

State of Wisconsin
Department of Workforce Development
Equal Rights Division

Chapter DWD 290

Prevailing Wage Rates on Public Works Projects

The Wisconsin Department of Workforce Development proposes an order to renumber and amend s. DWD 290.01(16)(b), to amend s. DWD 290.015(3), and to create s. DWD 290.01(16)(b), relating to prevailing wage rates on public works projects and affecting small business.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 66.0903, 103.005(1), 103.49, and 227.11, Stats.

Statutes interpreted: Sections 66.0903(1)(g) and 103.49(1)(d), Stats.

Related statutes or rules: none

Explanation of agency authority. The Department of Workforce Development administers the statutory requirements that the prevailing wage rate must be paid for covered employees in a trade or occupation engaged in erection, construction, remodeling, repairing, or demolition on a state or local public works project.

Sections 66.0903(1)(g) and 103.49(1)(d), Stats., delineate how the Department determines the prevailing wage rate for a trade or occupation on a public works project. First, a survey is done to collect data on the hourly wage rates and hourly fringe equivalent rates for a trade or occupation in that area. If there is a majority of hours worked at a particular wage rate plus fringe equivalent rate, those rates become the prevailing wage rate for that trade. If there is no rate at which a majority of the hours worked in that trade is paid, a weighted average methodology applies based on the pay of the highest-paid 51% of hours worked in that trade or occupation on projects in that area.

Summary of the proposed changes. The statutory language on determining prevailing wage rates was enacted in 1995 Wisconsin Act 215. Since that time, the Department has had an informal policy of looking at the hourly wage rate and hourly fringe equivalent rate as separate figures and requiring an exact match of both the hourly rate of pay and the hourly fringe equivalent rate in determining whether there is a majority of hours worked in a trade or occupation at a particular rate.

The Department's policy of requiring an exact match of both the hourly wage rate and the hourly fringe equivalent rate has resulted in situations that do not seem to comply with the intent of the prevailing wage law. For example, if a collective bargaining agreement is renegotiated and the hourly wage rate is reduced to cover the increased cost of health insurance in the fringe equivalent, the hours worked under the two different agreements will be considered as hours worked at different rates even though the total economic benefit and liability is the same.

Counting the rates under the original and renegotiated collective bargaining agreements with the same total economic benefit and liability as different rates means that the union rates may not be selected as the prevailing wage rates even if a majority of hours worked in a trade were by union workers.

Section DWD 290.015(3) provides that if the rates in a collective bargaining agreement are found to prevail for a particular trade in a particular area, any future increases or decreases in the collective bargaining agreement are to be included in the prevailing wage rate determinations. The proposed rule will make it less likely that a renegotiated collective bargaining agreement with the same total economic benefit and liability will negatively affect whether future increases or decreases under the collective bargaining agreement are incorporated in prevailing wage determinations. If the majority of hours worked in that trade in that area are by union workers, the future increases or decreases in the union contract will be reflected in the prevailing wage rates for that trade.

Under the proposed rule, the Department would determine whether there is a majority of hours reported that receive a total economic benefit that is the sum of the hourly rate of pay and hourly fringe equivalent. If there is a majority of hours worked at the rate that is that sum and there is more than one combination of hourly rates of pay plus hourly fringe equivalent rates that equal that sum, the prevailing wage rate will be the most commonly reported hourly basic rate of pay and corresponding hourly fringe equivalent rate that resulted in that sum.

If the sum of the hourly basic rate of pay and fringe in a collective bargaining agreement that has been filed with the Department for the current survey period is equal to the sum of the hourly basic rate of pay and fringe that is found to prevail in a particular area for that particular trade or occupation on that particular type of work and the majority of hours used to determine the prevailing wage rates were submitted under a collective bargaining agreement, the Department shall include in its determinations any future contractual increase or decrease provided for in the collective bargaining agreement or a successor agreement that is filed before January 1 of the calendar year following the end of the survey period. (paragraph added in response to hearing comment)

Summary of analytical methodology used to develop the proposed rule. The statutory language that directs the Department to consider the “hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefits paid directly or indirectly, for a majority of the hours worked in the trade” could be interpreted to require either an exact match of the hourly wage rate and the hourly fringe equivalent rate as separate figures or a match of the hourly wage rate and fringe equivalent rate as a combined rate that is the sum of the two rates. The Department has determined that the method of using the sum of the hourly wage rate and the hourly fringe equivalent more closely complies with statutory intent.

Federal law. There are no federal prevailing wage rate regulations that apply to state or local public works projects. The federal prevailing wage regulations that apply to federally-funded public works projects determine the prevailing hourly rate of pay and the prevailing fringe equivalent as completely separate inquiries. Under the federal system, the resulting combination

of the hourly rate of pay and fringe equivalent issued by the U.S. Department of Labor may result in a combination of hourly pay and fringe equivalent that is not the most commonly paid total economic benefit on private projects.

Comparison with rules in adjacent states. Iowa. No prevailing wage law.

Minnesota. The prevailing hourly wage rate is set at the most commonly paid hourly wage rate. The fringe equivalent rate is set at the most commonly paid rate at that hourly wage rate.

Michigan. The prevailing wage rates are the collective bargaining agreement rates.

Illinois. Only employers who do work on public works projects are surveyed. The prevailing rates are the most commonly paid wage rates and the corresponding fringe equivalent rates.

Anticipated costs incurred by private sector. There will be no significant fiscal effect on the private sector.

Effect on small business. The proposed rule will affect small business as defined in s. 227.114 (1), Stats., but the rule will not have a significant economic impact on a substantial number of small businesses.

Analysis and supporting documentation used to determine effect on small business. Small businesses will have increased flexibility to offer “cafeteria-style” benefit plans to their employees and have their wage rates selected as the prevailing wage.

SECTION 1. DWD 290.01 (16) (b) is renumbered as DWD 290.01 (16)(c) and as renumbered is amended to read:

DWD 290.01 (16) (c) In calculating the weighted average of the “highest-paid 51% of hours worked” in a trade or occupation, the department shall include all hours worked at the ~~wage and corresponding fringe benefits~~ sum of the hourly basic rates of pay and corresponding hourly contributions rates that include the highest-paid 51% of hours worked.

SECTION 2. DWD 290.01 (16) (b) is created to read:

DWD 290.01 (16) (b) In determining whether there is a majority of hours worked at a particular rate of pay, the department shall consider the sum of the hourly basic rate of pay plus corresponding hourly contributions rate. If there is a majority of hours worked at the rate that is that sum and there is more than one combination of hourly basic rates plus hourly contributions rates that equal that sum, the prevailing wage rate shall be the hourly basic rate of pay and corresponding hourly contributions rate with the most hours reported that resulted in that sum.

SECTION 3. DWD 290.015 (3) is amended to read:

DWD 290.015 (3) COLLECTIVE BARGAINING AGREEMENTS. ~~If a collectively bargained wage rate and fringe benefit package is~~ the sum of the hourly basic rate of pay and allowable hourly contributions rate in a collective bargaining agreement that has been filed with the department for the current survey period is equal to the sum of the hourly basic rate of pay and hourly contributions rate that is found to prevail in a particular area for a that particular trade or occupation on a that particular type of work and that rate is identical to an allowable rate in a collective bargaining agreement for that trade or occupation which has been filed with the department during the current survey period and the majority of hours used to determine the prevailing wage rates were submitted under a collective bargaining agreement, the department shall include in its determinations any future contractual increase or decrease provided for in the collective bargaining agreement or a successor agreement that is filed before January 1 of the calendar year following the end of the survey period. The department may determine premium pay, with the exception of height pay, pay for work with particular products, shift differential, and supervisory pay.

SECTION 4. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.