

Prevailing Wage Rates: FAQs

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Frequently Asked Questions is prepared as a general resource guide for answering some of the most commonly asked questions and to help public agencies, contractors and subcontractors find additional resources related to the above topics. Do not rely on the plain language in these answers without reading the applicable statutes and rules.

The information is not intended as legal advice. Oftentimes, applying prevailing wage rate law in specific situations is very complex. Those wishing legal advice should contact an attorney and not rely on this guide.

Those with general questions about the law may call (971) 673-0839, or send a detailed written inquiry to the Bureau of Labor and Industries Prevailing Wage Rate Unit at pwremail@boli.state.or.us.

Additional information including the [PWR Law Handbook](#) may be found online at www.oregon.gov/boli under the "Prevailing Wage Rate" sections. BOLI also offers FREE [seminars](#) for both public agencies and contractors regarding prevailing wage rate laws and requirements.

Apprentices

Bona fide apprentices and trainees may be paid a percentage of the hourly base prevailing wage rate according to the term in which the apprentice or trainee is working in the program. To be a bona fide apprentice or trainee:

- The apprentice or trainee must be registered with either BOLI's [Apprenticeship and Training Division](#) or the [Federal Bureau of Apprenticeship and Training](#);
- The apprentice or trainee must be performing work within his or her trade;
- The apprentice or trainee must be working in the current ratio to the number of journey workers on the project as specified in the program standards; and
- The employer must be a registered training agent.

The applicable pay rate percentage to be paid to an apprentice is based on the program standards in which the apprentice is registered. OAR 839-025-0004(1), (28) and (29); OAR 839-025-0035(9) and (10); OAR 839-025-0060; OAR 839-025-0065

[Apprenticeship rates](#) can be found on BOLI's website.

Q & A:

Q. Does an apprentice or trainee need to be registered in a program in order to be paid the applicable rates?

A. Yes. The apprentice or trainee must be registered with a bona fide apprenticeship or training program and be employed by a registered training agent pursuant to ORS 660.010(10) for apprentice or trainee rates to apply. OAR 839-025-0060; OAR 839-025-0065

Q. May the employer pay less than the full hourly fringe benefit portion of the wage to a bona fide apprentice?

A. If the applicable prevailing wage rate for the apprentice or trainee is found in the Region pages of BOLI's [Prevailing Wage Rate](#) book, the apprentice or trainee must be paid the full fringe amount shown. If the applicable prevailing wage rate for the apprentice or trainee is found in the Appendix section of BOLI's Prevailing Wage Rate book, the apprentice or trainee may be paid less than the full fringe shown if it is the prevailing practice for that trade and that region. [Apprenticeship rates](#) can be found on BOLI's website. OAR 839-025-0040(2)

Q. What apprenticeship program expenses (if any) may an employer take as credit against fringe benefit wages?

A. If a contractor employs workers registered in a bona fide apprenticeship or training program, some costs incurred by the contractor in that program may be taken as a credit. The programs and the training agents are responsible for the administrative cost and expenses associated with the operation of their programs, i.e. clerical or organizational costs of operating an apprenticeship program and these may not be passed on to the employees. If an employer pays tuition, books, or other items that apprentices may be required to pay for being in a program, which directly benefit the apprentice, those benefits may be taken as a credit against the fringe benefit requirements. The benefit must still meet the qualifications listed in ORS 279C.800(1), OAR 839-025-0004(8) and 839-025-0040. (See the [Fringe Benefits FAQ](#) for more information.)

Q. How do I calculate the hourly credit if I contributed a lump sum to the apprenticeship training fund?

A. Rather than contribute to an apprenticeship training fund on an hourly basis, some employers contribute a lump sum in advance for the annual cost of the program. If the employer does not make contributions on an hourly basis, the hourly credit should be calculated as follows:

Total contributions to a qualified apprenticeship or training program for a certain classification over a time period

÷ The total number of hours worked by all employees in that classification

= Hourly credit allowed.

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Certified Payroll

Every contractor and subcontractor on a covered project must file certified payroll records ([WH-38](#)) with the public agency associated with the project. Contractors and subcontractors must complete a certified payroll statement for each week a worker is employed on a public works project. These certified payroll statements must be submitted once a month, by the fifth business day of the following month, to the public agency. ORS 279C.845; OAR 839-025-0010

Q & A:

Q. Do I have to use BOLI's exact certified payroll form?

A. No. BOLI does not require contractors and subcontractors to use this form, but they must supply all information the form requests (unless otherwise noted), and this information must be certified. Contractors and subcontractors using their own forms or reports can comply with the certification requirement by completing and attaching the certified statement from the WH-38 form to their filing.

Note: completing and submitting the U.S. DOL payroll report (federal Form WH-347) on projects subject to Oregon's PWR law does not satisfy BOLI's filing requirements.

Q. What details must be included in certified payroll records?

A. For each worker, contractors and subcontractors must submit the name and address, work classification, the number of hours worked each day, the pay rate, gross amount paid, deductions and net amount paid, the hourly equivalent amount contributed to any party, plan or program for fringe benefits, and the type of benefit provided. If fringe benefits are provided to workers as wages, this should be shown as well. If owners, managers or supervisors have earned prevailing wages during the week, they must also appear on the certified payroll report, showing all the same information as is required for other workers, although deductions and net amount paid may not apply to owners. To meet filing requirements, the employer must sign the certified statement to confirm that the information is true and complete. Unsigned reports do not satisfy the filing requirement. Submitting false or incomplete information may be the basis for civil penalties and placement on the list of persons ineligible to receive contracts or subcontracts on public works. ORS 279C.860; OAR 839-025-0085; 839-025-0090

Q. Do I always have to submit my certified payroll reports by the fifth business day of every month?

A. Yes. Certified payroll statements must be filled out on a weekly basis and submitted not less often than once a month to the public agency, by the fifth business day of the following month. More frequent submittals are not required, but are allowed.

Q. What do I do if an employee works in more than one classification?

A. In this case, the contractor or subcontractor must carefully track how much time is spent doing each type of work. Contractors and subcontractors must pay employees the applicable prevailing rate for the hours they spend in each work classification. If the contractor's records do not clearly show the time spent in each classification, the contractor must pay the worker at the highest classification rate for all hours worked.

Q. What happens if a prime contractor doesn't file certified payroll records?

A. The PWR law requires the public agency to withhold 25 percent of any amount earned by a prime contractor if the prime contractor does not turn in its certified payroll reports each month. This is in addition to any other retainage obligated by the Public Contracting Code. Once the certified payroll reports have been submitted, the public agency must pay the 25 percent withheld within 14 days. ORS 279C.845(7); OAR 839-025-0010(5)

Q. What happens if a subcontractor doesn't file certified payroll records?

A. The PWR law requires prime contractors to withhold 25 percent of any amount earned by a first-tier subcontractor if the subcontractor does not turn in its certified payroll reports each month. Once the certified payroll reports have been submitted, the prime contractor must pay the 25 percent withheld within 14 days. ORS 279C.845(8); OAR 839-025-0010(6) Contractors should also be sure to review the certified payroll reports and oversee the job site to confirm that subcontractors are properly classifying and paying their workers.

Q. How long should I keep copies of certified payroll records after filed?

A. All contractors and subcontractors who work on public works projects must maintain records showing that the appropriate prevailing rate of wage and overtime rate has been paid to all workers. These records must be kept for a minimum of three years from the completion of work on public works project. OAR 839-025-0025

Examples of records that must be maintained include:

- Certified payroll reports
- Name and address of each employee
- Work classifications of each employee
- The rates of wages and fringe benefits paid to each employee
- Daily and weekly hours worked by each employee
- Total daily and weekly compensation paid to each employee
- All withholdings and deductions taken from each employee's pay
- Any and all payroll records pertaining to the employees working on the public works project
- All apprenticeship and training agreements

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Classification of PWR Work

Q & A:

Q. How do I determine the correct work classification?

A. To determine the correct classification, refer to the most recent [Definitions of Covered Occupations](#). It is important to note that it is the work performed by the employee, not the worker's title or qualifications that decide which classification applies.

Q. What do I do if I cannot find a specific type of work listed?

A. Find the definition that most closely matches the work being performed by the worker. If you still have questions, contact BOLI at 971-673-0839.

Q. What if a worker is performing more than one classification of work?

A. The contractor or subcontractor must carefully track how much time is spent doing each type of work. Contractors and subcontractors must pay employees the applicable prevailing rate for the hours they spend in each work classification. If the contractor's records do not clearly show the time spent in each classification, the contractor must pay the worker at the highest classification rate for all hours worked.

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Davis-Bacon Act

The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts. For more information visit the [US Department of Labor's website](#).

Q & A:

Q. Am I required to follow Oregon's PWR law if I am already subject to the Federal Davis-Bacon Act?

A. Yes; if a project is over \$50,000 and meets the definition of a "public work" under the PWR law, even if the project is subject to regulation under the Davis-Bacon Act, it is also subject to the state PWR law. If a public agency (other than a federal agency) uses federal funds on a public works project, these funds become "funds of a public agency" as defined in the PWR law once the funds are in the custody and/or control of a public agency.

Q. Which rates do I use when the project is subject to BOTH Oregon's PWR laws and the Federal Davis-Bacon Act?

A. On non-residential projects subject to both state and federal prevailing wage laws, contractors must pay the higher of the state or federal prevailing wage rates to workers. ORS 279C.838; OAR 839-025-0035(2). For information on residential projects, see the [Residential Construction FAQ](#).

Q: What do I do when state and federal prevailing wage rate law requirements are different?

A: In most cases, follow the law that has the most restrictive requirement, or the one that is most beneficial to the employee. For example, Oregon's prevailing wage rate law has stricter overtime requirements than the federal Davis-Bacon Act. On a project subject to both state and federal prevailing wage rate laws, employers must follow Oregon's stricter overtime requirements.

While most requirements of the state PWR law apply to projects subject to both state and federal prevailing wage laws, there are a few areas in which the federal requirements take precedence. For projects subject to both state and federal laws advertised on or after January 1, 2008, BOLI will follow federal guidelines for the term "site of work" and for when prevailing wages are due to delivery workers. (See "Site of Work" and "Truck Drivers" in [Contractor Responsibilities](#) for more information.)

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Fringe Benefits

Each prevailing wage rate is made up of an hourly base rate plus an hourly fringe rate. Employers may pay the hourly fringe benefit portion of the wage directly to the workers as wages, and/or may claim credit for "bona fide" fringe benefits they provide to their employees. Oregon's PWR law and the federal Davis-Bacon Act are similar regarding fringe benefits. The employer's contribution must be made for the benefit of the employee, must not be required by law, and must be made on a regular and at least quarterly basis. ORS 279C.800(1); OAR 839-025-0004(8) OAR 839-025-0043

Q & A:

Q. What qualifies as a "bona fide" employee fringe benefit?

A. The fringe benefit plan must meet all of the following requirements:

- Contributions must be made regularly and at least on a quarterly basis
- Contributions made for prevailing wage work may not be used to fund the plan or program for periods of non-prevailing wage rate work.
- Contributions must not be required by law (such as taxes, workers' compensation, etc.)
- Contributions must be irrevocable and for the employee's benefit.

Plans that provide for delayed vesting or have eligibility requirements are "bona fide" if they meet the other requirements. Safety training, drug testing, state industry council contributions, trade promotion funds, equipment costs, travel pay, per diem payments and workers' compensation insurance do not qualify as fringe benefits. ORS 279C.800(1); OAR 839-025-0004(8)

Examples of "bona fide" fringe benefits include:

- Health and welfare plans
- Vacation plans
- Pension plans, in some cases
- Apprenticeship training

Employers may take a credit for such benefits as vacation, sick and holiday pay IF the plan meets several requirements:

- The plan must actually provide a benefit to the employees.
- The benefit must represent a commitment that can be legally enforced.
- The benefit must be carried out under a financially responsible plan or program.
- The plan or program providing the benefit must be communicated in writing to the employees.
- The benefit plan or program is not required by law.

Q. May I take a fringe credit for time off I provide to my employees under Portland's Sick Leave Ordinance?

A. No. When an employee earns and takes paid time off under the requirements of the City's ordinance, the employer cannot take a credit against the prevailing wage rate for that paid leave given. If an employer has a bona fide paid time off (PTO) plan that provides for paid time off in excess of what the City's ordinance requires, the employer may take a credit for the amount of the benefit that exceeds the City's requirements.

Q. How do I record fringe benefits on my certified payroll report?

A. Each fringe benefit contribution must be listed *as an hourly rate* on certified payroll reports. All hourly fringe benefits that are paid as wages to an employee must be reported separately from the hourly base wages on certified payroll reports.

When reporting fringe benefit credits on certified payroll reports, these must be listed separately for each employee, by plan name, showing the hourly credit taken for each plan. The allowable hourly credit must be determined and tracked separately for each employee because the credit is based on figures that will vary from person to person, depending on the benefit contribution amount for each particular employee, and the number of hours that the employee worked during the contribution period.

Q. How often must I pay fringe benefit contributions into a bona fide plan, fund or program?

A. Contributions must be made on a regular basis and not less often than quarterly. "Regular basis" and "not less often than quarterly" have been interpreted by rule (OAR 839-025-0043) as follows:

"Regular basis" means either the schedule of contribution as provided in writing in the plan, fund, or program, or if none, the regular contribution schedule established by the contractor or subcontractor. For example, if the plan specifies that contributions to a bona fide fringe benefit fund be made by the fifteenth calendar day of each month following the month the wages were earned, then contributions to the fund must be made by that date. If the plan, fund or program does not specify a contribution date, or if the specified contribution date as written in the plan, fund or program does not meet the meaning of "not less often than quarterly" as defined below, the contractor or subcontractor must establish and maintain a contribution date by which payment to the plan, fund or program will be made on a regular bases and not less often than quarterly.

"Not less often than quarterly" means that the fringe benefit portion of wages must be contributed to a bona fide plan, fund or program at least once every three months within an established consecutive twelve month period. The contribution must represent payment to the plan, fund or program for amounts earned in the three month period immediately prior to the contribution date.

An established twelve month period may be a calendar year, fiscal year, plan year, or other consecutive twelve month period as determined by the employer. The beginning of the twelve month period may be changed only if the change is intended to be permanent, and is not designed to evade the timely payment of contributions into a bona fide plan, fund or program. If an employer does not determine a consecutive twelve month period the default period shall be a calendar year; that is, from 12:00 midnight on January 1 to 11:59 p.m. December 31, each year.

As an example, using the calendar year as the established consecutive twelve month period, a contractor or subcontractor establishes a contribution date of April 15 for the payment of fringe benefits earned between January 1 and March 31 into the plan, fund or program; consequently, amounts earned between April 1 and June 30 must be contributed into the plan, fund or program on or before July 15; amounts earned between July 1 and September 30 must be contributed into the plan, fund or program on or before October 15; and amounts earned between October 1 and December 31 must be contributed into the plan, fund or program on or before January 15.

Q. I do not offer any fringe benefits to my employees. Do I still need to pay them?

A. Yes. If an employer does not offer any bona fide fringe benefits to an employee, the entire PWR hourly fringe rate must be paid to the worker as wages on the employee's regularly scheduled pay date. OAR 839-025-0043(2)

Q. How do I calculate fringe benefits?

A. For help calculating fringe benefits correctly visit our [Computing Benefit Contributions](#) page.

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Prevailing Wage Overtime

Q & A:

Q. When are contractors required to pay overtime to workers on public works projects?

A. Generally, on projects subject to the PWR law, overtime is due on a daily basis, after eight hours per day, Monday through Friday. This is the case even if the employee has not worked 40 hours in the workweek. There are different overtime rules for employees on an established 4/10 schedule (see question below). Regardless of the work schedule an employer establishes on a PWR covered project, workers must be paid overtime for all hours worked on Saturdays, Sundays, six legal holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day), and for hours worked over 40 in a week. If one of the legal holidays falls on a Saturday or Sunday, the preceding Friday or following Monday becomes the recognized holiday and all hours worked on that day on a PWR covered project must be paid at an overtime rate. ORS 279C.540; OAR 839-025-0050

Q. I am a union contractor and the collective bargaining agreement (CBA) has different overtime requirements. Do I have to change how I pay overtime on public works projects?

A. No. Contractors who are signatory to a CBA in effect with any labor organization are exempt from the overtime pay requirements of ORS 279C.540. However, the exemption does not apply to workers who are not covered by the terms of the CBA or when the labor organization has no jurisdiction in the geographical area where work is being performed. ORS 279C,540(4); OAR 839-025-0054

Q. What is the overtime rate on PWR projects?

A. The overtime rate is 1.5 times the hourly base rate, plus the hourly fringe rate. Although the fringe rate does not have to be paid at time and one half, it must be paid for all hours worked, including overtime hours. Overtime should be paid using the following equation:

(hourly base rate x 1.5) + hourly fringe rate

If hourly zone pay is due, that amount is added to the base rate, and the following equation should be used:

((hourly base rate + hourly zone pay) x 1.5) + hourly fringe rate

If an employee earns more than one base rate of pay for the day/week, then the daily/weekly overtime owed, in addition to the regular straight time wages, is based on a *weighted average* of the hourly base rates earned. OAR 839-025-0050(2)(b)

Examples of how to calculate overtime are in OAR 839-025-0050(2)(c). Examples of weighted average overtime calculations are at [Calculating Weighted Average Overtime](#).

Q. What if an employee is on a 4/10 schedule?

A. According to Oregon law, if an employee works an established schedule of four ten-hour days on a PWR covered project, overtime may not be due until after ten hours per day. To have an established "four-ten" schedule, the four days of work must be consecutive and must fall within Monday and Friday. Therefore, an employee could work a four-ten schedule of either Monday through Thursday **or** Tuesday through Friday. ORS 279C.540; OAR 839-025-0050

The consecutive four days chosen for an established four-ten schedule may not be changed on a week-by-week basis. If an established four-ten schedule is not followed because of weather, scheduling, or for any other reason, overtime will be owed for all hours worked over eight per day that week. An employer may change an established work schedule, but only if the change is intended to be permanent and is not designed to evade the PWR overtime requirements. OAR 839-025-0034

Q. Do I need to pay daily, weekend or holiday overtime for off-site work?

A. Ordinarily an employer is only required to pay a worker at the prevailing rate of wage for work performed on the "[site of work](#)" as defined by law. Nevertheless, the daily, weekend or holiday overtime requirements of ORS 279C.540 is specific to any labor employed by the state or a county, school district, municipality, municipal corporation or subdivision thereof through a contractor – not just public works. If off-site work is being done in fulfillment of a contract between a contractor and a public agency, the daily, weekend or holiday overtime requirements apply.

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Owners/Managers/Supervisors

Q & A:

Q. Must owners, managers, and supervisors be paid prevailing wage rates?

A. OAR 839-025-0035(3) and (4) state that every person paid by a contractor or subcontractor in any manner for the person's labor in the construction, reconstruction, major renovation or painting of a public work is employed and must receive no less than the applicable prevailing rate of wage, regardless of any contractual relationship alleged to exist. Persons employed on a public works project and who are spending more than 20 percent of their time during any workweek in performing duties which are manual or physical in nature as opposed to mental or managerial in nature are workers and must be paid the applicable prevailing rate of wage. Mental or managerial duties include, but are not limited to, administrative, executive, professional, supervisory or clerical duties. Therefore, after considering all work (both PWR and non-PWR) performed in the work week, if the owner, manager, and/or supervisor spent more than 20 percent of his/her time performing physical work, then that person is a "worker" as defined in OAR 839-025-0004(31) and must be paid the appropriate prevailing rate of pay for the time spent performing manual labor on any public works project that occurred during that work week.

For example: If the owner, manager, and/or supervisor spends 60 percent or 24 hours of a 40 hour workweek performing administrative functions such as preparing time cards, supervising the project work, and arranging for deliveries, and the remaining 40 percent (16 hours) of the time performing the duties of an electrician, the individual must be paid the electrician's prevailing wage rate for the number of hours spent that week performing electrician's duties on public works projects.

Q. If the operator of a truck is also the owner of that truck, do prevailing wages still need to be paid?

A. The PWR law does not apply to "owner-operators" of trucks. Drivers who own and operate their own trucks and who are independent contractors do not need to be paid prevailing wages for the time spent driving their own trucks. Operators of other equipment or motor vehicles are not exempt.

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Prevailing Wage Fee

On all projects subject to the PWR law, the public agency must pay a fee to BOLI's Prevailing Wage Rate Unit for each contract awarded to a contractor. The amount of the fee due is one-tenth of one percent (.001) of the contract price; however, there is a minimum fee of \$250 and a maximum fee of \$7,500. The fee is due at the time the public agency notifies the commissioner under ORS 279C.835 that a contract subject to the PWR provisions has been awarded. If a public agency awards multiple contracts on a single project, a fee is due for each contract awarded. The public agency must submit a Public Works Contract Fee Information form ([WH-39](#)) with payment of the fee.

Q & A:

Q. Who is required to pay a fee to BOLI?

A. Public agencies are required to pay the prevailing wage fee to the BOLI PWR Unit on all projects subject to PWR law. ORS 279C.825

Q. What if the total project cost is different than the original bid?

A. The public agency must submit a Fee Adjustment Form ([WH-40](#)) to BOLI within 30 days of the final progress payment after completion of the contract when change orders increase or decrease the original contract by \$100,000 or more. If the fee would change by \$100 or more, the public agency must pay any additional fee and submit the adjustment form to BOLI. If BOLI owes the public agency a refund, the bureau issues it once the adjustment form is processed.

Q. What happens when a contract doesn't have a "hard" bid amount?

A. The public agency should base the initial fee on the guaranteed maximum amount of the project. Once the project is complete, the public agency must file an adjustment form that reflects the actual cost of the project. If there is no guaranteed maximum amount, the agency must make a good faith estimate of the contract price and calculate the fee based on this estimated amount. ORS 279C.825; OAR 839-025-0200 *et seq.*

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Public Works Bonds

Every contractor and subcontractor who works on public works projects must file a \$30,000 [Public Works Bond](#) with the Construction Contractors Board (CCB) before beginning work on a public works project. The Public Works Bond must provide that the contractor or subcontractor will pay unpaid wages to workers on public works projects. ORS 279C.836(1) Additional information regarding the Public Works Bond is available in the [Prevailing Wage Rate Laws Handbook](#).

Q & A:

Q. Who is required to file a Public Works Bond?

A. Every person required to pay prevailing wages on a public works project must file a Public Works Bond with the CCB. This is the case even if the employer does not have a CCB license. For example, non-construction companies such as flagging businesses or temporary employment agencies may not be required to have a CCB license, but if they employ workers on a public works project, they will have to pay those workers the appropriate prevailing wage rate and will therefore be required to file a Public Works Bond with the CCB. ORS 279C.836

Q. Are subcontractors always required to obtain a Public Works Bond?

A. Generally, yes. Any person required to pay prevailing wages on a public project with a total project cost of \$100,000 or more must file a Public Works Bond with the CCB, even if the subcontractor's contract is for less than \$100,000. Before allowing a subcontractor to start work on a public works project, the contractor must verify that the subcontractor has filed a Public Works Bond with the CCB. This information can be found on the [CCB's website](#). ORS 279C.836(2)

Q. Are there any exemptions to the requirement to file a Public Works Bond?

A. There is an exemption for contractors certified as disadvantaged, minority, women or emerging small business enterprises for the first FOUR years of certification. Exempt contractors must still file written verification of certification with the CCB, and give the CCB written notice that they elect not to file a bond. Additionally, once awarded a public works contract, an exempt prime contractor must give written notification to the public agency that it elects not to file a public works bond, an exempt subcontractor must give written notification to the prime contractor that it elects not to file a public works bond.

Contractors and subcontractors working on a public works project with a total project cost of \$100,000 or less may elect not to file a Public Works Bond with the CCB. This \$100,000 threshold amount is for the total project cost, not for an individual contract amount. For example, if a subcontractor has an \$8,000 contract on a project with a total cost of \$120,000, the subcontractor must file a Public Works Bond with the CCB before beginning work on the project. ORS 279C.836(8)

Emergency projects, as defined in ORS 279A.010(f) are also exempt from the Public Works Bond requirements.

Q. Do you need a Public Works Bond for each contract?

A. No. Unlike other required payment and performance bonds, the Public Works Bond remains in effect continuously and covers all public works projects worked on during the duration of the bond. ORS 279C.836(1)

Q. How is the Public Works Bond different from a prime contractor's payment bond?

A. Both bonds are used for the purpose of unpaid wages. The Public Works Bond covers only the wages owed to the employees of the contractor who has the Public Works Bond. The prime contractor's payment bond covers all workers on the project, including subcontractors' employees.

The Public Works Bond is required for all contractors and subcontractors. It covers all public works projects worked on during the duration of the bond. The payment bond is generally only required of prime contractors on public works projects. Unlike the Public Works Bond, the payment bond only covers the individual project and covers only the wages earned on that one project.

Q. Where can I get a Public Works Bond?

A. Contact your insurance agent, current bonding company or search the usual places for bonding companies.

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Prevailing Wage Rates

For detailed information on how to look up a prevailing wage rate, visit the [How to Determine the Correct Rate of Pay](#) section of our website.

Q & A:

Q. Which rate book do I use when I am looking up wage rates?

A. BOLI publishes prevailing wage rate booklets twice a year, usually in January and July. In addition, BOLI publishes amendments to the rate booklets twice a year, usually in April and October. Generally, if the project is subject only to state PWR law, the rates in effect at the time the bid specifications are first advertised by the public agency are those that apply for the duration of the project. All rate booklets and amendments can be found on our [website](#). OAR 838-025-0020(4)(b)

ORS 279C.838(1) requires state prevailing wage rates to be paid on projects subject to both the state prevailing wage rate law and the federal Davis-Bacon Act if the state prevailing rate of wage is higher than the federal prevailing rate of wage. Federal rates may be obtained through <http://www.wdol.gov/>

Q. What is a "Construction Manager/General Contractor contract" or ("CM/GC Contract")?

A. This is a contract that typically results in a general contractor/construction manager initially undertaking various pre-construction tasks that may include, but are not limited to: design phase development, constructability reviews, value engineering, scheduling, and cost estimating, and in which a guaranteed maximum price for completion of construction-type work is typically established by amendment of the initial contract, after the preconstruction tasks are complete or substantially complete. Following the design phase, the CM/GC may then act as a General Contractor and begin the subcontracting process. The CM/GC typically coordinates and manages the construction process, provides contractor expertise, and acts as a member of the project team.

Q. Do I use the same rate book for a Construction Manager/General Contractor (CM/GC) contract?

A. The rates in effect at the time the CM/GC contract becomes a public works contract are the applicable rates to be used for the duration of the project. When a public agency is party to a CM/GC contract, the contract becomes a public works contract either when the contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement that is a public works or when the CM/GC contract enters the construction phase, whichever occurs first. The prevailing wage rate in effect at that time shall apply and must be included with the construction specifications for the CM/GC contract. OAR 839-025-0020(6)

Q. Who can I contact to get more information regarding prevailing wage rates?

A. For help looking up rates or classifications, please call the Bureau of Labor and Industries at (971) 673-0839 or view our [PWR Law Handbook](#) on our website. For assistance with which rates to use for a particular project, contact the project's public agency or prime contractor.

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Residential Construction

BOLI has modeled its definition of "residential construction" after the U.S. Department of Labor's definition of such projects. Generally, residential construction projects are projects for the construction, reconstruction, major renovation or painting of a single family house or apartment building of no more than four stories in height. The residential project includes all incidental items associated with the project, such as site work, parking areas, utilities, streets and sidewalks. OAR 839-025-0004(24)(a)

Where it is determined that a different definition of "residential construction" has been adopted by local ordinance or code, or the prevailing practice of a particular trade or occupation regarding what is considered "residential construction" differs from the federal definition, the commissioner may consider such information in determining whether a project is residential construction. OAR 839-025-0004(24)(b)

Q & A:

Q. What rates are used on residential projects subject to Oregon's PWR law?

A. BOLI does not survey residential rates, so residential construction projects subject to Oregon's PWR law are required to use the federal Davis-Bacon wage rates for residential construction projects. These rates can be found on the U.S. Department of Labor's website www.wdol.gov. The federal residential rates apply to residential construction projects subject to Oregon's PWR law, even if the project is not subject to the federal Davis-Bacon Act. However, if the federal residential rate for a particular trade or classification is ever less than Oregon's minimum wage rate required by ORS 653.025, the contractor must pay at least Oregon's minimum wage to the worker(s).

Q. What if there is no federal residential rate that applies?

A. In some instances, there are no applicable federal residential Davis-Bacon wage rates for certain trades or classifications. If a wage rate is needed on a residential project subject to both state and federal prevailing wage rate law, a request for a special wage rate determination should be submitted to the USDOL according to the federal requirements in Title 29 CFR, Part 5.5(a)(1)(ii). If a wage rate is needed on a residential project that is subject only to Oregon's PWR law, the request for a special wage rate determination must be submitted to BOLI at least 15 days prior to the date the specifications for the project are first advertised. If a public agency fails to request a special wage rate determination as required, the rates in the applicable BOLI rate book will apply to those trades or classifications for which there is no applicable federal residential rate. OAR 839-025-0037

Q. Are affordable housing projects subject to PWR law?

A. If a residential project is predominately for affordable housing and is privately owned, it is exempt from Oregon's PWR law. "Affordable housing" means the occupants' incomes are no greater than 60 percent of the area median income, or no greater than 80 percent if the occupants are owners. "Predominately" for affordable housing means at least 60 percent of the project is designated for affordable housing. Affordable housing can be considered "privately owned" even if it is owned by a public agency, as long as it is leased to a private entity for 50 years or more, or if the affordable housing is owned by a partnership, as long as the public agency is not a majority owner in the partnership. ORS 279C.810(2)(d)

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Site of the Work

Oregon PWR statutes and the federal Davis-Bacon Act define the "site of work" slightly differently, but those small differences have big consequences when it comes to the application of PWR laws.

Q & A:

Q. What is the definition of "site of work" when a project is subject to only Oregon PWR laws?

A. Oregon defines site of work as the physical place where the construction called for in the project contract will remain after the work is complete. It also includes pits, batch plants, tool-yards and similar locations that are within a reasonable distance of the structures. Any such locations established after the project was first advertised for bid are considered "dedicated" and are part of the site of work. Even if the pit, batch plant or tool-yard was opened before the first advertisement, it is part of the site of work if it is dedicated or nearly so to the PWR project. Work performed on a dedicated site must be paid at the appropriate prevailing wage rate, as does the drive time between the dedicated site and the project site. OAR 839-025-0004(25); OAR 839-025-0035(5), (6) and (7)

Q. Under Oregon law what is not considered to be part of the site of work?

A. Permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or project are not included in the site of work. For example: If a contractor is fabricating material at its shop to be used on a public works, and the shop has been in operation prior to the contract, and will continue to be in operation after the contract, the shop is not considered to be included in the site of work.

Q. How does the federal interpretation of site of work differ from Oregon's?

A. The U.S. Department of Labor (US DOL) defines "site of the work" as the physical place or places where the building or work called for in the contract will remain, and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project. In other words, by federal standards, the "site of work" usually means within the boundaries of the project. Pits, batch plants, tool-yards and other locations will be considered "dedicated" to the project if they are adjacent or virtually adjacent to the project site, as determined by the US DOL. For more information visit the US Department of Labor's website www.dol.gov.

Q. What do I do when a project is subject to both PWR and the Davis-Bacon Act and the site of work regulations are different?

A. While most requirements of the state PWR law apply to projects subject to both state and federal prevailing wage laws, there are a few areas in which the federal requirements take precedence. For projects subject to both state and federal laws, BOLI will follow federal guidelines for the term "site of work." ORS 279C.838(2)

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Truck Drivers

Truck drivers, parts runners and other delivery personnel working for contractors and subcontractors are generally not due the prevailing rate of wage for delivery to and from the site of work. However, if driving takes place on the site of work, or if these workers are engaged in performing other manual work at the work site, the applicable prevailing wage rate must be paid to the workers for time spent on site.

Q & A:

Q. When do I need to pay prevailing wages to a truck driver on a PWR job site?

A. For enforcement purposes, truck drivers performing delivery for a construction contractor or subcontractor must be paid prevailing wages if they perform 15 minutes or more of driving or other work at the work site. OAR 839-025-0004(32); OAR 839-025-0035(7)

Truck drivers performing delivery for a commercial supplier are not generally due prevailing wages for incidental work performed on the project site. These workers are due prevailing wages only if they spend more than 20 percent of their time during a workweek engaged in work on the project site. OAR 839-025-0035(6)

A commercial supplier who enters into a construction contract on a PWR project is a construction contractor for purposes of the law and must comply with the law as it applies to construction contractors.

On public works projects that are subject to the Davis-Bacon Act, delivery personnel are not due prevailing wages unless they spend more than an incidental amount of time engaged in work on the project site. For enforcement purposes of this requirement, an incidental amount of time is generally considered to be more than 20 percent of the workweek. ORS 279C.838(3)

The PWR law does not apply to "owner-operators" of trucks. Drivers who own and operate their own trucks and who are independent contractors do not need to be paid prevailing wages for the time spent driving their own trucks. Operators of other equipment or motor vehicles are not exempt.

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