

Oregon Bureau of Labor and Industries Wage and Hour Division

Prevailing Wage Rate Law Overview for ARPA SLFRF Grant Recipients 2023

The information in this presentation is a general summary of portions of Oregon's Prevailing Wage Rate (PWR) law and is not intended as legal advice. If you would like legal advice, you may consult a lawyer. For general questions about Oregon's PWR law, you may contact BOLI's PWR Unit at (971) 353-2286.



Topics

- Prevailing Wage Rate Law Basics
- Determining PWR Coverage
- Public Agency Responsibilities on “Public/Private” PWR Projects
- Contractor Responsibilities
- BOLI PWR Unit Resources and Contacts



Prevailing Wage Rate Law Basics

- Oregon's Prevailing Wage Rate (PWR) laws were first passed in 1959 and were based on the federal Davis-Bacon Act
- The PWR laws apply to all contractors and sub-contractors performing work on a covered project
- The prevailing wage rate is a minimum wage that must be paid to workers for the type of work they perform on a covered project; it consists of an hourly base rate and an hourly fringe benefit rate

Purpose of the PWR Laws

- To protect local contractors from unfair competition
- To promote local participation in public construction and maintain community established compensation standards
- To encourage the training and education of workers in industry skill standards
- To encourage contractors to use the fringe benefit funds for actual benefits for their employees

Determining Coverage: Two Most Common Types of PWR Projects

A project must meet the definition of “public works” in ORS 279C.800(6) to be subject to the PWR laws.

First type of common PWR project: ORS 279C.800(6)(a)(A) – Construction, reconstruction, major renovation or painting that is carried on or contracted for by a public agency to serve the public interest. Examples:

- A new high school is built
- A leaky roof at City Hall is repaired
- Potholes on neighborhood streets are patched

Determining Coverage: Two Most Common Types of PWR Projects

Second type of common PWR project: ORS 279C.800(6)(a)(B) – Construction, reconstruction, major renovation, or painting and project will use \$750,000 or more of funds of a public agency.

- Project could be publicly or privately owned
- Project does not have to be contracted for by a public agency and does not have to serve the public interest
- Public funds can be used for construction costs or for related costs such as land acquisition, equipment and furniture, appraisals, surveys, etc.
- These projects are sometimes referred to as “public/private” PWR projects

Determining Coverage: Two Most Common Types of PWR Projects

Examples of public/private projects that are subject to the PWR laws:

- A private non-profit receives a \$1,000,000 grant from a public entity to renovate a historic building
- A private developer receives a \$750,000 loan from a public entity to help pay for a private mixed-use development
- A private housing developer receives grants from three different public agencies totaling \$800,000 for a six-story affordable housing project

Determining Coverage: Types of Work

The terms “construction,” “reconstruction,” and “major renovation” are defined in rule OAR 839-025-0004:

- (5) – Construction: initial construction or addition to buildings, structures or roads
- (22) – Reconstruction: restoration of existing buildings, structures or roads
- (11) – Major renovation: remodeling or alteration of buildings or structures; alteration of roads

Determining Coverage: Two Exemptions from the PWR Laws

If an exemption from the PWR law under ORS 279C.810(2) applies to a project, the project will not be subject to the PWR laws. Two most common exemptions:

- Projects with a total project cost of \$50,000 or less (except for projects on publicly-owned property that include a solar component)
- Projects for residential construction that are privately owned and that predominantly provide affordable housing

Determining Coverage: Affordable Housing Exemption

For the affordable housing exemption to apply:

- Project must be privately owned
- At least 60% of the units must be for occupants with incomes no greater than 60% of the area median income
- Project must meet the definition of “residential construction:”
 - Single-family houses or apartment buildings not higher than four stories, with no commercial space

Public Agency Resp. on Public/Private PWR Projects – Required Agreement Provisions

The public agency providing funds for a public/private PWR project will be in compliance with the PWR language requirements of ORS 279C.830 as long as the agency requires that all specifications for each contract awarded on the project include:

- A provision that every public works contract and subcontract require that every contractor and subcontractor pay all workers not less than the appropriate prevailing wage rate
- A provision that states the applicable prevailing wage rates for the project

Public Agency Resp. on Public/Private PWR Projects – Applicable Rates

For public/private PWR projects:

- The applicable rates are those in effect at the time the public agency enters into an agreement with a private entity for the project. After that time, the specifications for any contract for the public works shall include the applicable prevailing rate of wage.

Public Agency Resp. on Public/Private PWR Projects – Notice of Public Works Form

- For all PWR projects, public agencies must submit a Notice of Public Works form (WH-81) to notify BOLI of PWR projects
- On public/private PWR projects, the public agency providing funds for the project must submit the WH-81 form to BOLI at the time the public agency commits to the provision of funds for the project
- If the public agency did not submit the WH-81 form when required, they must do so when they are alerted that the project is subject to the PWR laws

Public Agency Resp. on Public/Private PWR Projects – PWR Fee

- The public agency that provides funds for a public/private PWR project must pay BOLI a PWR fee. The fee is 1/10th of 1% of total project cost (project cost x .001); minimum fee is \$250; maximum fee is \$7,500.
- Payment is due when the public agency submits the WH-81 form. Agency must include a WH-39 form with payment. (See linked Excel version of WH-81/WH-39 forms on BOLI's website.)

Note: The public agency may require the recipient of the public funds to pay the PWR fee. If they do not pay the fee, BOLI will require the public agency to pay it.

Public Agency Resp. on Public/Private PWR Projects – Certified Payroll Reports

- On all PWR projects, contractors and subcontractors must submit weekly certified payroll reports to the public agency for that project
- On public/private PWR projects, contractors and subcontractors must submit weekly certified payroll reports to the public agency that provided funds for the project
- Weekly certified payroll reports for a particular month must be submitted to the public agency by the fifth business day of the following month
- The certified payroll reports are public records and must be made available by the public agency upon request

Contractor & Subcontractor Responsibilities on PWR Public/Private Projects

Contractors and subcontractors must follow all the same PWR requirements on public/private PWR projects as on any other project subject to the PWR laws. Requirements include:

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| <ul style="list-style-type: none">▪Public Works Bonds▪Contract Language▪Posting Rates on Site▪Paying the Correct Rates▪Paying Overtime Appropriately | <ul style="list-style-type: none">▪Calculating Fringe Benefit Credits▪Paying Apprentices Correctly▪Certified Payroll Reports & Withholding▪Retaining Required Records |
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BOLI PWR Resources

PWR home page on BOLI's website (includes links to WH-81/WH-39 forms):

<https://www.oregon.gov/boli/employers/Pages/prevailing-wage.aspx>

See BOLI'S [PWR Laws Handbook](#) for helpful information

PWR webinar schedule:

<https://www.oregon.gov/boli/employers/Pages/prevailing-wage-seminars.aspx>

Information on requesting a coverage determination for a project:

<https://www.oregon.gov/boli/employers/Pages/coverage-determinations.aspx>

BOLI PWR Unit Contacts

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