

## **HISTORY OF OREGON'S PREVAILING WAGE RATE LEGISLATION**

- 1959 Oregon enacts a State prevailing wage rate law to cover public works that are not covered by Davis-Bacon regulations. Stated objectives are:
1. To assure quality workmanship on public works;
  2. To discourage exploitation of workers; and
  3. To encourage competition for contracts at the management skills level.
- 1969 Oregon's prevailing wage rate law is amended to include fringe benefits.
- 1977 Oregon's prevailing wage rate law undergoes a major revision, which, among other changes, expands subject workers to include those paid on a salary or per diem basis, and provides debarment for employers who willfully violate the prevailing wage rate statutes.
- 1981 Oregon's prevailing wage rate law is amended to require contracting agencies to notify the Bureau of Labor and Industries (BOLI) of awarded contracts, and to allow the commissioner to seek injunctions against employers without first receiving a wage claim.
- 1983 Oregon's prevailing wage rate law is amended to include a provision that the contracting public agency may be held exclusively liable for unpaid prevailing wages in certain circumstances. In addition, the law now provides that contractors may be debarred for intentional failure to post the prevailing wage rates on the job site.
- 1991 Oregon's prevailing wage rate law is amended to allow the losing bidder to recover at least \$5,000 from the winning bidder if it can be established that the winner has willfully violated any one of several laws, including the prevailing wage rate law.
- 1994 Oregon voters reject Measure 12, which would have repealed Oregon's prevailing wage rate law.
- 1995 Oregon's prevailing wage rate law is substantially amended by the 1995 legislature. The statutes now include a declaration by the Legislative Assembly that the purposes of the prevailing wage rate law are:
- To ensure that contractors compete on the ability to perform work competently and efficiently while maintaining community established compensation standards;
  - To recognize that local participation in publicly financed construction and family wage income and benefits are essential to the protection of community standards;
  - To encourage training and education of workers to industry skills standards; and
  - To encourage employers to use funds allocated for employee fringe benefits for the actual purchase of those benefits.

Changes to the law include an increase in the threshold for coverage from \$10,000 to \$25,000; a prohibition against dividing public works projects to avoid compliance with the PWR law; and the addition of a prevailing wage fee payable by contractors who contract directly with a public agency. Fees are to be used to pay the costs of:

- State-conducted prevailing wage rate surveys,
- Educational programs, and
- Investigation and enforcement of the prevailing wage rate law.

Other changes to the law include the requirement that contract specifications and contracts for public works include a provision stating the PWR fee shall be paid to BOLI; the addition of an advisory committee to assist in administration of the PWR law; civil penalty authority up to \$5,000 for each violation of the prevailing wage rate law; contractors are no longer required to submit copies of their certified payroll statements to BOLI (however, they are still required to submit these reports to the public agency); and debarment of subcontractors who fail to pay workers when workers' wages are paid by the prime contractor.

1996 BOLI adopts administrative rules that conform state rules to federal Davis-Bacon regulations regarding the "site of work."

1997 Oregon's prevailing wage rate law is amended making public contracting agencies' liability joint and several with any contractor or subcontractor for unpaid prevailing wages when the agency fails to include required prevailing wage rate language in the advertisement for bids, request for bids, contractor specifications, accepted bids, or elsewhere in the contract documents.

Other changes to the law include the amendment to the daily overtime statute to allow employers to adopt work schedules of four ten-hour days on public works projects; liquidated damages may be for an additional amount of wages equal to twice the unpaid overtime wages if contractors have falsified the payroll records; and contractors must adopt a written work schedule on public projects prior to the beginning of work.

The statute (ORS 279C.305) that requires public agencies to prepare and submit a list of their planned public improvement projects to BOLI is amended.

The estimated project cost threshold for least cost comparison requirements when an agency considers using its own employees as workers on a public works is increased from \$50,000 to \$125,000.

ORS 279C.815 (formerly 279.359) is amended to require that BOLI rely on the annual wage survey in determining prevailing wage rates. It allows the commissioner to consider additional information if it appears that the data derived from the wage survey alone is insufficient to establish the prevailing wage rates.

1999 Oregon's PWR law is amended to reapply portions of the PWR law to Oregon University System contracts.

The notice of claim requirement against public works contractors' bond is modified to allow BOLI to include unidentified workers.

School district contracts with community foundations or nonprofit corporations are exempt from prevailing wage rate law requirements under certain and specific conditions; sunsets January 1, 2006.

Prevailing wage rate fees are allowed to be used for education programs on public contracting and purchasing laws in addition to the prevailing wage rate law.

2001 Oregon's prevailing wage rate law is amended to require contractors and subcontractors on public works projects to prepare weekly certified payroll statements and submit them to the public agency monthly, by the fifth business day of the month.

Public contracting agencies are required to include a copy of the contractor's disclosure of first-tier subcontractors with the Notice of Public Works form submitted to BOLI.

ORS 279C.810 is amended by adding an exemption. Public work projects for which no funds of a public agency are directly or indirectly used are exempt from the PWR law. BOLI is required to adopt rules to carry out these provisions. The amendment specifies that "funds of a public agency" does not include funds provided in the form of a government grant to a nonprofit organization, unless the grant is issued for the purpose of construction; and defines "nonprofit organization."

- 2003 Oregon's prevailing wage rate law is amended to exempt Oregon Youth Conservation Corps (OYCC) members.

HB 2341 establishes a Public Contracting Code for public agencies within Oregon. The new Code establishes three separate chapters to modernize and clarify public contracting processes. The first chapter, ORS 279A, establishes an overarching policy for all contracting activities. The second chapter, ORS 279B, covers most types of procurements, except for public improvements, public works and architectural, engineering and related services, which are covered in the third chapter, ORS 279C. The entire prevailing wage rate law is contained within ORS 279C.

- 2005 Oregon's PWR law is substantially amended by the 2005 legislature. Changes to the law include an increase in the PWR threshold for coverage from \$25,000 to \$50,000; contractors must pay the higher of state or federal rates on projects subject to both the state PWR law and the federal Davis-Bacon Act; BOLI must compare state and federal prevailing wage rates, determine which is higher for workers in each trade or occupation in each locality, and make this information available twice each year; and public agencies must include in their project specifications information showing which prevailing rate of wage, either state or federal, is higher.

Other changes to the law include the requirement that all contracts, including subcontracts, must contain a provision that workers shall be paid not less than the specified minimum hourly rate of wage on projects subject to the PWR law; and all contractors and subcontractors working on a public works project must file a \$30,000 "public works bond" with the Construction Contractor's Board. This bond is to be used exclusively for unpaid wages determined due by BOLI. Some exemptions from the requirement are provided for certified disadvantaged, minority, women or emerging small business enterprises. In addition, general contractors must verify that subcontractors have filed a public works bond before permitting a subcontractor to start work on a project.

Project price is now defined to include, but is not limited to, the value of work performed by persons paid by a contractor as part of the project. Project price does not include the value of donated materials or work performed on a project by individuals volunteering to a public agency. "Funds of a public agency" does not include building and development fees waived or paid by the public agency, staff resources used for project oversight or coordination, or staff resources used for the design or inspection of the project.

Finally, contracting agencies and general contractors must withhold 25 percent of amounts earned by contractors if certified payroll reports are not submitted as required.

2006 BOLI adopts administrative rules that conform state rules to federal Davis-Bacon regulations regarding the definition of residential construction projects. To assist in determining a project to be a “residential construction project,” the rule allows the commissioner to consider definitions of “residential construction” that may be in local ordinance or code, or where the prevailing practice of a trade or occupation differs from the definition.

BOLI also adopts administrative rules that allow public agencies to use federal Davis-Bacon wage rates for residential construction projects subject to state law. Public agencies now need to request residential rates from BOLI only when there is no applicable federal rate for a particular classification, and only when the residential construction project is not subject to the federal Davis-Bacon Act.

BOLI adopts administrative rules that allow public agencies to include the applicable prevailing wage rate publication in all specifications by reference only. The reference must include the title and date of the publication or determination, and must include the date of all applicable amendments.

2007 Oregon’s PWR law is substantially amended by the 2007 Legislature. Some of the changes take effect for projects advertised on or after July 1, 2007. These include the following changes.

The definition of “public works” in ORS 279C.800(6)(a) is amended to include in addition to roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest:

- A project for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and \$750,000 or more of funds of a public agency; or
- A project for construction of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency.

The definition of “funds of a public agency” is amended to exclude, among other things, tax credits or tax abatements, or money from the sale of bonds that are loaned by a state agency to a private entity, unless the money will be used for a public improvement.

If a public works project is of the type described in ORS 279C.800(6)(a)(B) or (C) (a privately owned project with \$750,000 or more of funds of a public agency or in which 25 percent or more of the square footage will be occupied or used by a public agency), the Commissioner of the Bureau of Labor and Industries is required to divide the project if appropriate so that any part of the project that does not include funds of a public agency and that will not be occupied or used by a public agency will not be subject to the PWR law. If a project includes parts that are owned by a public agency and parts that are owned by a private entity, the commissioner is required to divide the parts of the project that are not public works from those that are subject to the PWR law if appropriate.

Projects for residential construction that are privately owned and that predominately provide affordable housing are exempted from the PWR law.

BOLI is required to make coverage determinations upon request about whether projects or

proposed projects are or would be subject to the PWR law. The requestor or anyone adversely affected or aggrieved by the determination may request a hearing.

Other changes take effect for projects advertised on or after January 1, 2008. These changes include the following.

The applicable prevailing rates of wage for a public works project may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates, and by providing adequate information about how to access the rates.

When a public works project is subject to the Davis-Bacon Act, if the public agency fails to include the state and federal prevailing rates of wage in the specifications for the contract, or fails to include in the specifications information showing which prevailing rate of wage is higher, the public agency will be liable to each affected worker for any unpaid difference between the applicable higher rate of wage and the lower rate of wage. The public agency will also be liable for an additional amount equal to the amount of unpaid wages as liquidated damages.

When a public works project is subject to the Davis-Bacon Act, BOLI must:

- Use the federal definition and interpretation of “site of work;”
- Use the federal guidelines for whether workers transporting materials and supplies to and from the site of the project are due the prevailing rate of wage;
- Apply the federal standard to workers enrolled in skill training programs that are certified by the U.S. Secretary of Transportation under the Federal-Aid Highway Act.

The PWR fee, previously required to be paid by contractors, is now required to be paid by public agencies. The minimum fee is increased to \$250 and the maximum fee is increased to \$7,500. The increased minimum and maximum amounts sunset on January 1, 2011.

BOLI is required to develop and adopt a plan to increase diversity statewide among workers employed on public works projects.

Certified disadvantaged, minority, women or emerging small business enterprises may elect not to file a public works bond with Construction Contractors Board (CCB) for up to four years after certification.

Contractors and subcontractors may elect not to file a public works bond with CCB when working on a public works project for which the total project cost does not exceed \$100,000.