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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILED

01/09/2025 10:50 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amends rule to clarify civil penalty authority for violations of law relating to prevailing wage.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/28/2025 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

These rule amendments are necessary to provide additional clarity around those violations of law for which the Bureau of Labor and Industries can impose a civil penalty. ORS 279C.865(1) authorizes the Bureau to impose a civil penalty in an amount not to exceed \$5,000 for violations of ORS 279C.800 to 279C.870 or for violations of administrative rules adopted under those statutes. The current rule identifies fifteen specific violations of the law for which a civil penalty may be imposed on a contractor or subcontractor and eleven specific violations of the law for which a civil penalty may be imposed on a public body. In addition to reiterating the broad legal principle described in ORS 279C.865(1), these rule amendments delete an obsolete violation and provide additional details around a violation related to ORS 279C.835. As regards the latter, these rule amendments are necessary to provide more clarity around the circumstances under which a public agency must notify the Bureau of certain public works projects.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

The text of OAR 839-025-0013, referenced in these rule amendments, is available here:

<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=309813>.

ORS chapter 279C is available here: https://www.oregonlegislature.gov/bills_laws/ors/ors279c.html.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

These rule amendments are unlikely to impact racial equity in this state. ORS 279C.865 and OAR 839-025-0530(1) currently authorize the Bureau to impose civil penalties for failing to comply with ORS 279C.835 or OAR 839-025-0013. While these rule amendments are intended to provide additional clarity to public agencies, the Bureau does not understand the amendments to alter existing law and, as a consequence, does not anticipate that these rule amendments will impact racial equity in this state.

FISCAL AND ECONOMIC IMPACT:

As described above, these rule amendments are intended to clarify existing law. As a consequence, the Bureau does not anticipate any fiscal or economic impacts.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

These rules apply to state agencies, units of local governments and members of the public who are involved in the construction of public works projects. As indicated above, these rule amendments are primarily intended to provide clarity to entities who meet the definition of a "public agency" provided in ORS 279C.800.

According to the U.S. Small Business Administration, there are nearly 400,000 small businesses operating in Oregon, approximately 13,000 of which are in the construction industry and have between 1-19 employees. The Bureau therefor estimates that approximately 15,000 construction-related businesses with 50 or fewer employees, are potentially subject to these rules, if they choose to bid on and are awarded contracts to perform work on public works projects.

Because these rule amendments operate to clarify existing law, the Bureau does not anticipate these rule amendments will impose any additional reporting, recordkeeping and administrative activities or costs. Similarly, the Bureau does not anticipate any increased costs of professional services, equipment supplies, labor and increased administration required to comply with these rule amendments.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

These rules were developed in conjunction with the Rulemaking Subcommittee of the Prevailing Wage Advisory Committee described in ORS 279C.820. A representative of both small and large businesses was included on the Subcommittee. In addition, small businesses and members of the public are invited to comment on these rules. The Bureau will also post notice of this rulemaking on its webpage and in the Oregon Bulletin, while also disseminating this notice to the Bureau's mailing list.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 839-025-0530

RULE SUMMARY: Amends rule to clarify civil penalty authority for violations of law relating to prevailing wage.

CHANGES TO RULE:

839-025-0530

Violations for Which a Civil Penalty May Be Assessed ¶¶

(1) The Commissioner may assess a civil penalty for each violation of any provision of the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870) and for each violation of any provision of the administrative rules adopted under the Prevailing Wage Rate Law.¶¶

(2) For purposes of this section, a failure to pay the required prevailing rate of wage and a failure to pay required fringe benefits are separate violations.¶¶

(3) Civil penalties may be assessed against any contractor, subcontractor or public agency regulated under the Prevailing Wage Rate Law and are in addition to, not in lieu of, any other penalty prescribed by law.¶¶

(4) The commissioner may assess a civil penalty against a contractor or subcontractor for any violation described in section 1 of this rule, including but not limited to the following violations:¶¶

- (a) Failure to pay the applicable prevailing rate of wage in violation of ORS 279C.840;¶
 - (b) Failure to pay the applicable hourly fringe benefit rate of wage in violation of ORS 279C.840;¶
 - (c) Failure to pay all wages due and owing to the contractor's or subcontractor's workers on the regular payday established and maintained under ORS 652.120 in violation of ORS 279C.840(1);¶
 - (d) Failure to post the applicable prevailing wage rates in violation of ORS 279C.840(4);¶
 - (e) Failure to post the notice describing the health and welfare or pension plans in violation of ORS 279C.840(5);¶
 - (f) Failure to include a provision in a subcontract that workers shall be paid not less than the specified minimum hourly rate of wage in violation of ORS 279C.830(1)(c);¶
 - (g) If a public works project is subject to both ORS 279C.800 to 279C.870 and to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), failure to include a provision in a subcontract that workers must be paid not less than the higher of the applicable state or federal prevailing rate of wage in violation of ORS 279C.830(1)(d);¶
 - (h) Failure to include in a subcontract, either between a contractor and a subcontractor, or between a subcontractor and another subcontractor, a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(2);¶
 - (i) Failure to file with the Construction Contractors Board a public works bond, as required under ORS 279C.836, before starting work on a contract or subcontract for a public works project subject to the provisions of ORS 279C.800 to 279C.870;¶
 - (j) Failure to verify that a subcontractor has filed a public works bond as required or has elected not to file a public works bond under ORS 279C.836 prior to permitting a subcontractor to start work on a public works project;¶
 - (k) Failure to file certified statements in violation of ORS 279C.845;¶
 - (l) Filing inaccurate or incomplete certified statements in violation of ORS 279C.845;¶
 - (m) Failure to retain 25 percent of the amount the first-tier subcontractor earned when the first-tier subcontractor fails to submit payroll and certified statement forms to the public agency in violation of ORS 279C.845;¶
 - (n) Reducing an employee's pay in violation of ORS 279C.840(7);¶
 - (o) Taking action to circumvent the payment of the prevailing wage, other than subsections (k) and (m) of this section, in violation of ORS 279C.840(7);¶
 - (p) Failure to submit reports and returns in violation of ORS 279C.815(3);¶
 - (q) Failure to certify the accuracy of reports and returns in violation of ORS 279C.815(3);¶
 - (r) ~~Failure to timely pay the fee required by ORS 279C.825 on public works contracts first advertised or solicited prior to January 1, 2008;~~¶
 - ~~(s)~~ Receiving a public works contract or subcontract while on the list of ineligible in violation of ORS 279C.860;¶
 - ~~(t)~~ Awarding a contract to a contractor or subcontractor whose name appears on the list of ineligible maintained pursuant to ORS 279C.860;¶
 - ~~(u)~~ Failure to contribute fringe benefit wages timely to a trustee or to a third person pursuant to a plan, fund or program on a "regular basis" and "not less often than quarterly," as those terms are defined in OAR 839-025-0043.¶
- (5) The commissioner may assess a civil penalty against a public agency for any violation described in section 1 of this rule, including but not limited to the following violations:¶
- (a) Failure to include in the specifications for a public works contract a provision stating the applicable existing prevailing wage rate in violation of ORS 279C.830(1)(a);¶
 - (b) If a public works project is subject to both ORS 279C.800 to 279C.870 and to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), failure to require the contractor to pay the higher of the applicable state prevailing rate of wage or federal prevailing rate of wage to all workers in violation of ORS 279C.830(1)(b);¶
 - (c) Failure to include a contract provision stating that workers must be paid the applicable prevailing rate of wage in violation of ORS 279C.830(1)(c);¶
 - (d) If a public works project is subject to both ORS 279C.800 to 279C.870 and to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), failure to include a contract provision stating that workers on public works must be paid not less than the higher of the applicable state prevailing rate of wage or federal prevailing rate of wage in violation of ORS 279C.830(1)(d);¶
 - (e) Failure to include in the specifications for a contract for a public works a provision stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(2);¶
 - (f) Failure to include in a contract for a public works a provision requiring the contractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(2)(a);¶
 - (g) Failure to include in a contract for a public works a provision requiring the contractor to include in every subcontract a provision requiring the contractor to have a public works bond filed with the Construction

Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(2)(b);¶
(h) Failure to notify the commissioner when a contract is awarded in violation of ORS 279C.835 subject to the provisions of ORS 279C.800 to 279C.870 has been awarded in violation of ORS 279C.835, or failure to notify the commissioner in violation of OAR 839-025-0013 when a project is a public works project pursuant to ORS 279C.800(6)(a)(B), ORS 279C.800(6)(a)(C), ORS 279C.800(6)(a)(D), ORS 279C.800(6)(a)(E) or ORS 279C.800(6)(a)(F);¶

(i) Dividing a public works project in violation of ORS 279C.827;¶

(j) Failure to include a copy of the disclosure of first-tier subcontractors with the Notice of Public Works in violation of ORS 279C.835;¶

(k) Failure to retain 25 percent of the amount the contractor earned when the contractor fails to submit payroll and certified statement forms to the public agency in violation of ORS 279C.845;¶

(l) Failure to timely pay the fee required in violation of ORS 279C.825;¶

(m) Awarding a contract to a contractor whose name appears on the list of ineligibles maintained pursuant to ORS 279C.860;¶

(n) Entering into an agreement with another state or a political subdivision or agency of another state agreeing that a contractor or subcontractor may pay less than the prevailing rate of wage determined in accordance with ORS 279C.815 under the terms of a contract for public works to which the contracting agency is a party or of which the contracting agency is a beneficiary in violation of ORS 279C.829.¶

(o) Failure to comply with the state's least cost policy in violation of ORS 279C.305 or material breach of an agreement negotiated by the public agency and a contractor or trade association to remedy a violation of ORS 279C.305 and prevent future violations.

Statutory/Other Authority: ORS 651.060(4), ORS 279C.808

Statutes/Other Implemented: ORS 279C.800--870, OL Ch. 334 (2017), OL Ch. 715 (2017) - 279C.870