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PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 839

BUREAU OF LABOR AND INDUSTRIES

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FILING CAPTION: Amends rule to implement Enrolled House Bill 2649 (2023).

EFFECTIVE DATE: 01/04/2024

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AMEND: 839-025-0010

NOTICE FILED DATE: 10/27/2023

RULE SUMMARY: Amends rule to implement Enrolled House Bill 2649 (2023).

CHANGES TO RULE:

839-025-0010

Payroll and Certified Statement Requirements ¶¶

~~(1) The form required by ORS 279C.845 is the Payroll and Certified Statement form, WH-38. This form must accurately and completely set out the As used in this rule.¶¶~~

~~(a) "Public improvement project subject to enhanced reporting" means a public improvement contract with a contract price exceeding \$3 million, that is entered into by a qualifying agency.¶¶~~

~~(b) "Public improvement contract" has the meaning given that phrase in ORS 279A.010.¶¶~~

~~(c) "Qualifying agency" has the meaning given that phrase in ORS 279C.533.¶¶~~

~~(d) "Subcontractor's or" means a subcontractor's payroll records, including the name and address of each worker, the worker's correct classifica required to report payroll certified statements under the provisions of ORS 279C.800 to 279C.870 or ORS 279C.533.¶¶~~

~~(2)(a) Except as provided in subsection (b) of this section, rate of pay, daily and weekly number of hours worked and the gross wages the worker earned each week during which the contractor or subcontractor employs a worker upon a public works project.¶¶~~

~~(2)the form required by ORS 279C.845 is the Payroll and Certified Statement form, WH-38. The WH-38 form must be submitted in accordance with ORS 279C.845 and include the information required by ORS 279C.845.¶¶~~

~~(b) For public improvement projects subject to enhanced reporting, the form required by ORS 279C.533 and 279C.845 is the Enhanced Payroll and Certified Statement form, Enhanced WH-38. The Enhanced WH-38 form must be submitted in accordance with ORS 279C.845 and include the information required by ORS 279C.533 and 279C.845.¶¶~~

~~(3)(a) The contractor or subcontractor may~~ust~~ submit the weekly payroll to the public agency or qualifying agency on the WH-38 form or may use Enhanced WH-38 form, or a similar form providing suched the form contains all the elements of the WH-38 or Enhanced WH-38 form. When submitting the weekly payroll to the public agency or qualifying agency on a form other than WH-38 or Enhanced WH-38 form, the contractor or subcontractor must attachinclude the certifiedcation statement contained on the WH-38 or Enhanced WH-38 form toon the payroll forms submitted.¶¶~~

~~(3b) Each Payroll and Certified Statement form must be submitted by the contractor or sub~~ Not later than 30 days after making a final payment to a contractor to the ~~on a public agency by the fifth business day of each month following a month in which workers were employed upon a public works project.~~¶

~~(4) The Payroll and Certified Statement forms received by the public agency are public records subject to the provisions of ORS 192.410 to 192.505. As such, they must be made available upon request. Pursuant to ORS 279C.845(4), information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 through 279C.870.~~¶

~~(5) If the contractor~~ improvement project requiring enhanced reporting, a qualifying agency must make the required report to the Bureau of Labor and Industries in a format and via an electronic method specific by the Bureau in writing.¶

~~(4) If the contractor on a public works project or a public improvement project subject to enhanced reporting fails to timely submit its payroll and certified statement forms to the public agency as required by subsection (3) of this rule, the public~~ in accordance with ORS 279C.845, the public agency or qualifying agency must retain 25 percent of any amount earned by the contractor until the contractor has submitted the required payroll and certified statements to the public agency.¶

(a) The amount to be retained shall be calculated at 25 percent of the unpaid amount earned by the contractor at the time each payroll and certified statement are due. For example, if the contractor fails to submit its payroll and certified statement by the fifth of the month and the contractor earned \$100,000 in the period since its last payroll and certified statement were submitted to the public agency, the public agency must retain 25 percent of \$100,000 (\$25,000), until such time as the required payroll and certified statement are submitted.¶

(b) When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the contractor.¶

(c) Once the required payroll and certified statement have been submitted to the public agency, the public agency must pay the amount retained to the contractor within 14 days.¶

~~(65) If a first-tier subcontractor on a public works project or a public improvement project subject to enhanced reporting fails to timely submit a payroll and certified statement form to the public agency as required by subsection (3) of this rule~~ in accordance with ORS 279C.845, the contractor must retain 25 percent of any amount earned by the first-tier subcontractor until the first-tier subcontractor has submitted the required payroll and certified statements to the public agency.¶

(a) The amount to be retained shall be calculated at 25 percent of the unpaid amount earned by the first-tier subcontractor at the time each payroll and certified statement are due. For example, if the first-tier subcontractor fails to submit the payroll and certified statement by the fifth of the month and the first-tier subcontractor earned \$100,000 in the period since the last payroll and certified statement were submitted to the public agency, the contractor must retain 25 percent of \$100,000 (\$25,000), until such time as the required payroll and certified statement are submitted.¶

(b) When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the first-tier subcontractor.¶

(c) The contractor must verify that the first-tier subcontractor has filed the required payroll and certified statement(s) with the public agency before the contractor may pay the first-tier subcontractor any amount retained under this section.¶

(d) Once the first-tier subcontractor has filed the required payroll and certified statement with the public agency, the contractor must pay the amount retained to the first-tier subcontractor within 14 days.¶

~~(76) Notwithstanding ORS 279C.555 or 279C.570(7),~~ amounts retained pursuant to the provisions of this rule shall be in addition to any other amounts retained.¶

~~(87)~~(a) If a project is a public works of the type described in ORS 279C.800(6)(a)(B) and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public agency or agencies providing funds for the project.¶

(b) When more than one public agency provides funds for a project, the public agencies may designate one agency to receive the contractor's and any subcontractors' payrolls.¶

~~(98)~~(a) If a project is a public works of the type described in ORS 279C.800(6)(a)(C) and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public agency or agencies that will occupy or use the completed project.¶

(b) When more than one public agency will occupy or use the completed project, the public agencies may designate one agency to receive the contractor's and any subcontractors' payrolls.¶

~~(109)~~ If a project is a public works of the type described in ORS 279C.800(6)(a)(D) and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public agency

that owns the land, premise(s), structure(s) or building(s) on which the solar radiation device(s) will be constructed or installed.¶

(110) If a project is a public works of the type described in ORS 279C.800(6)(a)(E) and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public university listed in ORS 352.002 that owns the real property.¶

(121) If a project is a public works of the type described in ORS 279C.800(6)(a)(F) and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public agency or agencies providing funds for the project or to the public agency that owns the real property on which the demolition or removal of hazardous waste takes place.¶

[ED. NOTE: Forms and Publications referenced are available from the ~~Wage and Hour Division of the Bureau of Labor and Industries.~~

Statutory/Other Authority: ORS 651.060, ORS 279C.808

Statutes/Other Implemented: ORS 279C.800 - 279C.870