

Minnesota's prevailing wage law: A guide for state agencies

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State agencies serve as a steward of public funds. Each year, state agencies distribute public money in the form of contracts, grants, loans or tax incentives for economic development projects and the construction of public buildings and other public works. When doing so, it is important to remember that state prevailing wages may be required to be paid to workers on those projects. This guide is intended to inform state agencies on:

- 1) What is prevailing wage?
- 2) What is the purpose of state prevailing wage?
- 3) What are common misperceptions about prevailing wage?
- 4) What are the key responsibilities for agencies related to prevailing wages?

What are prevailing wages and prevailing wage rates?

Prevailing wage is the minimum hourly wage, including overtime, and fringe benefits employers must pay workers who perform work on projects. Prevailing wages and the prevailing wage rate required to be paid to workers is based on the work being performed by the worker on the project. Rates differ based on the work being performed and can differ by county and region. Prevailing wage rates are determined by annual survey of the construction industry conducted by the Department of Labor and Industry (DLI).

Why is prevailing wage important?

It is in the public interest that public buildings and other public works be constructed and maintained by the best means and highest quality of labor reasonably available and that persons working on public works be compensated according to the real value of the services they perform. It is, therefore, the policy of the state that wages of laborers, workers and mechanics on projects financed in whole or part by state funds should be comparable to wages paid for similar work in the community as a whole.

What are some common misconceptions about prevailing wage?

- 1) The rates do not reflect actual wages being paid to construction workers in Minnesota.
 - Prevailing wage rates are based on annual surveys conducted by the department of wages paid to construction workers performing work in Minnesota.
- 2) Requirements do not apply to owners, salaried workers, independent contractors or sole proprietors.
 - Prevailing wage requirements and prevailing wage rates apply to all workers performing work covered by the Minnesota Prevailing Wage Law, no matter their work status.

- 3) Prevailing wage automatically raises the cost of a project.
 - Prevailing wage rates are based on surveys of wages that are being paid to workers for similar work in the community where the project is located. Consequently, paying the prevailing wage should not increase the cost of the project.
- 4) Federal Davis-Bacon wage rates and requirements are identical to state prevailing wage.
 - Both the state and federal government have prevailing wage laws. Neither the law nor prevailing wage rates are identical. Consequently, if federal funding is being used for a project in addition to state funding, agencies need to be aware of both state and federal prevailing wage requirements.

What are the key responsibilities for agencies to ensure prevailing wage rates are paid to workers on construction projects supported by their financial assistance?

- 1) If required by Minnesota Statutes 116J.871, subdivision 2 and 3, obtain certification, using updated form provided by DLI, from persons receiving and benefiting from the financial assistance that laborers and mechanics at the project site will be paid prevailing wages.
- 2) Ensure all contracts for a project specifically state prevailing wage rates, prevailing hours of labor and the hourly basic rates of pay.
- 3) Ensure applicable prevailing wage determinations for the project along with the following contract language is incorporated into proposals and all contracts, including all contracts with subcontractors. All work on a project must be performed under contracts that specifically include the prevailing wage obligations of the MPWA.
 - Pursuant to Minn. Stat. 177.41 to 177.44, and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.
- 4) The contract must also provide that the contracting agency shall demand and the contractor and subcontractor furnish to the contracting agency, copies of any or all payroll not more than 14 days after the end of each pay period.
 - DLI has a certified payroll form available on its website that can be used to meet this requirement.

Resources for agencies and state-financed projects

About the Department of Labor and Industry

The Department of Labor and Industry protects workers through enforcement of state laws governing labor and employment protections, minimum wage, overtime, child labor and prevailing wage. It works to ensure all construction workers on state-funded projects are paid the appropriate prevailing wage through outreach, compliance assistance and enforcement activities.

DLI identifies and certifies state prevailing wage rates

- 1) DLI conducts an annual survey of the construction industry to identify wage rates paid on construction projects.
 - a. Surveys are voluntary and project specific.
 - b. A worker can only be reported once per project.
 - c. Each wage rate reported is a combination of an hourly wage plus hourly fringe benefit.
- 2) An analysis of data collected is performed to identify the mode, or most frequently reported construction wage rate, for the classification of work performed on projects.
- 3) DLI certifies and publishes state prevailing wage rates.
 - a. Commercial and residential wage rates are determined by county.
 - b. Highway and heavy rates are determined by region. There are 10 regions in the state.

DLI enforces state prevailing wage requirements

- 1) DLI performs construction worksite project inspections.
- 2) DLI investigates complaints about alleged violations.

DLI is a public resource

- 1) DLI conducts outreach to contractors and contracting authorities about prevailing wage requirements.
- 2) DLI hosts regular training sessions with state agencies about prevailing wage requirements and compliance strategies.
- 3) DLI is available for consultations to inform project participants about prevailing wage, compliance and best practices. Staff members who administer or monitor contracts and grants can sign up for prevailing wage notifications and training opportunities. Information about prevailing wage is available on DLI's website.
- 4) DLI provides additional guidance related to the following:
 - a. rate assignments – requests submitted by contracting agency or contractor when the prevailing wage certification has a missing wage rate;
 - b. classification clarification – providing project-specific guidance for classifying workers based on nature of work, tools used and tasks performed; and
 - c. project assessment – generally completed by contracting authorities to determine if prevailing wage applies to a particular project, the analysis is based on the scope of work, funding sources, estimated cost of the project and any specific financing such as a grant, loan or tax credit.

Other resources for contracts and grant guidance

- 1) Department of Administration, Office of State Procurement
- 2) Department of Administration, Real Estate and Construction Services
- 3) Department of Administration, Office of Grants Management
- 4) State agency board with specific statutory authority to enter into grant contracts.

Engage with DLI

Critical times to engage DLI:

- 1) when preparing bid solicitation documents for a construction project receiving state financial assistance;
- 2) before awarding financial assistance on a construction contract;
- 3) pre-construction; and
- 4) any time there is a question of applicability or a compliance concern.

Contact DLI

Contact DLI's Prevailing Wage Team at 651-284-5091 or dli.prevwage@state.mn.us.