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

CHAPTER 839  
**BUREAU OF LABOR AND INDUSTRIES**

**FILED**  
04/14/2026 1:09 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Implements chapter 612, Oregon Laws 2025 and clarifies application of prevailing wage law.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/31/2026 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.*

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Filed By:  
Josh Nasbe  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 05/27/2026

TIME: 10:00 AM

OFFICER: Thea Conbere

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-446-4951

CONFERENCE ID: 337861814

SPECIAL INSTRUCTIONS:

Press the # button after the Conference ID number when phoning into the hearing.

NEED FOR THE RULE(S)

These rules are necessary to implement 2025 House Bill 2688 (chapter 612, Oregon Laws 2025). This legislation applied the prevailing wage to certain offsite, "bespoke" work that is performed specifically for a public works project listed in ORS 279C.800(6)(a)(A) to (F) (defined in the proposed rules as "satellite locations."). In addition, these rules are necessary to clarify application of the prevailing wage law, including the ability of a public body to require certain awardees or other third parties to provide notice of the public works project and pay a related fee.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

2025 House Bill 2688 (chapter 612, Oregon Laws 2025) is available here:  
<https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/HB2688>

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

These rules and the underlying legislation are likely to have a positive impact on racial equity in this state. Many workers on public works projects are participants in Registered Apprenticeship Programs or are otherwise protected by specific

anti-discrimination and anti-harassment law. In addition, both state and federal law require outreach intended to recruit workers from communities of color. These efforts, in conjunction with an expansion of the prevailing wage, are likely to have a positive racial impact in this state.

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#### FISCAL AND ECONOMIC IMPACT:

House Bill 2688 (2025) and these rules expand the application of the prevailing wage to certain off-site bespoke work that is performed in accordance with specifications for a particular public works project listed in ORS 279C.800(6)(a)(A) to (F). By describing the manner in, and the circumstances under, which the prevailing wage applies to this work, these rules are likely to have a fiscal and economic impact on public bodies, people, and businesses, who perform work related to public works projects.

These rules may result in increased costs for public bodies and contractors, including subcontractors. In the last five years, the Bureau received more than 13,000 Notice of Public Works forms and nearly \$73 billion was spent on public works projects across the state. Roughly \$47 billion, about 65% of the total, was spent on projects located in Clackamas, Multnomah, or Washington County. Projects located in metropolitan districts make up most of the money spent on public works projects statewide, and those districts have higher prevailing wage rates than others.

These rules require that workers be paid the prevailing wage rate of the locality of the site of the construction of the public works project listed in ORS 279C.800(6)(a)(A) to (F). Under this framework, the public works project may be located in a district with a higher prevailing rate of wage than the district in which the off-site work is located. In that circumstance, these rules will likely result in employers paying, and workers receiving, a higher rate of wage for off-site work than if the rate of wage was set according to the district in which the off-site work is located. Conversely, when the public works project is performed in a district with a lower prevailing rate of wage than the district in which the off-site work is located, these rules may result in employers paying, and workers receiving, a lower rate of wage for the off-site work.

For off-site contractors and subcontractors working on multiple public works projects in different locations, these rules may result in an increase in costs associated with managing different pay scales. Conversely, for those public bodies contracting for or otherwise funding off-site work in different locations for a single public works project, these rules may result in a decrease in costs associated with managing different pay scales.

The application of recordkeeping requirements associated with the prevailing wage may also increase costs for public bodies and contractors, including subcontractors.

These rules operate to mitigate fiscal impacts by exempting specified work from the application of the prevailing wage and by providing a safe harbor for other work, providing certainty as to its application. These rules also encourage the parties, at the contracting stage, to exchange information to assist each party in identifying work subject to the off-site prevailing wage. For a subset of prevailing wage projects, these rules also authorize public bodies to require an awardee of public funds or other third party to provide the Bureau with a notice of public works and pay the associated fee.

Finally, it may be that any increase in costs created by these rules is ultimately shared between the parties or borne by the public body contracting for or otherwise funding the public works project, making an accurate assessment of the apportionment of these costs difficult to estimate.

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#### 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 are likely to have an economic impact on workers and contractors, including subcontractors, who perform work on public works projects. These rules are also likely to have an economic impact on state agencies and local governments, including municipalities, school districts, and special districts, who contract for or otherwise fund, public works projects.

According to the Statistics of U.S. Businesses produced by the Census, there are approximately 90,000 small businesses operating in Oregon, roughly 14,000 of which are in the construction industry. Those small, construction-related businesses are potentially subject to these rules if they bid on and are awarded contracts to work on public works projects. Additionally, the 2025 Small Business Profile, produced by the United States Small Business Administration, indicates that Oregon has nearly 4,200 small businesses in the manufacturing industry. Those small, manufacturing-related businesses are potentially subject to these rules if they bid on and are awarded contracts to work on public works projects.

Contractors, including subcontractors, on public works projects are required to maintain detailed payroll records under current statutory law. These obligations include maintaining certified payroll records that include the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked and the gross wages each worker earned on a public works project during each week. Because these recordkeeping requirements exist under current law they will apply to satellite locations. The additional information these rules will require employers to retained is necessary to ensure appropriate supervision of apprentices at each physical location and may require additional resources to implement.

Similarly, every contractor and subcontractor engaged on a public works project is required to post the applicable prevailing wage rates in a conspicuous and accessible place. Compliance with the Bureau's rule could require that a contractor post multiple rates at a satellite location if they perform work on several public works projects and may require additional resources to implement.

While some members of the Rulemaking Advisory Committee indicated the rules would have a fiscal impact on small business, there was no clear indication of what the extent of the impact would be or how to quantify it. Other members of the committee indicated that the rules would have a neutral or negligible fiscal impact on small businesses. Given that this is a new prevailing wage framework, BOLI's historical data is of limited utility in quantifying the costs for reporting, recordkeeping, and administrative activities for small businesses.

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

Prior to forming a Rules Advisory Committee that included businesses and associations with members of various sizes, the Bureau held several informal listening sessions and invited members of the public to participate, ask questions and share ideas. These listening sessions were publicized in multiple ways, including direct solicitation to businesses, including small businesses, who have in the past interacted with the Bureau's Prevailing Wage Rate Unit.

Going forward, 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.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

839-025-0004, 839-025-0013, 839-025-0015, 839-025-0020, 839-025-0025, 839-025-0033, 839-025-0035, 839-025-0038, 839-025-0200, 839-025-0800

AMEND: 839-025-0004

RULE SUMMARY: Adds and modifies definitions to implement chapter 612, Oregon Laws 2025 and determine applicability of prevailing wage under ORS chapter 279C and OAR chapter 839, division 25, including definitions of "assembly," "bespoke," "fabrication," "locality," "public works," and "satellite location."

CHANGES TO RULE:

839-025-0004

Definitions Generally ¶

As used in OAR chapter 839, division 25, unless the context requires otherwise: ¶

(1) "Apprentice" means: ¶

(a) A person who is individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Office of Apprenticeship (OA), or with any state apprenticeship agency recognized by OA, and who is employed by a ~~registered~~ training agent ~~pursuant to~~ as defined in ORS 660.010(10) and is working pursuant to the standards of the apprentice's apprenticeship program; or ¶

(b) A person in probationary employment as an apprentice in such an apprenticeship program, but who is not individually registered in the program, but who has been certified by the OA or a state apprenticeship agency to be eligible for probationary employment as an apprentice, and who is employed by a ~~registered~~ training agent ~~pursuant to~~ as defined in ORS 660.010(10) and is working pursuant to the standards of the apprentice's apprenticeship program. ¶

(2) "Assembly" means the fitting together of various parts so as to make into an operative whole. ¶

(3) "The Basic Hourly Rate of Pay" or "Hourly Rate" means the rate of hourly wage, excluding fringe benefits, paid to the worker. ¶

(~~3~~4)(a) "Bespoke" means work that is performed according to individualized specifications that are contained in a public works contract or related documents, including contract plans. ¶

(b) "Bespoke" does not include work that: ¶

(A) Is performed before the issuance of the public works solicitation; ¶

(B) Creates a manufactured dwelling as defined in ORS 446.003; ¶

(C) Creates volumetric modular housing that is based exclusively on a common set of standards, without modification. As used in this paragraph, "volumetric modular housing" means dwellings built from prefabricated, three-dimensional modules constructed in a factory; ¶

(D) Creates mass timber products that are based exclusively on a common set of standards, without modification; ¶

(E) Creates or applies concrete, asphalt, or aggregate material and the products derived from those materials; ¶

(F) Creates or applies paint color; or ¶

(G) Creates applied art as described in OAR 839-025-0150(2). ¶

(5) "Bureau" means the Bureau of Labor and Industries. ¶

(~~4~~6) "Collective bargaining agreement in effect" means a collective bargaining agreement ~~which~~ that is recognized as being binding on all parties by the National Labor Relations Board; ~~which, that~~ is enforceable within the geographic area in which the public improvement is located; and, the terms of which extend to workers who are working on the public improvement project. ¶

(~~5~~7) "Commissioner" means the Commissioner of the Bureau of Labor and Industries, or designee. ¶

(~~6~~8) "Construction" means the initial construction of buildings and other structures, or additions thereto, and of highways and roads. "Construction" does not include the transportation of material or supplies to or from the public works project by employees of a construction contractor or construction subcontractor. ¶

(~~7~~9) "Demolition" includes the dismantling, razing, destroying, wrecking or removal of buildings or other structures or any part thereof, and of highways and roads. ¶

(~~8~~10) "Division" means the Wage and Hour Division of the Bureau of Labor and Industries. ¶

(~~9~~11) "Employ" includes to suffer or permit to work. ¶

(102) "Fabrication" means to create or construct an item from diverse parts. ¶

(13) "Fringe benefits" means the amount of: ¶

(a) The rate of contribution irrevocably made on a "regular basis" and "not less often than quarterly," as those terms are defined in OAR 839-025-0043, by a contractor or subcontractor to a trustee or to a third person

pursuant to a plan, fund or program; and.¶

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program which is committed in writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state or local law to provide any of such benefits. Other bona fide fringe benefits do not include reimbursement to workers for meals, lodging or other travel expenses, nor contributions to industry advancement funds (CIAF for example), drug testing or union dues.¶

(114)(a) "Funds of a public agency" includes any funds of a public agency that are directly or indirectly used, as described below.¶

(A) "Directly used funds of a public agency" means revenue, money, or that which can be valued in money collected for a public agency or derived from a public agency's immediate custody and control, and, except as provided in ORS 279C.810(1)(a)(H) and (J) and subsection (b) of this section, includes but is not limited to any money loaned by a public agency, including the loan of proceeds from the sale of conduit or pass-through revenue bonds for the specific purpose of financing a project, and public property or other assets used as payment for all or part of a project.¶

(B) "Indirectly used funds of a public agency" means, except as provided in subsection (b) of this section, that a public agency ultimately bears the cost of all or part of the project, even if a public agency is not paying for the project directly or completing payment at the time it occurs or shortly thereafter. A public agency does not indirectly use funds of a public agency when it elects not to collect land rent that is due. Examples of when an agency "ultimately bears the cost" of all or part of a project include but are not limited to:¶

(i) Amortizing the costs of construction over the life of a lease and paying these costs with funds of a public agency during the course of the lease;¶

(ii) A public agency subsidizing the costs of construction that would normally be borne by the contractor;¶

(iii) Using insurance proceeds that belong to a public agency to pay for construction. Insurance proceeds represent "money collected for the custody and control of a public agency" and therefore are funds of a public agency, whether the contractor obtains payment directly from the insurance company or the public agency; or¶

(iv) Using or creating a private entity as a conduit for funding a project when the private entity is in fact an alter ego of the public agency.¶

(b) "Funds of a public agency" does not include:¶

(A) Funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction, reconstruction, major renovation or painting;¶

(B) Building and development permit fees paid or waived by the public agency;¶

(C) Tax credits or tax abatements;¶

(D) Land that a public agency sells to a private entity at fair market value;¶

(E) The difference between:¶

(i) The value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the development or use of the land; and¶

(ii) The fair market value of the land if the land is not subject to the limitations described in subparagraph (i) of this paragraph;¶

(F) Staff resources of the public agency used to manage a project or to provide a principal source of supervision, coordination or oversight of a project;¶

(G) Staff resources of the public agency used to design or inspect one or more components of a project;¶

(H) Moneys derived from the sale of bonds that are loaned by a state agency to a private entity, unless the moneys will be used for a public improvement;¶

(I) Value added to land as a consequence of a public agency's site preparation, demolition of real property or remediation or removal of environmental contamination, except for value added in excess of the expenses the public agency incurred in the site preparation, demolition or remediation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870; or¶

(J) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS Chapter 289 or 441.525 to 441.595, unless the bonds or loans will be used for a public improvement.¶

(125) "Hazardous waste" has the meaning given in OAR 340-100-0010.¶

(136) "Highest rate of wage among collective bargaining agreements" is the highest rate of wage when combining the hourly rate plus the fringe benefits.¶

(147) "Housing" has the meaning given that term in ORS 456.055.¶

(158) "Labor organization" means any organization certified as such by the National Labor Relations Board. ¶

(169)(a) "Locality" has the meaning given that term in ORS 279C.800. ¶

(b) For an "electrical worker" as defined in ORS 279C.815, geographic areas are determined in accordance with ORS 279C.815(2)(b). ¶

(20) "Major renovation" means the remodeling or alteration of buildings and other structures within the framework of an existing building or structure and the alteration of existing highways and roads, the contract price of which exceeds \$50,000. ¶

(217) "Nonprofit organization," as used in section (9)(b)(A) of this rule, means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code. ¶

(1822) "Normal business hours" means the hours during which the office of the contractor or subcontractor is normally open for business. In the absence of evidence to the contrary, the Division will consider the hours between 8:00 a.m. and 5:00 p.m., excluding the hours between 12:00 noon and 1:00 p.m., on weekdays as normal business hours. ¶

(1923) "Overtime" means all hours worked: ¶

(a) On Saturdays; ¶

(b) On the following legal holidays: ¶

(A) Each Sunday; ¶

(B) New Year's Day on January 1; ¶

(C) Memorial Day on the last Monday in May; ¶

(D) Independence Day on July 4; ¶

(E) Labor Day on the first Monday in September; ¶

(F) Thanksgiving Day on the fourth Thursday in November; ¶

(G) Christmas Day on December 25. ¶

(c) Over 40 hours in a week; and either: ¶

(d) Over eight (8) hours in a day; or ¶

(e) Over 10 hours in a day provided: ¶

(A) The employer has established a work schedule of four consecutive days (Monday through Thursday or Tuesday through Friday) pursuant to OAR 839-025-0034; and ¶

(B) The employer operates in accordance with this established work schedule. ¶

(204) "Overtime rate" means the basic hourly rate of pay multiplied by one and one-half. ¶

(215) "Overtime wages" means the overtime hours worked multiplied by the overtime rate. ¶

(226) "Person" includes a public or private corporation, a partnership, a sole proprietorship, a limited liability company, a government or governmental instrumentality. ¶

(237) "Prevailing wage rate claim" means a claim for wages filed by a worker with the Division. ¶

(248) "Public agency" means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any instrumentality thereof organized and existing under law or charter. ¶

(259)(a) "Public work," "public works," or "public works project" includes but is not limited to: ¶

(A) Roads, highways, buildings, structures and improvements of all types for which a public agency contracts or carries on construction, reconstruction, major renovation, demolition, removal of hazardous waste or painting to serve the public interest; ¶

(B) A project for constructing, reconstructing, painting, demolishing, removing hazardous waste from, or performing a major renovation on a road, highway, building, structure or improvement of any type that uses \$750,000 or more of funds of a public agency; ¶

(C) A project for the construction of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency; ¶

(D) A device, structure, or mechanism, or a combination of devices, structures, or mechanisms that: ¶

(i) Uses solar radiation as a source for generating heat, cooling, or electrical energy; and ¶

(ii) Is constructed or installed, with or without using funds of a public agency, on land, premises, structures, or buildings that a public agency owns, regardless of the total project cost; ¶

(E) A project for the construction, reconstruction, painting, demolition, removal of hazardous waste from, or major renovation of, a road, highway, building, structure, or improvement of any type that occurs, with or without using funds of a public agency, on real property that a public university listed in ORS 352.002 owns; ¶

(F) Demolition of, or removal of hazardous waste from, a road, highway, building, structure or improvement of any type that uses \$750,000 or more in funds of a public agency, or that occurs on real property that a state agency owns, but that does not involve constructing, reconstructing, renovating or painting a road, highway, building, structure, or improvement; ¶

(G) Fabrication, assembly, preconstruction or construction that is: ¶

(i) Bespoke: ¶

(ii) Performed offsite: ¶

(iii) Performed specifically for, and in accordance with the specifications of, a particular project of a type listed in subparagraphs (A) to (F) of this paragraph; and ¶

(iv) Performed on any of the following systems or components: ¶

(I) Mechanical systems such as heating, ventilation, air conditioning, refrigeration and other ducting or piping systems or components; ¶

(II) Plumbing systems or components; ¶

(III) Electrical systems or components of electrical systems that conform with the requirements of ORS 479.510 to 479.945 and the rules of the Electrical and Elevator Board; ¶

(IV) Boiler systems or components of boiler systems; ¶

(V) Ornamental and structural iron work; ¶

(VI) Masonry and plaster systems or components; ¶

(VII) Roofing, flashing and architectural panel systems or components other than glazing systems and components; or ¶

(VIII) Mechanical insulation; or ¶

(H) Pursuant to ORS 352.138(4)(b), a project resulting from an agreement under the terms of which a private entity constructs, reconstructs, renovates or paints an improvement of any type that occurs, with or without using funds of a public agency, on real property owned by a public university listed in ORS 352.002 or by a nonprofit organization or other entity that a public university listed in ORS 352.002 owns or controls exclusively. ¶

(b) "Public work," "public works," or "public works project" does not include reconstructing or renovating privately owned property that a public agency leases. ¶

(2630) "Public works contract" or "contract" means any contract, agreement or understanding, written or oral, into which a public agency enters for any public work. ¶

(2731) "Reconstruction" means highway and road resurfacing and rebuilding, the restoration of existing highways and roads, and the restoration of buildings and other structures. ¶

(328) "Reconstruction or renovation of privately owned property which is leased by a public agency" includes improvements of all types within the framework or footprint of an existing building or structure. ¶

(2933)(a) "Residential construction project" means a public works project for the construction, reconstruction, major renovation or painting of a single family house or apartment building of not more than four (4) stories in height and all incidental items such as site work, parking areas, utilities, streets and sidewalks pursuant to the U.S. Department of Labor's "All Agency Memorandum No. 130" -- "Application Of The Standard of Comparison 'Projects Of a Character Similar' Under the Davis-Bacon and Related Acts" dated March 17, 1978, and "All Agency Memorandum No. 131" "Clarification of All Agency Memorandum No. 130" dated July 14, 1978. (See Appendix 6.) ¶

(b) Notwithstanding the provisions of subsection (a) of this section, where it is determined that a different definition of "residential construction" has been adopted by local ordinance or code, or that the prevailing practice of a particular trade or occupation regarding what is considered "residential construction" differs from the U.S. Department of Labor definition of residential construction, the commissioner may consider such information in determining a project to be a "residential construction project." ¶

(304) "Satellite location" means a site where work described in ORS 279C.800(6)(a)(G) is performed. ¶

(35) "Site of work" is defined as follows: ¶

(a) The site of work is limited to the physical place or places where the construction, reconstruction, major renovation or painting called for in the contract will remain when work on it has been completed, or the physical place or places where the demolition or hazardous waste removal called for in the contract will be performed, and other adjacent or nearby property used by the contractor or subcontractor for such work which can reasonably be said to be included in the site. ¶

(b) Except as provided in subsection (c) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards and similar facilities, are part of the site of work provided they are dedicated exclusively, or nearly so, to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them. Such facilities which are established by a supplier of materials for the project after the opening of bids are deemed to be dedicated exclusively to the performance of the contract or project. ¶

(c) Not included in the site of work are satellite locations, permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, and similar facilities of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site,

are not included in the site of work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract or project. ¶

(316) "Special wage determination" means a wage determination made at the request of a public agency and which is applicable only to specific job classes. A special wage determination is issued in those cases where there is no current wage determination applicable to specific job classes and the use of such job classes is contemplated on a public works project. ¶

(327) "Staff resources of a public agency" means employees of the public agency who may manage, supervise or oversee a project or employees of the public agency used to design or inspect one or more components of a project, but not persons with whom a public agency contracts to perform such services. ¶

(338) "Trade" or "occupation" is defined in accordance with the prevailing practices of the construction industry in Oregon. ¶

(349) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Office of Apprenticeship (OA), as meeting its standards for on-the-job training programs, and which has been so certified by that office, and who is employed by a registered training agent pursuant to as defined in ORS 660.010(10) and is working pursuant to the standards of the trainee's program. ¶

(3540) "Training agent" means an employer that is registered with a local joint committee and the Apprenticeship and Training Division of the Bureau of Labor and Industries. ¶

(3641) "Wage determination" includes the original decision and any subsequent amendments made by the commissioner in accordance with ORS 279C.815. ¶

(3742) "Wages" or "Prevailing Wages" means the basic hourly rate of pay and fringe benefits as defined in this rule. ¶

(438) "Worker" means a person employed on a public works project and whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental, professional or managerial. The term "worker" includes apprentices, trainees and any person employed or working on a public works project in a trade or occupation for which the commissioner has determined a prevailing rate of wage. ¶

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

Statutes/Other Implemented: ORS 279C.800 - 279C.870

AMEND: 839-025-0013

RULE SUMMARY: Amends rule to allow public agencies to require third party to provide notice of public works to the Bureau for projects described in ORS 279C.800(6)(a).

CHANGES TO RULE:

839-025-0013

Notice of Public Works Form ¶¶

- (1) The notification form required by ORS 279C.835 is the Notice of Public Works form, WH-81.¶¶
- (2)(a) Except as otherwise provided in sections (4), (5), and (6) of this rule, ~~the~~ a public agency must file the Notice of Public Works form, WH-81, with the ~~Prevailing Wage Rate Unit~~Bureau within 30 days after the date a public works contract is awarded.¶¶
- (b) When a project is a public works project pursuant to ORS 279C.800(6)(a) and no public agency awards a contract to a contractor for the project, the public agency may require an awardee or other third party to provide the notice to the Bureau in accordance with this section. The public agency remains liable for the failure to provide the notice within the timelines specified in sections (4) to (8) of this rule.¶¶
- (3) The Notice of Public Works form, WH-81, must be accompanied by:¶¶
- (a) ~~p~~Payment of the fee required pursuant to ORS 279C.825; and¶¶
- (b) ~~a~~A copy of the disclosure of first-tier subcontractors submitted to the public agency by the contractor if required pursuant to ORS 279C.370 and if a public agency awards a contract to a contractor for a public works project.¶¶
- (4) When a project is a public works project pursuant to ORS 279C.800(6)(a)(B) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency providing public funds for the project at the time the public agency commits to the provision of funds for the project.¶¶
- (5) When a project is a public works project pursuant to ORS 279C.800(6)(a)(C) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency when the agency enters into an agreement to occupy or use the completed project.¶¶
- (6) When a project is a public works project pursuant to ORS 279C.800(6)(a)(D) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency that owns the land, premise(s), structure(s) or building(s) on which the solar radiation device will be constructed or installed at the time the public agency enters into an agreement authorizing the construction or installation of the solar radiation device.¶¶
- (7) When a project is a public works project pursuant to ORS 279C.800(6)(a)(E) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public university listed in ORS 352.002 that owns the real property on which the work takes place, at the time the public agency enters into an agreement authorizing the project.¶¶
- (8) If a project is a public works of the type described in ORS 279C.800(6)(a)(F) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency or agencies providing public funds for the project or by the public agency that owns the real property on which the demolition or removal of hazardous waste takes place.-The form shall be filed at the time the public agency commits to the provision of funds for the project or authorizes demolition or hazardous waste removal work to be performed.¶¶
- (9) Public agencies are not required to file a Notice of Public Works form when the contract awarded is not regulated under the provisions of ORS 279C.800 to 279C.870.¶¶

[ED. NOTE: Forms and Publications referenced in these rules are available from the ~~Wage and Hour Division of the Bureau of Labor and Industries~~Bureau.]

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

Statutes/Other Implemented: ORS 279C.800 - 279C.870

AMEND: 839-025-0015

RULE SUMMARY: Amends rule to clarify application of bond threshold to work performed at satellite location.

CHANGES TO RULE:

839-025-0015

Public Works Bonds Requirements ¶

(1)(a) Except as otherwise provided in ORS 279C.836, before starting work on a contract or subcontract for a public works ~~project~~ of \$100,000 or more, a contractor or subcontractor must file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000. ¶

(b) For purposes of this section, "~~project~~the threshold of "\$100,000 or more" includes, but is not limited to, the combined value of work performed by every person paid by a contractor or subcontractor in any manner for the person's work on the project, including work performed at a satellite location, but does not include the value of donated materials or work performed on the project by individuals volunteering to the public agency without pay. ¶

(2) The Commissioner of the Bureau of Labor and Industries adopts the language in the Statutory Public Works Bond set forth in Attachment A to this rule. ¶

(3) The name of the entity as it appears on the public works bond must be the same as the entity name filed at the Oregon Corporation Division (if applicable). ¶

(a) If the entity is a sole proprietorship, the bond must include the name of the sole proprietor; ¶

(b) If the entity is a partnership, or joint venture, the bond must include the names of all partners or venturers (except limited partners); ¶

(c) If the entity is a limited liability partnership, the bond must be issued in the name of all partners and in the name of the limited liability partnership; ¶

(d) If the entity is a limited partnership, the bond must be issued in the name of all general partners and in the name of the limited partnership and any other business name(s) used. Limited partners do not need to be listed on the bond; ¶

(e) If the entity is a corporation or trust, the bond must be issued showing the corporate or trust name; or ¶

(f) If the entity is a limited liability company, the bond must be issued in the name of the limited liability company. ¶

(4) If at any time an entity changes or amends its entity name, the Construction Contractors Board must be notified within 30 days of the date of the change. ¶

(5) If an entity is a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity, and changes the entity to one of the other entity types, the new entity must supply a new bond. ¶

(6) If a disadvantaged business enterprise, minority-owned business, woman-owned business, veteran-owned business-~~or~~ emerging small business, certified under ORS 200.055, is found to have violated a provision of ORS 279C.800 to 279C.870 or an administrative-~~rule~~ adopted under ORS 279C.800 to 279C.870, the enterprise or business must file a public works bond in accordance with section (1) of this rule. ¶

(7) Riders to existing bonds changing the type of entity bonded will be construed as a cancellation of the bond and will not be otherwise accepted. ¶

(8) The inclusion or exclusion of business name(s) on a bond shall not limit the liability of an entity. Claims against a bonded entity will be processed regardless of business names used by such entity. ¶

[ED. NOTE: To view attachments referenced in rule text, click here for PDF copy.]

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

Statutes/Other Implemented: ORS 279C.800 - 279C.870

RULE ATTACHMENTS MAY NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.



**STATE OF OREGON**  
**STATUTORY PUBLIC WORKS BOND**

Surety bond #: \_\_\_\_\_ CCB # (if applicable): \_\_\_\_\_

We, \_\_\_\_\_, as principal, and \_\_\_\_\_, a corporation qualified and authorized to do business in the State of Oregon, as surety, are held and firmly bound unto the State of Oregon for the use and benefit of the Oregon Bureau of Labor and Industries (BOLI) in the sum of thirty thousand dollars (\$30,000) lawful money of the United States of America to be paid as provided in ORS chapter 279C, for which payment well and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by this agreement.

WHEREAS, the above-named principal wishes to be eligible to work on public works project(s) subject to the provisions of ORS chapter 279C, and is, therefore, required to obtain and file a statutory public works bond in the penal sum of \$30,000 with good and sufficient surety as required pursuant to the provisions of ORS 279C.836, conditioned as herein set forth.

NOW, THEREFORE, the conditions of the foregoing obligations are that if said principal with regard to all work done by the principal as a contractor or subcontractor on public works project(s), shall pay all claims ordered by BOLI against the principal to workers performing labor upon public works projects for unpaid wages determined to be due, in accordance with ORS chapter 279C and OAR Chapter 839, then this obligation shall be void; otherwise to remain in full force and effect.

This bond is for the exclusive purpose of payment of wage claims ordered by BOLI to workers performing labor upon public works projects in accordance with ORS chapter 279C.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty of this bond.

This bond shall become effective on the date it is executed by both the principal and surety and shall continuously remain in effect until depleted by claims paid under ORS chapter 279C, unless the surety sooner cancels the bond. This bond may be cancelled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal, the Construction Contractors Board, and BOLI. Cancellation shall not limit the responsibility of the surety for the payment of claims ordered by BOLI relating to work performed during the work period of a contract entered into before cancellation of this bond.

IN WITNESS WHEREOF, the principal and surety execute this agreement. The surety fully authorizes its representatives in the State of Oregon to enter into this obligation.

SIGNED, SEALED AND DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Surety by:

Principal by:

\_\_\_\_\_  
*Company Name* (Seal)

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Title (e.g. Attorney-in-Fact)*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*City State Zip*

\_\_\_\_\_  
*City State Zip*

**SEND BOND TO: Construction Contractors Board  
PO Box 14140  
Salem, OR 97309-5052  
Telephone: (503) 378-4621**

AMEND: 839-025-0020

RULE SUMMARY: Allows a public agency to include in a public works contract a list of off-site work performed on a system or component described in ORS 279C.800(6)(a)(G)(iv) and a requirement that any contractor or subcontractor provide the public agency with notice of any work that could reasonably be performed off-site.

CHANGES TO RULE:

839-025-0020

Public Works Contracts and Contract Specifications; Required Conditions ¶

(1) For purposes of this rule: ¶

(a) "Construction Manager/General Contractor contract" (or "CM/GC contract") means a contract that typically results in a general contractor/construction manager initially undertaking various pre-construction tasks that may include, but are not limited to: design phase development, constructability reviews, value engineering, scheduling, and cost estimating, and in which a guaranteed maximum price for completion of construction-type work is typically established by amendment of the initial contract, after the pre-construction tasks are complete or substantially complete. "CM/GC" refers to the general contractor/construction manager under this form of contract. Following the design phase, the CM/GC may then act as a General Contractor and begin the subcontracting process. The CM/GC typically coordinates and manages the construction process, provides contractor expertise, and acts as a member of the project team. ¶

(b) "Construction specifications" include the detailed description of physical characteristics of the improvement, design details, technical descriptions of the method and manner of doing the work, quantities or qualities of any materials required to be furnished, descriptions of dimensions, required units of measurement, composition or manufacturer, and descriptions of any quality, performance, or acceptance requirements. ¶

(2) Every public works contract must contain the following: ¶

(a) A condition or clause that, if the contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person, or the assignee of the person, in connection with the public works contract as such claim becomes due, the proper officer or officers of the public agency may pay such claim and charge the amount of the payment against funds due or to become due the contractor by reason of the contract (Reference: ORS 279C.515); ¶

(b) A condition that no person will be employed for more than 10 hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed must be paid at least time and one-half the regular rate of pay for all time worked: ¶

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or ¶

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and ¶

(C) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540 (Reference: ORS 279C.520(1)); ¶

(c) A condition that an employer must give notice to employees who work on a public works contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work (Reference: ORS 279C.520(2)); and ¶

(d) A condition that the contractor must promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service (Reference: ORS 279C.530). ¶

(3) Every public works contract that a public agency awards must contain a condition or clause that requires the contractor to: ¶

(a) Have a public works bond filed with the Construction Contractors Board before starting work on the project, unless the contractor is exempt under ORS 279C.836(4), (7), (8) or (9). ¶

(b) Require, in every subcontract, that the subcontractor have a public works bond filed with the Construction Contractors Board before starting work on the project, unless the subcontractor is exempt under ORS 279C.836(4), (7), (8) or (9). ¶

(4) Every subcontract that a contractor or subcontractor awards in connection with a public works contract between a contractor and a public agency must require any subcontractor to have a public works bond filed with

the Construction Contractors Board before starting work on the public works projects, unless the subcontractor is exempt under ORS 279C.836 (4), (7), (8), or (9).¶

(5)(a) Every public works contract and subcontract must provide that each worker the contractor, subcontractor or other person who is a party to the contract uses in performing all or part of the contract, must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Commissioner of the Bureau of Labor and Industries in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon.¶

(b) If a public works project is subject to both ORS 279C.800 to ORS 279C.870 and to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), every public works contract and subcontract must provide that the worker whom the contractor, subcontractor or other person who is a party to the contract uses in performing all or part of the contract, must be paid not less than the higher of the applicable state prevailing rate of wage for each trade or occupation as defined by the Commissioner of the Bureau of Labor and Industries in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon or federal prevailing rate of wage.¶

(6)(a) The specifications for every public works contract must contain a provision that states the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.).¶

(b) Except as provided in subsection (d) of this section and sections (8) and (9) of this rule, the existing state prevailing rate of wage and the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon are those in effect at the time the initial specifications were first advertised for bid solicitations.¶

(c) If a public agency is required under subsection (a) of this section or section (8) of this rule to include the state and federal prevailing rates of wage in the specifications for a contract for public works, the public agency shall also include in the specifications the requirement that the contractor pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public works project.¶

(d) Pursuant to ORS 279C.838(4) and notwithstanding ORS 279C.830(1), if the contract is subject to both ORS 279C.800 to 279C.870 and the Davis Bacon Act (40 U.S.C. 3141 et seq.), the public agency may provide in the specifications for the contract a single date to be used to establish the "existing state prevailing rate of wage," the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon, and the "applicable federal prevailing rate of wage" that is consistent with the federal requirements under 29 CFR 1.6.¶

(e) The specifications for a contract for public works must provide 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 the contractor or subcontractor is exempt under ORS 279C.836(4), (7), (8) or (9).¶

(7)(a) The provisions described in sections (5) and (6), and sections (8) and (9) if applicable, must be included in all specifications for each contract awarded on the project, regardless of the price of any individual contract, so long as the combined price of all contracts awarded on the project is \$50,000 or more (Reference: ORS 279C.830).¶

(b) A statement incorporating the applicable state prevailing wage rate publication and any amendments thereto into the specifications by reference will satisfy these requirements. Except as provided in subsection (c), such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments.¶

(c) When the prevailing wage rates are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates. Such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments. The reference requirements of this subsection will be satisfied if such reference includes Uniform Resource Locator (URL) information for a webpage or webpages showing the title of each applicable wage rates publication or determination and the date of each publication or determination as well as the date of any applicable amendments.¶

(8)(a) When a public agency is a party to a CM/GC contract, the CM/GC contract becomes a public works contract either when the contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction, reconstruction, major renovation, demolition, removal of hazardous waste or painting of an improvement that is a public works or when the CM/GC contract enters the construction phase, whichever occurs first.¶

(b) For example, the CM/GC will have a binding and enforceable obligation to perform or arrange for the performance of construction, reconstruction, major renovation, demolition, removal of hazardous waste or painting of an improvement after the public agency and CM/GC commit to the guaranteed maximum price.¶

(c) For purposes of this rule, the CM/GC contract enters the construction phase when the agency first authorizes the performance of early construction, reconstruction, major renovation, demolition, removal of hazardous waste or painting work directly related to the improvement project.¶

(d) The publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon and the prevailing wage rate in effect at the time the CM/GC contract becomes a public works contract shall apply and the applicable prevailing wage rates must be included with the construction specifications for the CM/GC contract. ¶

(9) A public works project described in ORS 279C.800(6)(a)(B), (C), (D), (E) or (F) that is not a CM/GC contract subject to section (8) of this rule, and for which no public agency awards a contract to a contractor for the project, is subject to the publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon and the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that are in effect at the time a public agency enters into an agreement with a private entity for the project. (Note: The effective date of the applicable federal prevailing rate of wage may be different under federal law.) After that time, the specifications for any contract for the public works shall include the applicable prevailing rate of wage. ¶

(10) If a project is a public works of the type described in ORS 279C.800(6)(a)(B), (C), (D), (E) or (F) and no public agency awards a contract to a contractor for the project, a public agency will be deemed to have complied with the provisions of ORS 279C.830 if the public agency requires compliance with the provisions of section (7) of this rule in any agreement entered into by the public agency committing to provide funds for the project, to occupy or use the completed project, authorizing the construction or installation of a solar radiation device, or authorizing demolition or hazardous waste removal. ¶

(11) Public agencies may obtain, without cost, a copy of the existing state prevailing rate of wages for use in preparing the contract specifications by contacting the ~~Prevailing Wage Rate Unit~~ or any office of the ~~bureau~~ Bureau. ¶

(12) A public agency may include in a public works contract: ¶

(a) A list of work required by the contract that reasonably could be considered to be performed on a system or component described in ORS 279C.800(6)(a)(G)(iv). ¶

(b) A requirement that any contractor or subcontractor provide the public agency with notice of any work that could reasonably be performed at a satellite location.

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

Statutes/Other Implemented: ORS 279C.800 - 279C.870

AMEND: 839-025-0025

RULE SUMMARY: Requires contractors, including subcontractors, performing work on public works contracts to keep records of the names of all journey workers engaged in the supervision of apprentices and records that distinguish supervising journey workers from other employees.

CHANGES TO RULE:

839-025-0025

Required Records ¶¶

(1) All contractors and subcontractors performing work on public works contracts subject to ORS 279C.800 to 279C.870 shall make and maintain for a period of three-~~(3)~~ years from the completion of work upon such public works records necessary to determine whether the prevailing rate of wage and overtime has been or is being paid to workers upon public works.¶¶

(2) In addition to the Payroll and Certified Statement, Form WH-38, records necessary to determine whether the prevailing wage rate and overtime wages have been or are being paid include but are not limited to records of:¶¶

(a) The name and address of each employee;¶¶

(b) The work classification or classifications of each employee, and, if applicable, the name of all journey workers engaged in the supervision of apprentices;¶¶

(c) The rate or rates of monetary wages and fringe benefits paid to each employee;¶¶

(d) The rate or rates of fringe benefit payments made in lieu of those required to be provided to each employee;¶¶

(e) Total daily and weekly compensation paid to each employee;¶¶

(f) The daily and weekly hours worked by each employee;¶¶

(g) The written notice to employees who work on a public contract of the days per week and number of hours per day they may be required to work.¶¶

(h) Apprenticeship and Training Agreements;¶¶

(i) Any deductions, rebates or refunds taken from each employee's total compensation and actual wages paid;¶¶

(j) Any payroll and other such records pertaining to the employment of employees upon a public work.¶¶

(3) When apprentices ~~and/or~~ trainees are employed on a public works project, the records must clearly distinguish them, and their supervising journey workers, from other employees.¶¶

(4) When a contractor or subcontractor employs a worker on public works projects and non public works projects during the same work week and the worker is paid a rate of pay which is less than the prevailing wage rate when working on a non public works project, the contractor or subcontractor must separately record the hours worked on the public works projects and those hours worked elsewhere.

Statutory/Other Authority: ORS 279.808, ORS 651.060~~(4)~~

Statutes/Other Implemented: ORS 279C.800- - 279C.870

AMEND: 839-025-0033

RULE SUMMARY: Clarifies prevailing wage rate posting requirements at satellite locations.

CHANGES TO RULE:

839-025-0033

Posting Requirements ¶

(1) Every contractor or subcontractor must post the prevailing wage rates applicable to the project in a conspicuous place at the site of work and at any satellite locations. The posting must be easily accessible to employees working on the project. Contractors may obtain a copy of the applicable wage rates by ~~contacting the Prevailing Wage Rate Unit~~ visiting [www.oregon.gov/boli](http://www.oregon.gov/boli) or any office of ~~by contacting the Bureau.~~ ¶

(2) When a contractor or subcontractor provides for or contributes to a health and welfare plan or pension plan for employees who are working on a public works project, the contractor or subcontractor must post a notice containing the following information: ¶

(a) A description of the plan or plans; ¶

(b) Information on how and where claims can be made; and ¶

(c) Where to obtain more information. ¶

(3) The notice required to be posted in section (2) of this rule must be posted in a conspicuous place at the site of work and at any satellite locations and must be easily accessible to employees working on the project. The notice must be posted in the same location as the prevailing wage rate pursuant to section (1) of this rule.

Statutory/Other Authority: ~~ORS 279.651~~ ORS 651.060, ORS 279C.808

Statutes/Other Implemented: ~~ORS 279.348~~ 279.38C.840

AMEND: 839-025-0035

RULE SUMMARY: Amends rule to include satellite locations in exception from obligation to pay prevailing wage and to remove gendered language.

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) A person employed on a public works project and who 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 is a worker 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) A person 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) is not a worker required to be paid the applicable prevailing rate of wage unless the employment of the person is performed in connection with and at the site of the public works project.¶¶

(6)(a) Except as provided in ORS 279C.838(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 materials 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, provided the person's activities at on the "site of work" as that term is defined in OAR 839-025-0004 public works project are limited to driving, delivering the materials or supplies, or waiting for materials or supplies to be loaded or unloaded.¶¶

(b) A person who is employed by a commercial supplier of materials or supplies, or who contracts 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 a construction contractor or construction subcontractor to transport materials or supplies to or from a public works project is a worker and must be paid no less than the applicable prevailing rate of wage for work performed in connection with the transportation of materials or supplies, unless the person's activities at on the "site of work" as that term is defined in OAR 839-025-0004 public works project, 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) A person employed on a public works project for personal services, as that term is defined in ORS 279C.100, as opposed to construction work, is not a worker 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 worker'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 worker'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 worker'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 worker'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

AMEND: 839-025-0038

RULE SUMMARY: Amends rule to clarify that all applicable wage rate determinations must be posted at satellite locations.

CHANGES TO RULE:

839-025-0038

Use of Multiple Wage Rate Determinations on Projects ¶¶

(1) The Bureau may authorize the use of multiple wage rate determinations on projects comprised of more than one construction type. For example, on a project consisting of the construction of both residential units and commercial space, the Bureau may authorize residential wage rates to be paid for work performed in connection with the construction of the residential units pursuant to OAR 839-025-0037 and non-residential prevailing wage rates to be paid for work performed in connection with the construction of the commercial space. ¶¶

(2) A public agency, developer or prime contractor may request authorization to use multiple wage determinations on a project. Requests for authorization to use multiple wage determinations on a project must be in writing and describe all relevant details of the project or proposed project. ¶¶

(3) The requester will be advised if the Bureau determines that multiple wage rate determinations are appropriate and may be used on a project. ¶¶

(4) If the Bureau determines that multiple wage rate determinations may be used on a project, continued authorization to use the multiple wage rate determinations shall be contingent upon compliance with the following requirements: ¶¶

(a) The project/contract specifications must clearly delineate the portions of the project subject to each applicable wage rate determination; ¶¶

(b) All applicable wage rate determinations must be posted at the site of work and at any satellite locations pursuant to the provisions of OAR 839-025-0033, with an explanation of the portions of the project to which each wage rate determination applies; ¶¶

(c) The developer or prime contractor must establish adequate controls to ensure that all workers on the project are paid in accordance with the applicable wage rates; and ¶¶

(d) Each and every contractor employing workers on the project must prepare, submit and maintain accurate time and payroll records to demonstrate compliance with all wage rate determinations applicable to the project.

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

Statutes/Other Implemented: ORS 279C.817

AMEND: 839-025-0200

RULE SUMMARY: Amends rule to allow public agencies to require third party to pay the public works fee to the Bureau for projects described in ORS 279C.800(6)(a).

CHANGES TO RULE:

839-025-0200

Fees to Be Paid by Public Agency ¶

(1)(a) A public agency must pay a fee to the ~~Prevailing Wage Rate Unit~~Bureau for every contract awarded to a contractor for a public work ~~which that~~ is regulated under the ~~Prevailing Wage Rate Law (ORS 279C.800 to 279C.870)~~ORS 279C.800 to 279C.870.¶

(b) When a project is a public works project described in ORS 279C.800(6)(a) and no public agency awards a contract to a contractor for the project, the public agency may require an awardee or other third party to pay the fee to the Bureau in accordance with this section. The public agency remains liable for the failure to pay the fee in accordance with section 3 of this rule.¶

(2) The amount of the fee is one tenth of one percent (.001) of the contract price. However, the fee must be no less than \$250 nor more than \$7,500 regardless of the contract price.¶

(3) The public agency must pay the fee at the time the ~~public agency notifies the commissioner under ORS 279C.835 a contract subject to the provisions of Prevailing Wage Rate law has been awarded~~notice described in OAR 839-025-0013 is provided to the Bureau.¶

(4) In order to assist public agencies in the proper calculation of the fee, the bureau has prepared a form for this purpose. The form, WH-39, is available, on request, from the ~~Prevailing Wage Rate Unit~~Bureau.¶

(5) As used in this rule, "contract price" means the dollar amount of the contract on the date it was awarded to the contractor and the dollar amount of any subsequent change orders or other adjustments.¶

[ED. NOTE: Forms referenced are available from the ~~agency~~Bureau.]

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

Statutes/Other Implemented: ORS ~~279-348 - 279-380~~C.825

ADOPT: 839-025-0800

RULE SUMMARY: Adopts rules applicable to satellite locations and exempts certain work from prevailing wage rate requirements.

CHANGES TO RULE:

839-025-0800

Satellite Locations

(1) Work that meets the requirements of OAR 839-025-0004(29)(a)(G) is not a public works if a contractor, including a subcontractor, or a public agency demonstrates by a preponderance of the evidence that the work produces:¶

(a) Inventory that reasonably can be sold on the general market or that, with reasonable certainty, can be utilized on a project other than the public works project;¶

(b) A final product that is identical to a final product that was previously produced for a reason other than the public works project; or¶

(c) A product that is based exclusively on standard designs or standard dimensions, without modification, including but not limited to products that, before the public works solicitation was issued, were available for purchase in a catalogue, product list, online or as on-demand manufacturing.¶

(2) The showing described in section (1) of this rule may be made at any time up to and including in a contested case proceeding.¶

(3) If, at the time a public works contract is required to incorporate the existing state prevailing rate of wage under OAR 839-025-0020, the applicable version of the Prevailing Wage Rates for Public Works Contracts described in OAR 839-025-0700 does not contain a rate that is expressly made applicable to work performed at a satellite location, the work is not a public works. ¶

(4) Subject to sections (1) to (3) of this rule, the prevailing rate of wage applicable to a satellite location is the same rate of wage that is applicable to the public works project listed in ORS 279C.800(6)(a)(A) to (F).¶

(5) Nothing in this rule:¶

(a) Requires a contractor to serve as a training agent or otherwise participate in a Registered Apprenticeship Program; or¶

(b) Modifies the obligations of a journey worker to supervise an apprentice, in accordance with Division 11 and any applicable standard, at the same physical location as the apprentice.

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

Statutes/Other Implemented: ORS 279C.800, ORS 279C.845