



PREVAILING WAGE RATE LAWS

A Handbook for Public Agencies, Contractors and Subcontractors in Oregon



2024 Edition

Oregon Bureau of Labor and Industries
Wage and Hour Division, Prevailing Wage Rate Unit

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[BOLI Website](#)

[Prevailing Wage Rate Home Page](#)

To Our Readers

This book is prepared as a general summary and teaching guide to help public agencies, contractors, and subcontractors understand and comply with Oregon's prevailing wage rate law. The information in this book reflects legislative changes through the 2023 legislative session. Appendices include links to applicable Oregon Revised Statutes and Oregon Administrative Rules, along with helpful contacts and other useful information.

The information in this book is not intended as legal advice. It is meant to be helpful when read in conjunction with the prevailing wage rate statutes and rules. Oftentimes, applying prevailing wage rate law in specific situations is very complex. Those wishing legal advice should contact an attorney and not rely on this guide.

See BOLI's website [here](#) for a list of attorneys who may be willing to represent employers, employees, and witnesses in prevailing wage rate law matters.

Those with general questions about the law may contact the Bureau of Labor and Industries (BOLI) Prevailing Wage Rate Unit at pwr.email@boli.oregon.gov or (971) 245-3844.

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Summary of Updates to the 2024 PWR Laws Handbook

The 2023 legislative session made several changes to both Oregon's Prevailing Wage Rate (PWR) laws and to Oregon's Public Contracting laws. The changes apply to procurements that a contracting agency advertised or solicited, or if the contracting agency did not advertise or solicit the procurement, to public improvement or public works contracts into which the contracting agency entered, on or after January 1, 2024.

The Definition of "Public Works" is Updated

[Senate Bill 594](#) updated the definition of "public works" to include demolition and removal of hazardous waste. Demolition projects and work to remove hazardous waste may now be subject to the PWR laws regardless of whether any construction work will be done.

Delivery Personnel

BOLI's enforcement regarding when delivery personnel on public works projects are owed prevailing wages will now follow the existing PWR rules in [OAR 839-025-0035](#)(6) and (7), rather than follow the federal Davis-Bacon and Related Acts.

Under [OAR 839-025-0035](#)(6) and (7), on projects subject to Oregon's PWR laws, all delivery personnel employed by contractors, subcontractors, and commercial suppliers must be paid the appropriate prevailing wage rate for all time spent performing delivery duties on the project site.

New Workforce and Reporting Requirements

The updates made to [ORS 279C.533](#) through [House Bill 2649](#) did not make changes to the PWR laws, but for certain public improvement projects done by "qualifying agencies," the bill requires apprenticeship utilization and sets aspirational benchmarks for women, minority, and veteran participation. Qualifying agencies are:

- State agencies;
- Higher Education Coordinating Commission;
- Public universities listed in ORS 352.002;
- A community college district as defined in ORS 341.005.

In addition, HB 2649 requires contractors to track and report to the qualifying agency worker information including the worker's name, occupation, and number of hours worked on the project; whether the hours are journey worker or apprentice hours; and the worker's race/ethnicity, gender, and veteran status. At the end of the project, the qualifying agency is required to submit this information to BOLI.

For more information on the requirements of HB 2649, see the [FAQs](#) on BOLI's website.

Changes to the Federal Davis-Bacon Act and Davis-Bacon and Related Acts

The U.S. Department of Labor made changes to the Davis-Bacon Act (DBA) and the Davis-Bacon and Related Acts (DBRA) that will affect some public works projects in Oregon. These changes apply to public works contracts subject to both Oregon's PWR laws and the DBA/DBRA that were entered into as of October 23, 2023.

On public works project subject to both Oregon's PWR laws and the DBA/DBRA, ORS 279C.838(2) and (3) require BOLI to follow U.S. Department of Labor (US DOL) regulations regarding "site of work" and delivery of materials to a project site. US DOL made [changes to their rules](#) in both of these areas:

- The “site of work” will now include secondary construction sites where a significant portion of the building or work is constructed if the site is dedicated exclusively, or nearly so, to the project for a specific period of time.
- Delivery personnel working for contractors and subcontractors on a PWR project must be paid for all work on site, provided it is not just a few minutes onsite to drop off materials.
- Delivery personnel working for material suppliers are not owed prevailing wages, provided the only work being done is loading, unloading, or waiting for materials to be loaded or unloaded.

Oregon's Prevailing Wage Rates

Oregon passed its Prevailing Wage Rate (PWR) law, sometimes referred to as the "Little Davis-Bacon Act," in 1959. As the nickname implies, the Oregon PWR law is modeled after the federal Davis-Bacon Act prevailing wage laws. Today, Oregon continues to update and refine its PWR law to reflect changes in the industry.

Oregon's lawmakers designed PWR law, ORS 279C.800 *et seq.*, to ensure that contractors compete on their ability to perform work competently and efficiently while maintaining community established compensation standards, to encourage the training and education of workers in industry skill standards, and to encourage employers to use the funds required by the PWR law for fringe benefits for the actual purchase of such benefits. ORS 279C.805

The Bureau of Labor and Industries (BOLI) is responsible for administering and enforcing the PWR law and for educating contractors, subcontractors and public agencies about its requirements.

This guide focuses on PWR requirements and BOLI enforcement. Underpaid employees as well as contractors, subcontractors, or other interested parties may file complaints with BOLI's Wage and Hour Division, or file a civil suit for damages against a violator of the PWR law.

Advisory Committee

The Labor Commissioner appoints an advisory committee to assist in the administration of the PWR law. This committee includes an equal number of management and labor members who are involved in building and construction work on public works contracts. The Commissioner may also appoint other interested parties. ORS 279C.820

PWR Seminars

BOLI's Prevailing Wage Rate Unit offers free seminars to help contractors, subcontractors and public agencies stay in compliance with prevailing wage rate law. The [seminar schedule](#) can be found on BOLI's website. Registration is no longer required for PWR seminars.

PWR Statutes and Rules

To access the Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) related to prevailing wage rate laws referenced in this handbook, see:

[PWR Oregon Revised Statutes](#) (Oregon State Legislature website, starting at ORS 279C.800)

[PWR Oregon Administrative Rules](#) (Oregon Secretary of State website)

Which Projects Are Covered by the PWR Law?

To be subject to the PWR law, a project must meet the definition of the term “public works.” ORS 279C.800(6)(a) and OAR 839-025-0004(25)(a)

Definition of “Public Works”

The term “public works” includes, but is not limited to:

- Roads, highways, buildings, structures, and improvements of all types for which a public agency contracts or carries on construction, reconstruction, major renovation, demolition, removal of hazardous waste, or painting to serve the public interest. ORS 279C.800(6)(a)(A)
- Projects for the construction, reconstruction, painting, demolishing, removing hazardous waste from, or performing a major renovation on, a road, highway, building, structure, or improvement of any type that uses \$750,000 or more of funds of a public agency. ORS 279C.800(6)(a)(B)
- Projects for the construction of a privately owned road, highway, building, structure, or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency. ORS 279C.800(6)(a)(C)
- The construction or installation on public property of any device, structure, or mechanism that uses solar energy, regardless of the total project cost or whether the project uses funds of a public agency. ORS 279C.800(6)(a)(D)
- The construction, reconstruction, painting, demolition, removal of hazardous waste from, or major renovation of, a road, highway, building, structure, or improvement of any type that occurs, with or without using funds of a public agency, on real property that a public university listed in ORS 352.002 owns. ORS 279C.800(6)(a)(E)
The public universities listed in ORS 352.002 are:

<i>University of Oregon</i>	<i>Oregon State University</i>
<i>Portland State University</i>	<i>Oregon Institute of Technology</i>
<i>Western Oregon University</i>	<i>Southern Oregon University</i>
<i>Eastern Oregon University</i>	
- Demolition of, or removal of hazardous waste from, a road, highway, building, structure, or improvement of any type that uses \$750,000 or more in funds of a public agency, or that occurs on real property that a state agency owns, but that does not involve constructing, reconstructing, renovating or painting a road, highway, building, structure, or improvement. ORS 279C.800(6)(a)(F)

The PWR law does not regulate the reconstruction or renovation of privately owned property that a public agency leases. However, if the project includes new construction on such property, such as adding square footage or constructing something outside the framework or footprint of the existing structure, such a project, including both the reconstruction/renovation and the new construction, may be subject to the PWR regulations under ORS 279C.800(6)(a)(A), (B) or (C). ORS 279C.800(6)(b)(A); OAR 839-025-0004(25), (28)

Covered Activities

PWR coverage is determined by the type of work performed on the project, not by what a contract is called. For example, if a project includes covered activities, such as rewiring a major portion of a building, and meets the other jurisdictional requirements of the PWR law, the entire project is covered. Any person employed on a public works project whose duties are manual or physical in nature is a worker required to be paid the applicable prevailing wage rate. OAR 839-025-0004(38)

Types of work included in the definition of “public works” that are subject to the PWR law:

Construction

Construction includes the initial construction of, or the addition to, buildings, structures, and roads. OAR 839-025-0004(6)

Reconstruction

Reconstruction includes the restoration of existing buildings and the restoration, rebuilding, or resurfacing of existing roads. OAR 839-025-0004(27)

Major Renovation

Major renovation includes any remodeling or alteration of existing structures or roads that costs more than \$50,000. OAR 839-025-0004(16)

Demolition

Demolition includes the dismantling, razing, destroying, wrecking, or removal of buildings or other structures or any part thereof, and of highways and roads. OAR 839-025-0004(7)

Removal of Hazardous Waste

For purposes of the definition of “public works,” hazardous waste is defined in [40 C.F.R. § 261.3](#), [OAR 340-101-0033](#) and [340-102-0011](#). OAR 839-025-0004(12)

Painting

If a painting project meets the other jurisdictional requirements of the PWR law, the project will be subject to the law.

Other types of work or contracts that may be subject to the PWR law:

Maintenance Contracts

General maintenance work, such as sweeping, cleaning, and landscaping, is not covered unless it is done as part of a public works project that includes construction, reconstruction, major renovation, painting, demolition, or hazardous waste removal. For example, the PWR law does not apply if maintenance landscaping work such as mowing or pruning is performed on the grounds of an existing building where no other work is being performed. If the same landscaping is part of a major building renovation, however, then it is covered work.

Maintenance work such as repairing or replacing a roof, recarpeting part of a building, chip sealing a road, or filling potholes is considered to be reconstruction work. If a project involving this type of work meets the other jurisdictional requirements of the PWR law, the project will be subject to the law.

Moving Contracts

When moving takes place before, during, or after a construction, reconstruction, major renovation, painting, demolition, or hazardous waste removal project that is subject to the PWR law, the moving contract will also be subject to the PWR law, and the workers must be paid the prevailing rate of pay for the type of duties being performed on the project site. For example, if a new building is constructed and the project is subject to the PWR law, the work to move furniture and materials into the new building will be subject to the PWR law, as well. This work is necessary to complete the building and must be considered part of the overall construction project.

Retainer Agreements

Public agencies often enter into retainer agreements, sometimes called “on-call contracts,” that span one or more years for the performance of maintenance and repair activities that may include construction, reconstruction, major renovation, painting, demolition, or hazardous waste removal. Frequently these services are to be provided at multiple agency-owned facilities or locations. Even if none of the individual work orders or “on-call” work events performed under the contract exceed the \$50,000 threshold, the contract is subject to the PWR law if the total contract price exceeds the threshold. Whenever a public agency enters into a contract that exceeds \$50,000 and includes a covered activity (i.e., construction, reconstruction, major renovation, painting, demolition, or hazardous waste removal), the entire contract is subject to the PWR law.

For example, a county may enter into a retainer agreement for highway maintenance wherein the scope of work includes activities such as sealing cracks in the pavement, filling potholes, repairing culverts, fixing fences, repainting traffic lanes, etc., which have been determined to be covered activities as defined in OAR 839-025-0004. If these maintenance duties are contracted out and the contract value is over \$50,000, the contract would be subject to the PWR law. Additionally, any other work done in support of that contract would also be covered.

Travel Time

Employees are due prevailing wages for travel time when they are traveling between the work site and a dedicated pit, tool yard, or another covered site. If employees are otherwise entitled to travel time (traveling from job site to job site during the workday, for example), then the employer must pay that time at an agreed-upon rate which is at least minimum wage.

If travel time is compensable time, and if the travel time is related to a public contract, the hours of travel time will count toward daily overtime. For more information, see the “Overtime Requirements” under the Contractor Responsibilities section of this book.

Warranty Work

If work done on a project subject to the PWR law is covered by a warranty, all work done under that warranty will also be subject to the PWR law. This is the case even if the warranty is contracted separately from the construction contract.

Exemptions from the PWR Law

A project may meet the definition of the term “public works,” but if one of the following exemptions applies to the project, the project will not be subject to the PWR law.

➤ **Projects Costing \$50,000 or Less**

Except for the construction or installation on public property of any device, structure, or mechanism that uses solar energy, the PWR law does not apply to projects costing \$50,000 or less. This amount is based on the cost of the entire project, not individual contracts. The total project cost includes the value of work performed by every person paid by a contractor or subcontractor for the person's work on the project. The price of a project also includes all materials and supplies, if purchased specifically for the project.

The total project cost does not include the value of donated materials or work performed on the project by individuals volunteering to the public agency without pay. ORS 279C.810(2)(a); ORS 279C.800(6)(a)(D); OAR 839-025-0100(1)(a)

If a project begins with a total project cost under \$50,000, but change orders increase the project cost to more than \$50,000, the entire project will be subject to the PWR law, including all work already performed on the project. OAR 839-025-0100(1)(a)

➤ **Projects That Do Not Use Funds of a Public Agency**

Generally, the PWR law does not apply to projects for which no funds of a public agency are directly or indirectly used. The exceptions to this are for the construction or installation on public property of any device, structure, or mechanism that uses solar energy, and for the construction, reconstruction, painting, demolition, removal of hazardous waste from, or major renovation of, a road, highway, building, structure, or improvement of any type by a private entity on real property owned by a public university with a governing board or by a not-for-profit organization or other entity that a public university with a governing board owns or controls exclusively. ORS 279C.810(2)(b); ORS 279C.800(6)(a)(D) and (E); ORS 352.138(4)(b); OAR 839-025-0100(1)(c)

"Directly used" funds of a public agency include:

- Revenue, money, or that which can be valued in money collected for or in the custody and control of a public agency;
- Money loaned by a public agency, including the loan of proceeds from the sale of conduit or pass-through revenue bonds, for the specific purpose of financing a project; and
- Public property or other assets used as payment for all or part of a project. OAR 839-025-0004(11)(a)(A)

"Indirectly used" funds of a public agency means the public agency ultimately bears the cost of all or part of the project; such indirectly used funds include:

- Amortizing the cost of construction over the life of a lease and paying these costs with funds of a public agency during the course of the lease;
- The public agency subsidizing the costs of construction that would normally be borne by the contractor;
- Using insurance proceeds that belong to a public agency to pay for construction; and
- Using or creating a private entity as a conduit for funding a project when the private entity is in fact an alter ego of the public agency. OAR 839-025-0004(11)(a)(B)

"Funds of a public agency" does not include:

- Funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction, reconstruction, major renovation, or painting;
- Building and development permit fees paid or waived by the public agency;

- Staff resources (employees) of the public agency used to manage a project or to provide a principal source of supervision, coordination, or oversight of a project;
 - Staff resources (employees) of the public agency used to design or inspect one or more components of a project;
 - Tax credits or tax abatements;
 - Land that a public agency sells to a private entity at fair market value;
 - The difference between the fair market value of land and the value of that land after taking into account any requirements, restrictions, or other limitations, exclusive of zoning or land use regulations, the public agency imposes on the development or use of the land;
 - The value added to land as a result of a public agency's site preparation, demolition, or remediation, except for the value added in excess of the expenses the public agency incurred in doing such work;
 - Money derived from the sale of bonds that are loaned by a state agency to a private entity, unless the money will be used for a public improvement;
 - Bonds or loans from the proceeds of bonds issued in accordance with ORS chapter 289 or ORS 441.525, unless the bonds or loans will be used for a public improvement. ORS 279C.810(1)(a); OAR 839-025-0004(11)(b)
- **Privately Owned Projects That Use Less Than \$750,000 in Funds of a Public Agency and for Which Less Than 25% of the Square Footage Will Be Occupied by a Public Agency**

The PWR law does not apply to projects that are privately owned, that use funds of a private entity, in which less than 25 percent of the square footage of the completed project will be occupied or used by a public agency, and for which less than \$750,000 of funds of a public agency are used. ORS 279C.810(2)(c); OAR 839-025-0100(1)(d)

➤ **Privately Owned Residential Projects That Provide Affordable Housing**

The PWR law does not apply to privately owned residential construction projects that predominately provide affordable housing. Generally, "residential construction" projects are projects for the construction, reconstruction, major renovation, or painting of a single family house or an apartment building of no more than four stories in height. "Affordable housing" means the occupants' incomes are no greater than 60 percent of the area median income, or no greater than 80 percent if the occupants are owners. "Predominately" for affordable housing means at least 60 percent of the project is designated for affordable housing. Affordable housing can be considered "privately owned" even if it is owned by a public agency, as long as it is leased to a private entity for 50 years or more, or if the affordable housing is owned by a partnership, as long as the public agency is not a majority owner in the partnership. ORS 279C.810(2)(d); OAR 839-025-0100(1)(e)

Excluded Agencies and Workers

Excluded Agencies

The PWR law does not apply to contracts with certain public agencies, although other wage-related regulations often apply. In most cases, the exemption from the law is found in the contracting agency's statutes or in ORS 279A.025, rather than the Prevailing Wage Rate statutes. It is important to note that the PWR exemption applies only if the contract is with the

agency itself; the exemption does not apply to funds of the exempt public agency when used to fund other projects. For example, while the Oregon State Lottery Commission is exempt, a project is not exempt merely because it is funded with lottery money.

While Oregon Health Sciences University (OHSU) is generally exempt from ORS Chapter 279, OHSU must ensure that prevailing wages are paid to workers. ORS 353.130 Additionally, construction, reconstruction, major renovation, or painting that OHSU performs or contracts to perform in connection with the OHSU Cancer Institute Project is subject to the PWR laws. [OL Ch. 121, Sec. 27, 2014](#)

Excluded Workers

It is not necessary to pay prevailing wages to inmates of the Oregon Department of Corrections assigned to a work release program when working on covered projects, or to inmates working for Oregon Corrections Enterprises on PWR projects. It is also not necessary to pay prevailing wages to Oregon Youth Conservation Corps members when working on covered projects. OAR 839-025-0100(2)

When a public works project is subject to the federal Davis-Bacon Act, Oregon's prevailing wage rate law does not apply to workers enrolled in skill training programs that are certified by the United States Secretary of Transportation under the Federal-Aid Highway Act (23 U.S.C. 113(c)). ORS 279C.838(5)

Joint Jurisdiction with Federal Government on Some Projects

When a project is subject to regulation under the state PWR law and uses federal funds that require compliance with the federal Davis-Bacon Act, the project will be subject to both the state PWR law and the federal Davis-Bacon Act at the same time. This is the case even if the project is funded solely with federal funds, because once federal funds are in the custody and/or control of a public agency, they become "funds of a public agency" as defined in the PWR law. OAR 839-025-0004(11)

On non-residential projects subject to both state and federal prevailing wage laws, contractors must pay the higher of the state or federal prevailing wage rates to workers. ORS 279C.838; OAR 839-025-0035(2)

On "residential construction" projects subject to both state and federal prevailing wage laws, contractors may generally pay the federal residential rates, unless there is no published wage rate for a specific classification. (See the "Residential Projects and Rates" section for more information on "residential construction" projects.) OAR 839-025-0037

While most requirements of the state PWR law apply to projects subject to both state and federal prevailing wage laws, there are a few areas in which the federal requirements take precedence. For projects subject to both state and federal prevailing wage rate laws, BOLI will follow federal guidelines for the term "site of work" and for when prevailing wages are due to truck drivers and delivery personnel. (See the "Site of Work" and "Truck Drivers" sections for more information.) ORS 279C.838(2) and (3)

BOLI will also apply the federal standard to workers enrolled in skill training programs that are certified by the United States Secretary of Transportation under the Federal-Aid Highway Act. ORS 279C.838(5)

Coverage Determination Requests

When requested to do so by a public agency or other interested party, the Commissioner of the Bureau of Labor and Industries will issue a coverage determination about whether a project or proposed project is or would be a public works project. The requests must be submitted to BOLI in writing, must describe all the relevant details of the project or proposed project, and must be accompanied by all documents, records or other information necessary for the Commissioner to make the determination. In addition, if the coverage determination request is not submitted by a public agency, the party submitting the request to BOLI must also submit a copy of the request to any public agency associated with the project.

Once BOLI has issued the determination, the requestor or anyone adversely affected by the determination may request reconsideration of the determination or a hearing.

More information about the coverage determination process, as well as previous coverage determinations issued, can be found on BOLI's website [here](#). Information about how to submit a coverage determination request can be found [here](#). ORS 279C.817; OAR 839-025-0005

Multiple Wage Rate Determinations

Some public works projects may involve more than a single construction type. For example, one project may consist of the construction of one building of residential units and one building of commercial space. On such a project, the Commissioner may authorize residential wage rates to be paid for work performed in connection with the construction of the residential building, and non-residential prevailing wage rates to be paid for work performed in connection with the construction of the commercial building.

Requests for authorization to use multiple wage determinations on a project must be submitted to BOLI in writing, and must include all relevant details of the project or proposed project.

If the Commissioner authorizes multiple wage rate determinations to be used on a project, continued use of the determinations is contingent upon compliance with all of the following:

- The project/contract specifications must clearly delineate the portions of the project subject to each applicable wage rate determination;
- All applicable wage rate determinations must be posted in a conspicuous and accessible location at the site of work, with an explanation of the portions of the project to which each wage rate determination applies;
- The developer or prime contractor must establish adequate controls to ensure that all workers on the project are paid in accordance with the applicable wage rates; and
- Each and every contractor employing workers on the project must prepare, submit and maintain accurate time and payroll records to demonstrate compliance with all wage rate determinations applicable to the project. OAR 839-025-0038

How Prevailing Wage Rates Are Determined

Collective Bargaining Agreements

The prevailing wage rates are based on the collective bargaining agreement for each occupation in each locality, as defined in [ORS 279C.800\(3\)](#). The “locality” is more commonly referred to as the Region, with Oregon divided into 14 Regions. Generally, if more than one collective bargaining agreement covers a trade or occupation in the Region, BOLI uses the highest rate of wage among the collective bargaining agreements to establish the prevailing wage rate for that Region. However, when establishing the prevailing wage rate for electrical workers, BOLI uses the geographical area within each local union’s collective bargaining agreement. ORS 279C.800; ORS 279C.815; OAR 839-025-0009

Wage Rates and Work Classifications

The prevailing practice of an industry determines how work is classified. Wage rates for each classification are listed as a base rate and an hourly fringe rate, and it is the combination of these two amounts that must be paid to the worker. Rates are determined for a number of classifications. It is important to note that it is the work performed by the employee, not the worker’s title or qualifications, that determines which classification applies. See “[Definitions of Covered Occupations for Public Works Contracts in Oregon.](#)”

Rate Books Published Twice Annually

BOLI publishes the state prevailing wage rates twice a year, and periodically updates the rates through amendments to reflect revisions to labor agreements or other changes. These publications can be found on BOLI’s website [here](#).

State law requires public agencies to include the applicable prevailing wage rates in the contract specifications of covered projects, and requires all contractors and subcontractors to post them at all PWR job sites. ORS 279C.830(1); ORS 279C.840(4)

Generally, the applicable prevailing wage rates are those in effect at the time the initial specifications are first advertised for bid solicitations. (See the “Applicable Rates on Public Works Project” section for more information on applicable rates for certain types of projects.) OAR 839-025-0020(6)(b)

Addition of Trade Classification to the Rate Book

The PWR law requires the submission of a written request to add a trade to the prevailing wage rate determinations. Anyone may request the consideration of an additional classification by writing to the Prevailing Wage Rate Unit, Wage and Hour Division, 1800 SW 1st Avenue, Suite 500, Portland, Oregon, 97201. The request must include the name of the proposed trade, the minimum education required, a description of the skills required, and the tools used.

Occasionally the classification process calls for a complete study of the proposed trade. The bureau’s PWR Coordinator conducts the study and makes recommendations to the Commissioner. OAR 839-025-0006

Special Wage Determinations

Sometimes public contracting agencies require the use of a trade not normally included in the wage determinations. If a planned public works project requires a trade that does not have an established classification or rate, the public agency may submit a written request to BOLI for consideration. This request must describe the work to be done and identify the requested trade.

If BOLI agrees that a special determination is needed, it will work with the agency to conduct a wage survey. The agency conducts the survey and submits the results to the PWR coordinator. This data is used to help the Commissioner establish the appropriate classification and rate.
OAR 839-025-0007

How to Determine the Correct Rate of Pay

To determine the correct rate of pay for workers on covered projects, agencies, contractors, and subcontractors need to refer to the booklet titled ***Prevailing Wage Rates for Public Works Contracts in Oregon***. Prevailing wage rate booklets are published twice a year, usually in January and July. Amendments to the rates are generally published twice a year, usually in April and October.

Projects Subject to State Law Only

To find the correct rate of pay on projects subject to Oregon's PWR law, use the following steps:

1. When was the project first advertised for bid?

Generally, the rates in effect at the time the bid specifications are first advertised are those that apply for the duration of the project. (See the "Applicable Rates on Public Works Project" section for more information on applicable rates for a project.)

2. What type of work is the worker performing?

Using BOLI's [Definitions of Covered Occupations booklet](#), find the definition that most closely matches the actual work being performed by the worker. If you have any questions about work classifications, contact BOLI at pwr.email@boli.oregon.gov or (971) 245-3844.

3. Find the correct occupation in the appropriate *Prevailing Wage Rate for Public Works Contracts in Oregon* publication. The prevailing wage rate is made up of an hourly base rate plus an hourly fringe rate. It is the combination of the base rate plus the fringe rate that is due the worker on an hourly basis. This rate may include a group number, shift differential, hazard pay, and/or zone pay. Shift differentials, hazard pay, and zone pay are added to the base rate and are included in overtime calculations. Rate books and amendments to rate books can be found on BOLI's website [here](#).

Apprentices and trainees generally must be paid the full fringe benefit portion of the prevailing wage rate. However, in certain trades, apprentices or trainees may be paid less than the full fringe benefit rate according to the prevailing practice for that trade. Spreadsheets showing the hourly fringe rate owed to apprentices can be found on BOLI's website [here](#).

4. If you still need help, contact BOLI at pwr.email@boli.oregon.gov or (971) 245-3844.

Projects Subject to State and Federal PWR Laws

ORS 279C.838 requires the higher of either the state prevailing wage rates or federal Davis-Bacon rates to be paid to workers on non-residential projects in Oregon subject to both the state PWR law and federal Davis-Bacon Act. To find the correct rate of pay on such projects, use the steps listed above to find the correct state prevailing wage rate, then compare the state rate to the appropriate rate from the applicable federal wage determination. The worker must be paid the higher of the two rates.

Apprentices being paid the federal prevailing wage rate must be paid hourly fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of hourly fringe benefits listed in the Davis-Bacon wage determination.

For assistance in finding the applicable federal wage determination for the project, check with the project's public agency. The federal wage determinations can also be found online at www.sam.gov.

If you need help comparing the state and federal prevailing wage rates, contact BOLI at pwr.email@boli.oregon.gov or (971) 245-3844.

Public Agency Responsibilities

Public agencies must comply with a host of legal contracting requirements. The main focus of this portion of the handbook for public agencies is the Prevailing Wage Rate law, ORS 279C.800 through 279C.870. However, this section also includes information on several requirements from Public Contracting Code in ORS 279C that fall outside of the Prevailing Wage Rate law.

Public Contracting Requirements

Workforce and Reporting Requirements on Certain Public Improvements

2023's [House Bill 2649](#) updated the requirements under [ORS 279C.533](#) for apprenticeship utilization thresholds and set aspirational benchmarks for women, minority, and veteran participation on certain public improvement¹ contracts. These new requirements apply *only* to public improvement contracts done by “qualifying agencies.” **Qualifying agencies** are:

- State agencies;
- Higher Education Coordinating Commission when using funds from the State Treasury for the construction costs of a public improvement;
- Public universities listed in ORS 352.when 002 using funds from the State Treasury for the construction costs of a public improvement; and
- Community colleges when using funds from the State Treasury for the construction costs of a public improvement.

Apprentice Requirements

On public improvement contracts done by qualifying agencies for which the contract price exceeds \$3,000,000, the qualifying agency must provide in the contract that the contractor employ apprentices to perform 12% or more of the work hours that workers in apprenticeable occupations perform on the contract. In addition, the qualifying agency must provide in the public improvement contract that the contractor will require in each subcontract with a contract price of \$750,000 or more that the subcontractor employ apprentices to perform 12% or more of the work hours that workers in apprenticeable occupations perform on the subcontract.

If a contractor does not meet the apprenticeship utilization requirement, the qualifying agency must reduce the payment made to the contractor by \$15/hour for each hour the apprenticeship utilization was short of the 12% requirement. The computation for the payment reduction is:

((total number of all hours worked x 12%) minus the number of apprentice hours worked) x \$15

The qualifying agency must pay the payment reduction amount to the State Treasury, to the credit of the Bureau of Labor and Industries Account established under ORS 651.160. BOLI must use these funds to expand apprenticeship training programs.

Outreach, Recruitment and Retention

For all public improvement contracts, regardless of contract amount, qualifying agencies must require that the contractor establish and implement a plan for outreach to, and recruitment and retention of, women, minority individuals, and veterans to perform work on the public improvement contract. The aspirational target is that individuals in one or more of these groups

¹ [Defined in ORS 279A.010\(1\)\(cc\)](#)

make up at least 15% of the total number of workers on the public improvement contract.

The contractor on a public improvement contract must require any subcontractor with a subcontract price of \$750,000 or more establish and implement their own plan for outreach to, and recruitment and retention of, women, minority individuals, and veterans to work on the on the subcontract, with the same aspiration target that individuals in one or more of these groups make up at least 15% of the total number of workers on the subcontract.

Reporting Requirements

Contractors must report their compliance and their subcontractors' compliance with the outreach, recruitment and retention requirements to the qualifying agency.

Additionally, contractors must track and report to the qualifying agency worker information including the worker's name, occupation, and number of hours worked on the project; whether the hours are journey worker or apprentice hours; and the worker's race/ethnicity, gender, and veteran status. Contractors may use BOLI's Enhanced Payroll/Certified Statement form for this purpose, which can be found in the forms table on the BOLI website [here](#).

Within 30 days of making the final payment for the public improvement contract, the qualifying agency must report the demographic and apprenticeship utilization information to BOLI, using the [Online System for Reporting on Public Improvement Projects portal](#).

For more information on these requirements and on the online reporting system, see the [FAQs](#) on BOLI's website.

Planned Public Improvement Summary

As part of public contracting requirements under [ORS 279C.305](#), a contracting agency must submit to BOLI a list of public improvements² it plans to fund during the coming budget period. The agency must submit the list at least 30 days before it adopts a budget, and should revise the list if its plans change. The list must state whether the public agency intends to perform the construction through a private contractor.

Public Improvement Project Cost Analysis

Additionally, [ORS 279C.305](#) requires that a contracting agency conduct a cost analysis for certain public improvements. If a contracting agency plans to use its own personnel or equipment to perform construction work on a public improvement and the estimated value of the contracting agency's personnel or equipment exceeds \$200,000, or exceeds \$125,000 if the public improvement involves the resurfacing of highways, roads, or streets at a depth of two or more inches, the contracting agency must file with BOLI an analysis that shows the decision to use the agency's personnel or equipment conforms to the policy that public agencies shall make every effort to construct public improvements at the least cost to the contracting agency. The analysis must be submitted to BOLI at least 180 days before construction begins on the public improvement. Once filed, all documents are public records.

The Planned Public Improvement Summary form (WH-118) and the Public Improvement Project Cost Analysis form (WH-119) can be found in the forms table on BOLI's website [here](#). The forms may be emailed to pwr.email@boli.oregon.gov or mailed to the Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 1800 SW 1st Avenue, Suite 500, Portland, Oregon, 97201.

² [Defined in ORS 279A.010\(1\)\(cc\)](#)

Prevailing Wage Rate Law Requirements

Notice of Public Works Form

Public agencies are required to notify BOLI within 30 days after awarding any public works contract subject to PWR law using the Notice of Public Works form (WH-81). If a public agency awards multiple contracts on a single project, the Notice of Public Works form must be submitted for each contract. This form can be found in the forms table on BOLI's website [here](#). Public agencies must also include a copy of the disclosure of first-tier subcontractors submitted by the contractor to the public agency pursuant to [ORS 279C.370](#). The Notice of Public Works form may be emailed to pwr_email@boli.oregon.gov or mailed to the Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 1800 SW 1st Avenue, Suite 500, Portland, Oregon, 97201.

When a project is a public works project of the type described in ORS 279C.800(6)(a)(B), (C), (D), (E), or (F) (i.e., a public works project for which no public agency awards a contract to a contractor), the public agency that enters into an agreement to provide funds for the project; occupy or use the completed project; or allow construction, reconstruction, major renovation, painting, demolition, or removal of hazardous waste to occur on the agency's property must submit the Notice of Public Works form to BOLI. For these types of projects, the form is due at the time the agency enters into an agreement for the project. ORS 279C.835; OAR 839-025-0013

Prevailing Wage Fee

On all projects subject to the PWR law, the public agency must pay a fee to BOLI's PWR Unit for every contract awarded to a contractor. If a public agency awards multiple contracts on a single project, a fee is due for each contract awarded. The amount of the fee is one-tenth of one percent (.001) of the contract price; however, there is a minimum fee of \$250 and a maximum fee of \$7,500. The public agency must submit a Public Work Contract Fee Information form (WH-39) with payment of the fee. This form can be found in the forms table on BOLI's website [here](#). The form and fee payment are due at the same time the public agency submits the Notice of Public Works form, and must be mailed to the Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 1800 SW 1st Avenue, Suite 500, Portland, Oregon, 97201. BOLI issues a Certificate of Payment as proof of payment. ORS 279C.825; OAR 839-025-0200

If a contract does not have a "hard" bid amount, the public agency should base the initial fee on the guaranteed maximum. Once the project is complete, the public agency may file a Fee Adjustment form (WH-40) that reflects the actual cost of the project. If there is no guaranteed maximum amount, the agency must make a good faith estimate of the contract price and calculate the fee based on this estimated amount. OAR 839-025-0220

The public agency must submit a Fee Adjustment form (WH-40) to BOLI within 30 days of the final progress payment after completion of the contract when change orders increase or decrease the original contract by \$100,000 or more. If the fee would increase by \$100 or more, the public agency must pay any additional fee and submit the adjustment form. This form can be found in the forms table on BOLI's website [here](#), and must be mailed with the additional fee payment to the Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 1800 SW 1st Avenue, Suite 500, Portland, Oregon, 97201. If BOLI owes the public agency a refund, it will be issued once the adjustment form is processed. OAR 839-025-0210

When a project is a public works project of the type described in ORS 279C.800(6)(a)(B), (C), (D), (E), or (F), (i.e., a public works project for which no public agency awards a contract to a contractor), the public agency that enters into an agreement to provide funds for the project; occupy or use the completed project; or allow construction, reconstruction, major renovation, painting, demolition, or removal of hazardous waste to occur on the agency's property must pay a PWR fee to the PWR Unit. For this type of project, the amount of the fee is based on the total project amount. If the total project amount is not known, the public agency must base the fee on the guaranteed maximum amount of the project or must make a good faith estimate of the total project amount. If multiple agencies commit funds or will occupy or use the space, if not otherwise previously agreed upon by the agencies, the fee will be pro-rated proportionately based on the amount of funds provided or the space occupied or used by each agency. OAR 839-025-0230

Contracts and Specifications Require Specific Provisions

Public agencies must include certain items in the specifications and in the contracts for projects subject to the PWR law.

Specifications for contracts must include:

- A provision stating the applicable prevailing wage rates, including any appropriate amendment. (See the "Applicable Rates for Public Works Projects" section for more information.) A statement incorporating the rates by reference will satisfy this requirement, but the reference must include the title and date of the publication that applies, and the date of any amendment that applies. ORS 279C.830(1)(a); OAR 839-025-0020(6) and (7)
- A provision that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt. ORS 279C.830(2)(a); OAR 839-025-0020(6)(e)

On projects subject to both Oregon's PWR law and the federal Davis-Bacon Act, **specifications** must also include:

- A requirement that the contractor pay the higher of the applicable state or federal prevailing rate of wage. ORS 279C.830(1)(b); OAR 839-025-0020(6)(c)

Contracts must include:

- A provision that workers must be paid not less than the applicable prevailing rate of wage in accordance with ORS 279C.838 and 279C.840. ORS 279C.830(1)(c); OAR 839-025-0020(5)(a)
- A provision that if the contractor fails to pay for labor and services, the agency can pay for them and withhold these amounts from payments to the contractor. ORS 279C.515; OAR 839-025-0020(2)(a)
- A provision that the contractor must pay daily, weekly, weekend and holiday overtime as required in ORS 279C.540. ORS 279C.520(1); OAR 839-025-0020(2)(b)
- A provision that the employer must give written notice to the workers of the number of hours per day and days per week they may be required to work. ORS 279C.520(2); OAR 839-025-0020(2)(c)
- A provision that the contractor must make prompt payment for all medical services for which the contractor has agreed to pay, and for all amounts for which the contractor collects or deducts from the worker's wages. ORS 279C.530; OAR 839-025-0020(2)(d)
- A provision that requires the contractor to have a public works bond filed with the

Construction Contractors Board before starting work on the project, unless exempt. ORS 279C.830(2)(b)(A); OAR 839-025-0020(3)(a)

- A provision that requires the contractor to include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt. ORS 279C.830(2)(b)(B); OAR 839-025-0020(3)(b)

On projects subject to both Oregon's PWR law and the federal Davis-Bacon Act, **contracts** must also include:

- A requirement that the contractor pay the higher of the applicable state or federal prevailing rate of wage. ORS 279C.830(1)(b); OAR 839-025-0020(6)(c)

Public agencies are jointly and severally liable for any unpaid prevailing wages unless they have included a statement in the contract documents, such as the contract, specifications or the advertisement for bid, that all workers must be paid the applicable prevailing wage rate. ORS 279C.855(3); OAR 839-025-0080(4)

If a public works project is subject to the Davis-Bacon Act but the public agency fails to include the state and federal prevailing rates of wage in the specifications, or fails to provide in the contract that workers on the public works must be paid not less than the higher of the applicable state or federal prevailing rate of wage, and the workers on the project are paid the lower rather than the higher prevailing wage rate, the public agency is liable to the workers for the difference between the lower and the higher rate, plus an equal amount as liquidated damages, for every hour worked. ORS 279C.855(4); OAR 839-025-0080(6)

Contract and Specification Requirements on Public/Private Projects

When a project is a public works project of the type described in ORS 279C.800(6)(a)(B), (C), (D), (E), or (F) (i.e., a public works project for which no public agency awards a contract to a contractor), the public agency that enters into an agreement to provide funds for the project; occupy or use at least 25% of the completed project; or allow construction, reconstruction, major renovation, painting, demolition, or removal of hazardous waste to occur on the agency's property must require in any agreement entered into by the public agency the following:

- The specifications for the project must contain a provision that states the applicable prevailing wage rates for the project, and
- Every contract and subcontract for the project must provide that contractors and subcontractors must pay each worker on the project not less than the applicable prevailing wage rate. OAR 839-025-0020(10)

Applicable Rates for Public Works Projects

Generally, the applicable prevailing wage rates for a public works project are those in effect at the time the initial specifications are first advertised for bid solicitations by the public agency. The rates in effect at that time are the rates that are to be used for the duration of the project.

Additional provisions exist for determining the applicable rates for the following:

- **Projects Subject to Both State and Federal PWR Laws**

If the project is subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, the public agency may opt to use the federal method described in [29 CFR 1.6](#) to establish the applicable state prevailing wage rates for the project. OAR 839-025-

0020(6)(d)

- **Projects Using a Construction Manager/General Contractor (CM/GC)**

When a public agency uses a CM/GC on a public works project, the CM/GC will generally perform various pre-construction tasks such as design phase development, constructability reviews and cost estimating. A guaranteed maximum price for completion of the construction-type work is typically established by amendment of the initial contract after the pre-construction tasks are complete. The CM/GC then typically acts as the General Contractor and begins the subcontracting process. Use of a CM/GC to manage public works projects for a public agency does not relieve the agency or the CM/GC of their responsibilities under the prevailing wage rate regulations.

The rates in effect at the time the CM/GC contract becomes a public works contract are the applicable rates to be used for the duration of the project. The CM/GC contract becomes a public works contract either when the contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction, reconstruction, major renovation, painting, demolition, or hazardous waste removal, or when the CM/GC contract enters the construction phase, whichever occurs first.

For example, the CM/GC will have a binding and enforceable obligation to perform or arrange for the performance of construction after the public agency and CM/GC commit to the guaranteed maximum price. The CM/GC contract enters the “construction phase” when the agency first authorizes the performance of early work that includes construction, reconstruction, major renovation, painting, demolition, or hazardous waste removal that is directly related to the public works project. OAR 839-025-0020(8)

- **Public/Private Projects**

When a project is a public works project of the type described in ORS 279C.800(6)(a)(B), (C), (D), (E), or (F) (i.e., a public works project for which no public agency awards a contract to a contractor), the applicable rates are those in effect at the time the public agency first enters into an agreement with a private entity for the project. After that time, the specifications for any contract for the public works shall include the applicable prevailing rate of wage. ORS 279C.830(1)(e)

Residential Projects and Rates

BOLI has modeled its definition of “residential construction” after the U.S. Department of Labor’s definition of such projects. Generally, residential construction projects are projects for the construction, reconstruction, major renovation or painting of a single family house or apartment building of no more than four stories in height. The residential project includes all incidental items associated with the project, such as site work, parking areas, utilities, streets and sidewalks. OAR 839-025-0004(29)(a)

BOLI does not survey or publish residential rates, so residential construction projects as defined in OAR 839-025-0004(29) and subject to Oregon’s PWR law generally use the federal residential Davis-Bacon wage rates. These rates can be found on the U.S. Department of Labor’s website, www.sam.gov. The federal residential rates apply to residential construction projects subject to Oregon’s PWR law, even if the project is not subject to the federal Davis-Bacon Act. However, if the federal residential rate for a particular trade or classification is ever less than Oregon’s minimum wage rate required by ORS 653.025, no less than Oregon’s minimum wage must be paid to the worker.

In some instances, there are no applicable federal residential wage rates for certain trades or classifications. If a wage rate is needed on a residential project subject to both state and federal prevailing wage rate law, a request for a special wage rate determination should be submitted according to the federal requirements in [29 CFR, Part 5.5\(a\)\(1\)\(ii\)](#).

If a wage rate is needed on a residential project that is subject only to Oregon's PWR law, the public agency must submit a request for a special wage rate determination to BOLI at least 15 days prior to the date the specifications for the project are first advertised. If a public agency fails to request a special wage rate determination as required, the rates in the applicable BOLI rate book will apply to those trades or classifications for which there is no applicable federal residential rate. OAR 839-025-0037

Ensuring a Payment Bond is Filed When Required

The public agency should verify that the contractor files a payment bond or posts another security when required pursuant to ORS 279C.380 and 279C.390. If the agency fails to do so, it is jointly liable with the contractor for any unpaid prevailing wages. The agency may pay any claims for unpaid labor and deduct the amount of the claims from the amount it pays the contractor. ORS 279C.625

Certified Payroll Reports

Contractors and subcontractors on public works projects must submit certified payroll reports to the public agency once a month, by the fifth business day of the following month. Certified payroll reports received by the public agency are public records subject to the provisions of ORS 192.311 to 192.478. ORS 279C.845(6)

When a project is a public works project of the type described in ORS 279C.800(6)(a)(B), (C), (D), (E), or (F) (i.e., a public works project for which no public agency awards a contract to a contractor), the contractors and subcontractors must submit certified payroll reports to the public agency providing funds for the project, occupying or using the completed project, or allowing construction, reconstruction, major renovation, painting, demolition, or hazardous waste removal to occur on the agency's property. If more than one public agency is involved in the project, the agencies may designate one agency to be the recipient of the certified payroll reports. For these types of public works projects, certified payroll reports received by the public agency are also public records subject to the provisions of ORS 192.311 to 192.478. ORS 279C.845(6); OAR 839-025-0010(8), (9), (10), (11), and (12).

Withholding Retainage

In addition to any other retainage obligated by the Public Contracting Code, the PWR law requires public agencies to withhold 25 percent of any amount earned by the prime contractor if the prime contractor does not turn in its certified payroll reports each month. Once the certified payroll reports have been submitted, the public agency must pay the 25 percent withheld within 14 days. ORS 279C.845(7); OAR 839-025-0010(5)

BOLI Prohibits Dividing Projects to Avoid PWR

Public agencies may not divide a project to avoid compliance with the PWR law. ORS 279C.827; OAR 839-025-0310

BOLI treats separate contracts for the same project as a single project for PWR purposes and may issue an order compelling the violating agency to treat the contracts as a single project.

The bureau looks at a number of factors to decide if separate contracts actually constitute a single project, such as:

- The physical separation of project structures;
- Whether a single public works project includes several types of improvements or structures;
- The anticipated outcome of the particular improvements or structures the agency plans to fund;
- Whether the structures or improvements are similar to one another and combine to form a single, logical entity having an overall purpose or function;
- Whether the work on the project is performed in one time period or in several phases as components of a larger entity;
- Whether a contractor or subcontractor and their employees are the same or substantially the same throughout the particular project;
- The manner in which the public agency and the contractors administer and implement the project;
- Other relevant matters as may arise in any particular case.

If a public works project is of the type described in ORS 279C.800(6)(a)(B) or (C), the Commissioner of the Bureau of Labor and Industries will divide the project if appropriate, considering the above factors, so that the parts of the project that do not include public funds or that will not be occupied or used by the public agency will not be subject to the PWR law.

Additionally, if a project includes parts that are publicly owned and parts that are privately owned, the Commissioner will divide the project if appropriate, considering the above factors, so that the parts of the project that are privately owned are not subject to the PWR law. Interested parties must submit a coverage determination request to BOLI when considering such a division of a project. ORS 279C.827; OAR 839-025-0310; ORS 279C.815

Agreements with Agencies of Other States

A public agency in Oregon is prohibited from entering into an agreement with another state, or a political subdivision of another state, that allows a contractor or subcontractor to pay less than the applicable prevailing wage rate on a public works project. ORS 279C.829

A Checklist for Public Agencies

Required:

- ❑ Submit the Planned Public Improvement Summary (WH-118) to BOLI prior to each budget period.
- ❑ Submit the Public Improvement Project Cost Analysis (WH-119), if applicable, to BOLI at least 180 days before beginning construction.
- ❑ Include required provisions in applicable public improvement contracts related to apprenticeship utilization and workforce demographics requirements found in ORS 279C.533; report information to BOLI within 30 days of final payment.
- ❑ Include the prevailing wage rates, public works bond requirement and other required language in the contract and the contract specifications.
- ❑ Submit the Notice of Public Works form (WH-81) and copy of the disclosure of first-tier subcontractors to BOLI within 30 days after awarding the contract.
- ❑ Submit the PWR fee and Public Works Fee Information form (WH-39) to BOLI for every public works contract awarded, within 30 days after awarding the contract or committing funds to the project.
- ❑ Verify that the agency has not contracted with any of the contractors on BOLI's current [List of Contractors Ineligible to Receive Public Works Contracts](#).
- ❑ Require that the contractor has a payment bond or has obtained a cashier's check or certified check, unless exempt.
- ❑ Withhold 25 percent of any amount earned by the prime contractor if the prime contractor fails to submit its certified payroll reports as required.

Suggested:

- ❑ Verify that the project manager has knowledge of construction and worker classifications.
- ❑ Verify that subcontractors know that the job is a prevailing wage rate job.
- ❑ Verify that none of the subcontractors working on the project are on BOLI's current [List of Contractors Ineligible to Receive Public Works Contracts](#).
- ❑ Confirm that the correct prevailing wage rates and the details of any benefit plans are conspicuously posted on the project site.
- ❑ Verify that all contractors and subcontractors are using the correct work classifications.
- ❑ Confirm that all contractors and subcontractors are filing complete and accurate certified payrolls, and are paying employees the correct prevailing wage rate.

Contractor and Subcontractor Responsibilities

Public Improvement Requirements

Workforce and Reporting Requirements on Certain Public Improvements

2023's [House Bill 2649](#) updated the requirements for apprenticeship utilization thresholds and set aspirational benchmarks for women, minority, and veteran participation on certain public improvement projects. These new requirements apply *only* to public improvement contracts done by "qualifying agencies." **Qualifying agencies** are:

- State agencies;
- Higher Education Coordinating Commission when using funds from the State Treasury for the construction costs of a public improvement;
- Public universities listed in ORS 352. when 002 using funds from the State Treasury for the construction costs of a public improvement; and
- Community colleges when using funds from the State Treasury for the construction costs of a public improvement.

Apprentice Requirements

On public improvement contracts done by qualifying agencies for which the contract price exceeds \$3,000,000, the contractor must employ apprentices to perform 12% or more of the work hours that workers in apprenticeable occupations perform on the contract. In addition, the contractor must require in each subcontract with a contract price of \$750,000 or more that the subcontractor employ apprentices to perform 12% or more of the work hours that workers in apprenticeable occupations perform on the subcontract.

If a contractor does not meet the apprenticeship utilization requirement, the qualifying agency must reduce the payment made to the contractor by \$15 per hour for each hour the contractor's apprenticeship utilization was short of the 12% requirement. The computation for the payment reduction is:

((total number of all hours worked x 12%) minus the number of apprentice hours worked) x \$15

The contractor may provide in a subcontract with a contract price of \$750,000 or more that the contractor may reduce the payment made to the subcontractor by \$15 per hour for each hour the subcontractor's apprenticeship utilization was short of the 12% requirement.

Outreach, Recruitment and Retention

For all public improvement contracts done by qualifying agencies, regardless of contract amount, the contractor must establish and implement a plan for outreach to, and recruitment and retention of, women, minority individuals, and veterans to perform work on the public improvement contract. The aspirational target is that individuals in one or more of these groups make up at least 15% of the total number of workers on the public improvement contract.

The contractor on a public improvement contract must require any subcontractor with a subcontract price of \$750,000 or more establish and implement their own plan for outreach to, and recruitment and retention of, women, minority individuals, and veterans to work on the on the subcontract, with the same aspiration target that individuals in one or more of these groups make up at least 15% of the total number of workers on the subcontract.

Reporting Requirements

Contractors must report their compliance and their subcontractors' compliance with the outreach, recruitment and retention requirements to the qualifying agency.

Additionally, contractors must track and report to the qualifying agency worker information including the worker's name, occupation, and number of hours worked on the project; whether the hours are journey worker or apprentice hours; and the worker's race/ethnicity, gender, and veteran status. Contractors may use BOLI's Enhanced Payroll/Certified Statement form for this purpose, which can be found on the forms table on the BOLI website [here](#).

For more information on these requirements, see the [FAQs](#) on BOLI's website.

Prevailing Wage Rate Law Requirements

Filing a Public Works Bond with Construction Contractors Board

Contractors and subcontractors must file a \$30,000 public works bond with the Construction Contractors Board (CCB) before beginning work on a public works project. The public works bond must provide that the contractor or subcontractor will pay claims ordered by the bureau to workers on public works projects. Unlike other required payment and performance bonds, the public works bond remains in effect continuously and covers all public works projects worked on during the duration of the bond. ORS 279C.836(1)

Public works bond forms can be found on the forms table on BOLI's website [here](#).

Before allowing a subcontractor to start work on a public works project, the contractor must ensure the subcontractor has filed a public works bond with the CCB. This information can be found on [CCB's website](#) in the [Contractor License Search](#) section. ORS 279C.836(2)

Any person that is required to pay prevailing wages on a public project must file a public works bond with the CCB. This is the case even if the employer does not have a CCB license. For example, non-construction companies such as temporary employment agencies are not required to have a CCB license, but if they employ workers on a public works project, they will have to pay those workers the appropriate prevailing wage rate and will therefore be required to file a public works bond with the CCB, using this [form](#). ORS 279C.836(4)

An exemption from this requirement is allowed for a certified disadvantaged business enterprise, minority-owned business, woman-owned business, a veteran-owned business, or an emerging small business enterprise, for the first four years of certification. (For information on becoming certified, see the Business Oregon [Certification Office for Business Inclusion and Diversity](#) website.) Such an enterprise must provide the CCB with written notification of its certification, and must complete the [CCB's exemption form](#). In addition, when the business enterprise is the prime contractor, it must notify the public agency that a public works bond has not been filed by the business enterprise. When the business enterprise is a subcontractor, it must notify the prime contractor that a public works bond has not been filed by the business enterprise. ORS 279C.836(7)(a) and (c)

If a certified business as described above meets the requirements for exemption from the public works bond, but BOLI finds the business to have violated the prevailing wage rate law, the business will be required to file a public works bond with the CCB before beginning work on a public works project. ORS 279C.838(7)(b)

Contractors and subcontractors working on a public works project with a total project cost of \$100,000 or less may elect not to file a public works bond with CCB. This \$100,000 threshold amount is for the total project cost, not for an individual contract amount. For example, if a subcontractor has a \$10,000 contract on a project with a total cost of \$300,000, the subcontractor must file a public works bond with CCB before beginning work on this project. ORS 279C.836(8), ORS 279C.810(2)(a)

In some cases of emergency, if declared in accordance with rules adopted under ORS 279A.065, the requirement for filing a public works bond with CCB may be excused. ORS 279C.836(9)

Required Contract Language

Every contract and subcontract must contain a provision that states the workers will be paid not less than the applicable prevailing wage rate for the type of work being performed. ORS 279C.830(1)(c); OAR 839-025-0020(5)(a)

If the project is subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, every contract and subcontract must contain a provision that states the workers must be paid not less than the higher of the applicable state or federal prevailing rate of wage. ORS 279C.830(1)(d); OAR 839-025-0020(5)(b)

Every contract and subcontract must contain a provision that requires any subcontractor to have a public works bond filed with Construction Contractors Board before starting work on a public works project, unless the subcontractor is exempt from the bond requirement. ORS 279C.830(2)(b) and (c); OAR 839-025-0020(3) and (4)

Specification and Contract Requirements on Public/Private Projects

When a project is a public works project of the type described in ORS 279C.800(6)(a)(B), (C), (D), (E), or (F) (e.g., a public works project where a public agency provides funds for the project but does not award a contract to a contractor), the specifications for the project must contain a provision that states the applicable prevailing wage rates for the project. Additionally, every contract and subcontract for the project must provide that contractors and subcontractors must pay each worker on the project not less than the applicable prevailing wage rate. OAR 839-025-0020(10)

Payment of Prevailing Wages

Contractors and subcontractors must pay workers on public works projects no less than the applicable prevailing rate of wage for the type of work they perform. ORS 279C.840; OAR 839-025-0035(1)

A “worker” is defined as a person whose duties are manual or physical in nature, including those workers who use tools or who are performing the work of a trade, as distinguished from a person whose duties are mental, professional or managerial. OAR 839-025-0004(38)

Except for “public works” projects under ORS 279C.800(6)(a)(B), (C), (D), (E), and (F), projects that use a Construction Manager/General Contractor (CM/GC), and some projects that are subject to both state and federal PWR laws, the rates in effect at the time the initial specifications are first advertised for bid solicitations are the rates that apply for the duration of

that project. OAR 839-025-0020(6)(b) (See the “Applicable Rates on Public Works Projects” section for more information.)

When a non-residential public works project is subject to both the state and federal prevailing wage rate laws, contractors and subcontractors must pay the higher of either the state or federal prevailing wage rates for the type of work being performed. ORS 279C.838; OAR 839-025-0035(2)

If a project meets the definition of “residential construction” in OAR 839-025-0004(29), and the public agency has established the residential rates for the project, contractors may pay the federal residential wage rates to workers. These rates can be found on the U.S. Department of Labor’s web site, www.sam.gov. However, if the applicable federal residential rate is lower than Oregon’s minimum wage, contractors must pay workers not less than the state minimum wage. When there is no applicable federal residential rate for a particular trade or classification being used on the project, the public agency must request a special wage rate. If the public agency does not request a special wage rate, the contractor must pay the appropriate state prevailing wage rate found in BOLI’s PWR rate book publication. OAR 839-025-0037

Contractors and subcontractors are in compliance with prevailing wage rate (PWR) requirements if the amounts paid to the employee in wages and in qualified fringe benefits meet or exceed the total of the base and fringe benefits rates published in the rate book. For example, if the base rate is \$20 per hour and the fringe rate is \$4 per hour, and the employee works eight hours a day, Monday through Friday, the employee is entitled to \$960 [(\$20/hour x 40 hours) + (\$4/hour x 40 hours)].

The employer can satisfy this obligation by paying \$960 in wages to the employee, or \$600 in wages to the employee and \$360 to a fringe program, or \$700 in wages and \$260 in fringe benefits – or any other similar combination of wages and fringe benefits.

Employees with Multiple Classifications

Employees who perform more than one classification of work must be paid the applicable prevailing wage rate for the time spent working in each classification. It is the employer’s responsibility to track separately the hours spent by each employee doing each job classification, and to report them separately on the certified payroll. If this is not done, the employee must be paid for all hours worked at the highest rate the employee earned that week.

Apprentices

Bona fide apprentices may be paid a percentage of the hourly base prevailing wage rate according to the term in which the apprentice is working in the program. To be a bona fide apprentice:

- The apprentice must be registered with either BOLI’s Apprenticeship and Training Division or the federal Bureau of Apprenticeship and Training;
- The apprentice must be performing work within their program standard;
- The apprentice must be working in the correct ratio to the number of journey workers on the project, as specified in the program standard; and
- The employer must be a registered training agent. OAR 839-025-0004(1) and (35); OAR 839-025-0035(9) and (10); OAR 839-025-0060; OAR 839-025-0065

If apprentices are not working within the correct ratio to the number of journey workers on the project, as specified in the program standards, all apprentices must be paid the full prevailing wage rate for the time they are working out of ratio. OAR 839-025-0035(9) and (10)

Apprentices generally must be paid the full fringe benefit portion of the prevailing wage rate. However, in certain trades, apprentices may be paid less than the full fringe benefit rate according to the prevailing practice for that trade. Spreadsheets showing the hourly base and fringe rates owed to apprentices can be found on BOLI's website [here](#). OAR 839-025-0040(2)

If zone pay or other premium pay, such as a shift differential, is required for the classification in which the apprentice is working, the full hourly zone pay and/or premium pay must be paid to the apprentice for each hour worked on the project site.

If the program standards under which the apprentice is working require a higher rate of pay than the applicable prevailing wage rate, the training agent must pay the apprentice the appropriate rate as required by the program standards.

Owners, Managers, and Supervisors

The requirement to pay the applicable prevailing rate of wage may apply to owners, managers and supervisors. If owners, managers, or supervisors perform manual labor for more than 20 percent of their overall workweek, then all time spent performing labor on a public works project that week must be paid at the applicable prevailing rate of wage for the type of work performed during those hours, and those hours must be reported on the certified payroll. On the other hand, if owners, managers, or supervisors spend 20 percent or less of their overall workweek performing manual labor, they do not need to be paid prevailing wages that week, nor do their hours worked on a public works project that week need to be reported on the certified payroll. OAR 839-025-0035(3) and (4)

For example, if a supervisor works 42 hours one week, and during that week spends a total of nine hours performing manual labor on either public or private projects, the supervisor will have spent 21.4 percent of the workweek performing labor. Therefore, if some or all of the nine hours were spent performing manual labor on a public works project (or on several public works projects), the supervisor must be paid the appropriate prevailing wage rate for those hours of work.

For information on "owner/operators" of trucks, see the Owner/Operator section below.

Site of Work – Projects Subject to Oregon's PWR Law

Contractors and subcontractors must pay prevailing wages for work done at the site of work. The site of work is the physical place or places where the construction, reconstruction, major renovation, or painting called for in the contract will remain after work is complete, or the physical place or places where the demolition or hazardous waste removal call for in the contract will be performed.

On public works projects subject to Oregon's PWR law, the site of work also includes pits, batch plants, tool-yards and similar locations that are within a reasonable distance of the structure. Any such locations established after the project was first advertised for bid are considered "dedicated" and are part of the site of work. Even if the pit, batch plant, or tool-yard was opened before the first advertisement, it is part of the site of work if it is dedicated or nearly so to the PWR project.

Work performed on a dedicated site must be paid at the appropriate prevailing wage rate. Additionally, the drive time between the dedicated site and the project site must also be paid at

the appropriate prevailing wage rate. OAR 839-025-0004(30); OAR 839-025-0035(5), (6), and (7)

Site of Work – Projects Subject to Oregon’s PWR Law and the Davis-Bacon Act

On public works projects subject to both Oregon’s PWR law and the federal Davis-Bacon Act, the federal requirements for “site of work” will apply to the project. ORS 279C.838(2)

Under the federal Davis-Bacon Act, the site of work is the physical place where the construction called for in the contract will remain, and also includes:

- Pits, batch plants, tool-yards and other locations that are dedicated exclusively or nearly so to the project, provided they are adjacent or virtually adjacent to the project site or a secondary construction site, and
- Secondary construction sites where a significant portion of the building or work is constructed if the site is dedicated exclusively or nearly so to the project for a specific period of time. [29 CFR 5.2](#)

On public works project subject to both Oregon’s PWR law and the federal Davis-Bacon Act, work performed on a dedicated site or on a secondary construction site must be paid at the appropriate prevailing wage rate. Additionally, the drive time between the dedicated site and the project site, and the drive time between the secondary construction site and the project site, must be paid at the appropriate prevailing wage rate.

Truck Drivers – Projects Subject to Oregon’s PWR Law

Truck drivers and delivery personnel working for contractors, subcontractors, and commercial suppliers must be paid the appropriate prevailing wage rate for time spent performing manual labor on the project site. This includes driving time on site, loading and unloading, and any other manual labor performed on the project site. OAR 839-025-0004(38); OAR 839-025-0035(7); OAR 839-025-0035(6)

Generally, truck drivers and delivery personnel are not required to be paid the prevailing rate of wage for delivery *to and from* the project site. For example, driving time between a contractor’s place of business and the project site does not have to be paid at a prevailing rate of wage. However, as noted in the “Site of Work” section of this handbook, time spent driving between the project site and a dedicated site must be paid at the appropriate prevailing wage rate.

Truck Drivers – Projects Subject to Oregon’s PWR Law and the Davis-Bacon Act

On public works projects that are subject to both Oregon’s PWR law and the federal Davis-Bacon act, truck drivers and delivery personnel working for a contractor or subcontractor must be paid the appropriate prevailing wage rate for driving time and other manual labor performed on the project site, provided the time spent on site is more than just a few minutes. However, it is the total amount of time the truck driver or delivery personnel spends on the site of work during a typical day or workweek that must be considered. For example, if a truck driver works on site for a few minutes per delivery, but makes multiple deliveries per day or week, the time spent on site may be aggregated.

On public works projects that are subject to both Oregon’s PWR law and the federal Davis-Bacon Act, truck drivers and delivery personnel working for a material supplier are not due prevailing wages, provided the only work being performed is driving on site, loading or unloading, or waiting for materials to be loaded or unloaded. ORS 279C.838(3), [29 CFR 5.2](#)

Owner/Operators

The PWR law does not apply to “owner-operators” of trucks. Drivers who own and operate their own trucks and who are independent contractors do not need to be paid prevailing wages for the time spent driving their own trucks. However, operators of other equipment or motor vehicles, and owners of other types of businesses, are not exempt from the PWR laws. For information regarding the applicability of the prevailing wage rate laws for these types of owners, see the Owners, Managers and Supervisors section above.

Fringe Benefits

Employers may claim credit for bona fide fringe benefits they provide to their employees. The employer’s contribution must be made for the benefit of the employee, must not be required by law, and must be made on a regular basis (at least quarterly). Plans that provide for delayed vesting or have eligibility requirements are “bona fide” if they meet the other requirements. Safety training, drug testing, state industry council contributions, trade promotion funds, equipment costs, travel pay, per diem payments and workers’ compensation insurance do not qualify as fringe benefits. Oregon law now requires employers to provide paid sick leave under certain circumstances. When paid sick leave is required by law, it will not qualify as a fringe benefit. See Appendix A for more information on when paid sick leave may qualify as a fringe benefit. ORS 279C.800(1); OAR 839-025-0004(10)

Examples of Bona Fide Fringe Benefits

- Health and welfare plans
- Vacation plans
- Pension plans, in some cases
- Apprenticeship training

See Appendix A for more information on fringe benefits and their required qualifications, and for instructions on how to calculate the amount that may be credited for payments into fringe benefit programs.

When reporting fringe benefit credits on certified payroll reports, these must be listed separately for each employee, by plan name, showing the hourly credit taken for each plan.

Payment of Prevailing Wage by Persons Other than Contractors or Subcontractors

The law forbids any third party to pay any portion of the prevailing wages owed. This most often occurs in “market targeting” plans. **Exception:** Government agencies may pay a portion of the prevailing wages pursuant to a bona fide worker training or retraining program, and sureties and public agency are not prohibited from paying prevailing wages owed to workers. However, when a third party such as a surety, public agency or prime contractor pays prevailing wages owed on behalf of a contractor or subcontractor, BOLI may impose civil penalties against the non-paying contractor or subcontractor, and may place the non-paying contractor or subcontractor on a list of companies who are ineligible to work on public works projects for a certain period of time. ORS 279C.840(6); ORS 279C.860(1)(b) and (c); OAR 839-025-0320

Wage Averaging

The PWR law also bans wage averaging. Wage averaging is lowering workers’ wages on non-PWR jobs to compensate for higher rates contractors or subcontractors pay on jobs subject to the prevailing wage rate laws. ORS 279C.840(7); OAR 839-025-0330

Overtime and Work Schedules

Overtime Requirements

Generally, on projects subject to the PWR law, overtime is due on a daily basis, after eight hours per day, Monday through Friday. This is the case even if the employee has not worked 40 hours in the workweek.

If an employee works an established schedule of four ten-hour days on a PWR covered project, overtime may not be due until after ten hours per day. To have an established “four-ten” schedule, the four days of work must be consecutive and must fall within Monday and Friday; therefore, an employee could work a four-ten schedule of either Monday through Thursday or Tuesday through Friday. ORS 279C.540; OAR 839-025-0050

An employer may change an employee’s established work schedule, but only if the change is intended to be permanent and is not designed to evade the PWR overtime requirements. For example, an employee working on a Monday-through-Thursday four-ten schedule cannot switch to a Tuesday-through-Friday schedule for one week and still maintain the four-ten schedule that week. Additionally, an employee working on a four-ten schedule on a PWR project cannot work on private projects on days outside of the four-ten schedule and still maintain the four-ten schedule that week. If an established four-ten schedule is not followed, overtime will be owed for all hours worked over eight per day Monday through Friday that week. OAR 839-025-0034

Regardless of the work schedule an employer establishes on a PWR covered project, workers must be paid overtime for all hours worked on Saturdays, Sundays, six legal holidays (New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day), and for hours worked over 40 in a week. If one of the legal holidays falls on a Saturday or Sunday, the preceding Friday or following Monday becomes the recognized holiday and all hours worked on that day on a PWR covered project must be paid at an overtime rate. ORS 279C.540; OAR 839-025-0050

The overtime rate is 1.5 times the hourly base rate, plus the hourly fringe rate. Although the fringe rate does not have to be paid at time and one half, it must be paid for all hours worked, including overtime hours. Overtime should be paid using the following equation:

$$(hourly\ base\ rate \times 1.5) + hourly\ fringe\ rate$$

If hourly shift differential, hazard pay, or zone pay is due, that amount is added to the base rate, and the following equation should be used:

$$((hourly\ base\ rate + premium\ pay) \times 1.5) + hourly\ fringe\ rate$$

If an employee earns more than one base rate of pay for the day/week, then the daily/weekly overtime owed, in addition to the regular straight time wages, is based on a *weighted average* of the hourly base rates earned. OAR 839-025-0050(2)(b)

See Appendix C of this handbook for examples of weighted average overtime calculations.

If work such as travel time or shop time is compensable time, and if the travel or shop time is related to a public contract, the hours of travel and/or shop time will count toward daily overtime.

For example, an employee on a “five-eight” schedule works the following hours during one day:

- Drive time from shop to PWR project – ½ hour
- Work on PWR project – 8 hours
- Drive time from PWR project to shop – ½ hour
- Work in shop related to PWR project – 1 hour

This employee worked 10 hours this day, and all the work is related to the public contract for the PWR project. Therefore, the employee is due two hours of overtime at the daily weighted average rate. The drive time and shop hours can be paid at an agreed rate rather than at a prevailing wage rate, as the hours are not worked on the PWR project site. However, in this example, both drive time and shop hours count toward daily overtime. ORS 279C.540(1), OAR 839-025-0050(2)(b)

If a collective bargaining agreement applies and has different overtime provisions, the provisions in the bargaining agreement will govern. ORS 279C.540(4)

The overtime provisions of ORS 279C.540 do not apply to contracts with public universities listed in ORS 352.002. Overtime on such projects is due only after 40 hours in the workweek. Public universities listed in ORS 352.002 are the University of Oregon, Oregon State University, Portland State University, Oregon Institute of Technology, Western Oregon University, Southern Oregon University, and Eastern Oregon University. Local and community colleges are not public universities. ORS 352.138

Work Schedules

Contractors and subcontractors must give workers their regular work schedule (days of the week and number of hours per day) in writing, before beginning work on the project. Contractors and subcontractors may provide the schedule at the time of hire, prior to starting work on the contract, or by posting the schedule at the work site, along with the prevailing wage rate information and any fringe benefit information. If an employer fails to give written notice of the worker’s schedule, the work schedule will be presumed to be a five-day schedule. The schedule may only be changed if the change is intended to be permanent and is not designed to evade the PWR overtime requirements. ORS 279C.540(2); OAR 839-025-0034

Required Postings

Prevailing Wage Rates

Each and every contractor and subcontractor must post the applicable prevailing wage rates in a conspicuous place on the project site so workers have ready access to the information. ORS 279C.840(4); OAR 839-025-0033(1)

Details of Fringe Benefit Programs

Contractors and subcontractors must also post the details of all fringe benefit plans or programs if any contributions are made to a health and welfare plan and/or a pension plan. The posting should include a description of the plan, information about how to file a claim and where to obtain more information. ORS 279C.840(5); OAR 839-025-0033(2)

Certified Payroll

Filing Requirements

Every contractor and subcontractor on a covered project must file certified payroll reports with the public agency. Contractors and subcontractors must complete a certified payroll statement for each week a worker is employed on a public work. These certified payroll reports must be submitted once a month, by the fifth business day of the following month, to the public agency. ORS 279C.845; OAR 839-025-0010

Filing Requirements on Public/Private Projects

When a project is a public works project of the type described in ORS 279C.800(6)(a)(B), (C), (D), (E), or (F) (e.g., a public works project where a public agency provides funds for the project but does not award a contract to a contractor), every contractor and subcontractor must file certified payroll reports with the public agency that provided funds for the project, or the public agency that will occupy or use the project, or the public agency that allowed the covered project to be done on the agency's property. These certified payroll reports must be submitted once a month, by the fifth business day of the following month, to the public agency. ORS 279C.845; OAR 839-025-0010

Certified Payroll Report Form

To help contractors and subcontractors satisfy the filing requirement, BOLI has an Excel version of a certified payroll report form (WH-38) which can be found on the forms table on BOLI's website [here](#). The forms table also includes a [fillable PDF version](#) of a certified payroll report form, and [instructions](#) for how to fill out the form. BOLI does not require contractors and subcontractors to use the WH-38 form, but they must supply all information the form requests (unless otherwise noted), and this information must be certified by signing the certified statement (page 2 of the form). Contractors and subcontractors using their own forms or reports can comply with the certification requirement by completing and attaching a copy of the certified statement from the WH-38 form to their filing.

Note: completing and submitting the U.S. DOL payroll report (federal Form WH-347) on projects subject to Oregon's PWR law does not satisfy BOLI's filing requirements.

For each worker, contractors and subcontractors must submit name and address, work classification, the number of hours worked each day, the pay rate, gross amount paid, deductions and net amount paid, and the hourly equivalent contributed to any party, plan, or program for fringe benefits and the type of benefit provided. If fringe benefits are provided to workers as wages, this must be shown as well. If owners, managers, or supervisors have earned prevailing wages during the week, they must also appear on the certified payroll report, showing all the same information as that required for other workers, although deductions and net amount paid may not apply to owners.

When workers perform work in multiple classifications in a single day, the certified payroll report must accurately reflect the number of hours worked in each classification that day.

To meet filing requirements, the employer must sign the certified statement to confirm that the information is true and complete. Unsigned reports do not satisfy the filing requirement. Submitting false or incomplete information may be the basis for civil penalties or debarment.

Withholding Retainage

The PWR law requires prime contractors to withhold 25 percent of any amount earned by a first-tier subcontractor if the subcontractor does not turn in its certified payroll reports each month. Once the certified payroll reports have been submitted, the prime contractor must pay the 25 percent withheld within 14 days. ORS 279C.845(8); OAR 839-025-0010(6)

Other Contractor Responsibilities

Required Records

All contractors and subcontractors who work on public works projects must maintain records showing that the appropriate prevailing rate of wage and overtime rate has been paid to all workers. These records must be maintained for a minimum of three years from the completion of work on public works project. Contractors and subcontractors may opt to keep records longer. When an employer has not kept records, BOLI relies on the evidence provided by the claimant and other available sources. OAR 839-025-0025

Examples of records that must be maintained include:

- Certified payroll reports
- Name and address of each employee
- Work classifications of each employee
- The rates of wages and fringe benefits paid to each employee
- Daily and weekly hours worked by each employee
- Total daily and weekly compensation paid to each employee
- All withholdings and deductions taken from each employee's pay
- Any and all payroll records pertaining to the employees working on the public works project
- All apprenticeship and training agreements

Inspection to Determine Whether Prevailing Rate of Wage Has Been Paid

Upon request by the Commissioner or its representative, every contractor or subcontractor performing work on a public works project must make time, payroll and other records deemed necessary available in order to determine whether the prevailing rate of wage is being paid. Records obtained by BOLI from the contractor or subcontractor, or made from the records obtained by BOLI from a contractor or subcontractor under ORS 279C.850(2), are not public record. ORS 279C.850(2) and (3)

A Checklist for Contractors and Subcontractors

- ❑ Respond promptly and accurately to communications from BOLI.
- ❑ File a public works bond with CCB before starting work on a public works project.
- ❑ Before allowing a subcontractor to work on a PWR project, ensure the subcontractor has filed a public works bond with CCB.
- ❑ Verify that any subcontractor contracted with is not on BOLI's current [List of Contractors Ineligible to Receive Public Works Contracts](#). This list of debarred contractors is on BOLI's website at www.oregon.gov/boli.
- ❑ Include in every contract and subcontract a provision that the workers will be paid not less than the applicable prevailing wage rate for the type of work being performed.
- ❑ Ensure that all subcontractors and employees know that they are working on a prevailing wage rate job.
- ❑ Ensure that supervisors and foremen know how to properly classify workers.
- ❑ Keep accurate daily records. Show the amount of time each worker spends in each classification of work.
- ❑ Review employee time cards often to ensure times and duties are reported accurately. Have employees sign in and out for the day and for lunch.
- ❑ File accurate and complete certified payrolls with the public agency.
- ❑ Notify employees of their work schedules, in writing and prior to beginning work.
- ❑ Post the prevailing wage rates in a conspicuous place on the project site.
- ❑ Post the details of any benefit plans in a conspicuous place on the project site.
- ❑ Keep all required records for at least three years.
- ❑ On required public improvement contracts done by qualifying agencies, follow the requirements for apprenticeship utilization and workforce demographics; report required information to the qualifying agency.

Additional Items for Prime Contractors:

- ❑ Withhold 25 percent of amounts earned by a first-tier subcontractor if the subcontractor does not turn in its certified payroll reports as required.
- ❑ Review the certified payroll and oversee the job site to confirm that subcontractors are properly classifying and paying their workers.
- ❑ Post any required payment bond.

Prevailing Wage Rate Law Enforcement

BOLI's enforcement goal is compliance. The bureau has a variety of enforcement tools that range from education and training to civil penalties, debarment and other sanctions. BOLI uses the appropriate sanction to fit the violation. For example, if a contractor, subcontractor, or agency accidentally violates PWR law, BOLI considers the violating party's willingness to cooperate and correct the problem when it determines an enforcement action. In such cases, BOLI may direct the agency, contractor or subcontractor to attend a training course on PWR law, and ask for a commitment of future compliance. For willful or repeated violations of the law, it is more likely that BOLI will impose civil penalties or debar a violating contractor from working on public works projects for three years. ORS 279C.860 and 279C.865; OAR 839-025-0085 and 839-025-0520

Agency Liability

A public agency must give adequate notice to the contractor that PWR law applies to the project. Failure to treat the project as subject to PWR law may make the agency liable for unpaid wages, civil penalties, or orders to ensure compliance with the law.

Unpaid Prevailing Wages

The public agency is jointly and severally liable with any contractor or subcontractor for unpaid prevailing wages and liquidated damages unless the contract documents contain a statement requiring the contractor and all subcontractors to comply with ORS 279C.840. If the contractor had notice that the project is covered by PWR law, the public agency's liability is joint and several with any contractor or subcontractor that had notice of the requirement to comply with ORS 279C.840, for any unpaid prevailing wages. ORS 279C.855(3); OAR 839-025-0080(4)

If a public works project is subject to the Davis-Bacon Act but the public agency fails to include the state and federal prevailing rates of wage in the specifications, or fails to provide in the contract that workers on the public works must be paid not less than the higher of the applicable state or federal prevailing rate of wage, and the workers on the project are paid the lower rather than the higher prevailing wage rate, the public agency is liable to the workers for the difference between the lower and the higher rate, plus an equal amount as liquidated damages, for every hour worked. ORS 279C.855(4); OAR 839-025-0080(6)

If a contract requires a payment bond or other security and the agency fails to obtain it, the agency and the officers authorizing the contract are jointly liable with the contractor for any unpaid prevailing wages. ORS 279C.625; ORS 279C.380; ORS 279C.390

Civil Penalties for Public Agencies

BOLI may impose civil penalties of up to \$5,000 per violation. Where violations are ongoing, each day may count as a separate violation. ORS 279C.865; OAR 839-025-0500 *et seq.*

Violations include:

- Failing to include or reference the applicable prevailing wage rates in the contract specifications.
- Failing to include in the contract a provision that workers shall be paid prevailing wages.
- Failing to require the contractor to pay the higher of the applicable state or federal prevailing wage rate when the project is subject to both state and federal PWR laws.

- Failing to include in the contract specifications a provision that the contractor and every subcontractor must file a public works bond with the CCB before starting work on the project.
- Awarding a contract to a debarred contractor.
- Failing to include in the contract a provision requiring the contractor to file a public works bond with the CCB before starting work on the project.
- Failing to include in the contract a provision requiring the contractor to include in every subcontract a provision requiring the contractor to file a public works bond with the CCB before starting work on the project.
- Failing to pay a PWR fee to BOLI.
- Failing to notify BOLI when a contract is awarded.
- Failing to include a copy of the disclosure of first-tier subcontractors with the Notice of Award.
- Failing to retain 25 percent of the amount the contractor earned when the contractor fails to submit certified payroll reports as required.
- Dividing a project to avoid paying the PWR.
- Circumventing PWR laws in any way.

Compelling Compliance

BOLI may issue an order compelling an agency to comply with the PWR law. ORS 279C.827(1)(b)

Contractor Liability

If a contractor or subcontractor does not fulfill obligations under the PWR law, there are a number of possible consequences.

Unpaid Prevailing Wages

Any contractor or subcontractor failing to pay prevailing wages as required is liable for the amount of underpayment. ORS 279C.855(1); OAR 839-025-0080(1)

Liquidated Damages

Contractors and subcontractors will also be liable for liquidated damages equal to the amount of unpaid wages. For example, if a contractor or subcontractor underpaid an employee by \$1,500, the contractor, subcontractor or surety thereof is responsible for the unpaid wages plus an equal amount in liquidated damages for a total of \$3,000. The liquidated damages are twice the amount of unpaid overtime wages if payroll records have been falsified. ORS 279C.855(1), ORS 279C.540(9), OAR 839-025-0080(2) and (3)

Prime Contractor Liability for the Violations of a Subcontractor

If a subcontractor fails or refuses to pay prevailing wages owed, BOLI or any employee may file a claim against the prime contractor's payment bond. The prime contractor may be responsible for the payment of wages and liquidated damages owed to the subcontractor's employees. ORS 279C.855(2)

Civil Penalties

BOLI may impose civil penalties against contractors and subcontractors for any violation of the

prevailing wage statutes or administrative rules, even if there was no underpayment of wages. Such violations include failing to file a public works bond with the CCB, failing to keep adequate records, failing to post required information at the job site, or failing to file certified payroll reports. BOLI may impose penalties up to \$5,000 per violation. If violations are ongoing, each day counts as a separate violation. ORS 279C.865; OAR 839-025-0500 *et seq.*

BOLI considers many factors when imposing civil penalties, including:

- Previous or repeated violations.
- The severity of the violations.
- The amount of underpayment of wages, if any.
- Whether the contractor or subcontractor knew, or should have known, about the violations.
- How difficult it would have been for the contractor or subcontractor to comply.
- The contractor's/subcontractor's response to the violations.

It is important for contractors and subcontractors to cooperate with investigations and correct any violations as quickly as possible to reduce any civil penalties that the bureau may impose.

Warning Letters

BOLI may send warning letters to contractors and subcontractors who have violated the PWR law. BOLI imposes significantly higher penalties against contractors and subcontractors who commit violations after receiving a warning letter, up to and including assessing maximum civil penalties and debarment.

Debarment

BOLI may debar a contractor or subcontractor from receiving public works contracts in Oregon for three years if it is determined that the contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed on a public works, if the contractor or subcontractor has intentionally failed or refused to post the rates as required, or if the contractor or subcontractor has intentionally falsified information in the certified payroll statements. BOLI may debar a contractor, even if the violation was not willful, if the contractor did not pay prevailing wages to workers and the surety or public agency paid them. Similarly, BOLI may debar a subcontractor, even if the violation was not willful, if the subcontractor did not pay prevailing wages to workers and the prime contractor, a surety, or a public agency paid them.

If the contractor or subcontractor is a corporation or a limited liability company, the bureau may also personally debar the officer or agent of a debarred corporation or any member or manager of a limited liability company. Furthermore, the debarment extends to any firm, corporation, limited liability company, partnership, or association in which the debarred individual has a financial interest.

BOLI maintains a list of debarred contractors, referred to as the "List of Ineligibles." This list can be found on BOLI's website [here](#). ORS 279C.860; OAR 839-025-0085; OAR 839-025-0090

Appendix A

Computing the Allowable Hourly Credit for Fringe Benefit Contributions

Oregon's PWR law and the federal Davis-Bacon Act are similar regarding fringe benefits. To qualify for any credit, the fringe benefit plan must meet all of the following requirements:

- Contributions must be made regularly and at least on a quarterly basis.
- Contributions made for prevailing wage work may not be used to fund the plan or program for periods of non-prevailing wage work.
- Contributions must not be required by law (such as taxes, workers' compensation, etc.)
- Contributions must be irrevocable and for the employee's benefit.

Hourly Contributions

If a contractor or subcontractor makes contributions on a per hour basis for all hours worked, including both PWR and non-PWR hours, credit may be taken for the amount contributed to the plan each hour for each employee. For example, a contractor paying \$2.78 per employee hour into a qualifying health plan may credit \$2.78 per hour towards the hourly fringe benefit requirements.

Weekly, Monthly or Quarterly Contributions

If a contractor or subcontractor makes a flat weekly, monthly or quarterly contribution to a qualifying plan for an employee, the allowable hourly credit is calculated by dividing the contribution amount by the total number of hours, both PWR and non-PWR hours, the employee worked during the contribution period. For example, if the employer contribution one month was \$250, and if the employee worked 170 hours that month, the credit would be \$1.47 per hour (\$250 per month / 170 hours worked = \$1.47 per hour credit).

The general formula to use is as follows:

$$\frac{\text{Amount of employer contribution paid on behalf of the employee for the contribution period}}{\text{All hours worked by the employee during the contribution period (including non-PWR hours)}} = \text{Allowable hourly equivalent fringe benefit credit.}$$

When calculating the hourly fringe credit, a time period shorter than the contribution period may need to be used. For example, if the employer makes contributions to a health insurance plan monthly but pays the employee on a weekly basis, the employer may need to calculate the hourly fringe credit on a weekly basis. This can be done by converting the employer's monthly contribution to a weekly amount (monthly employer contribution times 12 months, divided by 52 weeks). The resulting weekly contribution equivalent can then be used each pay period to calculate the hourly fringe credit for the week, by dividing the weekly contribution equivalent by the number of hours the employee worked in the week.

Calculate Credits Separately for Each Employee

The allowable hourly credit must be determined and tracked separately for each employee because the credit is based on figures that will vary from person to person, depending on the benefit contribution amount for each particular employee and the number of hours that the employee worked during the contribution period.

Employer's Contribution

Only the employer's contribution toward a benefit plan may be used to calculate the allowable hourly credit. If an employee contributes toward a benefit plan, the amount of the employee's contribution may not be used in calculating the credit.

Eligibility Requirements

Eligibility requirements for a plan, such as a waiting period, are permissible. However, during the period in which an employee is ineligible to participate in the plan, no credit may be taken against the hourly fringe benefit amount due that employee. Pension plans with vesting provisions are eligible if they meet ERISA requirements. (See Appendix B for contact information for the Employee Benefits Security Administration, the federal agency that enforces ERISA.)

Pension Plans

In addition to the general contribution requirements listed previously, contributions to a pension plan *must* be made to a trustee or to a third person. The "third person" must not be affiliated with the contractor or subcontractor, and the trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid into the plan, or in any way divert the funds to his or her own use or benefit.

Unequal Contributions

If a defined contribution pension plan provides for a higher hourly rate of contribution on PWR-covered work than for non-covered work, the higher rate paid for PWR work may be fully credited only if the plan provides for immediate participation by employees and 100 percent vesting after an employee works no more than 500 hours.

For example, if an employer contributes \$1.00 per hour to a pension plan for each PWR hour worked, and contributes \$.25 per hour for each non-PWR hour worked, the employer may only take the full credit of \$1.00 per hour if the pension plan allows for immediate participation and vesting as outlined above.

If unequal contributions are made to a defined contribution pension plan, and the plan does not provide for immediate participation and vesting as outlined above, the allowable credit is based on the average contribution the employer made over the previous fiscal year. The total pension benefit contributions made during this twelve-month period should be divided by the total number of hours worked (including non-PWR hours) during that period. The result is an average hourly contribution the employer may claim.

As an example, an employer contributes \$1.00 per hour to a pension plan for each PWR hour worked, and contributes \$.25 per hour for each non-PWR hour worked. During the previous year, the employee worked 1,500 PWR hours and 500 non-PWR hours. The total contribution for this year would be \$1,625 ((1,500 PWR hours x \$1.00 per hour) + (500 non-PWR hours x \$.25 per hour) = \$1,625). The total yearly contribution of \$1,625 would then be divided by 2,000 hours, which is the total number of hours worked during the year. The resulting credit would be \$.81 per hour ($\$1,625 / 2,000 \text{ hours} = \$.81$).

Unfunded Plans

Employers may offer benefits to employees such as vacation, sick (see additional information about sick leave below) and holiday pay. Because employers do not generally put money aside for these benefits, they are referred to as "unfunded" plans. Employers may take a credit for such benefits, but the plan must meet several requirements:

- The plan must actually provide a benefit to the employees.
- The benefit must represent a commitment that can be legally enforced.
- The benefit must be carried out under a financially responsible plan or program.
- The plan or program providing the benefit must be communicated in writing to the employees.
- The plan must not be required by law.

Unless all of these conditions are met, the employer may not take a credit for an unfunded plan.

The 2015 Oregon Legislature passed a law requiring employers to provide paid sick leave under certain circumstances. (ORS 653.601 – 653.661; OAR 839-007-0000 *et seq.*) If an employer is required to provide paid sick leave under this law, no credit may be taken for such payments. However, if the employer is not required to provide paid sick leave and does so anyway, credit may be taken for such payment. Additionally, if the employer provides for more paid sick leave than that required under state law, the employer may take credit for the payments made in excess of the legal requirement.

Calculating the allowable hourly credit for unfunded plans is similar to other credit computations: The total benefit amount for a contribution period is divided by the total hours worked during the contribution period. As an example, an employee may earn 40 hours of vacation per year. If the employee's regular rate of pay is \$10 per hour, the total yearly benefit amount is \$400 (40 hours x \$10 per hour = \$400). If the employee worked 2000 hours during the year, the allowable hourly credit for vacation benefits would be \$.20 per hour (\$400 / 2000 hours = \$.20).

The employer must carefully track the amount of unfunded benefits an employee earns and uses. If an employee quits or is terminated and has a "balance" of earned vacation, sick or holiday pay that has not been used, this "balance" must be paid to the employee with the final paycheck.

Qualified Apprenticeship Programs

If a contractor or subcontractor employs workers who are registered in a bona fide apprenticeship or training program with BOLI's Apprenticeship and Training Division, the costs incurred by the contractor or subcontractor in that program may be taken as a credit. Only the actual costs incurred for the training program, such as instruction, books, tools and materials, may be credited. However, time or costs involved in administering the program may not be included in the actual costs of the training program.

Each trade or classification must be treated separately, and the cost incurred for apprenticeship training for one classification may not be used to offset costs required to be incurred for another classification. For example, a contractor may not claim credit for apprenticeship training costs that were actually incurred for electricians and apply that credit toward meeting the prevailing wage obligation for carpenters.

Rather than contribute to an apprenticeship training fund on an hourly basis, some employers contribute a lump sum in advance for the annual cost of the program. If the employer does not make contributions on an hourly basis, the hourly credit should be calculated as follows:

Total contributions to a qualified apprenticeship or training program for a certain classification over a time period

÷ The total number of hours worked by all employees in that classification

= Hourly credit allowed.

Reporting Hourly Fringe Benefits

Each fringe benefit contribution must be listed *as an hourly rate* on certified payroll reports, and the hourly rate must be reported individually for each worker.

For example, if an employer pays \$250 one month for a bona fide benefit for an employee, and that translates into a credit of \$1.47 per hour, the employer must report \$1.47 per hour credit on the certified payroll report rather than the monthly payment of \$250.

Frequency of Payment of Fringe Benefits

Contributions must be made on a regular basis and not less often than quarterly. OAR 839-025-0043

“Regular basis” means either the schedule of contribution as provided in writing in the plan, fund, or program, or if none, the regular contribution schedule established by the contractor or subcontractor. For example, if the plan specifies that contributions to a bona fide fringe benefit fund be made by the fifteenth calendar day of each month following the month the wages were earned, then contributions to the fund must be made by that date. If the plan, fund, or program does not specify a contribution date, or if the specified contribution date as written in the plan, fund, or program does not meet the meaning of “not less often than quarterly” as defined below, the contractor or subcontractor must establish and maintain a contribution date by which payment to the plan, fund, or program will be made on a regular bases and not less often than quarterly.

“Not less often than quarterly” means that the fringe benefit portion of wages must be contributed to a bona fide plan, fund, or program at least once every three months within an established consecutive twelve-month period. The contribution must represent payment to the plan, fund, or program for amounts earned in the three-month period immediately prior to the contribution date.

An established twelve-month period may be a calendar year, fiscal year, plan year, or other consecutive twelve-month period as determined by the employer. The beginning of the twelve-month period may be changed only if the change is intended to be permanent, and is not designed to evade the timely payment of contributions into a bona fide plan, fund, or program. If an employer does not determine a consecutive twelve-month period the default period shall be a calendar year; that is, from 12:00 midnight on January 1 to 11:59 p.m. December 31, each year.

As an example, using the calendar year as the established consecutive twelve month period, a contractor or subcontractor establishes a contribution date of April 15 for the payment of fringe benefits earned between January 1 and March 31 into the plan, fund, or program; consequently, amounts earned between April 1 and June 30 must be contributed into the plan, fund, or program on or before July 15; amounts earned between July 1 and September 30 must be contributed into the plan, fund, or program on or before October 15; and amounts earned

between October 1 and December 31 must be contributed into the plan, fund, or program on or before January 15.

If an employer does not offer any bona fide fringe benefits to an employee, the entire PWR hourly fringe rate must be paid to the worker as wages on regular payroll dates. All hourly fringe benefits that are paid as wages to an employee must be reported separately from the hourly base wages on certified payroll reports.

Posting Details of the Plans on the Project Site

Every contractor and subcontractor must post the details of all fringe benefit plans or programs if any contributions are made to a third party for fringe benefits. The posting should include a description of the plan, information about how to file a claim and where to obtain more information.

Appendix B

Contacts

Oregon Bureau of Labor and Industries

1800 SW 1st Avenue, Suite 500
Portland, Oregon 97201
(971) 245-3844
Oregon Relay TTY: 711
www.oregon.gov/boli

Apprenticeship and Training Division

Email: ATD.general@boli.oregon.gov

Civil Rights Division

Email: CRD.email@boli.oregon.gov

Employer Assistance (for employers non-PWR questions)

Email: TA.email@boli.oregon.gov

Prevailing Wage Rate Unit

Email: PWR.email@boli.oregon.gov

Wage and Hour Division (for workers with non-PWR questions)

Email: BOLI_help@boli.oregon.gov

Construction Contractors Board

P.O. Box 14140
201 High St. SE, Suite 600
Salem, OR 97301
(503) 378-4621
www.oregon.gov/ccb

United States Department of Labor

Wage and Hour Division
620 SW Main St., Room 423
Portland, Oregon 97205
(503) 326-3057 / (866) 487-9243
www.dol.gov/whd

United States Department of Labor

Employee Benefits Security Administration (EBSA)
909 1st Ave, Ste 255
Seattle, WA 98104
(206) 757-6781
www.dol.gov/ebsa

Appendix C

Calculating Weighted Average Overtime

In the following three examples, each employee is working on an established five-day work schedule (i.e., a 5/8 schedule). Therefore, daily overtime is computed for hours worked after eight in a day, Monday through Friday.

If a contractor or subcontractor adopts a work schedule of four consecutive days, rather than five (Monday through Thursday, or Tuesday through Friday), daily overtime would be computed for the hours worked after ten in a day, rather than eight.

If an employee earns more than one base rate of pay for the day/week, then the daily/weekly overtime owed, in addition to the regular straight time wages, is based on a weighted average of the hourly base rates earned. OAR 839-025-0050(2)(b) For purposes of overtime wages computation, each workday stands alone.

Example 1:

Bob Gross works as a Laborer and a Power Equipment Operator (PEO) for Haystack Construction Company. Below is his timecard for work performed at Mt. Hood High School, a public works project, for the week of October 15 to October 21.

The applicable rates for this project are from the [BOLI July 5, 2023 Prevailing Wage Rate Publication](#). This project is located in Portland.

The hourly rates owed and Bob Gross' timecard:

Classifications	Base Rate	Fringe Rate
Laborer Group 1	\$36.11	\$16.80
Power Equipment Operator Group 4 (PEO)	\$47.74	\$16.65

HAYSTACK CONSTRUCTION COMPANY

TIME SHEET

EMPLOYEE NAME: Bob Gross JOB TITLE: Laborer & Power Equipment Operator (PEO)

DATE FROM: October 15, 2023 DATE TO: October 21, 2023

DAY	DATE	JOB SITE	HOURS	NOTES
SUN	10-15-23			
MON	10-16-23	Mt. Hood H.S.	8 PEO Group 4	
TUE	10-17-23	Mt. Hood H.S.	8 Labor Group 1 1 PEO Group 4	Worked 2 classifications
WED	10-18-23	Mt. Hood H.S.	5 Labor Group 1 7 PEO Group 4	Worked 2 classifications
THU	10-19-23	Mt. Hood H.S.	6 PEO Group 4	
FRI	10-20-23	Mt. Hood H.S.	10 Labor Group 1	
SAT	10-21-23			
			TOTAL HOURS:	45

Public Works Project
 EMPLOYEE'S SIGNATURE: *Bob Gross* DATE: October 21, 2023

In this example, the contractor pays the fringe benefits to a trustee pursuant to a bona fide plan. As required by OAR 839-025-0050(2)(b), because Bob worked one hour of overtime on Tuesday and earned two different rates that day, and Bob worked four hours of overtime on Wednesday and earned two different rates that day, the weighted average of his base rates of pay for each day must be calculated to compute his overtime rate for each of those days. Daily overtime also applies on Friday, without having to calculate a weighted average, as he only worked in one classification that day. Bob's weekly earnings would be as follows:

Straight time (base rate)

$$\begin{array}{rcl}
 \$36.11/\text{hr} \times 29 \text{ hours} & = & \$1,047.19 \\
 \$47.74/\text{hr} \times 16 \text{ hours} & = & \$763.84 \\
 \hline
 & & \$1,811.03
 \end{array}$$

To calculate 1/2 the weighted average overtime for Tuesday and Wednesday (necessary because overtime was earned each day and multiple classifications were worked each day):

Tuesday Hours		Wednesday Hours				
$\$36.11/\text{hr} \times 8 \text{ hours}$	=	\$288.88	$\$36.11/\text{hr} \times 5 \text{ hours}$	=	\$180.55	<i>Multiply the base rate by the hours worked at that rate that day, for each classification.</i>
$\$47.74/\text{hr} \times 1 \text{ hour}$	=	\$47.74	$\$47.74/\text{hr} \times 7 \text{ hours}$	=	\$334.18	
		\$336.62			\$514.73	
$\$336.62 \div 9 \text{ hours}$	=	\$37.40	$\$514.73 \div 12 \text{ hours}$	=	\$42.89	<i>Divide the total base amount earned by the # of hours worked that day, then again by 0.5 to get the 1/2 weighted average hourly rate for the day</i>
$\$37.40 \times 0.5$	=	\$18.70	$\$42.89 \times 0.5$	=	\$21.45	

PWR daily overtime for Friday (only one classification worked) :

Friday Hours		
$\$18.06/\text{hr} \times 2 \text{ hours}$	=	\$36.11
		<i>Labor rate of \$36.11 divided by 2 to get the 1/2 overtime rate</i>

Calculate Total Wages Earned

$$\begin{array}{rcl}
 \$36.11/\text{hr} \times 29 \text{ hours} & = & \$1,047.19 \\
 \$47.74/\text{hr} \times 16 \text{ hours} & = & \$763.84 \\
 & & \$1,811.03
 \end{array}$$

Weighted average overtime

$\$18.70 \times 1 \text{ hour}$	=	\$18.70	Tuesday
$\$21.45 \times 4 \text{ hours}$	=	\$85.80	Wednesday

PWR daily overtime

$\$18.06/\text{hr} \times 2 \text{ hours}$	=	\$36.11	Friday
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Total Weekly Wages \$1,951.64

Example 2:

Clyde Mayes works as a Cement Mason for Shore Acres Cement Company. Below is his timecard for work performed on the South Sister Reconstruction public works project and private work performed at Little Corner Donut Shop, for the week of April 17 to April 23.

The applicable rates for the South Sister Reconstruction project are from the [BOLI January 1, 2022 Prevailing Wage Rate Publication](#). This project is located in Sisters.

The hourly rates owed and Clyde Mayes' timecard:

Classifications	Base Rate	Fringe Rate
Cement Mason Group 1	\$36.72	\$22.07
Private Cement Work	\$30.00	-

COMPANY NAME:
SHORE ACRES CEMENT COMPANY

**WEEKLY
TIME SHEET**

EMPLOYEE NAME: <i>Clyde Mayes</i>	JOB TITLE: <i>Cement Mason</i>
DATE FROM: <i>April 17, 2022</i>	DATE TO: <i>April 23, 2022</i>

DAY	DATE	JOB SITE	HOURS
<i>Sunday</i>	<i>4-17-22</i>	<i>Donut Shop</i>	<i>6</i>
<i>Monday</i>	<i>4-18-22</i>	<i>South Sister Reconstruction</i>	<i>10</i>
<i>Tuesday</i>	<i>4-19-22</i>	<i>Donut Shop</i> <i>South Sister Reconstruction</i>	<i>3</i> <i>8</i>
<i>Wednesday</i>	<i>4-20-22</i>	<i>Donut Shop</i>	<i>10</i>
<i>Thursday</i>	<i>4-21-22</i>	<i>Donut Shop</i>	<i>10</i>
<i>Friday</i>	<i>4-22-22</i>		

Clyde Mayes *4-22-2022*
EMPLOYEE SIGNATURE / DATE

In this example, the contractor pays the fringe benefits to a trustee pursuant to a bona fide plan. There are 2 hours of daily OT on Monday, which are owed at 1.5 times the prevailing wage rate earned that day. Although Clyde worked 11 hours on Tuesday, only 8 hours were worked on a public works project and the other 3 hours were worked on a private job that is not related to a public contract; therefore there is no daily OT this day. Weekly overtime is owed for hours over 40 (minus the PWR daily & weekend overtime where applicable), and must be calculated at the weekly weighted average overtime as required by OAR 839-025-0050(2)(b).

Clyde's weekly earnings would be as follows:

To calculate 1/2 the weighted average overtime for the week (necessary because over 40 hours were worked in the week and multiple rates of pay were earned during that time):

\$36.72/hr x 18 hours	=	\$660.96	<i>Multiply the base rates with the hours worked for each day.</i>
\$30.00/hr x 29 hours	=	\$870.00	
		\$1,530.96	

\$1,530.96 ÷ 47 hours	=	\$32.57	<i>Divide the total base amount earned by total # of hours worked in the week, then again by 0.5 to get the 1/2 weighted average hourly rate for the week</i>
\$32.57 x 0.5	=	\$16.29	

PWR daily overtime from Monday:

Monday Hours

\$18.36/hr x 2 hours	=	\$36.72	<i>Cement rate of \$36.72 divided by 2 to get the 1/2 overtime rate</i>
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Calculate Total Wages Earned

\$36.72/hr x 18 hours	=	\$660.96	Straight time (base rate)	\$36.72/hr x 18 hours	=	\$660.96
\$30.00/hr x 29 hours	=	\$870.00		\$30.00/hr x 29 hours	=	\$870.00
		\$1,530.96				\$1,530.96

Weekly weighted average overtime

\$16.29 x 5 hours	=	\$81.45
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(47 hours worked in the week minus 2 hours of PWR daily OT = 45 hours; therefore 5 hours of weekly OT must be calculated)

PWR daily overtime

\$18.36 x 2 hours	=	\$36.72
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Total Weekly Wages \$1,649.13

Example 3:

Wally Walker works as a carpenter for Frosty Forest Grove Carpentry, and this contractor pays the fringe as wages. He is currently working on the Forest Grove Public Library, which is a public works project. Wally begins his day at the company’s shop then drives to the PWR worksite. Occasionally he will spend other worktime in the shop other than the beginning of the day, working on items related to the Forest Grove Public Library.

The applicable rates for the Forest Grove Public Library are from the [BOLI July 1, 2022 Prevailing Wage Rate Publication](#). This project is located in Forest Grove.

The hourly rates owed and Wally Walker’s timecard:

Classifications	Base Rate	Fringe Rate
Carpenter Group 1	\$44.80	\$19.21
Drive Time	\$25.00	-
Shop time	\$40.00	-

**FROSTY FOREST GROVE
CARPENTRY**

WEEKLY TIME SHEET

EMPLOYEE NAME: WALLEY WALKER

JOB TITLE: CARPENTER

WEEK OF: SEPT. 5-10, 2022

DATE	JOB SITE/LOCATION	HOURS	TOTAL DAILY HOURS
MON. SEPT. 5, 2022	FOREST GROVE LIBRARY	6	6
TUE. SEPT. 6, 2022	SHOP	2	9.5
	DRIVE TIME	0.5	
	FOREST GROVE LIBRARY	7	
WED. SEPT. 7, 2022	SHOP	1	11
	DRIVE TIME	0.5	
	FOREST GROVE LIBRARY	8	
	DRIVE TIME	0.5	
	SHOP	1	
THU. SEPT. 8, 2022	FOREST GROVE LIBRARY	8	10.5
	DRIVE TIME	0.5	
	SHOP	2	
FRI. SEPT. 9, 2022	SHOP	10	10
SAT. SEPT. 10, 2022	OFF	-	-

EMPLOYEE SIGNATURE: Wally Walker

DATE: SEPT. 10, 2022

In this example, Wally’s travel time and shop time are compensable time, and the time counts toward daily overtime because it is related to a public contract (i.e., the Forest Grove Public Library project). Even though the drive time and shop hours count toward daily overtime, those hours can be paid at an agreed rate rather than at a prevailing wage rate because the hours were not worked on the PWR project site. Therefore, Wally is due daily overtime on Tuesday, Wednesday, Thursday, and Friday. On Tuesday, Wednesday, and Thursday, the daily overtime must be calculated at the daily weighted average rate because Wally earned multiple rates of pay those days. Overtime is also due for work on Monday, which was Labor Day. This is a legal holiday and OT is owed for hours worked this day. (The six legal holidays under PWR law are New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.) ORS 279C.540; OAR 839-025-0050.

Wally's weekly earnings would be as follows:

To calculate ½ the weighted average overtime for Tuesday, Wednesday and Thursday:

Tuesday Hours

\$44.80/hr x 7 hours	=	\$313.60		
\$25.00/hr x 0.5 hour	=	\$12.50	\$406.10 ÷ 9.5 hours	= \$42.75
\$40.00/hr x 2 hours	=	\$80.00	\$42.75 x 0.5	= \$21.38
		<u>\$406.10</u>		

Wednesday Hours

\$44.80/hr x 8 hours	=	\$358.40		
\$25.00/hr x 1 hour	=	\$25.00	\$463.40 ÷ 11 hours	= \$42.13
\$40.00/hr x 2 hours	=	\$80.00	\$42.13 x 0.5	= \$21.07
		<u>\$463.40</u>		

Thursday Hours

\$44.80/hr x 8 hours	=	\$358.40		
\$25.00/hr x 0.5 hour	=	\$12.50	\$450.90 ÷ 10.5 hours	= \$42.94
\$40.00/hr x 2 hours	=	\$80.00	\$42.94 x 0.5	= \$21.47
		<u>\$450.90</u>		

Calculate Total Wages Earned

Straight time (base rate)

\$44.80/hr x 29 hours	=	\$1,299.20
\$25.00/hr x 2 hours	=	\$50.00
\$40.00/hr x 16 hours	=	\$640.00
		<u>\$1,989.20</u>

Weighted average overtime

\$21.38 x 1.5 hours	=	\$32.06	Tuesday
\$21.07 x 3 hours	=	\$63.21	Wednesday
\$21.47 x 2.5 hours	=	\$53.68	Thursday
\$20.00 x 2 hours	=	\$40.00	Friday

PWR holiday OT

\$22.40 x 6 hours	=	\$134.40	Monday (Labor Day)
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Fringe benefit rate

\$19.21 x 29 hours	=	<u>\$557.09</u>
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Total Weekly Wages \$2,869.63

Appendix D

History of Oregon's PWR Legislation

- 1959 Oregon enacts a State prevailing wage rate law to cover public works that are not covered by Davis-Bacon regulations. Stated objectives are:
- To assure quality workmanship on public works;
 - To discourage exploitation of workers; and
 - To encourage competition for contracts at the management skills level.
- 1969 Oregon's prevailing wage rate law is amended to include fringe benefits.
- 1977 Oregon's prevailing wage rate law undergoes a major revision, which, among other changes, expands subject workers to include those paid on a salary or per diem basis, and provides debarment for employers who willfully violate the prevailing wage rate statutes.
- 1981 Oregon's prevailing wage rate law is amended to require public agencies to notify the Bureau of Labor and Industries (BOLI) of awarded contracts, and to allow the Commissioner to seek injunctions against employers without first receiving a wage claim.
- 1983 Oregon's prevailing wage rate law is amended to include a provision that the public agency may be held exclusively liable for unpaid prevailing wages in certain circumstances. In addition, the law now provides that contractors may be debarred for intentional failure to post the prevailing wage rates on the job site.
- 1991 Oregon's prevailing wage rate law is amended to allow the losing bidder to recover at least \$5,000 from the winning bidder if it can be established that the winner has willfully violated any one of several laws, including the prevailing wage rate law.
- 1994 Oregon voters reject Measure 12, which would have repealed Oregon's prevailing wage rate law.
- 1995 Oregon's prevailing wage rate law is substantially amended by the 1995 legislature. The statutes now include a declaration by the Legislative Assembly that the purposes of the prevailing wage rate law are:
- To ensure that contractors compete on the ability to perform work competently and efficiently while maintaining community established compensation standards;
 - To recognize that local participation in publicly financed construction and family wage income and benefits are essential to the protection of community standards;
 - To encourage training and education of workers to industry skills standards; and
 - To encourage employers to use funds allocated for employee fringe benefits for the actual purchase of those benefits.

Changes to the law include an increase in the threshold for coverage from \$10,000 to \$25,000; a prohibition against dividing public works projects to avoid compliance with the PWR law; and the addition of a prevailing wage fee payable by contractors who contract directly with a public agency. Fees are to be used to pay the costs of:

- State-conducted prevailing wage rate surveys,

- Educational programs, and
- Investigation and enforcement of the prevailing wage rate law.

Other changes to the law include the requirement that contract specifications and contracts for public works include a provision stating the PWR fee shall be paid to BOLI; the addition of an advisory committee to assist in administration of the PWR law; civil penalty authority up to \$5,000 for each violation of the prevailing wage rate law; contractors are no longer required to submit copies of their certified payroll statements to BOLI (however, they are still required to submit these reports to the public agency); and debarment of subcontractors who fail to pay workers when workers' wages are paid by the prime contractor.

- 1997 Oregon's prevailing wage rate law is amended making public agencies' liability joint and several with any contractor or subcontractor for unpaid prevailing wages when the agency fails to include required prevailing wage rate language in the advertisement for bids, request for bids, contractor specifications, accepted bids, or elsewhere in the contract documents.

Other changes to the law include the amendment to the daily overtime statute to allow employers to adopt work schedules of four ten-hour days on public works projects; liquidated damages may be for an additional amount of wages equal to twice the unpaid overtime wages if contractors have falsified the payroll records; and contractors must adopt a written work schedule on public projects prior to the beginning of work.

The statute (ORS 279C.305) that requires public agencies to prepare and submit a list of their planned public improvement projects to BOLI is amended.

The estimated project cost threshold for least cost comparison requirements when an agency considers using its own employees as workers on a public works is increased from \$50,000 to \$125,000.

ORS 279C.815 (formerly 279.359) is amended to require that BOLI rely on the annual wage survey in determining prevailing wage rates. It allows the Commissioner to consider additional information if it appears that the data derived from the wage survey alone is insufficient to establish the prevailing wage rates.

- 1999 Oregon's PWR law is amended to reapply portions of the PWR law to Oregon University System contracts.

The notice of claim requirement against public works contractors' bond is modified to allow BOLI to include unidentified workers.

School district contracts with community foundations or nonprofit corporations are exempt from prevailing wage rate law requirements under certain and specific conditions; sunsets January 1, 2006.

Prevailing wage rate fees are allowed to be used for education programs on public contracting and purchasing laws in addition to the prevailing wage rate law.

- 2001 Oregon's prevailing wage rate law is amended to require contractors and subcontractors on public works projects to prepare weekly certified payroll statements

and submit them to the public agency monthly, by the fifth business day of the month.

Public agencies are required to include a copy of the contractor's disclosure of first-tier subcontractors with the Notice of Public Works form submitted to BOLI.

ORS 279C.810 is amended by adding an exemption. Public work projects for which no funds of a public agency are directly or indirectly used are exempt from the PWR law. BOLI is required to adopt rules to carry out these provisions. The amendment specifies that "funds of a public agency" does not include funds provided in the form of a government grant to a nonprofit organization, unless the grant is issued for the purpose of construction; "nonprofit organization" is defined.

- 2003 Oregon's prevailing wage rate law is amended to exempt Oregon Youth Conservation Corps (OYCC) members.

HB 2341 establishes a Public Contracting Code for public agencies within Oregon. The new Code establishes three separate chapters to modernize and clarify public contracting processes. The first chapter, ORS 279A, establishes an overarching policy for all contracting activities. The second chapter, ORS 279B, covers most types of procurements, except for public improvements, public works and architectural, engineering and related services, which are covered in the third chapter, ORS 279C. The entire prevailing wage rate law is contained within ORS 279C.

- 2005 Oregon's PWR law is substantially amended by the 2005 legislature. Changes to the law include an increase in the PWR threshold for coverage from \$25,000 to \$50,000; contractors must pay the higher of state or federal rates on projects subject to both the state PWR law and the federal Davis-Bacon Act; BOLI must compare state and federal prevailing wage rates, determine which is higher for workers in each trade or occupation in each locality, and make this information available twice each year; and public agencies must include in their project specifications information showing which prevailing rate of wage, either state or federal, is higher.

Other changes to the law include the requirement that all contracts, including subcontracts, must contain a provision that workers shall be paid not less than the specified minimum hourly rate of wage on projects subject to the PWR law; and all contractors and subcontractors working on a public works project must file a \$30,000 "public works bond" with the Construction Contractors Board. This bond is to be used exclusively for unpaid wages determined due by BOLI. Some exemptions from the requirement are provided for certified disadvantaged, minority, women, or emerging small business enterprises. In addition, general contractors must verify that subcontractors have filed a public works bond before permitting a subcontractor to start work on a project.

Project price is now defined to include, but is not limited to, the value of work performed by persons paid by a contractor as part of the project. Project price does not include the value of donated materials or work performed on a project by individuals volunteering to a public agency. "Funds of a public agency" does not include building and development fees waived or paid by the public agency, staff resources used for project oversight or coordination, or staff resources used for the design or inspection of the project.

Finally, public agencies and general contractors must withhold 25 percent of amounts earned by contractors if certified payroll reports are not submitted as required.

- 2007 The definition of “public works” in ORS 279C.800(6)(a) is amended to include in addition to roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest:
- A project for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and \$750,000 or more of funds of a public agency; or
 - A project for construction of a privately owned road, highway, building, structure, or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency.

The definition of “funds of a public agency” is amended to exclude, among other things, tax credits or tax abatements, or money from the sale of bonds that are loaned by a state agency to a private entity, unless the money will be used for a public improvement.

If a public works project is of the type described in ORS 279C.800(6)(a)(B) or (C) (a privately owned project with \$750,000 or more of funds of a public agency or in which 25 percent or more of the square footage will be occupied or used by a public agency), the Commissioner of the Bureau of Labor and Industries will divide the project if appropriate so that any part of the project that does not include funds of a public agency and that will not be occupied or used by a public agency will not be subject to the PWR law. If a project includes parts that are owned by a public agency and parts that are owned by a private entity, the Commissioner will divide the parts of the project that are not public works from those that are subject to the PWR law if appropriate.

Projects for residential construction that are privately owned and that predominately provide affordable housing are exempted from the PWR law.

BOLI is required to make coverage determinations upon request about whether projects or proposed projects are or would be subject to the PWR law. The requestor or anyone adversely affected or aggrieved by the determination may request a hearing.

The applicable prevailing rates of wage for a public works project may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates, and by providing adequate information about how to access the rates.

When a public works project is subject to the Davis-Bacon Act, if the public agency fails to include the state and federal prevailing rates of wage in the specifications for the contract, or fails to include in the specifications information showing which prevailing rate of wage is higher, the public agency will be liable to each affected worker for any unpaid difference between the applicable higher rate of wage and the lower rate of wage. The public agency will also be liable for an additional amount equal to the amount of unpaid wages as liquidated damages.

When a public works project is subject to the Davis-Bacon Act, BOLI must:

- Use the federal definition and interpretation of “site of work;”
- Use the federal guidelines for whether workers transporting materials and supplies to and from the site of the project are due the prevailing rate of wage;
- Apply the federal standard to workers enrolled in skill training programs that are certified by the U.S. Secretary of Transportation under the Federal-Aid Highway Act.

The PWR fee, previously required to be paid by contractors, is now required to be paid by public agencies. The minimum fee is increased to \$250 and the maximum fee is increased to \$7,500. The increased minimum and maximum amounts sunset on January 1, 2011.

BOLI is required to develop and adopt a plan to increase diversity statewide among workers employed on public works projects.

Certified disadvantaged, minority, women, or emerging small business enterprises may elect not to file a public works bond with Construction Contractors Board (CCB) for up to four years after certification.

Contractors and subcontractors may elect not to file a public works bond with CCB when working on a public works project for which the total project cost does not exceed \$100,000.

- 2009 Oregon’s prevailing wage rate law is amended to include a provision that a contractor or subcontractor may be debarred (ineligible to receive public works contracts or subcontracts for three years) if BOLI determines the contractor intentionally falsified certified payroll statements.

The bond Notice of Claim deadline is extended from 120 days to 180 days after the person last performed labor or furnished materials. The bond Notice of Claim deadline for fringe benefit claims is extended to 200 days.

Employers are required to pay PWR wages on the employer’s regularly established and maintained paydays.

Public agencies are prohibited from entering into an agreement with another state, or a political subdivision of another state, that allows a contractor or subcontractor to pay less than the prevailing rate of wage on a public works project.

The amount of the PWR fee is permanently adjusted to 0.1 percent (one-tenth of one percent) of the contract price, with a minimum fee of \$250 and a maximum fee of \$7,500. The PWR fee is due at the time the Notice of Public Works form is submitted to BOLI.

The requirement for certified payroll reports is amended to include the gross amount of wages *earned* per week, rather than the gross amount of wages *paid* per week, as not all employers pay wages on a weekly basis.

- 2010 The 2010 Special Legislative Session amends the definition of “public works” so that effective January 1, 2011, the construction or installation of solar radiation devices on publicly owned property will be subject to the prevailing wage rate laws, regardless of

the total project cost or whether funds of a public agency are used on the project.

- 2011 Oregon's prevailing wage rate law is amended to remove the requirement that BOLI compare state and federal prevailing wage rates and publish information showing which prevailing rate of wage is higher for use on projects subject to both the state PWR law and the federal Davis-Bacon Act.

The required language provisions are modified for projects subject to both Oregon's PWR law and the federal Davis-Bacon Act. For such projects, the specifications and every contract and subcontract must provide that the workers must be paid not less than the higher of the applicable state or federal prevailing rate of wage.

- 2013 Oregon's prevailing wage rate law is amended to allow a member or manager of a limited liability company that commits certain violations of the PWR regulations to be added to the list of those persons ineligible to receive a public works contract.

The definition of "public works" is amended to include the construction, reconstruction, major renovation, or painting of a road, highway, building, structure, or improvement of any type that occurs on Oregon University System property or on property an institution within the Oregon University System owns, regardless of whether the project uses funds of a public agency.

- 2015 The definition of "public works" in Oregon's prevailing wage rate law is amended so that a project that uses \$750,000 or more of funds of a public agency for constructing, reconstructing, painting, or performing a major renovation on a road, highway, building, structure, or improvement of any type will be subject to the prevailing wage rate law, regardless of whether the project is privately owned, or whether the project uses funds of a private entity.

The statutes regarding public universities listed in ORS 352.002 (ORS 352.138) are amended so that the prevailing wage rate law will apply to an agreement under the terms of which a private entity constructs, reconstructs, renovates, or paints an improvement on real property owned by a public university listed in ORS 352.002, or by a not-for-profit organization or other entity that a public university listed in ORS 352.002 owns or controls exclusively.

- 2016 The 2016 Special Legislative Session amends the prevailing wage rate law so that, effective January 1, 2017, a contractor or subcontractor, or an agent of a contractor or subcontractor, may not intentionally:

- Fail to pay an employee the appropriate prevailing wage rate;
- Reduce an employee's regular wage rate to offset the prevailing wage rate;
- Unlawfully withhold, deduct, or divert any portion of an employee's wages;
- Enter into an agreement with an employee under the terms of which the employee performs work on a public works project at less than the prevailing rate of wage; or
- Otherwise deprive an employee, permanently or indefinitely, of prevailing wages due in an amount that equals or exceeds 25 percent of wages due or \$1000 in a single pay period, whichever is greater.

Any intentional violation of the above would constitute a Class C felony for which the Commissioner of the Bureau of Labor and Industries may pursue through a civil action or referral to a district attorney or the Attorney General for prosecution.

- 2017 Oregon's prevailing wage rate law is amended to require a business that is within its first four years of certification as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns, or an emerging small business to have a public works bond on file with the Construction Contractors Board before starting work on a public works project if the Bureau of Labor and Industries finds that the business has violated the PWR laws.

The required language provisions are modified so that every subcontract awarded in connection with a public works contract must require the subcontractor to have a public works bond on file with the Construction Contractors Board, unless the subcontractor is exempt from the public works bond requirement.

Oregon prevailing wage rate law is amended to clarify factors BOLI may consider in determining whether a public works should be divided and prohibits anyone, not just public agencies, from dividing a public works project into more than one contract to avoid prevailing wage rate laws.

New legislation establishes that failure to pay fringe benefits and failure to pay the prevailing wage rate are separate violations.

ORS 279C.305, part of the public contracting code, is modified. Contracting agencies are required to perform a least-cost analysis on projects when the estimated value of the contracting agency's own equipment or personnel exceeds \$200,000 (or exceeds \$125,000 if the public improvement is to resurface highways, roads, or streets at a depth of two or more inches). The contracting agency must file the analysis with BOLI not later than 180 days before construction begins on the public improvement. Construction contractors, or trade associations that represent construction contractors, may file a complaint with BOLI alleging a contracting agency has violated ORS 279C.305 with respect to a public improvement that a contractor was eligible to construct. A filing fee of \$250 is required in order to submit a complaint. BOLI may impose a civil penalty up to \$5,000 for a violation, or up to \$20,000 if BOLI finds the contracting agency willfully violated ORS 279C.305.

- 2021 The 2021 Legislative Session passed Senate Bill 493 changing the way prevailing wage rates are established in Oregon. This legislation amends ORS 279C.815 to establish the prevailing rate of wage for a trade or occupation in a locality is the rate of wage in the collective bargaining agreement for the trade or occupation in the locality or, if more than one collective bargaining agreement covers a trade or occupation in the locality, the highest rate of wage among the collective bargaining agreements for the trade or occupation in the locality.

- 2023 Senate Bill 594 amends the definition of "public works" under ORS 279C.800(6)(a)(A) to include demolition and removal of hazardous waste, and adds ORS 279C.800(6)(a)(F) to the definition of "public works." This new definition of public works includes demolition and removal of hazardous waste when the work uses \$750,000 or more in funds of a public agency or the work occurs on real property that a state agency owns. This work is subject to the PWR laws even if the project does not involve construction, reconstruction, major renovation, or painting.

Appendix E

Oregon Revised Statutes

[ORS 279A](#) Public Contracting – General Provisions

- 279A.010 Definitions for Public Contracting Code
- 279A.990 Penalties

[ORS 279C](#) Public Contracting Code

Hours of Labor

- 279C.540 Maximum hours of labor on public contracts; holidays; exceptions; liability to workers; rules
- 279C.545 Time limitation on claim for overtime; posting of circular by contractor

Action on Payment Bonds and Public Works Bonds

- 279C.600 Right of action on payment bond or public works bond of contractor or subcontractor; notice of claim
- 279C.605 Notice of claim
- 279C.610 Action on contractor's public works bond or payment bond; time limitation
- 279C.615 Preference for labor and material liens
- 279C.620 Rights of person providing medical care to employees of contractor
- 279C.625 Joint liability when payment bond not executed

Prevailing Wage Rate Laws

- 279C.800 Definitions for ORS 279C.800 to 279C.870
- 279C.805 Policy
- 279C.807 Workforce diversity for public works projects
- 279C.808 Rules
- 279C.810 Exemptions; rules
- 279C.815 Determination of prevailing wage; sources of information; comparison of state and federal prevailing wage; other powers of Commissioner
- 279C.817 Determination of applicability of prevailing wage rate; time limitation; hearing; rules
- 279C.820 Advisory committee to assist Commissioner
- 279C.825 Fees; rules
- 279C.827 Division of public works project; applicability of prevailing wage rate to divided projects
- 279C.829 Agreement with other state to pay less than prevailing rate of wage
- 279C.830 Provisions concerning prevailing rate of wage in specifications, contracts and subcontracts; applicability of prevailing wage; bond
- 279C.835 Notifying Commissioner of public works contract subject to prevailing wage; payment of fee
- 279C.836 Public works bond; rules
- 279C.838 Applicability of state and federal rates of wage; determination of site of project; determination of applicability of wage to transportation workers; waiver
- 279C.840 Payment of prevailing rate of wage; posting of rates and fringe benefit plan provisions
- 279C.845 Certified statements regarding payment of prevailing rates of wage; retainage
- 279C.850 Inspection to determine whether prevailing rate of wage being paid; civil action for failure to pay prevailing rate of wage or overtime
- 279C.855 Liability for violations
- 279C.860 Ineligibility for public works contracts for failure to pay or post notice of prevailing rates of wage; certified payroll reports to Commissioner
- 279C.865 Civil penalties
- 279C.870 Civil action to enforce payment of prevailing rates of wage
- 279C.875 Criminal liability for intentional failure to pay prevailing wage; rules

Appendix F

Oregon Administrative Rules

Chapter 839, Division 25

Procedural Rules

- 839-025-0000 Notice of Proposed Rules
- 839-025-0003 Forms; Availability; Submittal
- 839-025-0004 Definitions Generally
- 839-025-0005 Purpose and Procedure for Determination Requests
- 839-025-0006 Purpose and Procedure for Addition of Trade
- 839-025-0007 Purpose and Procedure for Special Wage Determination
- 839-025-0008 List of Planned Public Improvements and Cost Analysis
- 839-025-0009 Procedure for Establishing Prevailing Wage Rates

Forms Prescribed by the Labor Commissioner

- 839-025-0010 Payroll and Certified Statement Requirements
- 839-025-0013 Notice of Public Works Form

Contract Requirements

- 839-025-0015 Public Works Bonds Requirements
- 839-025-0020 Public Works Contracts and Contract Specifications; Required Conditions

Records

- 839-025-0025 Required Records
- 839-025-0030 Records Availability

Posting

- 839-025-0033 Posting Requirements
- 839-025-0034 Establishing a Work Schedule

Prevailing Rate of Wage

- 839-025-0035 Payment of Prevailing Rate of Wage
- 839-025-0037 Residential Construction Projects; Wage Rates; Rate Determinations
- 839-025-0038 Use of Multiple Wage Rate Determinations on Projects

Fringe Benefits

- 839-025-0040 Payment of Fringe Benefits
- 839-025-0043 Frequency of Payment of Fringe Benefits
- 839-025-0045 Youth Apprentices

Overtime Wages

- 839-025-0050 Overtime Wages Computations
- 839-025-0054 Exemption from Overtime Pay Requirements on Public Improvement Projects

Apprentices and Trainees

- 839-025-0060 Apprentices Working upon Public Works Projects
- 839-025-0065 Trainees Working upon Public Works Projects

Enforcement

- 839-025-0080 Liability to Workers
- 839-025-0085 Contract Ineligibility
- 839-025-0090 List of Ineligibles
- 839-025-0095 Removal of Names from List of Ineligibles

Exemptions

839-025-0100 Exemptions from ORS 279C.800 to 279C.870

Installation of Art on Public Works Projects and the Payment of the Prevailing Rate of Wage

839-025-0150 Definitions Related to Installation of Art on Public Works

839-025-0155 Payment of Prevailing Rate of Wage for the Installation of Art on Public Works Projects

Fees on Public Works Contracts

839-025-0200 Fees to Be Paid by Public Agency

839-025-0210 Adjustment of Fees Paid by Public Agency

839-025-0220 Fees for Contract Without Specific Award Amounts

839-025-0230 Fees for Contracts with Other Special Circumstances

Actions that Circumvent Payment of Prevailing Wages Prohibited

839-025-0300 Actions that Circumvent Payment of Prevailing Wages Prohibited

839-025-0310 Division of Projects

839-025-0320 Payment of Prevailing Wage by Persons Other than Contractors or Subcontractors Prohibited

839-025-0330 Wage Averaging Prohibited

839-025-0340 Circumventions of the Prevailing Wage Rate Law

Civil Penalties for Violation of Prevailing Wage Rates on Public Works Matters

839-025-0500 Definitions Related to Civil Penalties for Violations of Prevailing Wage Rates on Public Works Matters

839-025-0510 Violations Separate and Distinct

839-025-0520 Criteria to Determine Civil Penalty

839-025-0530 Violations for Which a Civil Penalty May Be Assessed

839-025-0540 Schedule of Civil Penalties

Appendices to Rules

Appendix 1: Planned Public Improvement Summary Form (WH-118)

Appendix 2: Capital Improvement Project Cost Comparison Estimate Form (WH-119)

Appendix 3: Examples of weighted average overtime calculations

Appendix 4: Certification of Registered Apprentice(s) and/or Trainee(s) Form (WH-120)

Appendix 5: Statutory Public Works Bond Form

Appendix 6: U. S. Department of Labor All Agency Memorandum No. 130 and No. 131

Forms referenced are available from the agency.