

Part I Chapter 44 Prevailing Wage Act

- A. General Requirement.** For public works projects in excess of \$25,000, the purchasing agency must include in the solicitation document and the contract the minimum prevailing wages to be paid by the contractor to its workers on the project.
- B. Duties of Purchasing Agency.**
1. Before soliciting bids or proposals, obtain from the Department of Labor and Industry the prevailing wage rates to be paid by the contractors on the public works project. Requests for prevailing wage rate determinations can be made through the Department of Labor and Industries' website: <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=553543&mode=2>.
 2. Include the prevailing minimum rates and required contract provisions in the invitation for bids, request for proposals and the contract.
 3. Before final payment, receive statements from the contractor concerning payment of wages on the project.
 4. If a worker objects to payment to the contractor because of the amount due the worker, the Secretary of Labor and Industry may order the public body to withhold certain monies from the contractor.
- C. Public Works Projects.** Means construction, reconstruction, demolition, alteration, and/or repair work other than maintenance work, done under contract and paid for, in whole or in part out of the funds of a public body where the estimated cost of the total project is in excess of \$25,000, but shall not include work performed under a rehabilitation or manpower training program.
1. **Installation of Equipment or Materials.** If it amounts to an alteration of the building, installation of equipment or materials should be considered a "public work."
 2. **Repair vs. Maintenance.** Maintenance is specifically excluded from the definition of "public work." "Maintenance work" is defined as the repair of existing facilities when the size, type, or extent of such facilities is not thereby changed or increased. The word "facilities" in this definition refers not only to a change in the size, type, or extent of the entire structure, but also to its component parts. The courts have held that re-roofing, road resurfacing, installation of HVAC systems, replacement of sidewalks and curbs, and replacement of manhole covers are not "maintenance".
- D. Required Contract Provisions.** Every public works contract in excess of \$25,000 must contain at least the following conditions, provisions and requirements:
1. The prevailing minimum wage rates as determined by the Department of Labor and Industry which shall be paid to the workmen employed in the performance of the contract. The contract shall specifically provide that the contractor shall pay at least the wage rates as determined in the decision of

the Secretary of Labor and Industry and shall comply with the conditions of the act approved August 15, 1961, and the regulations issued thereto, to assure the full and proper payment of the rates.

- 2.** The stipulation that workmen shall be paid at least the prevailing minimum wage rates and other provisions to assure payment thereof.
- 3.** The contract provisions apply to work performed on the contract by the contractor and to work performed on the contract by subcontractors.
- 4.** The contractor shall insert in each of its subcontracts the stipulations contained in these required provisions and other stipulations as may be required.
- 5.** No workmen may be employed on the public work except in accordance with the classifications in the L&I prevailing wage rate determination. If additional or different classifications are necessary the procedure in § 9.107 (relating to petition for review of rates and hearings) shall be followed.
- 6.** Workmen employed or working on the public work shall be paid unconditionally, regardless of whether a contractual relationship exists or the nature of a contractual relationship which may be alleged to exist between a contractor, subcontractor and workmen, at least once a week, without deduction or rebate, on any account, either directly or indirectly except authorized deductions, the full amounts due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in the contract, the act or the L&I regulations prohibits the payment of more than the general prevailing minimum wage rates.
- 7.** The contractor and each subcontractor shall post for the entire period of construction the prevailing wage rate determination, including the effective date of changes thereof, in a prominent and easily accessible place or places at the site of the work and at the places used by them to pay workmen their wages. The posted notice of wage rates shall contain the following information:
 - a.** The name of project.
 - b.** The name of the public body for which it is being constructed.
 - c.** The crafts and classifications of workmen listed in the general prevailing minimum wage rate determination for the particular project.
 - d.** The general prevailing minimum wage rates determined for each craft and classification and the effective date of changes.
 - e.** A statement advising workmen that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the contractor or subcontractor are not complying with the act or this title, they may file a protest in writing with the Secretary of the PA Department of Labor and Industry within 3 months of the date of the occurrence, objecting to the payment to a contractor to the extent of the amount due or to become due to them as wages for work

performed on the public work project. A workman paid less than the rate specified in the contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the contract, which right of action shall be exercised within 6 months from the occurrence of the event creating the right.

- 8.** The contractor and subcontractors shall keep an accurate record showing the name, craft or classification, number of hours worked per day and the actual hourly rate of wage paid, including employee benefits, to each workman employed by him in connection with the public work. The record shall include deductions from each workman. The record shall be preserved for 2 years from the date of payment and shall be open at reasonable hours to the inspection of the purchasing agency and to the PA Department of Labor and Industry.
- 9.** The apprentices shall be limited to numbers in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with the Apprenticeship and Training Act (43 P. S. §§ 90.1 - 90.10), approved July 14, 1961, and the regulations issued thereto shall be employed on the public work project. A workman using the tools of a craft who does not qualify as an apprentice within this subsection shall be paid the rate predetermined for journeymen in that particular craft or classification.
- 10.** Wages shall be paid without deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the PA Department of Labor and Industry has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workmen.
- 11.** Payment of compensation to workmen for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Prevailing Wage Act and the PA Department of Labor and Industry regulations, regardless of the average hourly earnings resulting therefrom.
- 12.** Each contractor and each subcontractor shall file a statement each week and a final statement at the conclusion of the work on the contract with the contracting agency, under oath, and in form satisfactory to the PA Department of Labor and Industry, certifying that workmen have been paid wages in strict conformity with the provisions of the contract as prescribed by this section or if wages remain unpaid to set forth the amount of wages due and owing to each workman respectively.
- 13.** The provisions of the Prevailing Wage Act and the PA Department of Labor and Industry regulations shall be incorporated by reference in the contract.
- 14.** Before final payment is made, a final wage certification must be submitted by all contractors and subcontractors.

E. Remedies and Penalties.

1. For an unintentional failure to pay prevailing wages, the contractor will pay the difference or provide adequate security for the payment of the amounts required to be paid as prevailing wages to the affected workers.
 2. For an intentional failure, the contractor shall not be awarded any public contracts for three years, and the contractor shall be liable to the Commonwealth for liquidated damages, in addition to damages for any other breach of the contract, in the amount of the underpayment of wages.
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References:

1. [Prevailing Wage Project](#) (Department of Labor & Industry)