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Contractor Responsibilities

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)

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 at https://ccbed.ccb.state.or.us/ccb_frames/consumer_info/. 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. ORS 279C.836(4)

An exemption from this requirement is allowed for certified disadvantaged, minority, women or emerging small business enterprises, for the first four years of certification. Such an enterprise must provide the CCB with written notification of its certification, and must complete the CCB's exemption form. In addition, the business enterprise must notify the public agency and the prime contractor that a public works bond has not been filed by the business enterprise. ORS 279C.836(7)

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 an \$8,000 contract on a project with a total cost of \$120,000, the subcontractor must file a public works bond with CCB before beginning work on this project. ORS 279C.836(8)

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)

[Public works bond forms](#) can be found on BOLI's website. Other forms, such as non-construction company forms and exemption forms, can be found on CCB's website at http://www.oregon.gov/CCB/public_works_bond.shtml.

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(3)

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(31)

Except for Construction Manager/General Contractor (CM/GC) contracts, 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(4)(a) (See Section (6) of this rule for CM/GC related information.)

When a 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)

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.

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

If an established four-ten schedule is not followed because of weather, scheduling, or for any other reason, overtime will be owed for all hours worked over eight per day that week. An employer may change an established work schedule, but only if the change is intended to be permanent and is not designed to evade the PWR overtime requirements. 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 zone pay is due, that amount is added to the base rate, and the following equation should be used:

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

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)

Examples of how to calculate overtime are in OAR 839-025-0050(2)(c). Examples of weighted average overtime calculations are in the [Calculating Weighted Average Overtime](#)

section.

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

For all contracts with Oregon University System, the overtime provisions of ORS 279C.540 do not apply. Overtime on such projects is due only after 40 hours in the workweek. ORS 351.086

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 should be paid for all hours worked at the highest rate the employee earned that week.

Work Schedules

Contractors and subcontractors must give workers the 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

Apprentices and Trainees

Workers may be paid the applicable apprentice or trainee rate only if BOLI's Apprenticeship and Training Division or the federal Bureau of Apprenticeship and Training has registered them as apprentices or trainees. OAR 839-025-0035(9) and (10); OAR 839-025-0060; OAR 839-025-0065

Contractors and subcontractors must comply with the ratio of journey workers to apprentices specified in the apprenticeship standards. Contractors and subcontractors who do not comply with these ratios must pay all apprentices the full prevailing wage rate.

In trades where apprentices customarily receive only a portion of the hourly fringe benefit amount, registered apprentices may be paid the base rate pursuant to their apprenticeship agreement and the fringe benefit rate according to the prevailing practice in the region in which they are performing work. Otherwise, apprentices must be paid the full fringe benefit portion of the prevailing wage rate. OAR 839-025-0040(2)

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 on a public works project for more than 20 percent of their workweek, they must be paid 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 workweek performing manual labor on a public works project, they do not need to be paid prevailing wages, nor do their hours 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, which equals 21.4 percent of 40 hours, throughout the week performing manual labor on a public works project (or on several public works projects), the supervisor would need to be paid the appropriate prevailing wage rate for those nine hours of work.

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. Operators of other equipment or motor vehicles are not exempt.

Site of Work

Contractors and subcontractors must pay prevailing wages for work done at the site of work. The site of work is the physical place where the construction called for in the project contract will remain after the work is complete.

For purposes of Oregon's PWR law, 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, as does the drive time between the dedicated site and the project site. OAR 839-025-0004(25); OAR 839-025-0035(5), (6), and (7)

On public works projects that are subject to the Davis-Bacon Act, pits, batch plants, tool-yards and other locations will only be considered "dedicated" to the project if they are adjacent or virtually adjacent to the project site. ORS 279C.838(2)

Truck Drivers

Truck drivers, parts runners and other delivery personnel working for contractors and subcontractors are generally not due the prevailing rate of wage for delivery to and from the site of work. However, if driving takes place on the site of work, or if these workers are engaged in performing other manual work at the work site, the applicable prevailing wage rate must be paid to the workers for time spent on site. For enforcement purposes, truck drivers performing delivery for a construction contractor or subcontractor must be paid prevailing wages if they perform 15 minutes or more of driving or other work at the work site. OAR 839-025-0004(30); OAR 839-025-0035(7)

Truck drivers performing delivery for a commercial supplier are not generally due prevailing wages for incidental work performed on the project site. These workers are due prevailing wages only if they spend more than 20 percent of their time during a workweek engaged in work on the project site. OAR 839-025-0035(6)

A commercial supplier who enters into a construction contract on a PWR project is a construction contractor for purposes of the law and must comply with the law as it applies to construction contractors.

On public works projects that are subject to the Davis-Bacon Act, delivery personnel are not due prevailing wages unless they spend more than an incidental amount of time engaged in work on the project site. For enforcement purposes, an incidental amount of time is generally considered to be more than 20 percent of the workweek. ORS 279C.838(3)

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. Operators of other equipment or motor vehicles are not exempt.

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. ORS 279C.800(1); OAR 839-025-0004(8)

Examples of Bona Fide Fringe Benefits

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

See the [Computing the Allowable Hourly Credit for Fringe Benefit Contributions](#) section 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.

Required Postings

Prevailing Wage Rates

Each and every contractor and subcontractor must post the applicable prevailing wage rates and fringe benefit plan information in a conspicuous place at the work 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 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. ORS 279C.840(5); OAR 839-025-0033(2)

Work Schedule

Contractors and subcontractors must give workers the 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

Certified Payroll

Filing Requirements

Every contractor and subcontractor on a covered project must file certified payroll records 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 statements 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 Form

To help contractors and subcontractors satisfy the filing requirement, form [WH-38](#) is included in each PWR rate book, and it can also be found on BOLI's website at http://egov.oregon.gov/BOLI/WHD/PWR/W_PWR_Forms.shtml. BOLI does not require contractors and subcontractors to use this form, but they must supply all information the form requests (unless otherwise noted), and this information must be certified.

Contractors and subcontractors using their own forms or reports can comply with the certification requirement by attaching and completing a copy of the certified statement from the WH-38 form to their filing.

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 amount 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 should 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.

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.

Multiple Work Classifications

If an employee works in more than one classification, the contractor or subcontractor must carefully track how much time is spent doing each type of work. Contractors and subcontractors must pay employees the applicable prevailing rate for the hours they spend in each work classification. If the contractor's records do not clearly show the time spent in each classification, the contractor must pay the worker at the highest classification rate for all hours worked.

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. 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

Annual Survey Requirements

Every year, the Oregon Employment Department, under the direction of BOLI, conducts a comprehensive geographical wage survey on Oregon's non-residential construction industry. Completion of the annual survey is mandatory, and all survey responses are kept confidential. Although residential construction hours are not included in the data, residential contractors must respond to the survey each year.

BOLI uses the data from the annual survey to set the state prevailing wage rates. This is why it is important for every contractor and subcontractor to complete and return the survey. The information requested is essential, and failure to respond to the survey as required may result in the assessment of civil penalties against a non-responding contractor. ORS 279C.815

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](#).
- 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.
- Return wage surveys promptly and with accurate information.

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.



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