not allowed to bid on any public works contract for two years. Civil penalties shall be deposited in the public works administration account. If a previous or subsequent violation of a requirement to pay a prevailing rate of wage under federal or other state law is found against the contractor or subcontractor within five years from a violation under this section, the contractor or subcontractor shall not be allowed to bid on any public works contract for two years. The two-year period runs from the date of notice by the director of the determination of noncompliance. When an appeal is taken from the director's determination, the two-year period commences from the date the notice of violation becomes final. A contractor or subcontractor is not barred from bidding on any public works contract if the contractor or subcontractor relied upon written information from the department to pay a prevailing rate of wage that is later determined to be in violation of this chapter. The civil penalty and sanctions under this subsection do not apply to a violation determined by the director to be an inadvertent filing or reporting error. The burden of proving, by a preponderance of the evidence, that an error is inadvertent rests with the contractor or subcontractor charged with the error. To the extent that a contractor or subcontractor has not paid the prevailing wage rate under a determination issued as provided in subsection (1) of this section, the unpaid wages constitute a lien against the bonds and retainage as provided herein and in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

(4) The director may waive or reduce a penalty or additional sanction under this section including, but not limited to, when the director determines the contractor or subcontractor paid all wages and interest or there was an inadvertent filing or reporting error. The director may not waive or reduce interest. The department of labor and industries shall submit a report of the waivers made under this section, including a justification for any waiver made, upon request of an interested party.

(5) If, after the department of labor and industries initiates an investigation and before a notice of violation of unpaid wages, the contractor or subcontractor pays the unpaid wages identified in the investigation, interest on all wages owed at one percent per month, and penalties in the amount of one thousand dollars or twenty percent of the total prevailing wage violation determined by the department of labor and industries, whichever is greater, then the violation is considered resolved without further penalty under subsection (3) of this section.

(6) A contractor or subcontractor may only utilize the process outlined in subsection (5) of this section if the department of labor and industries has not issued a notice of violation that resulted in final judgment under this section against that contractor or subcontractor in the last five-year period. If a contractor or subcontractor utilizes the process outlined in subsection (5) of this section for a second time within a five-year period, the contractor or subcontractor is subject to the sanctions prescribed in subsection (3) of this section and may not be allowed to bid on any public works contract for two years.

[2019 c 242 § 4; 2009 c 219 § 4; 2001 c 219 § 2; 1994 c 88 § 1; 1985 c 15 § 2.]

NOTES:

- Effective date — Findings — 2019 c 242: See notes following RCW 39.12.010.
- Severability — 1985 c 15: “If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.” [1985 c 15 § 4.]

RCW 39.12.070: Fees authorized for approvals, certifications, and arbitrations.

(1) The department of labor and industries may charge fees to awarding agencies on public works for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid. The department may also charge fees to persons or organizations requesting the arbitration of disputes under RCW 39.12.060. The amount of the fees shall be established by rules adopted by the department under the procedures in the administrative procedure act, chapter 34.05 RCW. Except as provided in subsection (3) of this section, the fees shall apply to all approvals, certifications, and arbitration requests made after the effective date of the rules. All fees shall be deposited in the public works administration account. The department may refuse to arbitrate for contractors, subcontractors, persons, or organizations which have not paid the proper fees. The department may, if necessary, request the attorney general to take legal action to collect delinquent fees.

(2) The department shall set the fees permitted by this section at a level that generates revenue that is as near as practicable to the amount of the appropriation to administer this chapter, including, but not limited to, the performance of adequate wage surveys, and to investigate and enforce all alleged violations of this chapter, including, but not limited to, incorrect statements of intent to pay prevailing wage, incorrect certificates of affidavits of wages paid, and wage claims, as provided for in this chapter and chapters 49.48 and 49.52 RCW. However, the fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid shall be forty dollars or less, as determined by the director of labor and industries in accordance with this subsection. For the 2019–2021 biennium, the fees shall not be more than twenty dollars.

(3) If, at the time an individual or entity files an affidavit of wages paid, the individual or entity is exempt from the requirement to pay the prevailing rate of wage under RCW 39.12.020, the department of labor and industries may not charge a fee to certify the affidavit of wages paid.

[2019 c 193 § 1; 2014 c 148 § 1; 2008 c 285 § 2; 2006 c 230 § 1; 1993 c 404 § 1; 1982 1st ex.s. c 38 § 1.]

NOTES:

- Effective date — 2008 c 285 § 2: “Section 2 of this act takes effect July 1, 2008.” [2008 c 285 § 3.]
- Intent — Captions not law — 2008 c 285: See notes following RCW 43.22.434.
- Effective date — 2006 c 230: “This act takes effect July 1, 2007.” [2006 c 230 § 3.]
- Effective date — 1993 c 404: “This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.” [1993 c 404 § 4.]

RCW 39.12.080: Public works administration account.

The public works administration account is created in the state treasury. The department of labor and industries shall deposit in the account all moneys received from fees or civil penalties collected under RCW 39.12.050, 39.12.065, and 39.12.070. Appropriations from the account may be made only for the purposes of administration of this chapter, including, but not limited to, the performance of adequate wage surveys, and for the investigation and enforcement of all alleged violations of this chapter as provided for in this chapter and chapters 49.48 and 49.52 RCW. During the 2017–2019 fiscal biennium the legislature may direct the state treasurer to make transfers of moneys in the public works administration account to the state general fund. It is the intent of the legislature to use the moneys transferred in the 2017–2019 biennium to support apprenticeship programs.

[2018 c 299 § 923; 2006 c 230 § 2; 2001 c 219 § 3; 1993 c 404 § 2.]

NOTES:

- Effective date — 2018 c 299: See note following RCW 43.41.433.
- Effective date — 2006 c 230: See note following RCW 39.12.070.
- Effective date — 1993 c 404: See note following RCW 39.12.070.

RCW 39.12.100: Independent contractors — Criteria.

For the purposes of this chapter, an individual employed on a public works project is not considered to be a laborer, worker, or mechanic when:

- (1) The individual has been and is free from control or direction over the performance of the service, both under the contract of service and in fact;
- (2) The service is either outside the usual course of business for the contractor or contractors for whom the individual performs services, or the service is performed outside all of the places of business of the enterprise for which the individual performs services, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;
- (3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract of service, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and

(7) On the effective date of the contract of service, if the nature of the work performed requires registration under chapter 18.27 RCW or licensure under chapter 19.28 RCW, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW.

[2009 c 63 § 1.]

RCW 39.12.110: Failure to provide or allow inspection of records.

Any employer, contractor, or subcontractor who fails to provide requested records, or fails to allow adequate inspection of records in an investigation by the department of labor and industries under this chapter within sixty calendar days of service of the department's request may not use the records in any proceeding under this chapter to challenge the correctness of any determination by the department that wages are owed, that a record or statement is false, or that the employer, contractor, or subcontractor has failed to file a record or statement.

[2011 c 92 § 1.]

RCW 39.12.120: Payroll records — Filing — Noncompliance. (Effective January 1, 2020.)

(1) Each contractor, subcontractor, or employer shall keep accurate payroll records for three years from the date of acceptance of the public works project by the contract awarding agency, showing the employee's full name, address, social security number, trade or occupation, classification, straight and overtime rates, hourly rate of usual benefits, and hours worked each day and week, including any employee authorizations executed pursuant to RCW 49.28.065, and the actual gross wages, itemized deductions, withholdings, and net wages paid, for each laborer, worker, and mechanic employed by the contractor for work performed on a public works project.

(2) A contractor, subcontractor, or employer shall file a copy of its certified payroll records using the department of labor and industries' online system at least once per month. If the department of labor and industries' online system is not used, a contractor, subcontractor, or employer shall file a copy of its certified payroll records directly with the department of labor and industries in a format approved by the department of labor and industries at least once per month.

(3) A contractor, subcontractor, or employer's noncompliance with this section constitutes a violation of RCW 39.12.050.

[2019 c 242 § 5.]

NOTES:

- Effective date — Findings — 2019 c 242: See notes following RCW 39.12.010.

RCW 49.28.010: Eight hour day, 1899 act — Public works contracts — Emergency overtime — Penalty.

(1) Hereafter eight hours in any calendar day shall constitute a day's work on any work done for the state or any county or municipality within the state, subject to conditions hereinafter provided.

(2) All work done by contract or subcontract on any building or improvements or works on roads, bridges, streets, alleys, or buildings for the state or any county or municipality within the state, shall be done under the provisions of this section. In cases of extraordinary emergency such as danger to life or property, the hours for work may be extended, but in such case the rate of pay for time employed in excess of eight hours of each calendar day, shall be one and one-half times the rate of pay allowed for the same amount of time during eight hours' service. And for this purpose this section is made a part of all contracts, subcontracts, or agreements for work done for the state or any county or municipality within the state.

(3) Any contractor, subcontractor, or agent of contractor or subcontractor, foreman, or employer who violates this section is guilty of a misdemeanor and shall be fined a sum not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail for a period of not less than ten days nor more than ninety days, or both such fine and imprisonment, at the discretion of the court.

[2003 c 53 § 274; 1899 c 101 § 1; RRS § 7642.]

NOTES:

- Intent — Effective date — 2003 c 53: See notes following RCW 2.48.180.

RCW 49.28.040: Eight hour day, 1903 act — Policy enunciated.

That it is a part of the public policy of the state of Washington that all work "by contract or day labor done" for it, or any political subdivision created by its laws, shall be performed in workdays of not more than eight hours each, except in cases of extraordinary emergency. No case of extraordinary emergency shall be construed to exist in any case where other labor can be found to take the place of labor which has already been employed for eight hours in any calendar day.

[1903 c 44 § 1; RRS § 7645.]

RCW 49.28.050: Eight hour day, 1903 act — Contracts, cancellation of, for violations.

All contracts for work for the state of Washington, or any political subdivision created by its laws, shall provide that they may be canceled by the officers or agents authorized to contract for or supervise the execution of such work, in case such work is not performed in accordance with the policy of the state relating to such work.

[1903 c 44 § 2; RRS § 7646.]

RCW 49.28.060: Eight hour day, 1903 act — Stipulation in contracts — Duty of officers.

It is made the duty of all officers or agents authorized to contract for work to be done in behalf of the state of Washington, or any political subdivision created under its laws, to stipulate in all contracts as provided for in RCW 49.28.040 through 49.28.060, and all such officers and agents, and all officers and agents entrusted with the supervision of work performed under such contracts, are authorized, and it is made their duty, to declare any contract canceled, the execution of which is not in accordance with the public policy of this state as herein declared.

[1903 c 44 § 3; RRS § 7647.]

RCW 49.28.065: Public works employees — Agreements to work ten hour day.

Notwithstanding the provisions of RCW 49.28.010 through 49.28.060, a contractor or subcontractor in any public works contract subject to those provisions may enter into an agreement with his or her employees in which the employees work up to ten hours in a calendar day. No such agreement may provide that the employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees. The overtime provisions of *RCW 49.28.020 shall not apply to the hours, up to forty hours per week, worked pursuant to agreements entered into under this section.

[1988 c 121 § 1.]

NOTES:

- *Reviser's note: RCW 49.28.020 was repealed by 2003 c 53 § 421, effective July 1, 2003.

RCW 49.48.040: Enforcement of wage claims — Issuance of subpoenas — Compliance.

(1) The department of labor and industries may:

(a) Upon obtaining information indicating an employer may be committing a violation under chapters 39.12, 49.46, and 49.48 RCW, conduct investigations to ensure compliance with chapters 39.12, 49.46, and 49.48 RCW;

(b) Order the payment of all wages owed the workers and institute actions necessary for the collection of the sums determined owed; and

(c) Take assignments of wage claims and prosecute actions for the collection of wages of persons who are financially unable to employ counsel when in the judgment of the director of the department the claims are valid and enforceable in the courts.

(2) The director of the department or any authorized representative may, for the purpose of carrying out RCW 49.48.040 through 49.48.080: (a) Issue subpoenas to compel the attendance of witnesses or parties and the production of books, papers, or records; (b) administer oaths and examine witnesses under oath; (c) take the verification of proof of instruments of writing; and (d) take depositions and affidavits. If assignments for wage claims are taken, court costs shall not be payable by the department for prosecuting such suits.

(3) The director shall have a seal inscribed "Department of Labor and Industries — State of Washington" and all courts shall take judicial notice of such seal. Obedience to subpoenas issued by the director or authorized representative shall be enforced by the courts in any county.

(4) The director or authorized representative shall have free access to all places and works of labor. Any employer or any agent or employee of such employer who refuses the

director or authorized representative admission therein, or who, when requested by the director or authorized representative, willfully neglects or refuses to furnish the director or authorized representative any statistics or information pertaining to his or her lawful duties, which statistics or information may be in his or her possession or under the control of the employer or agent, shall be guilty of a misdemeanor.

[1987 c 172 § 1; 1935 c 96 § 1; RRS § 7596-1.]

RCW 60.28.011: Retained percentage — Public transportation projects — Labor and material lien created — Bond in lieu of retained funds — Termination before completion — Chapter deemed exclusive — Release of ferry contract payments — Projects of farmers home administration — General contractor/construction manager procedure — Definitions.

(1)(a) Except as provided in (b) of this subsection, public improvement contracts must provide, and public bodies must reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of:

(i) The claims of any person arising under the contract; and (ii) the state with respect to taxes, increases, and penalties imposed pursuant to Titles 50, 51, and 82 RCW which may be due from such contractor.

(b) Public improvement contracts funded in whole or in part by federal transportation funds must rely upon the contract bond as referred to in chapter 39.08 RCW for the protection and payment of: (i) The claims of any person or persons arising under the contract to the extent such claims are provided for in RCW 39.08.010; and (ii) the state with respect to taxes, increases, and penalties incurred on the public improvement project under Titles 50, 51, and 82 RCW which may be due. The contract bond must remain in full force and effect until, at a minimum, all claims filed in compliance with chapter 39.08 RCW are resolved.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract has a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant must be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapter 39.12 RCW and this chapter.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapter 39.12 RCW and this chapter.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, must be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract must be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body must issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check must be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities must be held in escrow. Interest on the bonds and securities must be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor must pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from an authorized surety insurer. The public body may require that the authorized surety have a minimum A.M. Best financial strength rating so long as that minimum rating does not exceed A-. The public body must comply with the provisions of RCW 48.28.010. At any time prior to final formal acceptance of the project, a subcontractor may request the contractor to submit a bond to the public owner for that portion of the contractor's retainage pertaining to the subcontractor in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The contractor may withhold the subcontractor's portion of the bond premium. Within thirty days of receipt of the request, the contractor shall provide and the public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it, the bond is not commercially available, or the subcontractor refuses to pay the subcontractor's portion of the bond premium and to provide the contractor with a like bond. The contractor's bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body must release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor must accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor must then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section must be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same

contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.021 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes may be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue, the employment security department, the department of labor and industries, and the material suppliers and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.210. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

(12) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or material person who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.210.

[2017 c 302 § 1; 2015 c 280 § 1; 2013 c 113 § 1; 2011 c 231 § 2. Prior: 2009 c 432 § 5; 2009 c 219 § 6; prior: 2007 c 494 § 504; 2007 c 218 § 92; 2003 c 301 § 7; 2000 c 185 § 1; 1994 c 101 § 1; 1992 c 223 § 2.]

NOTES:

- Intent—Recognition—2011 c 231: “The legislature recognizes that federal regulations include requirements that pertain to contracts funded by federal-aid highway funds. One such requirement is that states must ensure that prime contractors pay subcontractors in full by no later than thirty days after the subcontractor’s work is satisfactorily completed. One option for meeting this requirement is to decline to hold retainage from prime contractors. The legislature also recognizes that retainage is currently used to ensure that claims against the contractor are resolved in a timely manner. The legislature intends that the contract bond provided by sureties on behalf of general contractors provides adequate security for claimants under the bond.” [2011 c 231 § 1.]
- Report—2009 c 432: See RCW 18.27.800.
- Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.
- Intent—Finding—2007 c 218: See note following RCW 1.08.130.
- Effective date—1992 c 223: See note following RCW 39.76.011.
- Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

RCW 60.28.021: Excess over lien claims paid to contractor.

After the expiration of the forty-five day period for giving notice of lien provided in RCW 60.28.011(2), and after receipt of the certificates of the department of revenue, the employment security department, and the department of labor and industries, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue, the employment security department, and the department of labor and industries are discharged, and the claims of material suppliers and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys’ fees, have been paid, the public body may withhold from the remaining retained amounts for claims the public body may have against the contractor and shall pay the balance, if any, to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor.

[2009 c 432 § 6; 2007 c 218 § 94; 1992 c 223 § 3.]

NOTES:

- Report—2009 c 432: See RCW 18.27.800.
- Intent—Finding—2007 c 218: See note following RCW 1.08.130.
- Effective date—1992 c 223: See note following RCW 39.76.011.
- Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

RCW 60.28.040: Tax liens — Priority of liens.

(1) Subject to subsection (5) of this section, the amount of all taxes, increases, and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is thirty-five thousand dollars or more, is a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(2) Subject to subsection (5) of this section, after payment of all taxes, increases, and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is thirty-five thousand dollars or more, the amount of all other taxes, increases, and penalties under Title 82 RCW, due and owing from the contractor, is a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(3) Subject to subsection (5) of this section, after payment of all taxes, increases, and penalties due or to become due under Title 82 RCW, the amount of all taxes, increases, and penalties due or to become due under Titles 50 and 51 RCW from the contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is thirty-five thousand dollars or more is a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(4) Subject to subsection (5) of this section, the amount of all other taxes, increases, and penalties due and owing from the contractor is a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid.

(5) The employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under such a public improvement contract shall have a first priority lien against the bond or retainage prior to all other liens.

[2014 c 97 § 301. Prior: 2009 c 432 § 7; 2009 c 219 § 7; 1985 c 80 § 1; 1971 ex.s. c 299 § 1; 1955 c 236 § 4; prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

NOTES:

- Report—2009 c 432: See RCW 18.27.800.
- Severability—Effective dates—1971 ex.s. c 299: See notes following RCW 82.04.050.

RCW 60.28.051: Duties of disbursing officer upon completion of contract.

Upon completion of a contract, the state, county, or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue, the employment security department, and the department of labor and industries of the completion of contracts over thirty-five thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he or she has received from the department of revenue, the employment security department, and the department of labor and industries certificates that all taxes, increases, and penalties due from the contractor, and all taxes due and to become

due with respect to such contract have been paid in full or that they are, in each department's opinion, readily collectible without recourse to the state's lien on the retained percentage.

[2009 c 432 § 8; 2007 c 210 § 2; 1992 c 223 § 4.]

NOTES:

- Report— 2009 c 432: See RCW 18.27.800.
- Effective date — 1992 c 223: See note following RCW 39.76.011.
- Waiver of rights, construction — Application — 1992 c 223: See RCW 39.04.900 and 39.04.901.

6

Selected Rules

(Washington Administrative Code)

NOTICE

This document contains sections of the Washington Administrative Code (WAC) rules that are current as of the date shown on the front cover. Changes to laws and/or rules may occur in legislative sessions or departmental rule-making. Please research the most current language of the WAC rules, which is available at **search.leg.wa.gov**. You may also contact the Prevailing Wage Program to obtain the most current laws.

WACs

Check the legislative website for current administrative rules:

app.leg.wa.gov/wac/default.aspx

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WAC	Description
296-127-170	Hearing on notice of violation.
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296-127-190	Filing of lien against retainage or bonds.
296-127-200	Surety bond payable to director.
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296-127-320	Payroll.
296-127-990	Severability.

WAC 296-126-023: Payment interval.

(1) This rule shall apply to employers and employees subject to chapter 49.12 RCW.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-128-035 or 296-131-010.

(2) Definitions:

(a) “Monthly interval” means a one-month time period between established pay days.

(b) “Pay day” means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) “Payment interval” means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) “Pay period” means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

- Example 1: Employer establishes a weekly pay period. The workweek is from Sunday January 1 through Saturday January 7. Unless a different payment interval applies by law, the employer must pay wages no later than January 17.
- Example 2: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). Unless a different payment interval applies by law, the employer must pay wages no later than the 25th day of the current month for the first pay period, and no later than the 10th day of the following month for the second pay period.

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

- Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

If pay period is:	Then pay day must be no later than:	And employer must pay wages for at least:
Monthly, starting on 1st day of the month	Last day of the month	1st day of the month — 24th day of the month

(6) An employer shall pay overtime wages owed to an employee on the regular pay day for the pay period in which the overtime wages were earned. If the correct amount of overtime wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for overtime wages; however, the payment of overtime wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and overtime wages must be paid by the regular pay day following the next pay period.

- Example: Employer establishes two semi-monthly pay periods. The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the pay day of the 25th; the second pay period covers the 16th day of the month with the pay day of the 10th of the following month. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay overtime wages no later than the 10th day of the following month for the overtime earned during the first pay period, and no later than the 25th day of the following month for the overtime earned during the second pay period.

If pay period is:	And if pay day for regular wages is:	Then pay day for overtime wages must be no later than:
1st of the month — 15th day of the month	25th of the month	10th of the following month
16th of the month — 30th or 31st of the month	10th of the following month	25th of the following month

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All regular wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to regular wages) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays regular wages to covered employees at no less than the applicable minimum wage rate.

[Statutory Authority: Chapters 49.12, 49.30, and 49.46 RCW. WSR 07-03-145, § 296-126-023, filed 1/23/07, effective 3/1/07. Statutory Authority: RCW 43.22.270, 49.12.020, 49.12.091, 49.12.050, 49.46.020 and 49.46.070. WSR 89-22-016 (Order 89-16), § 296-126-023, filed 10/24/89, effective 11/24/89; Order 74-9, § 296-126-023, filed 3/13/74, effective 4/15/74.]

WAC 296-126-040: Statements furnished.

(1) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the pay basis (i.e., hours or days worked), rate or rates of pay, gross wages and all deductions for that pay period.

(2) An itemized pay statement means a separate written statement from the paycheck issued to employees on each payday. Pay periods shall be identified on the pay statement by month, day, year, and payment date.

(3) The pay statement may be furnished or made available electronically provided each employee has access to receive and copy it on the payday. If an employee cannot receive an electronic pay statement at work or at home on the established payday, the employer must provide a written pay statement to the employee on the payday.

[Statutory Authority: Chapter 49.12 RCW. WSR 10-04-092, § 296-126-040, filed 2/2/10, effective 3/15/10; Order 74-9, § 296-126-040, filed 3/13/74, effective 4/15/74.]

WAC 296-127-010: Definitions for chapter 296-127 WAC.

(1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department or his or her duly authorized deputy or representative.

(3) "Industrial statistician" means the industrial statistician of the department.

(4) "Assistant director" means the assistant director of the fraud prevention and labor standards (FPLS) division or his or her duly authorized deputy or representative.

(5) "Contractor" means:

(a) The prime contractor, and each and every subcontractor, required to be registered

under chapter 18.27 RCW and/or licensed under chapter 19.28 RCW, that performs any work on a public works project site, and/or is required to pay industrial insurance premiums as a construction company.

(b) Employers engaged in shipbuilding and ship repair, building service maintenance, and any fabricator or manufacturer that produces nonstandard items specifically for a public works project.

(c) Employers that contract with contractors or subcontractors for the purpose of the production and/or delivery of materials pursuant to the terms of WAC 296-127-018.

(6) The term municipality shall include every city, county, town, district, political subdivision, or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

(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.

(b) The term “public work” shall not include:

(i) Work, construction, alteration, enlargement, improvement, repair, demolition, and/or maintenance for which no wage or salary compensation is paid, consistent with the requirements of RCW 35.21.278; or

(ii) Ordinary maintenance.

(A) Ordinary maintenance is defined as maintenance work performed by the regular employees of the state or any county, municipality, or political subdivision created by its laws.

(B) For housing authorities when contracting with a property management services company for purposes of operating a housing project, as defined in RCW 35.82.030. Rental

and other project revenues collected by a property management services company from the housing project's tenants and used to pay administrative operating and ordinary maintenance costs incurred by the company under the terms of the contract with the authority shall be treated as private funds, and any resulting services as executed at the cost of the property management services company and the housing project's tenants, until the net operating revenues are distributed to the authority for its exclusive use and control. For the purposes of this subsection, "ordinary maintenance" only includes: Routine repairs related to unit turnover work; grounds and parking lot upkeep; and repairs and cleaning work needed to keep a property in a clean, safe, sanitary, and rentable condition that are customarily undertaken or administered by residential property management services companies. "Ordinary maintenance" does not include repairs that would be considered replacement capital repairs or scheduled regular maintenance work on plumbing, electrical, or HVAC/R systems or their components.

(8) "Contract" means a contract, purchase order, or any other legal agreement in writing for public work to be performed for a fixed or determinable amount, which is duly awarded after advertisement and competitive bid. A contract that is awarded from a small works roster, or under the emergency provisions of state law, need not be advertised.

(9) "Residential construction" means construction, alteration, repair, improvement, or maintenance of single family dwellings, duplexes, apartments, condominiums, and other residential structures not to exceed four stories in height, including basement, when used solely as permanent residences. It does not include the utilities construction (water and sewer lines), or work on streets, or work on other structures (e.g., for recreation and business.)

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-010, filed 7/23/19, effective 8/23/19. Statutory Authority: RCW 39.12.070. WSR 94-01-100, § 296-127-010, filed 12/16/93, effective 1/16/94. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-010, filed 12/18/91, effective 1/31/92; WSR 88-22-046 (Order 88-22), § 296-127-010, filed 10/31/88. Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-010, filed 1/17/86. Statutory Authority: RCW 39.12.015, 39.12.060 and HB 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-010, filed 8/27/82.]

WAC 296-127-011: Time for determining prevailing wage.

(1) Prevailing wage rates for all public work contracts will be determined by the industrial statistician and published on the first business day of February and the first business day of August of each year. These rates shall become effective thirty days after the date of publication. However, the industrial statistician may revise an established prevailing wage rate in response to an administrative or judicial finding overturning the established rate, or at any time necessary to correct an error, with such revision becoming effective thirty days after the date of publication. However, in the event of an emergency as determined by the director of the department, such revised rate shall take effect upon publication.

(2) The department shall establish deadlines for the submission of:

- (a) Completed wage surveys, for inclusion of submitted data in the survey computations;
- (b) Newly ratified collective bargaining agreements for inclusion in the semiannual prevailing wage publication;
- (c) Notice of collectively bargained wage and benefit adjustments, and/or relevant contractual changes, for inclusion in the semiannual prevailing wage publication; and

(d) Notice of changes in apprenticeship standards and incremental wage rates for inclusion in the semiannual prevailing wage publication.

(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 39.10 RCW, 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.

(5) A schedule of the applicable prevailing wage rates must be included by:

(a) Contract awarding agencies, in the bid specifications and contract documents for each contract.

(b) Contractors, in the bid and/or contract documents provided to subcontractors.

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-011, filed 7/23/19, effective 8/23/19. Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, 43.22.051, and 2003 c 301. WSR 04-10-083, § 296-127-011, filed 5/4/04, effective 6/4/04. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-011, filed 12/18/91, effective 1/31/92; WSR 88-22-046 (Order 88-22), § 296-127-011, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and HB 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-011, filed 8/27/82.]

WAC 296-127-013: Scope of work descriptions.

(1) In order to determine applicable prevailing wage rates, the director or his/her designee will issue scope of work descriptions for each trade and occupation recognized as being involved in public work.

(2) The scope of work descriptions shall be created using authoritative sources available to the department, such as:

(a) Washington state apprenticeship and training council approved apprenticeship standards;

(b) Collective bargaining agreements;

(c) Dictionaries of occupational titles;

(d) Experts from organized labor, licensed contractors, and contractors' associations;

(e) Recognized labor and management industry practice.

(3) The applicable prevailing wage rates for workers employed on public works projects shall be determined by the scopes of work performed by those workers, and not by their specific job titles.

(4) The applicable scope of work description for a public works contract is the scope of work description that is in effect on the date that the bids are due to be submitted to the contract awarding agency. If the contract is not awarded within six months of the bid due date, then the applicable scope of work description shall be that which is in effect on the date that the contract is awarded. The same scope of work description shall remain in effect for the duration of the contract.

(5) In the event a dispute arises regarding a scope of work description following the award of a public works contract, the aggrieved party may request an arbitration hearing pursuant to the provisions of RCW 39.12.060, WAC 296-127-060, 296-127-061, and 296-127-062.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051. WSR 00-15-077, § 296-127-013, filed 7/19/00, effective 7/19/00. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-013, filed 12/18/91, effective 1/31/92; WSR 88-22-046 (Order 88-22), § 296-127-013, filed 10/31/88.]

WAC 296-127-014: Usual benefits.

(1) Employers are not required to establish “usual benefit” programs. If an employer chooses not to provide such benefits, however, wages paid must be at the full prevailing wage rate as defined by RCW 39.12.010.

(2) To be deemed a “usual benefit,” the following requirements must be satisfied:

(a) Employer payments for the usual benefit shall be made only in conformance with all applicable federal and state laws, including the requirements of the Employment Retirement Income Security Act of 1974, as amended, and of the Internal Revenue Service; and

(b) Employee payments toward the usual benefit, through self-contribution, payroll deduction, or otherwise, shall not constitute a credit to the employer for prevailing wage purposes.

(3) “Usual benefits” are limited to the following:

(a) Health and welfare payments. This is medical insurance, which may include dental, vision, and life insurance. Insurance programs providing protection against industrial accidents or occupational illnesses which are mandated by state or federal statutes, and all related mandatory forms of protection, shall not qualify as health and welfare insurance.

(b) Employer payments on behalf of a person employed for the purpose of providing retirement income.

(c) Vacation payments made either directly to the employees or into a vacation fund, provided these benefits are paid to the employees.

(d) Apprentice training fund. Payments made to training programs approved or recognized by the Washington state apprenticeship and training council.

(e) Paid holidays. Payments made to employees for specified holidays.

(4) Any fringe benefits required by other local, state, or federal laws do not qualify as “usual benefits.”

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-014, filed 12/18/91, effective 1/31/92; WSR 88-22-046 (Order 88-22), § 296-127-014, filed 10/31/88.]

WAC 296-127-01410: Information concerning prevailing wage usual benefits.

(1) Contractors and employers shall conform to all posting and employee notification requirements provided by applicable federal and state laws concerning usual benefits plans.

(2) Contractors and employers must have, and make available to the department upon request, copies of all documents concerning usual benefits, as identified in WAC 296-127-014, for which employer payments are made.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-01410, filed 12/18/91, effective 1/31/92.]

WAC 296-127-015: Applicability of prevailing wages for supervisors.

Determinations as to whether individuals are workers, laborers, or mechanics are based on the scope of work actually performed by the individuals, rather than the title of their occupations.

(1) Where additional supervisory duties are required of workers, laborers, or mechanics by statute or regulation, the industrial statistician shall establish a rate of pay for a work classification to be called "journey level in charge." These rates shall be published in the semiannual prevailing wage publication.

(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.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-015, filed 12/18/91, effective 1/31/92; WSR 88-22-046 (Order 88-22), § 296-127-015, filed 10/31/88.]

WAC 296-127-017: Notice of wage determinations.

Current prevailing wage data will be furnished by the office of the industrial statistician upon request.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-017, filed 12/18/91, effective 1/31/92. Statutory Authority: RCW 39.12.015, 39.12.060 and HB 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-017, filed 8/27/82.]

WAC 296-127-018: 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.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.051 and 43.22.270. WSR 08-24-101, § 296-127-018, filed 12/2/08, effective 1/2/09. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104 and 92-08-101, § 296-127-018, filed 12/18/91 and 4/1/92, effective 8/31/92.]

WAC 296-127-019: Survey methodology.

(1) The industrial statistician shall establish prevailing wage rates by:

- (a) Conducting wage and hour surveys for established trades and occupations;
- (b) Adopting the wage and benefit adjustments established in collective bargaining agreements for those trades or occupations where the most recently established prevailing wage rates were derived from a collective bargaining agreement; and/or
- (c) In instances when the procedures established in (a) and (b) of this subsection are not feasible, employing other methods deemed appropriate by the industrial statistician as set out in subsection (8) of this section.

(2) The department will determine the identity of employers to be surveyed for a specific trade or occupation by:

- (a) Mailing trade and occupation questionnaires to all contractors whose registration under chapter 18.27 RCW or license under chapter 19.28 RCW is active;
- (b) Mailing trade and occupation questionnaires to Washington state department of transportation prequalified contractors; and
- (c) Compiling and maintaining lists of employers that are not required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, but that employ workers in building service maintenance, in shipbuilding or ship repair, in the fabrication and/or manufacture of nonstandard items produced specifically for a public works project, and/or in the production and delivery of materials as defined in WAC 296-127-018. Trades and occupations utilized by the shipbuilding and ship repair industries shall not have their survey data combined with their construction counterparts, for the purpose of establishing prevailing wage rates for that industry.

(3)(a) Wage survey forms will be mailed to:

- (i) Those contractors and employers whose businesses currently are active and were active during the established survey period, and whose response to the trade and occupation questionnaire indicates that they employ one or more of the trades or occupations being surveyed; and
- (ii) Labor unions representing workers in the trades or occupations being surveyed.

(b) The department annually shall mail to statewide trade associations and statewide labor organizations a proposed schedule of trades intended to be surveyed during the upcoming fiscal year. In addition, the department shall notify those statewide trade associations and labor organizations, reasonably known to be affected, of the mailing of wage surveys.

(4) Data reported on survey forms may be verified by the department, and will be used only when submitted on behalf of or by:

- (a) Individual contractors identified by a contractor registration number that currently is valid, and was valid during the established survey period;
- (b) Employers that are not required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, that directly employ and supervise workers as employees in building service maintenance, in shipbuilding or ship repair, in the manufacture of nonstandard items specifically produced for a public works project, or in the production and delivery of materials, as defined in WAC 296-127-018;

(c) Labor unions submitting wage and hour data on behalf of contractors and/or employers who are signatory to those unions' collective bargaining agreements covering the trade or occupation being surveyed; or

(d) Interested parties providing wage and hour data by trade and occupation from certified payroll records and/or from hours reported by trade and occupation on affidavits of wages paid, according to guidelines established by the department.

(5) The department shall use affidavit forms that include a requirement that contractors report the actual number of hours worked by each trade and occupation utilized on the public works project for which the affidavit is filed.

(6) Valid data reported on wage surveys shall be calculated, as follows:

(a) If the majority of hours reported for a trade or occupation in the largest city in a county is paid at the same wage rate, then that rate shall be established as the prevailing wage rate.

(b) If the same wage rate is not reported to have been paid for the majority of hours reported in the largest city in a county for a trade or occupation, then the average wage rate shall be established as the prevailing wage rate, based on a weighted average of the hours, wages, and benefits reported in the largest city.

(c) If a statistically significant number of hours fails to be reported for the largest city in a county, then the average wage rate for the county is established as the prevailing wage, based on a weighted average.

(7) Survey data will not be accepted if the data report the hours and wages of those who are exempt from the prevailing wage requirements of chapter 39.12 RCW, as defined in WAC 296-127-026.

(8)(a) The industrial statistician may utilize alternative methods to establish prevailing wage rates consistent with the terms of (b) of this subsection. These methods include, but are not limited to:

(i) The use of wage and hour data from the department of employment security;

(ii) The use of wage and hour data from the industrial insurance division of the department of labor and industries;

(iii) The use of data from surveys performed by the United States Department of Labor, wage and hour division; or

(iv) The use of wage and hour data reported to the department on affidavits of wages paid.

(b) These alternative methods will not be used for trades or occupations for which surveys had been completed as of the effective date of this section unless a subsequent survey produces insufficient data. In addition, these alternative methods may be used under circumstances that include, but are not limited to, the following:

(i) To establish prevailing wage rates for a new trade or occupation where a survey is not immediately feasible;

(ii) In response to an administrative or judicial determination of invalid wage rate or scope of work description;

(iii) In response to changes or additions in licensing, safety, or other requirements of other state agencies, departments or divisions; or

(iv) To establish rates for industries and trades and occupations generally not surveyed,

in order to meet the requirement of having established wage rates for publication in contract or bid specifications as required by RCW 39.12.030.

(9) Any party that submits false information under this section shall, after a determination to that effect has been issued by the director after a hearing pursuant to chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars.

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-019, filed 7/23/19, effective 8/23/19. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-019, filed 12/18/91, effective 1/31/92; WSR 88-22-046 (Order 88-22), § 296-127-019, filed 10/31/88.]

WAC 296-127-020: Interpretation of phrases used in chapter 39.12 RCW.

(1) The “acceptance date of the public works project” referred to in RCW 39.12.065 is the date that the contract awarding agency formally accepts the completed public works project pursuant to state law.

(2) RCW 39.12.050 and 39.12.065 refer to “inadvertent filing or reporting error.” The department defines an error as “inadvertent” if it is made by a contractor, as defined by WAC 296-127-010(5), or employer that shows that the error was made notwithstanding the use of due care by the contractor or employer. The burden of proving that an error is inadvertent rests with the contractor or employer charged with the error.

(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.

(4) In the implementation and enforcement of RCW 39.12.050 the terms “contractor” and “subcontractor” include an entity, however organized, with substantially identical corporate and/or operational structure to an entity that has been found to violate RCW 39.12.050. The factors used to determine substantial identity shall include an assessment of whether there is: Substantial continuity of the same business operation; use of the same machinery and/or equipment; similarity of jobs and types of working conditions; continuity of supervisors; and similarity of product or services.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-020, filed 12/18/91, effective 1/31/92. Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-020, filed 1/17/86. Statutory Authority: RCW 39.12.015, 39.12.060 and HB 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-020, filed 8/27/82.]

WAC 296-127-021: Apprentice worker.

Any apprentice employed on public works projects for whom an apprentice agreement is registered and approved by the state apprenticeship council pursuant to chapter 49.04 RCW within sixty days of hiring may be considered an apprentice and paid the applicable prevailing hourly rate for an apprentice of that trade for all hours worked.

[Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-021, filed 8/27/82.]

WAC 296-127-022: Overtime according to RCW 49.28.065.

(1) Work performed on public works contracts will not require the payment of overtime rates for the first two hours worked in excess of eight hours per day when the employer and employee voluntarily enter into an agreement wherein the employee will work up to ten hours per day in a four-day week to accomplish forty hours of work.

(2) Recognizing that there may be days when a full ten hours of work is not available, the remainder of the forty hours may be made up on another work day or days within the same work week, except work performed on Saturdays, Sundays, and holidays is subject to the established prevailing overtime provisions for a given trade or occupation, as provided in chapter 39.12 RCW.

(3) For the purpose of this section an agreement must:

(a) Have been authorized by employees who bargained collectively with their employers through representatives of their own choosing; or

(b) Be obtained in writing, signed, and dated by both parties; and

(c) Be entered into individually with each employee; and

(d) Be entered into separately for each public works project, except that an employer, at its option, may obtain an annual authorization; and

(e) State the name of the public works project with specificity; and

(f) Be entered into voluntarily by the employer and employee.

(4) Each employer must retain copies of the individual employee authorization agreements required pursuant to subsection (3) of this section for three years from the date of acceptance of the public works project by the contract awarding agency. Absence of an authorization record for an employee shall be deemed per se evidence of lack of that employee's authorization. Such records are payroll records, subject to the requirements of WAC 296-127-320.

(5) It is prohibited to work more than ten hours in any calendar day on a public works project except in cases of extraordinary emergency, such as danger to life or property.

(6) Notwithstanding the above provisions, overtime rates must be paid for all hours worked in excess of forty hours per week.

(7) This section provides a minimum public works overtime standard, and does not supersede prevailing overtime wage rates established under the authority of chapter 39.12 RCW.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-022, filed 12/18/91, effective 1/31/92. Statutory Authority: RCW 43.22.270. WSR 88-19-055 (Order 88-21), § 296-127-022, filed 9/15/88.]

WAC 296-127-023: Building service maintenance.

The "public building service maintenance contracts" referred to in RCW 39.12.020 shall mean janitorial service contracts and cover only work performed by janitors, waxers, shampooers, and window cleaners.

For all building service maintenance contracts, the prevailing wage rates which are in effect on the date when the bids are required to be submitted to the contract awarding public agency are the minimum prevailing wage rates which must be paid for the first year of such contracts and thereafter. However, any building service maintenance contract

of more than one year duration, must include wage increase language recognizing the potential for future variance in applicable prevailing wage(s) and specifying that the wages which a contractor shall pay its employees must be altered annually to recognize and follow the most recently promulgated increases in prevailing wages each year after the first year of the contract period. The cost of the increases in the wages due employees shall be borne by the contract awarding agency.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 88-22-046 (Order 88-22), § 296-127-023, filed 10/31/88.]

WAC 296-127-025: Applicability of joint federal-state standards.

(1) When a public works project is subject to the provisions of the Washington state public works law, chapter 39.12 RCW, and the Federal Davis-Bacon and related acts, the contractor and every subcontractor on that project must pay at least the Washington state prevailing wage rates, if they are higher than the federal prevailing wage rates for the project unless specifically preempted by federal law.

(2) When the federal prevailing wage rates are higher than the Washington state prevailing wage rates, the contractor shall pay the federal rate as required by federal law.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-025, filed 12/18/91, effective 1/31/92; WSR 88-22-046 (Order 88-22), § 296-127-025, filed 10/31/88.]

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 by the state or any county, municipality, or political subdivision created by its laws.

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-026, filed 7/23/19, effective 8/23/19. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 88-22-046 (Order 88-22), § 296-127-026, filed 10/31/88.]

WAC 296-127-030: Irrigation district exemption.

Contracts awarded by irrigation districts for the reclamation or development of waste or undeveloped lands are not covered by the prevailing wage law, pursuant to RCW 39.04.010. Any work, construction alteration, repair or improvement that is not solely for the reclamation or development of waste or undeveloped land is covered by the prevailing wage laws and therefore subject to all the laws and regulations contained in and adopted pursuant to chapter 39.12 RCW.

[Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-030, filed 8/27/82.]

WAC 296-127-040: Statement of intent to pay prevailing wages.

(1) All statements of intent to pay prevailing wages submitted to the industrial statistician of the department shall be accompanied by the fee set in RCW 39.12.070 for each statement. Fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies statements of intent for its own contracts shall provide to the industrial statistician each month the number of statements of intent certified and quarterly shall send the fee set in RCW 39.12.070 for each statement of intent to pay prevailing wages it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, and 2008 c 285. WSR 08-17-072, § 296-127-040, filed 8/19/08, effective 9/19/08. Statutory Authority: RCW 39.12.070. WSR 94-01-100, § 296-127-040, filed 12/16/93, effective 1/16/94. Statutory Authority: RCW 43.22.270. WSR 90-24-053, § 296-127-040, filed 12/3/90, effective 1/3/91. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 88-22-046 (Order 88-22), § 296-127-040, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-040, filed 8/27/82.]

WAC 296-127-045: Affidavit of wages paid.

(1) All affidavits of wages paid submitted to the industrial statistician of the department shall be accompanied by the fee set in RCW 39.12.070 for each affidavit of wages paid. All fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies affidavits of wages paid for its own contracts shall provide to the industrial statistician each month the number of affidavit of wages paid it has certified and quarterly shall send the fee set in RCW 39.12.070 for each affidavit of wages paid it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, and 2008 c 285. WSR 08-17-072, § 296-127-045, filed 8/19/08, effective 9/19/08. Statutory Authority: RCW 39.12.070. WSR 94-01-100, § 296-127-045, filed 12/16/93, effective 1/16/94. Statutory Authority: RCW 43.22.270. WSR 90-24-053, § 296-127-045, filed 12/3/90, effective 1/3/91. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 88-22-046 (Order 88-22), § 296-127-045, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-045, filed 8/27/82.]

WAC 296-127-050: Filing of statements of intent to pay prevailing wages and affidavits of wages paid for contracts under two thousand five hundred dollars.

A contract awarding agency may, as part of a public works contract, enter into an agreement with a contractor to approve statements of intent to pay prevailing wages and affidavits of wages paid on behalf of the department for contracts wherein the total amount does not exceed two thousand five hundred dollars as provided in RCW 39.12.040(2), pursuant to the following terms:

- (1) The agreement must be incorporated into the bid specifications and contract document;
- (2) Statement of intent forms and affidavit of wages paid forms, provided by the department, must be filed with the contract awarding agency by the contractor prior to the disbursement of public funds;
- (3) Contract awarding agencies must retain copies of all statements of intent to pay

prevailing wages received pursuant to this section for a period of not less than three years;

(4) Contract awarding agencies must send to the department copies of all affidavits of wages paid received pursuant to this section within thirty days of receipt from the contractor;

(5) The contract awarding agency shall accept full responsibility and liability for payment of any valid wage claims directly to the claimant;

(6) The contract awarding agency may proceed against any contractor found to have violated the provisions of the statute, and may debar such contractor from consideration for future contracts for up to one year and will provide the department with the names and contractor registration or other employer identification numbers of any such debarred contractors within thirty days of the debarment; and

(7) Contract awarding agencies and contractors shall not enter into contracts or agreements to perform public work that subdivide or otherwise disaggregate any public works project of more than two thousand five hundred dollars, to enable such public works project to be awarded pursuant to this section.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-050, filed 12/18/91, effective 1/31/92.]

WAC 296-127-060: Director of department of labor and industries to arbitrate disputes — General provisions.

(1) The contract executed between a public authority and the successful bidder or contractor and all of his or her subcontractors shall contain a provision that in case any dispute arises as to what are the prevailing rates of wages for a specific trade, craft or occupation and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director, and his or her decision shall be final, conclusive, and binding on all parties involved in the dispute.

(2) In exercising his or her authority to hear and decide disputes the director shall consider among other things, timeliness, the nature of the relief sought, matters of undue hardship or injustice, or public interest. A “timely” request for arbitration is one received within thirty days after the contract has been awarded.

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

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

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

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

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

- (i) The petitioner's relationship to the matters involved in the proceedings, and
- (ii) The nature of the presentation which he or she would make. Copies of the petition shall be served on all parties or interested persons known to be participating in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-060, filed 7/23/19, effective 8/23/19. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-060, filed 8/27/82.]

WAC 296-127-061: Requests for arbitration.

(1) The petition for arbitration (original and two copies) shall be filed with: Director, Department of Labor and Industries, 7273 Linderson Way Southwest, Tumwater, Washington, or by mail to: Post Office Box 44001, Olympia, WA 98504-4001. In addition, copies of the petition shall be served personally or by mail upon each of the following:

- (a) The public agency or agencies involved;
- (b) The industrial statistician; and
- (c) Any other person (or the authorized representatives of such person) known to be interested in the subject matter of the petition.

(2) The director shall under no circumstances request any administering agency to postpone any contract performance because of the filing of a petition. This is a matter which must be resolved directly with the administering agency by the petitioner or other party in interest.

(3) A petition for arbitration of a wage determination shall:

- (a) Be in writing and signed by the petitioner or his or her counsel (or other authorized representative); and
- (b) Identify clearly the wage determination, location of project or projects in question, and the agency concerned; and
- (c) State that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request; and
- (d) Contain a short and plain statement of the grounds for review; and
- (e) Be accompanied by supporting data, views, or arguments; and
- (f) Be accompanied by a filing fee of seventy-five dollars. Fees shall be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-061, filed 7/23/19, effective 8/23/19. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-061, filed 8/27/82.]

WAC 296-127-062: Conduct of arbitration hearing.

(1) Interested persons other than the petitioner shall have a reasonable opportunity as specified by the director in particular cases to submit to the director written data, views, or arguments relating to the petition. Such material (original and four copies) shall be filed

with the: Director, Department of Labor and Industries, 7273 Linderson Way Southwest, Tumwater, Washington, or by mail to: Post Office Box 44001, Olympia, WA 98504-4001 and be accompanied by a filing fee of thirty-five dollars. Fees shall be made payable to the department of labor and industries. Copies of any such material shall be served on the petitioner and other interested persons.

(2) Each party in interest shall have the right to appear in person or by or with counsel or other qualified representatives in any proceeding before the director. If all parties agree, oral testimony may be waived and arguments submitted in writing.

(3) Upon his or her own initiative or upon motion of any interested person or party, the director may consolidate in any proceeding or concurrently consider two or more appeals which involve substantially the same persons or parties, or issues which are the same or closely related, if he or she finds that such consolidation or concurrent review will contribute to an efficient review and to the ends of justice, and it will not unduly delay consideration of any such appeals.

(4) The director shall prescribe the time and place for hearing. The director shall schedule the hearing within forty-five days of the request. For good cause shown, the director may allow a continuance at the request of a party in interest.

(a) With respect to any proceeding before the director, the director may upon his or her own initiative or upon the request of any interested person or party direct the interested persons or parties to appear before the director at a specified time and place in order to simplify the issues presented or to take up any other matters which may tend to expedite or otherwise facilitate the disposition of the proceeding.

(b) All papers submitted to the director under this section shall be filed with the: Department of Labor and Industries, 7273 Linderson Way Southwest, Tumwater, Washington, or by mail to: Post Office Box 44001, Olympia, WA 98504-4001. An original and two copies of all papers shall be submitted. Service under this part shall be by the filing party or interested person; service may be personal or may be by mail. Service by mail is complete on mailing.

(5) The final disposition shall be by the director.

(a) The director may decline review of any case whenever in his judgment a review would be inappropriate or because of the lack of timeliness, the nature of the relief sought, or other reasons.

(b) The director shall decide the case upon the basis of all relevant matter contained in the entire record before him or her but the director may utilize his or her experience, technical competence, and specialized knowledge in evaluating the evidence.

(c) Upon reasonable notice to the parties or interested persons, the director may vary the procedures specified in this part in particular cases.

(6) The director may allow all parties a period of ten days for filing post-hearing briefs prior to closing the record and concluding the hearing.

(7) The director shall issue a written decision within thirty days of the conclusion of the hearing. A copy shall be sent to each party in interest.

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-062, filed 7/23/19, effective 8/23/19. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-062, filed 8/27/82.]

WAC 296-127-130: Filing of complaint.

Any interested party, as defined in RCW 39.12.010(4) may file with the department a complaint alleging a violation of the prevailing wage laws. The complaint must describe the alleged violation and identify the alleged violator. It would aid the department's investigation if the complaint also specifies:

- (1) The name and address of the complainant;
- (2) The address of the alleged violator;
- (3) The name and address of the public agency that awarded the contract;
- (4) The date the public agency accepted the completed public work (if applicable);
- (5) The specific rates of wages paid by the violator and the rates that allegedly should be paid;
- (6) The exact amount of prevailing wages that are alleged to remain unpaid; and
- (7) The date the bids were due on the public works project.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-130, filed 1/17/86.]

WAC 296-127-140: Investigation of complaint.

(1) The department shall investigate a complaint filed by an interested party unless the complaint was filed more than thirty days after the date the public agency accepted the public work that gave rise to the complaint. The department may, in its sole discretion, investigate a complaint filed more than thirty days after the acceptance date. However, the department may not charge a contractor with a violation of RCW 39.12.065 if the complaint is filed after the thirty-day limit.

The department's investigation shall determine whether a violation of RCW 39.12.065 or 39.12.050, or both, or of any other provision of chapter 39.12 RCW, occurred.

(2) If the department's investigation substantiates a complaint that alleges that a contractor has violated RCW 39.12.065, the department is required to attempt to collect unpaid wages for the contractor's employees. During the investigation, the department should be able to identify the affected employees. The department shall direct to the affected employees the best notice practicable under the circumstances, including individual notice to all employees who can be identified through reasonable effort. The notice shall inform the employee that (a) the department's final order, whether favorable or not, will apply to all employees; (b) any employee may, if he or she desires, move to intervene as a party in any hearing held as a result of the investigation; and (c) that the employee may have a private right of action to collect unpaid prevailing wages.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-140, filed 1/17/86.]

WAC 296-127-150: Notice of violation.

(1) If the department determines after its investigation that there is reasonable cause to believe that the prevailing wage law has been violated, the department shall notify the violator of its determination. The notice of violation shall be served on the violator personally or by certified mail.

(2) The notice of violation shall:

- (a) Describe concisely the violation;
- (b) Specify which statute or statutes were violated;
- (c) If known, identify the laborers, workers, and mechanics who are affected by the violation;
- (d) If known, state the amount of unpaid prevailing wages the violator owes;
- (e) State that an employee cannot by contract or agreement waive the right to receive the prevailing wage;
- (f) State the penalty that the department will assess for a violation, if any, of RCW 39.12.065 and 39.12.050; and
- (g) State the date the complaint was filed with the department.

(3) RCW 39.12.065 and 39.12.050 establish the penalty amounts.

(4) If the notice alleges a violation of RCW 39.12.065, the department shall serve a copy of the notice of violation on the violator's sureties under chapters 39.08, 18.27, 19.28, and 60.28 RCW.

(5) The notice of violation shall inform the violator and, if a violation of RCW 39.12.065 is alleged, its sureties that they may request a hearing on the violations, the amount of unpaid prevailing wages owed, or the penalties assessed. The notice shall specify that if no hearing is requested within thirty days of the date of issuance of the notice the director shall issue a final, unappealable order finding that the violation did occur, ordering the violator to pay any unpaid prevailing wages, and assessing penalties.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-150, filed 1/17/86.]

WAC 296-127-160: Appeal of notice of violation.

The violator or any of its sureties who are interested in the matter may request a hearing on a notice of violation. One original and four copies of the request must be filed with the director within thirty days after the date the department issued the notice. The party requesting the hearing must also serve a copy of the notice on all interested sureties and, if the requester is a surety, on the violator.

The request for hearing must be in writing and must specify:

- (1) The name and address of the party requesting the hearing;
- (2) The notice of violation that is being appealed;
- (3) The items of the notice of violation that the requester believes are erroneous; and
- (4) The reasons the notice of violation is erroneous.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-160, filed 1/17/86.]

WAC 296-127-170: Hearing on notice of violation.

(1) The director may hear the appeal personally or may delegate the authority to hold the hearing and draft a proposed decision to an administrative law judge pursuant to chapter 34.12 RCW. The plaintiff in the hearing shall be the department, and the defendants shall be the violator and its interested sureties. The department shall have the burden of proving, by a preponderance of the evidence, that the violations occurred and that any wages were unpaid as stated in the notice.

(2) Any interested party may upon motion, be allowed to intervene as a plaintiff in the hearing. "Standing" shall be construed broadly to effectuate the remedial purposes of the prevailing wage law. An interested party, whether or not admitted as a plaintiff, may submit written arguments and affidavits. The parties shall be given an opportunity to respond to or rebut any arguments and affidavits before the person presiding over the hearing makes his or her decision.

(3) The hearing shall be conducted in accordance with chapter 34.05 RCW.

(4) If the director presides over the hearing, the director shall issue a final decision that includes findings of fact and conclusions of law, and if appropriate an order to pay unpaid prevailing wages, a penalty, or both.

(5) If an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate an order to pay unpaid prevailing wages, a penalty, or both. The proposed decision shall be served by certified mail or personally on the violator, the interested sureties, the department, and any interested parties who have intervened as plaintiffs. Any of these parties, if aggrieved by the proposed decision, may appeal to the director within thirty days after the date of issuance of the proposed decision. If none of the parties appeals within thirty days, the proposed decision may not be appealed either to the director or the courts.

(6) An appellant must file with the director an original and two copies of its notice of appeal. The notice of appeal must specify which findings and conclusions are erroneous. The appellant must attach to the notice the written arguments supporting its appeal.

The appellant must serve a copy of the notice of appeal and the arguments on the other parties. The respondent parties must file with the director their written arguments within thirty days after the date the notice of appeal and the arguments were served upon them.

(7) The director shall review the proposed decision in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director may: Allow the parties to present oral arguments as well as the written arguments; require the parties to specify the portions of the record on which the parties rely; require the parties to submit additional information by affidavit or certificate; remand the matter to the administrative law judge for further proceedings; and require a departmental employee to prepare a summary of the record for the director to review. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision.

(8) The director shall serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW unless the final decision affirms an unappealed proposed decision. If no party appeals within the period set by chapter 34.05 RCW, the director's decision is conclusive and binding on all parties.

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-170, filed 7/23/19, effective 8/23/19. Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-170, filed 1/17/86.]

WAC 296-127-180: Effect of final decision finding a violation of RCW 39.12.065.

If the director issues a final decision that includes a finding that a contractor violated RCW 39.12.065 and that the contractor owes unpaid prevailing wages, and the finding is not timely appealed or is affirmed by the courts, the findings and the decision are res judicata in any action by the department or by any interested party who was a plaintiff at the hearing, against the contractor and its sureties to recover the unpaid prevailing wages. The findings and decision are not res judicata in any action by an interested party who was not a plaintiff at the hearing.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-180, filed 1/17/86.]

WAC 296-127-190: Filing of lien against retainage or bonds.

(1) Upon receipt of a timely complaint that a contractor has violated RCW 39.12.065, and that the contractor owes unpaid prevailing wages, the department may file a lien against the retainage or bond obtained by the contractor under RCW 60.28.011.

(2) Upon issuance by the director of a final decision that finds that a contractor has violated RCW 39.12.065 or 39.12.050, and that sets a civil penalty for the violation, the department shall file liens for the penalty amount against the retainage and bonds the contractor obtained under RCW 39.12.065 (2)(c), 39.08.010, and 60.28.011.

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-190, filed 7/23/19, effective 8/23/19. Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-190, filed 1/17/86.]

WAC 296-127-200: Surety bond payable to director.

(1) RCW 39.12.065 (2)(c) authorizes the director to require a contractor to obtain a surety bond “running to the director in the amount of the violation found.” The intent and wording indicates that the director may require such a bond only after issuing a final decision finding that the contractor has violated RCW 39.12.065.

(2) The director may demand that a violating contractor post the bond when:

(a) The director has issued a final decision that finds that the contractor owes unpaid prevailing wages or a penalty, whether or not the decision has been appealed to the courts; and

(b) The retainage or bonds provided under RCW 60.28.011, 18.27.040, and 19.28.041 are or may be insufficient to pay the amount of prevailing wages or the penalty owed.

(3) A contractor may at any time voluntarily obtain a bond running to the director to guarantee the payment of the prevailing wages and any penalty. The contractor may allow the director to satisfy any claim for unpaid wages or the penalty from this bond instead of from the retainage or bonds obtained under RCW 60.28.011, 18.27.040, 19.28.041, and 39.08.010.

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-200, filed 7/23/19, effective 8/23/19. Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-200, filed 1/17/86.]

WAC 296-127-210: Suit against retainage and bonds.

(1) If the director issues a final decision that includes a finding that the contractor has violated RCW 39.12.065 or 39.12.050, and the finding is not timely appealed or is affirmed by the courts, the department may file suit against the appropriate retainage and bonds to recover the amount of unpaid prevailing wages or the civil penalty.

(2) The department may, before issuance of a final decision, file suit against the appropriate retainage and bonds to recover unpaid prevailing wages if the filing of a suit is necessary to preserve the claim. The suit shall be held in abeyance pending the exhaustion of administrative remedies.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-210, filed 1/17/86.]

WAC 296-127-220: Distribution of recovery.

(1) Upon making a recovery pursuant to RCW 39.12.065(2) against a contractor's retainage or bonds, the department shall distribute the proceeds and any award of attorneys' fees and costs as follows:

(a) The recovery shall be paid to the employees of the violator who did not receive the correct prevailing wage. The distribution among employees shall be based on the evidence of wage loss produced at the hearing on the violation.

(b) Next shall be paid the costs the department incurred in making the recovery. The department shall pay these costs from the attorney's fees and costs awarded by the courts.

(2) A contractor who is the subject of an investigation or who has received a notice of violation may choose not to contest the matter and may tender to the department the amount of unpaid prevailing wages the department determines is owed. The department, after identifying and notifying the affected employees pursuant to WAC 296-127-140, shall accept the tender if the contractor in writing acknowledges that the department, by accepting the tendered amount, does not absolve the contractor from liability to any employee for unpaid prevailing wages.

(3) If an employee for whom the department has recovered unpaid prevailing wages cannot be found, the department shall retain the wages for the one-year period required by RCW 63.29.150. After the statutory period has lapsed, the department shall pay the wages to the department of revenue in accordance with RCW 63.29.170.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-220, filed 1/17/86.]

WAC 296-127-300: Filing and service.

All papers required to be filed with the director under this chapter or chapter 39.12 RCW shall be addressed to: Director, Department of Labor and Industries, 7273 Linderson Way Southwest, Tumwater, Washington, or by mail to: Post Office Box 44001, Olympia, WA 98504-4001.

Filing and service shall be in accordance with chapter 34.05 RCW.

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-300, filed 7/23/19, effective 8/23/19. Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-300, filed 1/17/86.]

WAC 296-127-310: List of violators.

The department shall maintain a list of all contractors who are forbidden to bid on a public works project, or to have a bid accepted, pursuant to RCW 39.12.065(3), 39.12.055, or 39.12.050. To the extent required by RCW 39.12.065(3), 39.12.055, and 39.12.050, the industrial statistician shall refuse to certify any statement of intent to pay the prevailing wage or affidavit of wages paid that he or she determines was submitted by a contractor on the list. Because the department receives a large number of requests for certification, the department shall not be liable to any person or entity for certifying a statement or an affidavit of a contractor on the list.

The industrial statistician shall make the list available electronically.

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-310, filed 7/23/19, effective 8/23/19. Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-310, filed 1/17/86.]

WAC 296-127-320: Payroll.

(1) Each contractor shall keep accurate payroll records for three years from the date of acceptance of the public works project by the contract awarding agency, showing the name, address, Social Security number, trade or occupation, straight time rate, hourly rate of usual benefits as defined by WAC 296-127-014(1), and overtime hours worked each day and week, including any employee authorizations executed pursuant to WAC 296-127-022, and the actual rate of wages paid, for each laborer, worker, and mechanic employed by the contractor for work performed on a public works project.

(2) A contractor shall, within ten days after it receives a written request, from the department or from any interested party as defined by RCW 39.12.010(4), file a certified copy of the payroll records with the agency that awarded the public works contract and with the department.

(3) A contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-320, filed 12/18/91, effective 1/31/92. Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-320, filed 1/17/86.]

WAC 296-127-990: Severability.

If any provision of this chapter or its application to any persons or circumstances is held invalid by state or federal court, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-990, filed 12/18/91, effective 1/31/92.]

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Quick-access Links

If you're already familiar with prevailing wage, this section provides quick-access links to the tasks you need to meet L&I requirements.

Bidding and construction

- Scopes of work: [Lni.wa.gov/ScopesOfWork](https://lni.wa.gov/ScopesOfWork)
- Find prevailing wage rates by job classification: [Lni.wa.gov/PrevailingWageRates](https://lni.wa.gov/PrevailingWageRates)
- Policies and determinations: [Lni.wa.gov/PWPolicies](https://lni.wa.gov/PWPolicies)
- View the publication of all updates and corrections to any prevailing wage rate: [Lni.wa.gov/PWWageUpdates](https://lni.wa.gov/PWWageUpdates)
- Certified Payroll Records How-To-Do YouTube Videos: youtu.be/nyZXBnK1eK0
- Step by step instructions for on-line filing of Intents, Affidavits, and certified payroll records: [Lni.wa.gov/PWIAInstructions](https://lni.wa.gov/PWIAInstructions)

Look up tools

- Contractor strike and debar lists: [Lni.wa.gov/ContractorStrikes](https://lni.wa.gov/ContractorStrikes)
- Look up approved Intent and Affidavit Forms: [Lni.wa.gov/PWIASearch](https://lni.wa.gov/PWIASearch)
- Look up journey level rates: [Lni.wa.gov/ContractorWages](https://lni.wa.gov/ContractorWages)
- State Approved Registered Apprentice Wage Rates Lookup: [Lni.wa.gov/ApprenticeWages](https://lni.wa.gov/ApprenticeWages)
- Verify tool to look up a contractor, tradesperson, or business: [Lni.wa.gov/Verify](https://lni.wa.gov/Verify)

Portal signup

- Awarding agency portal signup: [Lni.wa.gov/AAPortal](https://lni.wa.gov/AAPortal)
- Contractor portal signup: [Lni.wa.gov/ContractorPortal](https://lni.wa.gov/ContractorPortal)
- Portal access, other questions: Email pw1@lni.wa.gov

Prevailing Wage Advisory Council

- Prevailing Wage Advisory Committee (PWAC): lni.wa.gov/PWAC

Complaint forms

- Worker Prevailing Wage Complaint Form: lni.wa.gov/go/F700-146-000
- Interest Party Prevailing Wage Complaint Form: lni.wa.gov/go/F700-129-000

Statute (RCW) and rule (WAC) links:

- Check current prevailing wage law on the Legislative web site:
app.leg.wa.gov/rcw/default.aspx?cite=39.12
- Find prevailing wage administrative rules on the legislative web site:
app.leg.wa.gov/wac/default.aspx?cite=296-127

Contact Information

Prevailing Wage Program

Mailing Address:
Department of Labor & Industries
PO Box 44540
Olympia WA 98504-4540

Street Address:
7273 Linderson Way SW
Tumwater WA 98501

Phone: 360-902-5335 or 1-855-545-8163
Fax: 360-902-5300

Lni.wa.gov/licensing-permits
Email: pw1@Lni.wa.gov
Subscribe: If you would like to receive Prevailing Wage updates and information, sign up at **public.govdelivery.com/accounts/WADLI/subscriber/new**.

Washington State Apprenticeship Program

Mailing Address:
Department of Labor & Industries
PO Box 44530
Olympia WA 98504-4530

Phone: 360-902-5320
Lni.wa.gov/Apprenticeship

Other Contacts

Contractor Registration

- **Lni.wa.gov/licensing-permits**
- 1-800-647-0982

Workers' Compensation (premium status)

- **Lni.wa.gov/Insurance**
- 360-902-4817

Electrical Licensing

- **Lni.wa.gov/ElectricalLicensing**
- 360-902-5269

Washington State Auditor's Office

- **sao.wa.gov**
- 564-999-0950

Employment Standards

- **Lni.wa.gov/workers-rights**
- 360-902-5316

United States Department of Labor

- **dol.gov**
- 1-866-487-2365

Visit **Lni.wa.gov/Offices** for a full list of our office locations.

*Upon request, foreign language support and formats for persons with disabilities are available. Call 1-800-547-8367. TDD users, call 711.
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