



**State of Wisconsin
Department of Workforce Development
Equal Rights Division**

NOTICE OF PUBLIC HEARING

Prevailing Wages

DWD 290, Wis. Adm. Code

NOTICE IS HEREBY GIVEN that pursuant to Sections 103.005(1), and 227.11(2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the amendment of rules relating to the state prevailing wage program and affecting small businesses.

Hearing Information

**Wednesday
August 11, 2010
10:00 a.m.**

**MADISON
G.E.F. 1 Building, Room F 305
201 E. Washington Avenue**

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 266-9427 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005(1) and 227.11(2), Stats.

Statutes interpreted: Sections 66.0903, 66.0904 and 103.49, Wis. Stats.

Explanation of agency authority. The state prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project, it must obtain a prevailing wage rate determination from

the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Changes to the state prevailing wage law were enacted in 2009 Wisconsin Act 28, including:

- A new threshold level determines the applicability of the law. Under the current law, any project of public works with an estimated completion cost of at least \$25,000 requires a prevailing wage rate determination.
- Contractors are required to provide a monthly report of wage payments made to employees on public works projects. These reports are posted on an internet website maintained by the department. A contractor may submit a copy of its collective bargaining agreement (CBA) if the payments made under the CBA meet the prevailing wage requirements.
- Under sec. 66.0904, Stats., the prevailing wage law now also covers a private project which receives \$1,000,000 or more in direct financial assistance from a local governmental unit.

Summary of the proposed rule. The proposed rule amends the Department's existing rule on the prevailing wage program to reflect the changes made by 2009 Wisconsin Act 28. In addition, the proposed rule covers the following issues:

- The proposed rule clarifies that, depending on its actions, a state agency or a local governmental unit may be an "employer" or a "contractor."
- The proposed rule provides that the Department may conduct wage surveys by electronic means.
- The proposed rule provides that the Department may determine residential rates as a percentage of building or heavy construction rates rather than as a separate survey category.
- The proposed rule provides that no corrections or recalculations to an annual survey may be completed after March 1 of each year.
- The proposed rule provides that, if a state agency, local governmental unit, or developer receiving more than \$1,000,000 in direct financial assistance has not requested a prevailing wage rate determination for a project covered by the law, and the Department later issues a prevailing wage rate determination for such a project, then, in addition to the payment of the increased wages which the state agency, local governmental unit or developer must make to reimburse the employer of workers who were not correctly paid, the state agency, local governmental unit or developer must also reimburse the employer for any liquidated damages that employers may have been required to pay.

Summary of related federal law. The federal prevailing wage law (known as the Davis Bacon Act) applies to a federal public works project for which the contract cost is greater than \$2,000. It does not apply to a private project which receives financial assistance from public funds unless the assistance is on such a scale that the project is determined to be a public project.

Comparison with rules in adjacent states. Minnesota has a statutory threshold of \$2,500 for a single-trade project and \$25,000 for a multi-trade project. In addition to public works projects, the Minnesota law covers the construction of a “value-added agricultural product processing facility” that is financed in whole or part with certain state loans or grants. Illinois does not have a threshold in its prevailing wage law. The law covers public works projects and defines public works projects as projects financed under various other specified laws. The Illinois law requires certified monthly payroll reports. Michigan does not have a threshold in its prevailing wage law. The law covers projects that must be bid and relies on other agencies to determine the thresholds for what projects must be bid. Iowa does not have a prevailing wage law.

Summary of factual data and analytical methodologies. The proposed rule is based on the new or amended requirements the statutes as affected by 2009 Act 28.

Effect on small business. Because the proposed rule carries forward the new or amended requirements of the statutes as affected by 2009 Act 28, the proposed rule of itself does not have an effect on small business.

Agency contact person. Julie Eckenwalder, Section Chief, Construction Wage Standards Section, (608) 266-3148, Julie.Eckenwalder@dwd.wisconsin.gov .

Comments and deadline for submission. Comments may be submitted to Howard Bernstein, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946 or Howard.Bernstein@dwd.wisconsin.gov .The deadline for submission is August 13, 2010.

Administrative rules website. The proposed rules are available at the website <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule’s promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting Howard Bernstein at the addresses given above or by telephone at (608) 266-9427.

Secretary or designee

Date