

Contractor and Subcontractor Responsibilities

Filing a Public Works Bond with Construction Contractors Board

Contractors and subcontractors 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 claims ordered by the bureau to workers on public works projects. 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)

Before allowing a subcontractor to start work on a public works project, the contractor must ensure the subcontractor has filed a public works bond with the CCB. This information can be found on CCB's website at www.oregon.gov/ccb (under the Contractor License Search section). ORS 279C.836(2)

Any person that is required to pay prevailing wages on a public 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 temporary employment agencies are not 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(4)

An exemption from this requirement is allowed for a certified disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns, or an emerging small business enterprise, for the first four years of certification. Such an enterprise must provide the CCB with written notification of its certification, and must complete the CCB's exemption form. In addition, when the business enterprise is the prime contractor, it must notify the public agency that a public works bond has not been filed by the business enterprise. When the business enterprise is a subcontractor, it must notify the prime contractor that a public works bond has not been filed by the business enterprise. ORS 279C.836(7)(a) and (c)

If a certified business as described above meets the requirements for exemption from the public works bond, but BOLI finds the business to have violated the prevailing wage rate law, the business will be required to file a public works bond with the CCB before beginning work on a public works project. ORS 279C.838(7)(b)

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 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 CCB before beginning work on this project. ORS 279C.836(8), ORS 279C.810(2)(a)

In some cases of emergency, if declared in accordance with rules adopted under ORS 279A.065, the requirement for filing a public works bond with CCB may be excused. ORS 279C.836(9)

Public works bond forms can be found on BOLI's website at www.oregon.gov/boli. Other forms, such as non-construction company forms and exemption forms, can be found on CCB's website at

www.oregon.gov/ccb.

Required Contract Language

Every contract and subcontract must contain a provision that states the workers will be paid not less than the applicable prevailing wage rate for the type of work being performed. ORS 279C.830(1)(c); OAR 839-025-0020(5)(a)

If the project is subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, every contract and subcontract must contain a provision that states the workers must be paid not less than the higher of the applicable state or federal prevailing rate of wage. ORS 279C.830(1)(d); OAR 839-025-0020(5)(b)

Every contract and subcontract must contain a provision that requires any subcontractor to have a public works bond filed with Construction Contractors Board before starting work on a public works project, unless the subcontractor is exempt from the bond requirement. ORS 279C.830(2)(b) and (c); OAR 839-025-0020(3) and (4)

Payment of Prevailing Wages

Contractors and subcontractors must pay workers on public works projects no less than the applicable prevailing rate of wage for the type of work they perform. ORS 279C.840; OAR 839-025-0035(1)

A “worker” is defined as a person whose duties are manual or physical in nature, including those workers who use tools or who are performing the work of a trade, as distinguished from a person whose duties are mental, professional or managerial. OAR 839-025-0004(33)

Except for “public works” projects under ORS 279C.800(6)(a)(B), (C), (D), and (E), projects that use a Construction Manager/General Contractor (CM/GC), and some projects that are subject to both state and federal PWR laws, the rates in effect at the time the initial specifications are first advertised for bid solicitations are the rates that apply for the duration of that project. OAR 839-025-0020(6)(b) (See Public Agency Responsibilities section for more information regarding applicable rates on public works projects.)

When a non-residential public works project is subject to both the state and federal prevailing wage rate laws, contractors and subcontractors must pay the higher of either the state or federal prevailing wage rates for the type of work being performed. ORS 279C.838; OAR 839-025-0035(2)

If a project meets the definition of “residential construction” in OAR 839-025-0004(24), and the public agency has established the residential rates for the project, contractors may pay the federal residential wage rates to workers. These rates can be found on the U.S. Department of Labor’s web site, www.wdol.gov. However, if the applicable federal residential rate is lower than Oregon’s minimum wage, contractors must pay workers not less than the state minimum wage. When there is no applicable federal residential rate for a particular trade or classification being used on the project, the public agency must request a special wage rate. If the public agency does not request a special wage rate, the contractor must pay the appropriate state prevailing wage rate found in BOLI’s PWR rate book publication. OAR 839-025-0037

Contractors and subcontractors are in compliance with prevailing wage rate (PWR) requirements if the amounts paid to the employee in wages and in qualified fringe benefits meet or exceed the total of the base and fringe benefits rates published in the rate book. For example, if the base rate is \$20 per hour and the fringe rate is \$4 per hour, and the employee works eight hours a day, Monday through Friday, the employee is entitled to \$960 [(\$20/hour x 40 hours) + (\$4/hour x 40 hours)].

The employer can satisfy this obligation by paying \$960 in wages to the employee, or \$600 in wages to the employee and \$360 to a fringe program, or \$700 in wages and \$260 in fringe benefits – or any other similar combination of wages and fringe benefits.

Employees with Multiple Classifications

Employees who perform more than one classification of work must be paid the applicable prevailing wage rate for the time spent working in each classification. It is the employer's responsibility to track separately the hours spent by each employee doing each job classification, and to report them separately on the certified payroll. If this is not done, the employee must be paid for all hours worked at the highest rate the employee earned that week.

Apprentices and Trainees

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 correct 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. OAR 839-025-0004(1), (29), and (30); OAR 839-025-0035(9) and (10); OAR 839-025-0060; OAR 839-025-0065

If apprentices or trainees are not working within the correct ratio to the number of journey workers on the project, as specified in the program standards, all apprentices or trainees must be paid the full prevailing wage rate for the time they are working out of ratio. OAR 839-025-0035(9) and (10)

Apprentices and trainees generally must be paid the full fringe benefit portion of the prevailing wage rate. However, in trades where apprentices or trainees customarily receive only a portion of the hourly fringe benefit amount, registered apprentices or trainees may be paid the fringe benefit rate according to the prevailing practice in the region in which they are performing work. In other words, if the applicable prevailing wage rate for the apprentice or trainee is found in the Region pages of BOLI's 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 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. A spreadsheet showing the hourly fringe rate owed to such apprentices and trainees can be found on BOLI's website at www.oregon.gov/boli. OAR 839-025-0040(2)

If zone pay or other premium pay, such as a shift differential, is required for the classification in which the apprentice or trainee is working, the full hourly zone pay and/or premium pay must be paid to the apprentice or trainee for each hour worked on the project site.

If the program standards under which the apprentice is working require a higher rate of pay than the applicable prevailing wage rate, the training agent must pay the apprentice the appropriate rate as required by the program standards.

Owners, Managers, and Supervisors

The requirement to pay the applicable prevailing rate of wage may apply to owners, managers and supervisors. If owners, managers or supervisors perform manual labor for more than 20 percent of their overall workweek, then all time spent performing labor on a public works project that week must be paid at the applicable prevailing rate of wage for the type of work performed during those hours, and those hours must be reported on the certified payroll. On the other hand, if owners, managers or supervisors spend 20 percent or less of their overall workweek performing manual labor, they do not need to be paid prevailing wages that week, nor do their hours worked on a public works project that week need to be reported on the certified payroll. OAR 839-025-0035(3) and (4)

For example, if a supervisor works 42 hours one week, and during that week spends a total of nine hours performing manual labor on either public or private projects, the supervisor will have spent 21.4 percent of the workweek performing labor. Therefore, if some or all of the nine hours were spent performing manual labor on a public works project (or on several public works projects), the supervisor must be paid the appropriate prevailing wage rate for those hours of work.

For information on “owner/operators” of trucks, see the next page.

Site of Work

Contractors and subcontractors must pay prevailing wages for work done at the site of work. The site of work is the physical place where the construction called for in the project contract will remain after the work is complete.

For purposes of Oregon’s PWR law, site of work also includes pits, batch plants, tool-yards and similar locations that are within a reasonable distance of the structure. 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)

On public works projects that are subject to the Davis-Bacon Act, pits, batch plants, tool-yards and other locations will only be considered “dedicated” to the project if they are adjacent or virtually adjacent to the project site, as determined by the U.S. Department of Labor. ORS 279C.838(2)

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. 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(33); 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, 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.

Fringe Benefits

Employers may claim credit for bona fide fringe benefits they provide to their employees. 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 basis (at least quarterly). 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. Oregon law now requires employers to provide paid sick leave under certain circumstances. When paid sick leave is required by law, it will not qualify as a fringe benefit. See Appendix A for more information on when paid sick leave may qualify as a fringe benefit. ORS 279C.800(1); OAR 839-025-0004(8)

Examples of Bona Fide Fringe Benefits

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

See Appendix A for more information on fringe benefits and their required qualifications, and for instructions on how to calculate the amount that may be credited for payments into fringe benefit programs.

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.

Payment of Prevailing Wage by Persons Other than Contractors or Subcontractors

The law forbids any third party to pay any portion of the prevailing wages owed. This most often occurs in “market targeting” plans. **Exception:** Government agencies may pay a portion of the prevailing wages

pursuant to a bona fide worker training or retraining program, and sureties and public agency are not prohibited from paying prevailing wages owed to workers. However, when a third party such as a surety, public agency or prime contractor pays prevailing wages owed on behalf of a contractor or subcontractor, BOLI may impose civil penalties against the non-paying contractor or subcontractor, and may place the non-paying contractor or subcontractor on a list of companies who are ineligible to work on public works projects for a certain period of time. ORS 279C.840(6); ORS 279C.860(1)(b) and (c); OAR 839-025-0320

Wage Averaging

The PWR law also bans wage averaging. Wage averaging is lowering workers' wages on non-PWR jobs to compensate for higher rates contractors or subcontractors pay on jobs subject to the prevailing wage rate laws. ORS 279C.840(7); OAR 839-025-0330

Overtime and Work Schedules

Overtime Requirements

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.

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

An employer may change an employee's established work schedule, but only if the change is intended to be permanent and is not designed to evade the PWR overtime requirements. For example, an employee working on a Monday-through-Thursday four-ten schedule cannot switch to a Tuesday-through-Friday schedule for one week and still maintain the four-ten schedule that week. Additionally, an employee working on a four-ten schedule on a PWR project cannot work on private projects on days outside of the four-ten schedule and still maintain the four-ten schedule that week. If an established four-ten schedule is not followed, overtime will be owed for all hours worked over eight per day that week. OAR 839-025-0034

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

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 shift differential, hazard pay, or zone pay is due, that amount is added to the base rate, and the following equation should be used:

$$((\text{hourly base rate} + \text{premium pay}) \times 1.5) \\ + \text{hourly fringe rate}$$

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) and Appendix C of this handbook.

If work such as travel time or shop time is compensable time, and if the travel or shop time is related to a public contract, the hours of travel and/or shop time will count toward daily overtime. For example, an employee on a “five-eight” schedule works the following hours during one day:

- Drive time from shop to PWR project – ½ hour
- Work on PWR project – 8 hours
- Drive time from PWR project to shop – ½ hour
- Work in shop related to PWR project – 1 hour

This employee worked 10 hours this day, and all the work is related to the public contract for the PWR project. Therefore, the employee is due two hours of overtime at the daily weighted average rate. The drive time and shop hours can be paid at an agreed rate rather than at a prevailing wage rate, as the hours are not worked on the PWR project site. However, in this example, both drive time and shop hours count toward daily overtime. ORS 279C.540(1), OAR 839-025-0050(2)(b)

If a collective bargaining agreement applies and has different overtime provisions, the provisions in the bargaining agreement will govern. ORS 279C.540(4)

The overtime provisions of ORS 279C.540 do not apply to contracts with public universities listed in ORS 352.002. Overtime on such projects is due only after 40 hours in the workweek. Public universities listed in ORS 352.002 are the University of Oregon, Oregon State University, Portland State University, Oregon Institute of Technology, Western Oregon University, Southern Oregon University, and Eastern Oregon University. Local and community colleges are not public universities. ORS 352.138

Work Schedules

Contractors and subcontractors must give workers the regular work schedule (days of the week and number of hours per day) in writing, before beginning work on the project. Contractors and subcontractors may provide the schedule at the time of hire, prior to starting work on the contract, or by posting the schedule at the work site, along with the prevailing wage rate information and any fringe benefit information. If an employer fails to give written notice of the worker’s schedule, the work schedule will be presumed to be a five-day schedule. The schedule may only be changed if the change is intended to be permanent and is not designed to evade the PWR overtime requirements. ORS 279C.540(2); OAR 839-025-0034

Required Postings

Prevailing Wage Rates

Each and every contractor and subcontractor must post the applicable prevailing wage rates in a conspicuous place on the project site so workers have ready access to the information. ORS 279C.840(4); OAR 839-025-0033(1)

Details of Fringe Benefit Programs

Contractors and subcontractors must also post the details of all fringe benefit plans or programs if any contributions are made to a health and welfare plan and/or a pension plan. The posting should include a description of the plan, information about how to file a claim and where to obtain more information. ORS 279C.840(5); OAR 839-025-0033(2)

Certified Payroll

Filing Requirements

Every contractor and subcontractor on a covered project must file certified payroll records with the public agency. Contractors and subcontractors must complete a certified payroll statement for each week a worker is employed on a public work. 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

Certified Payroll Form

To help contractors and subcontractors satisfy the filing requirement, form WH-38 can be found on BOLI's website at www.oregon.gov/boli. 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 by signing the certified statement (page 2 of the form). Contractors and subcontractors using their own forms or reports can comply with the certification requirement by completing and attaching a copy of 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.

For each worker, contractors and subcontractors must submit name and address, work classification, the number of hours worked each day, the pay rate, gross amount paid, deductions and net amount paid, and the hourly equivalent 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 must 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 that required for other workers, although deductions and net amount paid may not apply to owners.

When workers perform work in multiple classifications in a single day, the certified payroll report must accurately reflect the number of hours worked in each classification that day.

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 or debarment.

Withholding Retainage

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)

Other Contractor Responsibilities

Required Records

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 maintained for a minimum of three years from the completion of work on public works project. Contractors and subcontractors may opt to keep records longer, as the statute of limitations for workers to file claims for unpaid wages is six years. When an employer has not kept records, BOLI relies on the evidence provided by the claimant and other available sources. 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

Annual Survey Requirements

Each year, the Oregon Employment Department, under the direction of BOLI, conducts a comprehensive geographical wage survey of Oregon's non-residential construction industry. Completion of the survey is mandatory, and all survey responses are kept confidential. Although residential construction hours are not included in the data, residential contractors must respond to the survey each year.

BOLI uses the data from the survey to set the state prevailing wage rates. This is why it is important for every contractor and subcontractor to complete and return the survey. The information requested is essential, and failure to respond to the survey as required may result in the assessment of civil penalties against a non-responding contractor. ORS 279C.815

Inspection to Determine Whether Prevailing Rate of Wage Has Been Paid

Upon request by the commissioner or its representative, every contractor or subcontractor performing work on a public works project must make time, payroll and other records deemed necessary available in order to determine whether the prevailing rate of wage is being paid. Records obtained by BOLI from the

contractor or subcontractor, or made from the records obtained by BOLI from a contractor or subcontractor under ORS 279C.850(2), are not public record. ORS 279C.850(2) and (3)

A Checklist for Contractors and Subcontractors

- Respond promptly and accurately to communications from BOLI.
- File a public works bond with CCB before starting work on a public works project.
- Before allowing a subcontractor to work on a PWR project, ensure the subcontractor has filed a public works bond with CCB.
- Verify that any subcontractor contracted with is not on BOLI's current *List of Contractors Ineligible to Receive Public Works Contracts*. This list of debarred contractors is on BOLI's website at www.oregon.gov/boli.
- Include in every contract and subcontract a provision that the workers will be paid not less than the applicable prevailing wage rate for the type of work being performed.
- Ensure that all subcontractors and employees know that they are working on a prevailing wage rate job.
- Ensure that supervisors and foremen know how to properly classify workers.
- Keep accurate daily records. Show the amount of time each worker spends in each classification of work.
- Review employee time cards often to ensure times and duties are reported accurately. Have employees sign in and out for the day and for lunch.
- File accurate and complete certified payrolls with the public agency.
- Notify employees of their work schedules, in writing and prior to beginning work.
- Post the prevailing wage rates in a conspicuous place on the project site.
- Post the details of any benefit plans in a conspicuous place on the project site.
- Keep all required records for at least three years.
- Return wage surveys promptly and with accurate information.

Additional Items for Prime Contractors:

- Withhold 25 percent of amounts earned by a first-tier subcontractor if the subcontractor does not turn in its certified payroll reports as required.
- Review the certified payroll and oversee the job site to confirm that subcontractors are properly classifying and paying their workers.
- Post any required payment bond.