



PERMANENT ADMINISTRATIVE ORDER

BLI 5-2025
CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILED

03/07/2025 8:50 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Amends rule to allow contractors on public works to take credit for certain benefit contributions.

EFFECTIVE DATE: 03/10/2025

AGENCY APPROVED DATE: 03/07/2025

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AMEND: 839-025-0040

NOTICE FILED DATE: 01/09/2025

RULE SUMMARY: Amends rule to describe method of including certain fringe benefits in calculation of prevailing wage.

CHANGES TO RULE:

839-025-0040
Payment of Fringe Benefits ¶

(1) Each contractor and subcontractor required to pay workers the prevailing rate of wage must pay no less than the hourly rate of pay and fringe benefits as determined by the Commissioner and described in ORS 279C.800(4). ¶

(2) The rate of pay for fringe benefits paid to apprentices and trainees shall be not less than such rate paid to the majority of such apprentices and trainees in the same trade or occupation as determined by the commissioner. If there is no majority in the same trade or occupation, as determined by the commissioner, apprentices and trainees shall be paid the full amount of the fringe benefits. ¶

(3) The fringe benefit requirements of section (1) of this rule ~~are~~ is met when the amount of the fringe benefit or benefits is paid to the worker, in cash, in lieu of a third party administering a fringe benefit or benefits program. ¶

(4)(a) Except as provided in this section, a contractor who wishes to take a credit towards the prevailing rate of wage described in section 1 of this rule must "annualize" the employer contributions made to a benefit plan, fund or program described in ORS 279C.800(1) and must "annualize" the costs of unfunded benefits such as vacation and holiday pay to determine the proper hourly equivalent that may be taken as credit against the fringe benefit obligation. ¶

(b) To "annualize" the cost of providing a benefit, a contractor must divide the total employer contribution amount paid to a benefit plan, fund or program, or the cost of the unfunded benefit, by the total number of hours worked on both non-prevailing wage work and work covered by applicable Prevailing Wage Rate Laws during the time period to which the cost is attributable, provided that the period is not less than monthly, to determine the rate of contribution per hour. The credit must be determined separately for each worker. ¶

(c) Contributions to a bona fide fringe benefit plan may be excepted from the annualization requirement and the contractor may take full credit for those contributions if the contributions are made to a defined contribution pension plan that provides for immediate participation and immediate vesting. ¶

(5) When a contractor or subcontractor pays an hourly rate of pay which exceeds that which is determined by the Commissioner, the amount by which the rate is exceeded may be credited toward payment of the amount of fringe benefits determined by the Commissioner for the trade or occupation. ¶

(56) When a contractor or subcontractor pays a rate for any one fringe benefit which exceeds that which is determined for the fringe benefit, the amount by which the rate is exceeded may be credited toward payment of the amount to be paid for all fringe benefits as determined by the ~~C~~ommissioner for the trade or occupation.¶

(67) When a contractor or subcontractor pays an amount for fringe benefits which exceeds that which is determined by the ~~C~~ommissioner, the amount by which it exceeds the determination may be credited toward payment of the hourly rate of pay as determined by the ~~C~~ommissioner.

Statutory/Other Authority: ORS 279, ~~651C.808~~, ORS 651.060

Statutes/Other Implemented: ORS 279.350