

General Provisions of Laws Covering Workers on Public Work Contracts

The Labor Department issues wage schedules on a county-by-county basis that contain minimum rates of pay for different work classifications. State law requires that these schedules be made part of all contracts between a government entity and a contractor.

The State Labor Department updates prevailing wage rates annually by July 1. For information and/or assistance on a specific rate, please contact the local [district office](#). Informational wage schedules may be obtained by mailing or Fax a request to the Bureau's Central Office.

The process has five steps:

A state or local agency decides to let a contract for a public work project.

The contracting agency must send a written request to the Labor Department's Bureau of Public Work for an appropriate wage schedule.

The contracting agency then must attach the wage schedule to the bid specifications.

When awarding a contract, the agency must attach the wage schedule to the contract and notify the Bureau of Public Work that the contract has been awarded.

Before work begins, the contractor and subcontractor(s) must post wage schedules at the construction site so that workers know what they are entitled to.

Responsibilities of the Department of Jurisdiction

A Department of Jurisdiction (Contracting Agency) includes a state department, agency, board or commission; a county, city, town or village; a school district, board of education or board of cooperative educational services; a sewer, water, fire, improvement and other district corporation; a public benefit corporation; and a public authority awarding a public work contract.

The Department of Jurisdiction (Contracting Agency) awarding a public work contract **MUST** obtain a Prevailing Rate Schedule listing the hourly rates of wages and supplements due the workers to be employed on a public work project. This schedule may be obtained by completing and forwarding a Request for Wage and Supplement Information form (PW-39) to the Bureau of Public Work. The Prevailing Rate Schedule **MUST** be included in the specifications for the contract to be awarded and is deemed part of the public work contract.

Upon the awarding of the contract, the law requires that the Department of Jurisdiction (Contracting Agency) furnish the following information to the Bureau: the name and address of the contractor, the date the contract was let and the approximate dollar value of the contract. To facilitate compliance with this provision of the Labor Law, a copy of the Department's Notice of Contract Let form (PW-16) is provided with the original Prevailing Rate Schedule.

The Department of Jurisdiction (Contracting Agency) is required to notify the Bureau of the completion or cancellation of any public work project. The Department's PW-200 form is provided for that purpose.

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Hours

No laborer, worker or mechanic in the employ of a contractor or subcontractor engaged in the performance of any public work project shall be permitted to work more than eight hours in any day or more than five days in any week, except in cases of extraordinary emergency. The contractor **and** the Department of Jurisdiction (Contracting Agency) may apply to the Bureau of Public Work for a dispensation permitting workers to work additional hours or days per week on a particular public work project.

Wages and Supplements

The wages and supplements to be paid and/or provided to laborers, workers and mechanics employed on a public work project shall be not be less than those listed in the current Prevailing Rate Schedule for the locality where the work is performed. If a prime contractor on a public work project has not been provided with a Prevailing Rate Schedule, the contractor must notify the Department of Jurisdiction (Contracting Agency) who in turn must request an original Prevailing Rate Schedule from the:

**New York State Department of Labor,
Bureau of Public Work
State Office Campus, Bldg. 12
Albany, NY 12240**

Upon receiving the original schedule, the Department of Jurisdiction (Contracting Agency) is required to provide complete copies to all prime contractors who in turn must provide copies to each subcontractor and obtain an affidavit certifying such schedule was received.

The Commissioner of Labor makes an annual determination of the prevailing rates. This determination is in effect from July 1 thru June 30 of the following year. The annual determination is available on the Department of Labor website (<http://www.labor.state.ny.us/>). The prime contractor is required by law to provide copies of all applicable county schedules to each subcontractor and to obtain from each and every subcontractor an affidavit certifying that such schedules were received. If the original schedule expired, the contractor may obtain a copy of the new annual determination from the Department's website.

Payrolls and Payroll Records

Every contractor and subcontractor must keep original payrolls or transcripts subscribed and affirmed as true under penalty of perjury. Payrolls must be maintained for at least three years from the project's date of completion. At a minimum, payrolls must show the following information for each person employed on a public work project:

Name

Classification(s) in which the worker was employed

Hourly wage rate(s) paid

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Supplements paid or provided

Daily and weekly number of hours worked in each classification.

Every contractor and subcontractor shall submit to the Department of Jurisdiction (Contracting Agency), within thirty (30) days after issuance of its first payroll and every thirty (30) days thereafter, a transcript of the original payrolls, subscribed and affirmed as true under penalty of perjury. The Department of Jurisdiction (Contracting Agency) shall receive and maintain such payrolls.

In addition, the Commissioner of Labor may require contractors to furnish, within ten days of a request, payroll records sworn to as their validity and accuracy for public work and private work. Payroll records include, but are not limited to, time cards, work description sheets, proof that supplements were provided, cancelled payroll checks and payrolls. Failure to provide the requested information within the allotted ten days will result in the withholding of up to 25% of the contract, not to exceed one hundred thousand dollars. If the contractor or subcontractor does not maintain a place of business in New York State and the amount of the contract exceeds \$25,000, payroll records and certifications must be kept on the project worksite.

The prime contractor is responsible for any underpayments of prevailing wages or supplements by any subcontractor.

All contractors or their subcontractors shall provide to their subcontractors a copy of the Prevailing Rate Schedule specified in the public work contract. A failure to provide a schedule by a contractor or subcontractor is a violation of Article 8 of the Labor Law. See Section 220-a.

All subcontractors engaged by a public work project contractor or its subcontractor, upon receipt of the original schedule shall provide to such contractor a verified statement attesting that the subcontractor has received the Prevailing Rate Schedule and will pay or provide the applicable rates of wages and supplements specified therein. See Section 220-a.

Determination of Prevailing Wage and Supplement Rate Updates Applicable to All Counties

The wages and supplements contained in the annual determination become effective July 1st whether or not the new determination has been received by a given contractor. Care should be taken to review the rates for obvious errors. Any corrections should be brought to the Department's attention immediately. It is the responsibility of the public work contractor to use the proper rates. If there is a question on the proper classification to be used, please call the district office located nearest the project. Any errors in the annual determination will be corrected and posted to the Department's website on the first business day of each month. Contractors are responsible for paying these updated rates as well, retroactive to July 1st.

When you review the schedule for a particular occupation, your attention should be directed to the dates above the column of rates. These are the dates for which a given set of rates is effective. To the extent possible, the Department posts rates in its possession that cover periods of time beyond the July 1st to June 30th time frame covered by a particular annual determination. Rates that extend beyond that

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instant time period are informational only and may be updated in future annual determinations that actually cover the then appropriate July 1st to June 30th time period.

Withholding of Payments

When a complaint is filed with the Commissioner of Labor alleging the failure of a contractor or subcontractor to pay or provide the prevailing wages or supplements, or when the Commissioner of Labor believes that unpaid wages or supplements may be due, payments on the public work contract shall be withheld from the prime contractor in a sufficient amount to satisfy the alleged unpaid wages and supplements, including interest and civil penalty, pending a final determination.

When the Bureau of Public Work finds that a contractor or subcontractor on a public work project failed to pay or provide the requisite prevailing wages or supplements, the Bureau is authorized by Sections 220-b and 235.2 of the Labor Law to so notify the financial officer of the Department of Jurisdiction (Contracting Agency) that awarded the public work contract. Such officer **MUST** then withhold or cause to be withheld from any payment due the prime contractor on account of such contract the amount indicated by the Bureau as sufficient to satisfy the unpaid wages and supplements, including interest and any civil penalty that may be assessed by the Commissioner of Labor. The withholding continues until there is a final determination of the underpayment by the Commissioner of Labor or by the court in the event a legal proceeding is instituted for review of the determination of the Commissioner of Labor.

The Department of Jurisdiction (Contracting Agency) shall comply with this order of the Commissioner of Labor or of the court with respect to the release of the funds so withheld.

Summary of Notice Posting Requirements

The current Prevailing Rate Schedule must be posted in a prominent and accessible place on the site of the public work project. The prevailing wage schedule must be encased in, or constructed of, materials capable of withstanding adverse weather conditions and be titled "PREVAILING RATE OF WAGES" in letters no smaller than two (2) inches by two (2) inches.

Every employer providing workers' compensation insurance and disability benefits must post notices of such coverage in the format prescribed by the Workers' Compensation Board in a conspicuous place on the jobsite.

Every employer subject to the New York State Human Rights Law must conspicuously post at its offices, places of employment, or employment training centers notices furnished by the State Division of Human Rights.

Employers liable for contributions under the Unemployment Insurance Law must conspicuously post on the jobsite notices furnished by the New York State Department of Labor.

Apprentices

Employees cannot be paid apprentice rates unless they are individually registered in a program registered with the New York State Commissioner of Labor. The allowable ratio of apprentices to

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journeyworkers in any craft classification can be no greater than the statewide building trade ratios promulgated by the Department of Labor and included with the Prevailing Rate Schedule. An employee listed on a payroll as an apprentice who is not registered as above or is performing work outside the classification of work for which the apprentice is indentured, must be paid the prevailing journeyworker's wage rate for the classification of work the employee is actually performing.

Article 8 of the New York State Labor Law requires that only apprentices individually registered with the New York State Department of Labor may be paid apprenticeship rates on a public work project. No other Federal or State Agency or office registers apprentices in New York State.

Persons wishing to verify the apprentice registration of any person must do so in writing to the:

**New York State Department of Labor
Office of Employability Development/Apprenticeship Training
State Office Campus, Bldg. 12
Albany, NY 12240**

Fax (518) 457-7154

All requests for verification must include the name and social security number of the person for whom the information is requested.

The only conclusive proof of individual apprentice registration is written verification from the Albany Apprenticeship Training Central Office. Neither Federal nor State Apprenticeship Training offices outside Albany can provide conclusive registration information.

It should be noted that the existence of a registered apprenticeship program is not conclusive proof that any person is registered in that program. Furthermore, the existence or possession of wallet cards, identification cards or copies of state forms is not conclusive proof of the registration of any person as an apprentice.

Interest and Penalties

In the event that an underpayment of wages and/or supplements is found:

- Interest shall be assessed at the rate then in effect, as prescribed by the Superintendent of Banks pursuant to section 14-a of the Banking Law, per annum from the date of underpayment to the date restitution is made.

- A Civil Penalty may also be assessed, not to exceed 25% of the total of wages, supplements and interest due.

Debarment

Any contractor or subcontractor and/or its successor shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with any state, municipal corporation or public body for a period of five years when:

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- Two willful determinations have been rendered against that contractor or subcontractor and/or its successor within any consecutive six-year period.
- There is any willful determination that involves the falsification of payroll records or the kickback of wages or supplements.

Criminal Sanctions

Willful violations of the Prevailing Wage Law (Article 8 of the Labor Law) constitute a misdemeanor punishable by fine or imprisonment, or both.

Discrimination

No employee or applicant for employment may be discriminated against on account of age, race, creed, color, national origin, sex, disability or marital status.

No contractor, subcontractor nor any person acting on its behalf, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates. See Section 220-e (a)

No contractor, subcontractor nor any person acting on its behalf, shall in any manner, discriminate against or intimidate any employee on account of race, creed, color, disability, sex or national origin. See Section 220-e (b)

The Human Rights Law also prohibits discrimination in employment because of age, marital status or religion.

There may be deducted from the amount payable to the contractor under the contract a penalty of fifty dollars for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract. Section 220-e(c)

The contract may be cancelled or terminated by the State or municipality. All monies due or to become due there under may be forfeited for a second or any subsequent violation of the terms or conditions of the anti-discrimination sections of the contract. See Section 220-e (d)

Every employer subject to the New York State Human Rights Law must conspicuously post at its offices, places of employment, or employment training centers notices furnished by the State Division of Human Rights.

Workers' Compensation

In accordance with Section 142 of the State Finance Law, the contractor shall maintain coverage during the life of the contract for the benefit of such employees as required by the provisions of the New York State Workers' Compensation Law.

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A Contractor who is awarded a public work contract must provide proof of workers' compensation coverage prior to being allowed to begin work.

The insurance policy must be issued by a company authorized to provide workers' compensation coverage in New York State. Proof of coverage must be on form C-105.2 (Certificate of Workers' Compensation Insurance) and must name this agency as a certificate holder.

If New York State coverage is added to an existing out-of-state policy, it can only be added to a policy from a company authorized to write workers' compensation coverage in this state. The coverage must be listed under item 3A of the information page.

The contractor must maintain proof that subcontractors doing work covered under this contract secured and maintained a workers' compensation policy for all employees working in New York State.

Every employer providing workers' compensation insurance and disability benefits must post notices of such coverage in the format prescribed by the Workers' Compensation Board in a conspicuous place on the jobsite.

Unemployment Insurance

Employers liable for contributions under the Unemployment Insurance Law must conspicuously post on the jobsite notices furnished by the New York State Department of Labor.