



**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839

**BUREAU OF LABOR AND INDUSTRIES**

**FILED**

09/04/2025 11:26 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Amends rule to describe application of prevailing wage to delivery drivers.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/24/2025 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)**

Longstanding administrative rules have required that delivery drivers be paid the prevailing wage for certain delivery-related work associated with a public works project. Given the expansion of deliverable materials and supplies over time, the application of these rules has expanded considerably, to reach individuals and entities with little relation to the public works project. A temporary amendment to these rules recently expired and these rule amendments are necessary to retain the balance struck in that temporary rule.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE**

The Department of Labor's explanation of the current state of federal law is available here:  
<https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon>.

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

These rule amendments balance the legislative policies described in ORS 279C.805, with the practical realities associated with the expansion of modern delivery services. The net effect of these rules is that law will only require the payment of the prevailing wage when workers perform more than delivery-related work or otherwise have a relationship to contractors or subcontractors on the public works project.

To the extent that members of a racial groups disproportionately comprise the class of delivery workers performing solely delivery-related work or who do not have a relationship to contractors or subcontractors on the public works project, these rule amendments may have an economic impact on those racial groups. But the Bureau does not believe that the rule amendments will affect racial equity as the rule amendments apply the prevailing wage to delivery drivers, and their employers, in an equitable manner based on the work performed.

**FISCAL AND ECONOMIC IMPACT:**

These rule amendments are likely to reduce delivery-related costs on public works projects for employers and public bodies. These rule amendments are likely to reduce delivery-related compensation for delivery drivers who do not perform more than delivery-related work or otherwise have a relationship to contractors or subcontractors on the public works project.

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 rule amendments, and their economic effect, apply to state agencies, units of local governments, employers, employees, contractors and other members of the public, that are involved in public works projects.

According to the 2024 Small Business Profile compiled by the United States Small Business Administration, Oregon has nearly 400,000 small businesses across a wide array of industries, approximately 90,000 of which have between 1 and 19 employees. Of these 90,000, approximately 13,000 are identified as construction-related businesses. The Bureau therefore 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 or are awarded contracts to perform work on public works projects.

By reducing the number of delivery drivers subject to the obligation to pay the prevailing wage, these rule amendments are likely to reduce the overall reporting, recordkeeping and administrative activities and costs required to comply with these rules. Similarly, these rule amendments are likely to reduce the cost of professional services, equipment supplies, labor and administration necessary to comply with these rules. In addition to the obligations of complying with the law related to the prevailing wage, these rule amendments may require certain contractors and subcontractors on a public works project, and their employees, to track the amount of time spent at the site of work, to determine whether the prevailing wage applies.

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

Small businesses, as well as all members of the public, are invited to comment on these rules. In addition, the Bureau will 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? NO IF NOT, WHY NOT?

Given the scope of these changes and the available resources, the Bureau believes that any issues related to these rule amendments are likely to be efficiently surfaced via this public rulemaking notice and request for public comment.

AMEND: 839-025-0035

RULE SUMMARY: Amends rule to describe application of prevailing wage to delivery drivers.

CHANGES TO RULE:

839-025-0035  
Payment of Prevailing Rate of Wage ¶

(1) Every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner,

in which the workers are employed. Additionally, all wages due and owing to the workers shall be paid on the regular payday established and maintained under ORS 652.120.¶

(2) When a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), if the state prevailing rate of wage is higher than the federal prevailing rate of wage, the contractor and every subcontractor on the project shall pay no less than the state prevailing rate of wage as determined under ORS 279C.815.¶

(3) Every person paid by a contractor or subcontractor in any manner who is performing work subject to the prevailing wage on a public works project must receive no less than the applicable prevailing rate of wage, regardless of any contractual relationship alleged to exist. Thus, for example, if partners are themselves performing the duties of a worker, the partners must receive no less than the prevailing rate of wage for the hours they are so engaged.¶

(4) ~~PA~~ persons employed on a public works project and who ~~are~~is spending more than 20% of their time during any workweek in performing duties which are manual or physical in nature as opposed to mental or managerial in nature ~~are~~is a workers and must be paid no less than the applicable prevailing rate of wage. Mental or managerial duties include, but are not limited to, administrative, executive, professional, supervisory or clerical duties.¶

(5) ~~PA~~ persons employed on a public works project for the manufacture or furnishing of materials, articles, supplies or equipment (whether or not a public agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) ~~are~~is not a workers required to be paid the applicable prevailing rate of wage unless the employment of ~~such~~the persons is performed in connection with and at the site of the public works project.¶

(6)(a) ~~Except as provided in ORS 279C.838, persons employed on a public works project who are employed by (3), where federal law is applied, a person who is employed by a commercial supplier of materials or supplies that is not a construction contractor or construction subcontractor on the project, or a person who contracts with a commercial supplier of goods or materials must be paid no less than the applicable~~or supplies that is not a construction contractor or subcontractor on the project, to transport materials or supplies to or from a public works project is not required to be paid a prevailing rate of wage ~~when the work is performed, provided the person's activities at the "site of work" as that term is defined in OAR 839-025-0004 or when the work is performed are limited to driving, delivering the materials or supplies, or waiting fabrication plants, batch plants, borrow pits, job headquarters, tool yards or other such~~pl or materials or supplies to be loaded or unloaded.¶

(b) A person who is employed by a commercial supplier of materials or supplies, or who ~~contracte~~s that are dedicated exclusively or nearly so to the public works project.¶

(7) ~~Except as provided in ORS 279C.838, persons employed on a public works project with a commercial supplier of materials or supplies, and performs non-delivery-related work on the site of work of a public works project is a worker and must be paid no less than the applicable prevailing rate of wage.~~¶

(7) Except as provided in ORS 279C.838(3), where federal law is applied, a person employed by ~~the~~a construction contractor or construction subcontractor to transport materials or supplies to or from ~~the~~a public works project ~~are required to be paid~~is a worker and must be paid no less than the applicable prevailing wage ~~rate~~rate of wage for work performed in connection with the transportation of materials or supplies, unless the person's activities at the "site of work" as that term is defined in OAR 839-025-0004, are limited to driving, delivering the materials or supplies, or waiting for materials or supplies to be loaded or unloaded and the aggregate amount of time spent performing such duties does not exceed two hours in a "work day," as that term is defined in OAR 839-025-0050.¶

(8) ~~PA~~ persons employed on a public works project for personal services, as that term is defined in ORS 279C.100, as opposed to construction work, ~~are~~is not a workers required to be paid the prevailing rate of wage.¶

(9) Every apprentice, as defined in OAR 839-025-0004, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits as determined pursuant to ORS 279C.800 to 279C.870. Any worker on a public works project who is not an apprentice as defined in OAR 839-025-0004, or who is not employed by a registered training agent pursuant to ORS 660.010(10), or who is not working pursuant to the standards of the apprentice's apprenticeship program, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of apprentices employed exceeds the ratio permitted in the applicable standards, all apprentices so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.¶

(10) Every trainee, as defined in OAR 839-025-0004, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits determined pursuant to ORS 279C.800 to 279C.870. Any worker on a public works project who is not a trainee as defined in OAR 839-025-0004, or who is not employed by a registered training agent pursuant to ORS 660.010, or who is not working pursuant to the standards of the trainee's program, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of trainees employed exceeds the ratio permitted in the applicable standards, all trainees so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

Statutory/Other Authority: ORS 651.060, ORS 279C.808  
Statutes/Other Implemented: ORS 279C.800-279C.870