

PREVAILING WAGE FREQUENTLY ASKED QUESTIONS

Minnesota's prevailing wage law ([Minnesota Statutes 177.41 through 177.44](#)) requires employees working on state-funded construction projects or other projects covered by that law be paid wage-rates comparable to wages paid for similar work in the area where the project is located. Certain construction contracts of Minnesota State Colleges and Universities are subject to prevailing wage laws.

Minnesota prevailing wage laws require contracting entities to collect and retain payroll records to demonstrate compliance. Detailed information about contract provisions and compliance with payroll record requirements may be found at:

[Minnesota State e-manual version 2.0 for Vendors](#)

The following Frequently Asked Questions are intended to provide additional information to campus personnel who may handle various issues associated with prevailing wage compliance; they do not represent a comprehensive list of all issues.

What are the contract size exceptions to paying prevailing wages?

Prevailing wage standards do not apply to construction contracts where:

- The estimated total cost of completing the project* is less than \$2,500.00 and only one trade or occupation is required to complete it; or
- The estimated total cost of the project is less than \$25,000.00 and more than one trade or occupation is required to complete it.

(* Project means: erection, construction, remodeling, or repairing of a public building or other public work financed in whole or part by state funds.)

Do prevailing wages apply to Minnesota State Master Service Contracts Form 034?

Sometimes. If work is performed by employees in a construction trade (electrician, plumber, carpenter, mason, carpet layer, etc.) and the contract size exceeds the exceptions to prevailing wages (described in the answer to the question above), prevailing wage standards apply. When in doubt, require prevailing wages.

Does a sole proprietor contractor have to pay prevailing wages?

Yes. If the sole proprietor performs trade work, then they should conform to the prevailing wage requirements.



Is the college/university (C/U) required to pay prevailing wages for snow removal?

No. If a C/U has hired a service for snow removal, prevailing wages do not apply. Prevailing wages apply to construction projects.

Can the contractor use other payroll forms than those provided by Minnesota State?

No. The forms on the Minnesota State website were specifically developed to ensure, if filled out correctly, that all the data required by statute would be provided.

Does the superintendent on my campus project have to provide prevailing wage documentation for his work? Additionally, the sole proprietor of another contractor I've hired said there is no payroll wage rate documentation required because he is the sole proprietor, not a hired trade person. Is he exempt from having to provide documentation in accordance with prevailing wage law?

All workers performing construction labor on the worksite must be paid the prevailing wage for the type of work they are performing. This includes owners and supervisors if they are engaging in construction labor. For instance a project superintendent who operates a front end loader to assist in the construction, would have to be paid at minimum the equipment operator rate for the time spent operating equipment. Additionally, if the sole proprietor of a small company is performing construction labor on the worksite, that individual would have to be paid at minimum for the rate of labor they are performing. If his/her hourly salary exceeds the prevailing wage, no payment adjustment is necessary.

How long do prevailing wage payroll forms need to be kept?

The contracting agency must maintain prevailing wage payroll information for a minimum of three years after final payment has been made on the project. If your college or university records retention schedule has a longer time, use that timeframe. If you know that there are pending requests or that the records may be relevant to an unresolved issue, keep them until they are no longer needed.

How do I respond to request for prevailing wage information records?

All the information required to be collected on prevailing wage records is public data. The law requires a response to a request for public data within a reasonable time. Access (viewing) must be provided free at a mutually convenient time and place; if copies are requested, they must be provided, but there may be a charge using your college/university copy charge schedule. Be sure to review the records before releasing to make sure that no private information has been included in error (such as SSNs) which must be redacted (blocked out) before copying.

On-going data requests (for example, a request for all payroll records as the project progresses) must be honored, but periodic renewal of such requests may be required as part of a consistent policy. Contact the requesting party if you are not certain about what is requested – and it is a good idea to re-state the revised request in writing, if appropriate. ***System personnel may not ask the purpose of the information request.***

How are prevailing wages affected if our project includes federal funds?

Prevailing wages will still apply and payroll information will still need to be collected. The Minnesota prevailing wage laws, known as the “Little Davis-Bacon Act” are based on the Federal “Davis-Bacon Act.” Consult with System Office facilities personnel for questions about the applicability of federal prevailing wage standards.

If we are revising or upgrading our parking lot or roads on campus do we use the Commercial or Highway/Heavy wage rates?

Parking lots or road renovations on campus will fall under the Highway/Heavy wage rates.

The following FAQs are from the Department of Labor and Industry web site, which are intended to provide additional overview information on state prevailing wage law compliance:

www.doli.state.mn.us/LS/PrevWage.asp

Who is covered by Minnesota prevailing wage law?

Any contractor or subcontractor performing work by contract in which state funds in whole or in part are involved must adhere to Minnesota prevailing wage laws unless exceptions apply. Highway projects are enforced by the Minnesota Department of Transportation (MnDOT) and commercial projects are enforced by the Department of Labor and Industry.

The certification in effect at the time the project is advertised for bids applies for the duration of the project. Ensure that the most current wage rates are incorporated into the bidding documents when the project is advertised for bid.

The following examples illustrate some of the ways changes to prevailing-wage rates may impact a project:

Example 1. The A/E prepared the bidding documents inadvertently using the wrong county’s wage rates. The error was discovered prior to the bid date. The A/E must issue an addendum with the correct county’s prevailing-wage rates. If the error had been discovered after the execution of contracts, the error must be corrected by the appropriate contract-change method.



Example 2. The Department of Labor and Industry revises the prevailing-wage rates half-way through the construction of a project. Several trade's prevailing-wage rates have increased.

No action is required by the contractor because the prevailing-wage rates effective at the time the project was advertised for bid are the standard for the entire duration of the project (which may be several years).

Example 3. A construction manager lets a partial scope of work out for bid and signs subcontracts for a project. Time passes and the prevailing-wage rates change in the county where the project is located. The construction manager wants to bid the remaining scope of work. The construction manager must use the most current prevailing-wage rate for the remaining scope of work.

How does prevailing wage work?

The original Minnesota prevailing wage law required all state agencies to establish prevailing wage rates for their building projects. The Department of Labor and Industry (DLI) was given the power to investigate complaints, collect survey data, define classes of labor for highway construction and determine state prevailing wage rates. An amendment was passed in 1975, authorizing DLI to set the rates for all building and road construction and increased the penalties for noncompliance

Wage rates paid for comparable work are certified by DLI as the prevailing wage rates after the department conducts a survey of contractors, labor organizations and interested parties statewide.

This information is furnished to entities covered by prevailing wage laws that are awarding contracts for inclusion in their project specifications. A notice is also published in the *State Register* annually, indicating where copies of the certified rates may be obtained; however, these rates are subject to change at any time without notice.

Wage rates are established for two types of construction:

1. Highway/Heavy -- construction and maintenance of highways, streets, airport runways, bridges, power plants, dams, wastewater treatment plants, water towers, high-voltage power lines and utilities; and
2. Commercial Construction -- building projects exclusive of residential construction. (Residential construction is defined as single- or two-family homes. Separate wage certifications are issued for each county.)

How are prevailing wages set?

State law requires each wage rate be based on the actual wage rates paid to the largest number of workers within each labor classification reported in the statewide survey.



An administrative law judge agreed that the calculation to be used is the mode or most frequently occurring wage rate. For example, if the survey data shows that two bricklayers in a county earned \$19.40 an hour, another earned \$17.25 and one earned \$22.67, the prevailing hourly wage rate would be \$19.40.

If there are an equal number of workers with differing hourly wage rates, the rules state the highest rate paid becomes the prevailing wage rate. For example, if one worker receives \$14.90 an hour, another is paid \$16.75 and another gets \$15.35, the prevailing wage is \$16.75 an hour.

To obtain the necessary database, the Department of Labor and Industry mails surveys to all segments of the construction industry. The department recognizes 147 job classes common to the construction industry. These classifications are divided into four categories: laborers, truck drivers, heavy-equipment operators and skilled crafts.

In 2007, more than 18,000 requests for wage rates were mailed to public and private employers throughout the state.

The schedule of prevailing wages, as certified by the Department of Labor and Industry, is required by law to be posted in at least one conspicuous place on each state construction site.

How is Prevailing Wage enforced?

Authority to investigate complaints of prevailing wage violations has been assigned to two state agencies. The Minnesota Department of Transportation (Mn/DOT) is the primary enforcing agency for all projects advertised for bid for highway-related construction. **All other investigations are conducted by the Minnesota Department of Labor and Industry (DLI) or individual contract officers representing project owners.**

DLI is authorized to review payroll documents to determine compliance with prevailing wage rate provisions for all state construction projects, including highway construction.

DLI administers prevailing wage laws through the investigation of noncompliance complaints.

Minnesota Statutes 177.44 also states that anyone who forces an employee, by any kind of threat, to accept lower wages may be fined up to \$1,000 and be imprisoned for up to one year. It further provides that any employee who knowingly allows the contractor or subcontractor to pay less than the prevailing wage or who gives up any pay due may be fined up to \$40, jailed not more than 30 days or both. Each day a violation continues is a separate offense.

The Minnesota Department of Transportation is authorized to request and examine copies of payroll forms from contractors and subcontractors. The penalty for nonpayment by contractors and subcontractors is a misdemeanor punishable by a fine of not more than \$300, imprisonment of not more than 90 days or both. Each day a violation continues is a separate offense.



Contract officers who administer contracts without prevailing wage compliance and contractors, subcontractors or agents who knowingly pay workers below prevailing wage, are subject to misdemeanor penalties. Repetitive violations are considered a separate offense, punishable by a maximum fine of \$700, imprisonment for no more than 90 days or both.

Both state agencies have developed processes within their statutory authority to maximize compliance by all involved parties. While most contractors comply with agency orders to pay back-wages, project funds may be withheld by the contracting agency until compliance is achieved.

It is important for Minnesota State contracting personnel to understand how prevailing wage standards apply to system construction contracts and follow established procedures to ensure compliance. Please contact the System Office Facilities department for further assistance.

I have a large contract that requires Prevailing Wage but which also has subcontracts that are below the dollar thresholds exceptions per MS 177.43 Subd 7. Does Prevailing Wage also apply to these subcontracts?

Prevailing Wage is required for any portion of a contract where the original estimated total cost of completing the project is greater than \$2,500 for one trade and greater than \$25,000 for more than one trade. The statutes uses the terms contract and project interchangeably, however within this context the project is the entire job, therefore any breakout of the job or subcontracting would still be subject to prevailing wage.