

City of Saint Paul: Labor Standards Unit

Prevailing Wage Policy and Procedure Guidebook

This guide is designed to assist anyone doing business with the City of Saint Paul, such as contractors, vendors, workers, or anyone otherwise affected by City of Saint Paul construction contracts, development projects, and business transactions. It will also serve as a resource for City of Saint Paul departments and employees.

Unless otherwise specified, the information contained herein is Human Rights and Equal Employment Opportunity (HREEO) policy and procedure. Where the policies and procedures contained herein contravene city, state, or federal law, the city, state or federal law will govern. This guidebook follows the same definitions contained in the City of Saint Paul § 82.07 prevailing wage “Little Davis Bacon” ordinance, Minnesota and federal statutes, and administrative regulations promulgated by the U.S. Department of Labor (hereafter referred to as “US DOL”), and the Minnesota Department of Labor and Industry (hereafter referred to as “DOLI”). The policies and procedures contained herein are incorporated by reference into all prevailing wage bidding documents issued under all City of Saint Paul contracts (*we’ll have to alter bid specs to mention this*). This guidebook is subject to occasional revision. Contact the City of Saint Paul Labor Standards Unit to obtain the latest version.

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Legal Authority

Enforcement of prevailing wages, where city money is the sole source of funding, originates in §82.07 of the Saint Paul Administrative Code. If the source of funding includes state money or federal money, state and federal prevailing wage requirements, Minnesota Statutes 177.41 et. al., and Title 40 of the United States Code (the Davis Bacon and Related Acts) respectively, may also apply.

With regard to projects funded only with City money, prevailing wage applies regardless of whether bid specs are incorporated into the contract.

Federal Davis Bacon requirements apply to applicable federally-funded construction projects.

Federal Davis Bacon requirements include the Federal Davis Bacon and all Related Acts. This guide incorporates the Davis Bacon Act, the Contract Work Hours and Safety Standards Act (CWHSSA), the Copeland “Anti-Kickback” Act, 29 CFR 1, 29 CFR 3, and 29 CFR 5 -7, et. al., generally referred to as the Davis-Bacon and Related Acts (DBRA). Additional guidance and authority includes: US DOL All Agency Memos; US DOL *Field Operations Handbook*, Chapter 15, “Davis Bacon and Related Acts and Contract Work Hours and Safety Standards Act.” The U.S. Department of Housing and Urban Development additionally has applicable labor standards provisions applicable to HUD-funded projects.

Rationale and Duties

Purpose of labor prevailing wage compliance

The goal of prevailing wage is to ensure that construction projects funded in whole or in part with taxpayer money be constructed and maintained by the best means and the highest quality of labor reasonably available. It is also the policy of the City of Saint Paul that workers on projects funded in whole or in part with city taxpayer money be compensated according to the locally-determined real value of the services that he or she performs.

History of Prevailing Wage Laws

Prevailing wage laws originated with the passing of the federal Davis Bacon Act in 1931. In the midst of the Great Depression, it was considered good public policy to ensure that workers on federally funded projects were getting paid a wage that was typical for a given type of work in the geographical region the work was occurring. The state of Minnesota passed its own prevailing wage law, often called the “Little Davis Bacon Act”, in 1973. The City of Saint Paul

passed its first “minimum wage law on public contracts” ordinance (Little Davis Bacon) in 1992, and most recently, amended its prevailing wage law in 2012.

Duties of Labor Standards Compliance

The Labor Standards Unit performs the following duties related to federal, state, and city labor law compliance, among others:

- 1) Formulation and submission of prevailing wage, Living Wage, and other related labor law documents to the city procurement staff, project managers, and City Attorney’s Office;
- 2) Prevailing wage and Living Wage monitoring and enforcement;
- 3) Statutory interpretation and opinions on prevailing wage and related labor law requirements as enumerated in City of Saint Paul contracts;
- 4) Civil and criminal investigations on prevailing wage and other related labor law requirements of City of Saint Paul contracts;
- 5) Make determinations on wage rates, restitution, and classifications;
- 6) Provide training and education;
- 7) Respond to federal, state, local agency audits and reporting requests;

Who we serve

In addition to the general public, the Labor Standards Unit provides outreach, training, and assistance to a wide swath of the community, including:

- 1) Employees/Workers;
- 2) City procurement staff;
- 3) City project managers;
- 4) City Attorney’s Office;
- 5) Contractors and Vendors;
- 6) Organized Building and Construction Trade Unions; and
- 7) Community and business organizations.

Prevailing Wage Compliance Applicability

The City of Saint Paul Labor Standards Unit monitors publically-funded projects. Applicability depends on multiple factors, such as the source of the funds, amount of the funds, nature of the project, scope of work, and so on. Therefore, there is no one single set of prevailing wage bid documents that govern every contract. Contact the City of Saint Paul prevailing wage unit if you have questions about the applicability of prevailing wage to an existing or anticipated project.

Source of Funding

The prevailing wage unit works with multiple sources of funding, including federal funds (e.g., CDBG, HOME, etc.), State of Minnesota funds (e.g., DEED, MNDOT, etc.), and city funds (e.g., STAR, TIF, general funds, etc.). Please see Appendix A for a definition of these terms. The

source of the construction project funding and scope of work determines the applicable prevailing wage requirements.

The city Labor Standards Unit has received confirmation from Met Council and DOLI that specific Met Council funds do not trigger prevailing wage requirements. Generally, LCDA and TBRA funds do not trigger prevailing wage requirements per DOLI and Met Council guidance and authority. Projects using a combination of Met Council LCDA/TBRA funds and city/federal funds, however, may trigger prevailing wage requirements.

When Funding Triggers Prevailing Wage

The Davis-Bacon and Related Acts, apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings, public works, and public development projects. Meaning if \$1 dollar of federal assistance is used on a project that costs more than \$2,000, the project may have federal prevailing wage requirements.

For city-funded projects, prevailing wage is triggered when any amount of city money is provided for the project and the total cost of the project meets or exceeds \$25,000.

Project Defined

Project is defined as new construction work, demolition work, or repair work on any roads, bridges, sewers, streets, alleys, parks, parkways, buildings, removal or public nuisances or any other improvement of public or private property.

In defining the scope of a construction project, the city generally follows the federal rule: A project consists of all construction necessary to complete a facility regardless of the number of contracts involved, *so long as all the contracts awarded are closely related in purpose, time, and place*. For example, if a developer were to request and receive city money of the construction of a multi-use building containing a hotel, a restaurant, and a convenience store project, the developer would not be allowed, for purposes of avoiding prevailing wage, to break up the hotel, restaurant, and convenience store by “applying” the awarded public money only to the hotel component. In other words, the project is not necessarily defined by the contract between the money recipient and developer, or prime contractor. This city requirement is subject to exceptions. Please consult with the Labor Standards Unit for further information.

Types of Construction

Prevailing wage applies to the construction, modification or demolition of a building or public works project that is funded in whole or in part with taxpayer money. However, the federal government and the State of Minnesota classify types of construction differently:

The US DOL recognizes four different types of construction:

Building Construction: Includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies; all construction of such

structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Also, the installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Highway Construction: Includes construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

Heavy Construction: Includes those projects that are not properly classified as either "building," "highway," or "residential." Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Residential Construction: Includes the construction, alteration or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks..

The state of Minnesota (DOLI) utilizes three kinds of wage decisions, depending on the nature of the construction project:

Commercial: Building construction, rehabilitation, and repair. Examples include office buildings and multi-unit housing. Commercial construction is often referred to as "vertical" construction.

Highway Heavy: Street, sewer, sidewalk, parking lots, and parks construction, rehabilitation, and repair. Typically associated with projects that involve paving work. Highway heavy is often referred to as "horizontal" construction.

Residential: Construction, rehabilitation, and repair of single-family housing.

What wage decision is used when multiple sources of money are involved?

- 1) When only City/HRA money is involved in the project, the City of St. Paul utilizes the DOLI wage decision;
- 2) When City/HRA money and state money is involved in the project, the City of St. Paul utilizes the DOLI wage decision;
- 3) When federal money and state money is involved in the project, both the federal and state wage decision may be utilized; the workers is entitled to the higher rate between the federal and state wage decision in any like craft (Electrician v. Electrician). Additional information below.
- 4) When federal money and city money is involved in the project, only the federal prevailing wage requirements will apply to the project.

If both federal and state money is utilized on a project, both the federal and state rates will be applicable and the higher of the two rates must be used by the contractor. For example on a federal and state funded construction project, if the electrician rate is \$45.00 on the federal building wage decision and \$50.00 on the state commercial wage decision, a contractor would have to pay their electricians \$50.00. It is important to know what wage decision is applicable to the project as there are multiple wage decisions and each has different rates. It is the responsibility of the contractor to ensure their workers are paid the correct wage rate.

For housing developments, the city prevailing wage law and policy incorporates and follows the same exemptions found in federal Davis Bacon statutes and their regulatory implementation. On both city and federally funded housing projects, prevailing wage requirements shall apply to the rehabilitation of residential property only if such property contains not less than 8 units. This language represents an exemption for residential property that contains 7 or less units. Although the statute refers to the "rehabilitation" of residential property, this exemption has been interpreted to include the new construction of residential property containing 7 or less units. Property is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative or condominium project.

Wage Decision

All the workers on a project performing labor shall be classified, based on the work performed onsite, under a classification provided in the wage decision. The wage decision delineates the different trades and crafts contractors in construction projects typically utilized in construction projects. For example, a journeyman landscape laborer performing skilled laborer work at a construction site shall be paid as a skilled laborer.

If, during the life of a construction project, a contractor feels there is no appropriate classification on the wage decision for a given type of work to be performed at the site, the contractor shall contact the Labor Standards Unit in order to seek guidance as to what might be the most appropriate classification based on the work being performed. If the contractor and the Labor Standards Unit are not able to find a suitable classification, the contractor shall complete and submit, if a federal project, US DOL form SF-1444 - Request for Authorization of Additional Classification and Wage Rate Form or, if a city/state project, a DOLI Classification Clarification Request Form, to the City of Saint Paul labor compliance officer. On federally funded projects, the US DOL will have final approval of additional classifications requests - collectively bargained (union) rates may or may not be approved.

Classification determinations are usually based on Minnesota Rules 5200.1010 -5200.1120, the US DOL Dictionary of Occupational Titles, apprenticeship agreements, and applicable collective bargaining agreements.

Because the City of Saint Paul follows the wage decisions promulgated by the US DOL and the Minnesota Department of Labor and Industry, we do not conduct our own wage surveys.

However, if a project contains only city money, the Labor Standards Unit may, in its discretion, create a unique wage classification appropriate for the project after a request has been made by a contractor based on the following factors:

- 1) Economic hardship to the contractor if the request is not granted;
- 2) Economic consequences for the employee(s);
- 3) Contract amount, and;
- 4) Nature of work being performed by the contractor and their workers.

However, this type of situation is rare and the contractor will be expected to conform to the existing wage decision. In most cases, the unskilled laborer rate will be used for job descriptions that are not adequately described by any other classification. Before the Labor Standards Unit creates a classification not already contained in the wage decision, however, it must obtain consent from both the prime contractor on the project and the employees. If the employees are represented by a union, the union or unions will provide consent for the employees.

How Are Wage Rates Determined?

The U.S. Department of Labor and DOLI use different rates for their respective wage decisions. Updated wage decisions are published annually. Both agencies arrive at their numbers by conducting surveys of contractors to ascertain the hourly rates actually paid to workers.

The U.S. Department of Labor utilizes the follow method to determine prevailing wage in a given region: After collecting the data, the hourly wage rate and fringe are analyzed and calculated. If the majority of the workers in a given labor classification are compensated at the same rate, that rate shall be determined as prevailing for the particular labor classification. Otherwise, the wages and fringe benefits paid in a given region will be averaged by the total number of employees and the resulting rate shall be determined as prevailing for the that particular labor classification.

DOLI utilizes what's called the "mode" method. The method adopts the most frequently occurring wage rate found during the survey process, irrespective of what the resulting average wage rate is. For example, if DOLI conducts a survey in Ramsey County and finds two bricklayers being paid \$50.00, a third bricklayer being paid \$52.00 and a fourth bricklayer being paid \$65.00, DOLI will utilize the \$50.00 rate.

An employee must be paid based on the nature of the work performed. If an employee performs the work of a carpenter in the morning, a skilled laborer in the early afternoon, and landscaping laborer work in the evening, they must be paid these respective rates while performing those scopes of labor during that day.

Workers covered under prevailing wage

A person is covered under prevailing wage if they perform labor relating a government-funded construction project, and they are capable of being classified under a US DOL-issued or DOLI-issued wage decision. A covered worker includes those workers whose duties are primarily

manual or physical in nature, as distinguished from artistic, professional, consultative, or managerial duties. Applicable classifications include, but are not limited to: skilled and unskilled laborers; skilled trade journeymen; heavy equipment operators; and truck drivers. Any exception to payment of prevailing wage must be formally made to the Labor Standards Unit before the requesting company commences work at the site.

For STAR-funded projects there is exception that allows the STAR money recipient to utilize up to 30% of the total development cost (City STAR money + recipient match) toward volunteer and/or sweat equity costs. For each volunteer, their hourly labor will be valued at \$15.00 per hour.

If there are any questions as to whether the scope of work or the work of individual workers on a construction project are governed by prevailing wage, the Labor Standards Unit should be contacted. You should assume your work is covered by prevailing wage unless you are specifically told by the Labor Standards Unit that you are exempt.

Business owners working with employees from their own company must report their wage information and can certify their own payroll. However, business owners working alone cannot certify payment of their own prevailing wage; rather, they are reported on a weekly payroll prepared and certified by their engaging contractor. In other words, *for purposes of payroll reporting*, they are treated as employees of the engaging contractor.

Contract Administration: Pre-Construction

Contract Compliance Form

Contract administration, for prevailing wage purposes, typically begins when the City Contract Compliance team receives a Contract Compliance Form from the city project manager assigned to the project. The contract compliance document should state at a minimum, the approximate date the project is expected to begin, the source of the funding, the total development cost, and who the responsible city project manager is.

Wage Decision “Lock-In”

During the formal and informal bidding process, the Labor Standards Unit will, upon request by the city project manager assigned to the project, issue a wage decision for the project. This will include the wage decision applicable to that particular project, and it is based on the description of the project and total project cost provided by the city project manager.

For publically solicited construction projects, the wage decision may be updated up to formal bid opening. The prevailing wage decision is locked-in at formal bid opening, provided contract is awarded within 90 days. Prevailing wages must be updated if contract award is more than 90 days after formal bid opening. The wage decision must be updated if construction does not begin within 90 days of contract signing.

For non-publically advertised federally-funded development (HRA) projects, federal wage decisions must be updated until, the later of, either the signing of the construction contract between the city and the project developer or the closing of the federal loan contract. If construction does not begin within 90 days of applicable contract signing, the federal wage decision must be updated. City Project Managers should consult with Labor Standards no more than 5 days prior to contract signing to ensure applicable wage decision(s) is incorporated into development agreements.

Pre-Bid and Pre-Construction Meetings

At the discretion of the city project manager, developer, recipient of city money, or prime contractor, a pre-bid meeting may be arranged. If a pre-bid meeting is scheduled, a representative from the Labor Standards Unit might attend. However, generally speaking, the first time the Labor Standards Unit has an opportunity to meet the developer/owner/prime contractor on the project is at the preconstruction meeting. The preconstruction meeting takes place after the contract has been awarded but before the project has commenced. The preconstruction meeting affords an opportunity for the Labor Standards Unit to educate the contracting parties (recipient of city money, developer, contractors) about prevailing wage requirements.

Because the preconstruction meeting is an opportunity for all contractors to learn about labor standards requirements, it is strongly encouraged that prime contractors ensure all of their subcontractors attend the preconstruction meeting.

Contractor Profile and Contractor ID

Before the commencement of the project, the Labor Standards Unit requires the submission of the Contractor Profile Form from every contractor that will be working on the project, as well as a Prime and Subcontractor Identification Form from every contractor that will be subcontracting work out. See Appendix B for copies of these forms. The Prime Contractor/Subcontractor Identification Form identifies the contractors that will be on the project, and provides an estimate as to when they will be performing their work. The Contractor Profile identifies the wage classifications that particular contractor will be utilizing on the project, their contact information, and their prevailing wage contact person.

If, during the pre-construction or construction phase, the prime contractor or a subcontractor receives multiple wage decisions, or is confused as to what wage decision is applicable, they should contact the Labor Standards Unit. Generally speaking, the most recent wage decision will control.

Contract Administration: Construction Commencement

Payroll Submission

Once the project commences, the prime contractor will be responsible for ensuring all contractors properly submit their payroll into LCP Tracker, a third-party proprietary web-based electronic payroll reporting system, within two weeks of having been performed. On federally funded projects, contractors must submit payrolls weekly.

Wage Rates

The wage rate is the minimum rate a contractor may pay a worker allowed under the prevailing wage laws. It is generally comprises two parts: the basic hourly rate and the hourly fringe rate. Taken together, these two hourly rates must meet the minimal rate for a worker in that classification. However, a contractor does not need to pay the exact rates advertised. Rather, the total amount paid to the worker must meet the total prevailing wage rate. For example, if the wage decision states the prevailing wage basic hourly rate for a carpenter is \$25.00 and the fringe rate is \$25.00, an employer could choose to pay their worker \$35.00 in basic hourly pay and \$15.00 in fringe benefits. Alternatively, the employer may choose to pay the worker \$50.00 in taxable income, without providing for any kind of fringe benefit.

Fringe Benefits

Fringe benefits are an employment benefit provided to an employee that has inherent value and is provide in addition to the worker's regular hourly wage rate. Examples include pension, health and welfare, and vacation time. Under federal, state and city law, fringe benefits are taken into account when calculating prevailing wage. Fringe benefits can be administered by either the employer, by a third party administrator. If the fringe benefits are administered by a third party, the Labor Standards Unit will require the contractors on the project to provide a letter from the administrator averring the program is current and solvent.

Funded Plans

A funded fringe benefit plan is one that allows the contractor to make irrevocable contributions on behalf of an employee to a financially responsible trustee, fund, plan or program. The Health and Welfare fund is an example. The nature of the benefits typically include: pensions, health insurance or life insurance. Not all benefit plans are regarded as fringe benefits for purposes of meeting the minimal prevailing wage requirements. Contact the labor standards office to clarify.

Unfunded Benefits

An unfunded benefit plan is one that allows the employer to provide benefits drawn from their own financial resources (i.e., "in-house") for the benefit of the employee. The costs associated with maintaining the plan come from the employer's own assets. In order to satisfy the requirements of being an unfunded benefit, it must be irrevocable, guaranteed, legally enforced, formalized in writing and communicated to the worker, made available to the worker once he or she meets eligibility standards, and is carried out in a financially responsible manner.

An unfunded plan must satisfy the following criteria:

- 1) It is legally enforceable against the employer;
- 2) It is part of a financially responsible plan or program;
- 3) The plan has been communicated beforehand to the employees' workers.

Employers may not take a credit for benefits required by federal, state, and local laws, such as workers' compensation, unemployment compensation, and Social Security contributions.

An employer cannot take the average of all benefits provided to all employees in a given time period as the minimal fringe amount. That is, the fringe amount must be calculated specifically for each employee.

Contributions to fringe benefit plans must be made regularly, but not less than quarterly on an annual basis.

Training Programs

Training programs are not considered fringe benefits, unless it is provided as part of an approved apprenticeship program recognized by US DOL or DOLI.

Apprentices

An apprentice is a person enrolled in a training program that is approved and registered with the US DOL or DOLI, and usually includes an agreement between the worker and a sponsor. The intent of the training program is to produce a worker fully trained to perform work in their area of specialization at the journeyman level of skill and quality. The City of Saint Paul will not approve training programs not certified by either US DOL or DOLI. A worker in an unapproved apprentice training program must be paid prevailing wage.

Apprentices need to be included on payroll submissions. The Labor Standards Unit will add apprentice classifications to LCP Tracker once proof of enrollment in a bona fide apprenticeship program is established. Apprentices do not have to be paid prevailing wage at the applicable wage classification rate as long as the apprentice is performing the work of his or her trade and the contractor provides the following:

- 1) Apprenticeship Agreement;
- 2) Wage scale, usually found in the relevant collective bargaining agreement;
- 3) Onsite journeyman to apprentice ratio schedule, usually found within the collective bargaining agreement or issued by DOLI.

Apprentices must work within the correct journeyman-to apprentice ratio guidelines as promulgated in either the applicable collective bargaining agreement or, if no such standards exist, the ratios published by DOLI; the DOLI ratios are published on the DOLI website and are updated annually. For the most current ratios, please go to www.dli.mn.gov. The Minnesota Apprenticeship Advisory Council allows one apprentice for the first journeyman and one

additional apprentice for each additional three journeyman; therefore, the ratio on projects funded in whole or in part with federal and/or state funds would be as follows:

| JOURNEYMEN | APPRENTICES |
|------------|-------------|
| 1 | 1 |
| 4 | 2 |
| 7 | 3 |
| 10 | 4 |

If the apprentice ratio guidelines are not followed, they must be paid at least the prevailing wage journeyman rate based on how they are classified on the apprenticeship agreement, or the nature of the work they are in fact performing, whichever is greater.

If the apprentice is working outside the scope of their apprenticeship, they must be paid regular journeyman rate based on the nature of the work they are in fact performing. For example, an apprentice laborer that is painting must be paid as a journeyman painter for those hours he or she is painting at the worksite.

Apprentices working alone must be paid at the regular journeyman rate.

Pre-apprentices and helpers may not be paid less than prevailing wage.

The city will enforce the apprentice rates and ratio guidelines specified in the collective bargained agreement between the Union and contractor. In the absence of an agreement, the city will enforce the DOLI Apprenticeship Ratio Policy. If a contractor and a union have a contract that defines the project in such a way that it contravenes the city's definition of the project, the city will enforce apprentice ratios pursuant to the contract between the contractor and the Union only after obtaining authorization from both parties.

Overtime

A contractor must pay overtime if the employee works more than 40 hours per week or eight hours in a day, whichever is applicable. Under federal prevailing wage law, overtime is generally anything over 40 hours per week. Under local prevailing wage law, overtime is anything over 8 hours per workday. Whether 8 hours or 40 hours is applicable to your project depends on the source of the funding. Contact the Labor Standards Unit if you need assistance.

Overtime is calculated at a rate of 1.5 times the regular hourly rate plus the regular fringe benefit rate. For example, if a laborer's regular hourly rate of pay is \$25.00 and her fringe benefit rate is \$20.00, overtime would be: $(\$25.00 \times 1.5) + \$20.00 = \$57.50$.

Federal, state and city law supersedes any contractual agreement between a labor union and a contractor regarding wages if the agreement conflicts with the applicable prevailing wage law.

Independent Contractors vs. Employees

On projects where only city money is provided, the city requires all of the following criteria be met before a contractor's worker will be recognized as an independent contractor:

- 1) Maintains a separate business with the individual's own office, equipment, materials, and other facilities;
- 2) Holds or has applied for a federal employer identification number, or has filed business or self-employment incomes tax returns with the Internal Revenue Service if the individual has performed services in the previous year;
- 3) Is operating under contract to perform the specific services for the person for specific amounts of money and under which the individual controls the means of performing the services;
- 4) Is incurring the main expenses related to the services that the individual has contracted to perform for the person and is liable for a failure to complete the services;
- 5) Is responsible for the satisfactory completion of the services that the individual has contracted to perform for the person and is liable for a failure of complete the services;
- 6) Receives compensation form the person for the services performed under the contract on a commission or per-job or competitive bid basis and not any other basis;
- 7) May realize a profit or suffer a loss under the contract to perform services for the person;
- 8) Has continuing or recurring business liability or obligations, and;
- 9) The success or failure of the individual's business depends on the relationship of business receipts to expenditures.

On project with state or federal money, additional requirements might apply. Contact the Labor Standards Unit with any questions.

Individuals exempt from Prevailing Wage requirements

Consultants and professional staff, such as architects and survey engineers, are exempt from prevailing wage requirements. Office and administrative staff are generally exempt. Exemptions are determined on a case-by-case basis by the Labor Standards Unit consistent with federal, state, and city law. The Labor Standards Unit has sole discretion to make this decision on city-only funded projects.

Work performed on a project relating to an artistic or creative nature might be exempt from prevailing wage requirements. However, the Labor Standards Unit must grant an exemption in writing before work begins. Consult with the Labor Standards Unit for further information.

Salaried workers are not necessarily exempt from prevailing wage requirements. Contact the labor standards office if you need clarification on whether a salaried worker is exempt from prevailing wage reporting requirements.

Additional Types of Employees

Owners, foreman and supervisors who devote more than 20% of their time during the work week to labor to mechanic duties are considered laborers or mechanics for the time spent and are subject to prevailing wage requirements. Prevailing wage does not apply if they are performing administrative or clerical work at the work site.

Family members, friends and independent contractors must also be paid according to the prevailing wage requirements. No worker under the age of 18 is allowed to perform work on a prevailing wage construction project except as allowed under federal and state law.

Work Delays

From the time a worker is required to report for work at the project site until the worker is allowed to leave the site, no deductions shall be made from the worker's hours for any delays of less than twenty consecutive minutes. If the delay exceeds twenty minutes and the worker must remain on the project site, they are considered "on-call" and must be paid prevailing wage.

Payrolls and Statements

The general contractor is responsible for ensuring all payrolls, including those of all subcontractors and self-engaged contractors, is submitted on time. Payroll for all workers must be submitted via LCP Tracker.

Under some circumstances, the prevailing wage officer might allow the submission of paper payroll as long as it satisfies the reporting requirements of the department. Ultimately, this decision is at the discretion of the prevailing wage officer monitoring the project. If the prevailing wage officer grants permission to submit paper payroll, it must, at a minimum, provide the following information:

- 1) Name of project.
- 2) Name, phone number, and address of worker.
- 3) Classification of worker (e.g., carpenter, electrician, miner, etc.).
- 4) Week ending
- 5) Basic hourly rate of pay, fringe rate of pay, and total hourly pay.
- 6) Total hours on project for that week.
- 7) Number of hours worked each day.
- 8) If the worker is an apprentice they need to be identified as such.
- 9) Tax deductions, such as Social Security, Medicare and other taxes.
- 10) Total gross and net paycheck amount (if more than total pay earned for prevailing wage job, total earnings for the week from work on all projects worked that week must be included).
- 11) Overtime hours and pay, if applicable, broken down by day and hour.
- 12) All legal deductions taken from employee's pay (e.g., child support, garnishments).
- 13) Ethnicity of workers for AA/EEO reporting purposes.

Allowable Deductions

The following are generally allowable deductions:

- 1) Federal and state tax withholding
- 2) Court-ordered payments, such as garnishments or child support payments.
- 3) Employee contributions to 401K, pension or life insurance, US Savings bonds.
- 4) Employee authorized deductions, such as charitable contributions.
- 5) Union fees.

The following items may not be deducted from a worker's paycheck:

- 1) Uniforms rental or purchase.
- 2) Travel expenses, including lodging and food.
- 3) Expenses for tools provided by the contractor.

Records Submission and Retention

All payrolls must be entered into LCP Tracker within two weeks of having been performed by the worker at the construction site; missing payroll can affect payment by the City of St. Paul to the vendor or contractor working on the project. On federally funded construction projects, payrolls must be submitted weekly and onsite workers must be paid weekly.

All payroll records must be maintained for a minimum of three years from the completion date of the construction project.

Trucking

Truck drivers working on construction projects are also subject to prevailing wage. Prevailing wage recognizes two different kinds of truckers:

- 1) Employee Truck Drivers: Truck drivers are employees of the one of the contractors working on the project, and the truck the driver is operating is wholly owned by the contractor. Employee truck drivers' payroll may be entered into LCP Tracker just like any other worker on the project.
- 2) Third Party Truck Drivers: Third party truck drivers are either self-employed, or work for an outside trucking company. In either case, the contractor has made a contract with an outside trucking company to provide trucking services. Third party truck drivers can be further divided into independent truck owner/operator (ITO), and multiple truck owner/operator (MTO). An independent truck driver owns his or her own truck¹; a multiple truck owner is generally a trucking brokerage firm or trucking company that owns a fleet a vehicles and their truck drivers are employees of the company. The labor standards unit must receive monthly trucking reports, which verify that truck drivers

¹ Minnesota Rules 5200.1106, Subpart 7(A), defines an ITO as an individual, partnership, or principal stockholder of a corporation who owns or holds a vehicle under lease and who contracts that vehicle and the owner's services to an entity which provides construction services.

were paid the appropriate rate. If the engaging contractor does not provide the monthly trucking reports, the truck driver will have to be reported in LCP Tracker as an employee.

There are two components to payroll reporting regarding third party truckers: 1) the *regional* labor cost, which is the hourly rate of pay the truck driver receives, and; 2) the *statewide* operating cost of the truck, which is the compensation provided to the truck owner for mileage, wear and tear of the vehicle, and other expenses incurred in operating a truck.² Note that, whereas the hourly rate of pay is determined by region in the same manner as prevailing wage, the operating cost of the truck is a statewide determination.

If you are using third party trucking services, you must fill out and complete a Month-End Trucking Report. It consists of two components: 1) the MTO "Form A" and/or ITO "FORM B," and 2) the Statement of Compliance Form.

If you are a contractor using ITOs, you must provide "FORM B" (see appendix B). If you are using MTOs, you must use "FORM A" (see appendix B). These forms must be submitted at the end of every month during the life of the project. Appendix B also contains instructions on how to fill out the forms. A completed Statement of Compliance Form (see Appendix B) must also be submitted.

Contractors using ITO's must provide the city with bona fide demonstrations of status of such entities prior to the final award of any contract. The contractor must provide:

- 1) Cab Card;
- 2) Valid Driver's license and Registration;
- 3) A copy of the previous year's tax filing, and;
- 4) Any other determination regarding status as defined by the U.S. Department of Revenue. The city will also accept documentation validated by DOLI or US DOL.

State Hauling and Trucking Requirements

The following hauling activities are included in hours worked and considered work under the contract for purposes of payment of the truck rental rate:

The processing or manufacturing of material, including the hauling of material to and from a prime contractor's material operation that is not a separately held commercial establishment.

The processing or manufacturing of material, including the hauling of material to and from an off-site material operation that is not considered a commercial establishment.

The hauling of any or all stockpiled or excavated materials on the project work site to other locations on the same project even if the truck leaves the work site at some point.

² See Minn. Stat. 5200.1105 regarding what constitutes operating costs.

The delivery of materials from a non-commercial establishment to the project and the return haul.

The delivery of materials from another construction project site to the public works project and the return haul, either empty or loaded. Construction projects are not considered commercial establishments.

The hauling required to remove materials from the project to a location off the project site, and the return haul; either empty or loaded from other than a commercial establishment.

The delivery of mineral aggregate materials from a commercial establishment, which is deposited “substantially in place” and the return haul, either empty or loaded.

This list is not comprehensive. It is the responsibility of the prime contractor and its subcontractors to remain aware of hauling activities and request the assistance of the labor standards unit for clarification.

Federal Hauling and Trucking Requirements

- 1) Truck drivers are covered by the DBA in the following circumstances:
 - a. Drivers of a contractor or subcontractor for time spent working on the site of the work
 - b. Drivers of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of the work, if such time is not *de minimis* (less than 15 minutes to pick up or drop off materials).
 - c. Truck drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site
 - d. Truck drivers transporting portions(s) of the building or work between a site established specifically for the performance of the contract or project where a significant portion of such building or work is constructed and the physical place(s) where the building or work called for in the contract(s) will remain
- 2) Truck drivers are not covered in the following instances:
 - a. Material delivery truck drivers while off the site of the work
 - b. Drivers of a contractor or subcontractor traveling between a DBA job and a commercial supply facility while they are off the site of the work
 - c. Truck drivers whose time spent on the site of the work is *de minimis*, such as only a few minutes at a time merely to pick up or drop off materials or supplies
- 3) The provisions of DBRA/CWHSSA are not applied to bona fide owner-operators of trucks who are independent contractors. This position does not pertain to owner-operators of other equipment such as bulldozers, scrapers, backhoes, cranes, drilling rigs, welding machines, and the like. Moreover, employees hired by owner-operators are subject to DBRA in the usual manner described herein and in the US DOL Field Operations Handbook.

Truck Broker Fees

A truck broker providing trucks pursuant to a contract may charge a reasonable broker fee, but the neither the prime contractor nor any subcontractor may assess a broker fee.

Onsite Visits

In accordance with the need to enforce city, state, and federal prevailing wage law, city prevailing wage officers conduct site visits. Pursuant to the prevailing wage requirements, City of St. Paul compliance officers must be allowed to have access to the construction site during normal business hours. "Site" is expansively defined to include the location where the construction project is occurring, any off-site supply location, dumping location, off-site locations associated with hauling activities, and anywhere else where access is necessary to interview the workers of a project.

The prevailing wage officer must be allowed a reasonable amount of time to interview all workers, without interference from their employer. The information typically gathered includes, but is not limited to: their name, phone number, address, job classification, employer, hours worked, nature and description of day-to-day job duties, what tools they use, and any other areas of inquiry necessary for the prevailing wage officer to perform his or her duties.

Prevailing wage officers may also contact workers when at or not at work via telephone, email or US mail. The information gathered by the prevailing wage officer is considered confidential is not shared with anyone else, including the employer, except where restricted by state and local public data laws.

Investigations

The Labor Standards Unit will initiate an investigation based on its own findings or after receiving a complaint from a worker.³

Common violations include, but are not limited to:

- 1.) Failure to pay minimal prevailing wage rate;
- 2.) Misclassification of workers;
- 3.) Not reporting all workers' hours, therefore possibly not paying prevailing wage for all hours worked;
- 4.) Not reporting workers actually working on the project;
- 5.) Journey-to-apprentice ratio violations;

The following steps will be taken (not necessarily in order):

³ The following process refers to projects containing only city money; projects containing state and/or federal money might be subject to additional investigative requirements.

- 1) Conduct a confidential structured interview of the complainant in order to obtain the complainant's information;
- 2) Interview the contractor (i.e., the alleged violator);
- 3) Interview other workers on the project who worked for the alleged violator.
- 4) Gather all pertinent documents, including LCP Tracker wage records, the employer's wage records, and the worker's paystubs and bank records;
- 5) Review US DOL and/or DOLI administrative regulations concerning the investigative process, if applicable.

Procedure for Investigation

The Labor Standards Unit will compare the worker's paystubs and bank records and compare these against the employer's records and LCP submissions. If a discrepancy exists that demonstrates the worker was not paid the minimal prevailing wage, the Labor Standards Unit shall provide a written letter or email to the contractor specifying the amount of money owed and the basis for the finding. The contractor will be required to provide restitution to the worker and provide documentation of the restitution to the Labor Standards Unit. Upon the contractor's request, the Labor Standards Unit will arrange for a meeting with the contractor to review the evidence for the violation to ensure the allegations are accurate.

The Labor Standards Unit shall afford the contractor 14 days to review the findings and provide an opportunity to respond. If the contractor does not contest the findings within 14 days, or does not otherwise respond to the Labor Standards Unit's findings within said time, it shall be considered final. If the contractor contests the findings, the Labor Standards Unit shall respond within a reasonable amount of time to consider the contractor's position. If the Labor Standards Unit does not change its findings after considering the contractor's position, the contractor shall provide restitution within 30 days. The contractor may appeal the Labor Standards Unit findings to the Director of HREEO or one of the Director's appointees within 14 days.

Failure of the contractor to maintain adequate payroll records will be prima facie evidence that the contractor's workers were not paid the prevailing wage, at which point the burden will be on the contractor to demonstrate they paid the prevailing wage to the affected workers. It is the responsibility of the contractor to maintain payroll records sufficient for the Labor Standards Unit to make a reasonable determination.

If the project contains state and/or federal money, the Labor Standards Unit shall afford the contractor a reasonable amount of time to review the evidence for the alleged violation and provide restitution, within the guidelines permitted by the US DOL and DOLI.

If the Labor Standards Unit suspects a contractor knowingly paid their workers less than the prevailing wage, or obstructed the Labor Standards Unit's investigation, the Labor Standards Unit will weigh the evidence and might, based on a preponderance of the evidence, take corrective action beyond payment of restitution, up to and including debarment from city, state and federal projects, pursuant to US DOL, DOLI and city law. The City Labor Standards Unit

shall review all of the evidence and will refer the case to the City Attorney's Office if debarment is recommended.⁴

If the contractor fails to pay restitution after having a chance to review the evidence and pay the employee(s), the city might withhold payment to the contractor and use all or a portion of the withheld money to pay the outstanding restitution.

The US Department of Labor or the Minnesota Department of Labor might conduct their own investigation separate and distinct from the city investigation.

All information gathered during the investigation is confidential unless otherwise subject to the Minnesota Data Practices Act.

⁴ See City of Saint Paul Ordinance Chapter 185 for debarment procedure.

Related Laws

The Labor Standards Unit also provides assistance with the following federal, state and city laws:

Federal and state Fair Labor Standards Act (FLSA)

City Living Wage Ordinance

City Project Labor Agreement (PLA) Resolution

City Proprietary Interest Protection Agreement (PIPA)

Federal Copeland Anti-Kickback Act

Family Medical Leave Act (FMLA)

Minnesota Parental Leave Act

APPENDIX A

DEFINITIONS

CDBG: Community Block Development Grant, a form of federal HUD funding;

HRA: City of Saint Paul Housing and Redevelopment Authority

MET COUNCIL: Metropolitan Council

TBRA: Met Council Tax Base Revitalization Account

LCDA: Met Council Livable Community Demonstration Account

HOME: a form of federal HUD funding;

DEED: Department of Employment and Economic Development of Minnesota community development funding;

MNDOT: Minnesota Department of Transportation;

STAR: Neighborhood Sale tax Revitalization Program;

TIF: Tax Increment Funding

APPENDIX B



CONTRACTOR PROFILE

Project Name: _____

Business Name: _____ Federal Tax ID #: _____

Address: _____

Phone #: _____ Fax #: _____

Our agreement/contract dated _____ is with _____ in the amount of \$ _____

For _____
(Identify specific contract work)

Will you sub out any of your contract work? _____ If yes, please identify subs: _____

Person authorized to certify (sign) payroll reports: _____

Person submitting electronic payroll reports: _____ Email: _____

Identify work classifications (as listed in project wage decision) you anticipate using, base rate of pay, and total wage payment:

| <u>Work Classification</u> (Group #, if applicable. Add pages if necessary) | <u>Base Rate of Pay</u> | <u>Total Wage Payment</u> (base +fringes) |
|--|-------------------------|--|
| _____ | \$ _____ | \$ _____ |
| _____ | \$ _____ | \$ _____ |
| _____ | \$ _____ | \$ _____ |

Check (A), (B) or (C) identifying how fringe benefits are paid to your workers:

- (A) _____ included with pay check in the amount of \$ _____;
- (B) _____ funded (with trustee or third party) fringe benefit plan in the hourly amounts indicated below:
- (C) _____ unfunded* (company-paid) fringe benefit plan in the hourly amounts indicated below
(identify for each employee working on the project, include: hourly fringe amounts, provider/company name if applicable, & how often contribution is made):

| <u>*Holiday</u> | <u>*Vacation</u> | <u>*Sick Leave</u> | <u>Health</u> | <u>Dental</u> | <u>Life</u> | <u>Pension</u> | <u>Other</u> (identify) | <u>TOTAL HOURLY FRINGE RATE</u> |
|-----------------|------------------|--------------------|---------------|---------------|-------------|----------------|-------------------------|---------------------------------|
| \$ _____ | \$ _____ | \$ _____ | \$ _____ | \$ _____ | \$ _____ | \$ _____ | \$ _____ = | \$ _____ |
| \$ _____ | \$ _____ | \$ _____ | \$ _____ | \$ _____ | \$ _____ | \$ _____ | \$ _____ = | \$ _____ |

Benefit funds are deposited into Account #(s) _____ and are maintained by (agency name & address):

_____ Phone #: _____

IF FUNDS ARE MAINTAINED BY A THIRD PARTY FRINGE BENEFIT PLAN, PLEASE ATTACH A CURRENT LETTER FROM THE FUND ADMINISTRATOR.

Owner/Principal Officer & Title (PLEASE PRINT) _____ Owner/Principal Officer Signature _____ Date _____

IS THIS A SOLE PROPRIETORSHIP OR PARTNERSHIP BUSINESS? Yes No

IDENTIFICATION OF PRIME CONTRACTOR AND SUBCONTRACTORS (INCLUDING MATERIAL SUPPLIERS)



Form required for Labor Standards, AA/EEO, HUD Section 3, and Vendor Outreach

Submit completed form to: Contract Compliance & Business Development
 15 West Kellogg Blvd, Room 280
 Saint Paul, MN 55102-1681

Phone: 651-266-8900, Fax: 651-266-8919
 Email: contractcompliance@stpaul.gov

Project: _____ Bid #: _____ Est. Construction Cost: _____ VOP Goal: \$ _____ %

Please identify all subcontractors (including material suppliers) you intend to utilize on this project. Use "supplier only" column to identify suppliers.
 Identify Minority Owned, Women Owned, Small, and Section 3 businesses with **MBE, WBE, SBE, or Sec 3** respectively. Please identify Certified Vendors.
Form must be updated and submitted when you add, delete, or make other changes to the list.

| | CERT M/W/S/BE Vendor | Section 3 Certified Vendor | Nature of Work | supplier only (no labor) | Date Work to Begin | Date Work Completed | Contract Amount |
|----------------------|----------------------------|----------------------------------|----------------|--------------------------------|-----------------------|------------------------|--------------------|
| PRIME: _____ | | | _____ | | _____ | _____ | _____ |
| _____ | | | _____ | | _____ | _____ | _____ |
| SUBS: 1 _____ | | | _____ | | _____ | _____ | _____ |
| _____ | | | _____ | | _____ | _____ | _____ |
| 2 _____ | | | _____ | | _____ | _____ | _____ |
| _____ | | | _____ | | _____ | _____ | _____ |
| 3 _____ | | | _____ | | _____ | _____ | _____ |
| _____ | | | _____ | | _____ | _____ | _____ |
| 4 _____ | | | _____ | | _____ | _____ | _____ |
| _____ | | | _____ | | _____ | _____ | _____ |
| 5 _____ | | | _____ | | _____ | _____ | _____ |
| _____ | | | _____ | | _____ | _____ | _____ |
| 6 _____ | | | _____ | | _____ | _____ | _____ |
| _____ | | | _____ | | _____ | _____ | _____ |
| 7 _____ | | | _____ | | _____ | _____ | _____ |
| _____ | | | _____ | | _____ | _____ | _____ |
| 8 _____ | | | _____ | | _____ | _____ | _____ |
| _____ | | | _____ | | _____ | _____ | _____ |
| 9 _____ | | | _____ | | _____ | _____ | _____ |
| _____ | | | _____ | | _____ | _____ | _____ |

| | Name, Address, Contact Person, and Phone Number | CERT M/W/S/BE Vendor | Section 3 Certified Vendor | Nature of Work | supplier only (no labor) | Date Work to Begin | Date Work Completed | Contract Amount |
|----|---|----------------------------|----------------------------------|----------------|--------------------------------|-----------------------|------------------------|--------------------|
| 10 | | | | | | | | |
| 11 | | | | | | | | |
| 12 | | | | | | | | |
| 13 | | | | | | | | |
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| 20 | | | | | | | | |

City of Saint Paul HREEO Use Only

| Section 3 | | | |
|----------------------------------|----------------|--------------------------------------|----------------|
| <u>Construction Subcontracts</u> | | <u>Non-Construction Subcontracts</u> | |
| Total Subcontracts (labor) | | Total PSA awards | |
| GC Self Perform | \$0 | Goal - PSA 3% | 0 |
| Goal - Labor 25% (if applicable) | \$0 | Awards to Sec 3 Subs | |
| Goal - Labor 10% | \$0 | Percentage to Sec 3 | #DIV/0! |
| Awards to Sec 3 Subs | | Total Work by Sec 3 (GC & Subs) | |
| Percentage to Sec 3 | #DIV/0! | Total % by Sec 3 | #DIV/0! |

Notes / Status:

| Total Business Opportunity (VOP) | | | | \$0.00 |
|---|---------|---|----|---------|
| MBE | #DIV/0! | % | \$ | |
| WBE | #DIV/0! | % | \$ | |
| SBE | #DIV/0! | % | \$ | |
| Total MBE, WBE, SBE contract \$ | | | | \$0 |
| VOP Subcontract Percentage | | | | #DIV/0! |
| Overall VOP Contract Percentage | | | | #DIV/0! |