



PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

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

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AMEND: 839-025-0530

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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 eCommissioner 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 ineligible 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~~