

2007-08 Statutes updated through October 31, 2010

66.0903 Municipal prevailing wage and hour scales.

(1) DEFINITIONS. In this section:

(a) “Area” means the county in which a proposed project of public works that is subject to this section is located or, if the department determines that there is insufficient wage data in that county, “area” means those counties that are contiguous to that county or, if the department determines that there is insufficient wage data in those counties, “area” means those counties that are contiguous to those counties or, if the department determines that there is insufficient wage data in those counties, “area” means the entire state or, if the department is requested to review a determination under sub. (3) (br), “area” means the city, village or town in which a proposed project of public works that is subject to this section is located.

(am) “Bona fide economic benefit” has the meaning given in s. 103.49 (1) (am).

(b) “Department” means the department of workforce development.

(c) “Hourly basic rate of pay” has the meaning given in s. 103.49 (1) (b).

(cm) “Insufficient wage data” has the meaning given in s. 103.49 (1) (bg).

(d) “Local governmental unit” means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing. “Local governmental unit” includes a regional transit authority created under s. 66.1039 and the southeastern regional transit authority created under s. 59.58 (7).

(dr) “Minor service or maintenance work” means a project of public works that is limited to minor crack filling, chip or slurry sealing, or other minor pavement patching, not including overlays, that has a projected life span of no longer than 5 years; the depositing of gravel on an existing gravel

road applied solely to maintain the road; road shoulder maintenance; cleaning of drainage or

sewer ditches or structures; or any other limited, minor work on public facilities or equipment that is routinely performed to prevent breakdown or deterioration.

(f) “Prevailing hours of labor” has the meaning given in s. 103.49 (1) (c).

(g) 1. Except as provided in subd. 2., “prevailing wage rate” for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any area means the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly, for a majority of the hours worked in the trade or occupation on projects in the area.

2. If there is no rate at which a majority of the hours worked in the trade or occupation on projects in the area is paid, “prevailing wage rate” for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any area means the average hourly basic rate of pay, weighted by the number of hours worked, plus the average hourly contribution, weighted by the number of hours worked, for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for all hours worked at the hourly basic rate of pay of the highest-paid 51% of hours worked in that trade or occupation on projects in that area.

(im) “Supply and installation contract” means a contract under which the material is installed by the supplier, the material is installed by means of simple fasteners or connectors such as screws or nuts and bolts and no other work is performed on the site of the project of public works, and the total labor cost to install the material does not exceed 20 percent of the total cost of the contract.

(j) “Truck driver” has the meaning given in s. 103.49 (1) (g).

(2) APPLICABILITY. Subject to sub. (5), this section applies to any project of public works erected, constructed, repaired, remodeled, demolished for a local governmental unit, including all of the following:

(a) A highway, street, bridge, building, or other infrastructure project.

(b) A project erected, constructed, repaired, remodeled, demolished by one local governmental unit for another local governmental unit under a contract under s. 66.0301 (2), 83.03, 83.035, or 86.31 (2) (b) or under any other statute specifically authorizing cooperation between local governmental units.

(c) A project in which the completed facility is leased, purchased, lease purchased, or otherwise acquired by, or dedicated to, a local governmental unit in lieu of the local governmental unit contracting for the erection, construction, repair, remodeling, demolition of the facility.

(d) A road, street, bridge, sanitary sewer, or water main project in which the completed road, street, bridge, sanitary sewer, or water main is acquired by, or dedicated to, a local governmental unit, including under s. 236.13 (2), for ownership or maintenance by the local governmental unit.

(3) PREVAILING WAGE RATES AND HOURS OF LABOR. (am) A local governmental unit, before making a contract by direct negotiation or soliciting bids on a contract for the erection, construction, remodeling, repairing or demolition of any project of public works, shall apply to the department to determine the prevailing wage rate for each trade or occupation required in the work contemplated. The department shall conduct investigations and hold public hearings as necessary to define the trades or occupations that are commonly employed on projects of public works that are subject to this section and to inform itself as to the prevailing wage rates in all areas of the state for those trades or occupations, in order to determine the prevailing wage rate for each trade or occupation. The department shall issue its determination within 30 days after receiving the request and shall file the determination with the requesting local governmental unit.

(ar) The department shall, by January 1 of each year, compile the prevailing wage rates for each trade or occupation in each area. The compilation shall, in addition to the current prevailing wage rates, include future prevailing wage rates when those prevailing wage rates can be determined for any trade or occupation in any area and shall specify the effective date of those future prevailing

wage rates. If a project of public works extends into more than one area there shall be but one standard of prevailing wage rates for the entire project.

(av) In determining prevailing wage rates under par. (am) or (ar), the department may not use data from projects that are subject to this section, s. 66.0904, 103.49, or 103.50 or 40 USC 3142 unless the department determines that there is insufficient wage data in the area to determine those prevailing wage rates, in which case the department may use data from projects that are subject to this section, s. 66.0904, 103.49, or 103.50 or 40 USC 3142.

(bm) Any person may request a recalculation of any portion of an initial determination within 30 days after the initial determination date if the person submits evidence with the request showing that the prevailing wage rate for any given trade or occupation included in the initial determination does not represent the prevailing wage rate for that trade or occupation in the area. The evidence shall include wage rate information reflecting work performed by persons working in the contested trade or occupation in the area during the current survey period. The department shall affirm or modify the initial determination within 15 days after the date on which the department receives the request for recalculation.

(br) In addition to the recalculation under par. (bm), the local governmental unit that requested the determination under this subsection may request a review of any portion of a determination within 30 days after the date of issuance of the determination if the local governmental unit submits evidence with the request showing that the prevailing wage rate for any given trade or occupation included in the determination does not represent the prevailing wage rate for that trade or occupation in the city, village, or town in which the proposed project of public works is located. That evidence shall include wage rate information for the contested trade or occupation on at least 3 similar projects located in the city, village, or town where the proposed project of public works is located and on which some work has been performed during the current survey period and which were considered by the department in issuing its most recent compilation under par. (ar). The department shall affirm or modify the determination within 15 days after the date on which the department receives the request for review.

(dm) A reference to the prevailing wage rates determined by the department or a local governmental unit exempted under sub. (6) and to the prevailing hours of labor shall be published in the notice issued for the purpose of securing bids

for the project of public works. If any contract or subcontract for a project of public works is entered into, the prevailing wage rates determined by the department or exempted local governmental unit and the prevailing hours of labor shall be physically incorporated into and made a part of the contract or subcontract, except that for a minor subcontract, as determined by the department, the department shall prescribe by rule the method of notifying the minor subcontractor of the prevailing wage rates and prevailing hours of labor applicable to the minor subcontract. The prevailing wage rates and prevailing hours of labor applicable to a contract or subcontract may not be changed during the time that the contract or subcontract is in force. No person performing the work described in sub. (4) may be paid less than the prevailing wage rate in the same or most similar trade or occupation determined under this subsection; nor may he or she be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, unless he or she is paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times his or her hourly basic rate of pay.

(4) COVERED EMPLOYEES. (a) Subject to par. (b), all of the following employees shall be paid the prevailing wage rate determined under sub. (3) and may not be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

1. All laborers, workers, mechanics, and truck drivers employed on the site of a project of public works that is subject to this section.
2. All laborers, workers, mechanics, and truck drivers employed in the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of a project of public works that is subject to this section or from a facility dedicated exclusively, or nearly so, to a project of public works that is subject to this section by a contractor, subcontractor, agent, or other person performing any work on the site of the project.

(b) Notwithstanding par. (a) 1., a laborer, worker, mechanic or truck driver who is regularly employed to process, manufacture, pick up or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured materials or products is not entitled to receive the prevailing wage rate

determined under sub. (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor unless any of the following applies:

1. The laborer, worker, mechanic, or truck driver is employed to go to the source of mineral aggregate such as sand, gravel, or stone that is to be immediately incorporated into the work, and not stockpiled or further transported by truck, pick up that mineral aggregate, and deliver that mineral aggregate to the site of a project of public works that is subject to this section by depositing the material substantially in place, directly or through spreaders from the transporting vehicle.

2. The laborer, worker, mechanic, or truck driver is employed to go to the site of a project of public works that is subject to this section, pick up excavated material or spoil from the site of the project, and transport that excavated material or spoil away from the site of the project.

(c) A truck driver who is an owner-operator of a truck shall be paid separately for his or her work and for the use of his or her truck.

(5) NONAPPLICABILITY. This section does not apply to any of the following:

(a) A project of public works for which the estimated project cost of completion is below \$25,000.

(b) A project of public works in which the labor for the project is provided by unpaid volunteers.

(c) Minor service or maintenance work, warranty work, or work under a supply and installation contract.

(6) EXEMPTIONS. The department, upon petition of any local governmental unit, shall issue an order exempting the local governmental unit from applying to the department for a determination under sub. (3) when it is shown that an ordinance or other enactment of the local governmental unit sets forth standards, policy, procedure and practice resulting in standards as high or higher than those under this section.

(8) POSTING. For the information of the employees working on the project of public works, the prevailing wage rates determined by the department or exempted local governmental unit, the prevailing hours of labor, and the provisions of subs. (10) (a) and (11) (a) shall be kept posted by the local governmental unit in at least one conspicuous and easily accessible place on the site of the project or, if there is no common site on the

project, at the place normally used by the local governmental unit to post public notices.

(9) COMPLIANCE. (a) When the department finds that a local governmental unit has not requested a determination under sub. (3) (am) or that a local governmental unit, contractor or subcontractor has not physically incorporated a determination into a contract or subcontract as required under this section or has not notified a minor subcontractor of a determination in the manner prescribed by the department by rule promulgated under sub. (3) (dm), the department shall notify the local governmental unit, contractor or subcontractor of the noncompliance and shall file the determination with the local governmental unit, contractor or subcontractor within 30 days after the notice.

(b) Upon completion of a project of public works and before receiving final payment for his or her work on the project, each agent or subcontractor shall furnish the contractor with an affidavit stating that the agent or subcontractor has complied fully with the requirements of this section. A contractor may not authorize final payment until the affidavit is filed in proper form and order.

(c) Upon completion of a project of public works and before receiving final payment for his or her work on the project, each contractor shall file with the local governmental unit authorizing the work an affidavit stating that the contractor has complied fully with the requirements of this section and that the contractor has received an affidavit under par. (b) from each of the contractor's agents and subcontractors. A local governmental unit may not authorize a final payment until the affidavit is filed in proper form and order. If a local governmental unit authorizes a final payment before an affidavit is filed in proper form and order or if the department determines, based on the greater weight of the credible evidence, that any person performing the work specified in sub. (4) has been or may have been paid less than the prevailing wage rate or less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor and requests that the local governmental unit withhold all or part of the final payment, but the local governmental unit fails to do so, the local governmental unit is liable for all back wages payable up to the amount of the final payment.

(10) RECORDS; INSPECTION; ENFORCEMENT. (a) Each contractor, subcontractor, or contractor's or subcontractor's agent performing work on a project of public works

that is subject to this section shall keep full and accurate records clearly indicating the name and trade or occupation of every person performing the work described in sub. (4) and an accurate record of the number of hours worked by each of those persons and the actual wages paid for the hours worked.

(am) 1. Except as provided in this subdivision, by no later than the end of the first week of a month following a month in which a contractor, subcontractor, or contractor's or subcontractor's agent performs work on a project of public works that is subject to this section, the contractor, subcontractor, or agent shall submit to the department in an electronic format a certified record of the information specified in par. (a) for that preceding month. This requirement does not apply to a contractor, subcontractor, or agent if all persons employed by the contractor, subcontractor, or agent who are performing the work described in sub. (4) are covered under a collective bargaining agreement and the wage rates for those persons under the collective bargaining agreement are not less than the prevailing wage rate. In that case, the contractor, subcontractor, or agent shall submit to the department in an electronic format a copy of all collective bargaining agreements that are pertinent to the project of public works by no later than the end of the first week of the first month in which the contractor, subcontractor, or agent performs work on the project of public works.

2. The department shall post on its Internet site all certified records and collective bargaining agreements submitted to the department under subd. 1., except that the department may not post on that site the name of or any other personally identifiable information relating to any employee of a contractor, subcontractor, or agent that submits information to the department under subd. 1. In this subdivision, "personally identifiable information" does not include an employee's trade or occupation, his or her hours of work, or the wages paid for those hours worked.

(b) The department or the contracting local governmental unit may demand and examine, and every contractor, subcontractor, and contractor's or subcontractor's agent shall keep, and furnish upon request by the department or local governmental unit, copies of payrolls and other records and information relating to the wages paid to persons performing the work described in sub. (4) for work to which this section applies. The department may inspect records in the manner provided in ch. 103. Every contractor, subcontractor, or agent performing work on a project of public works that is

subject to this section is subject to the requirements of ch. 103 relating to the examination of records.

(c) If requested by any person, the department shall inspect the payroll records of any contractor, subcontractor, or agent performing work on a project of public works that is subject to this section to ensure compliance with this section. In the case of a request made by a person performing the work specified in sub. (4), if the department finds that the contractor, subcontractor, or agent subject to the inspection is in compliance and that the request is frivolous, the department shall charge the person making the request the actual cost of the inspection. In the case of a request made by a person not performing the work specified in sub. (4), if the department finds that the contractor, subcontractor, or agent subject to the inspection is in compliance and that the request is frivolous, the department shall charge the person making the request \$250 or the actual cost of the inspection, whichever is greater. In order to find that a request is frivolous, the department must find that the person making the request made the request in bad faith, solely for the purpose of harassing or maliciously injuring the contractor, subcontractor, or agent subject to the inspection, or that the person making the request knew, or should have known, that there was no reasonable basis for believing that a violation of this section had been committed.

(d) Section 103.005 (5) (f), (11), (12) and (13) applies to this section, except that s. 103.005 (12) (a) does not apply to any person who fails to provide any information to the department to assist the department in determining prevailing wage rates under sub. (3) (am) or (ar). Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section, including proceedings under sub. (11) (a).

(11) LIABILITY AND PENALTIES. (a) 1. Any contractor, subcontractor, or contractor's or subcontractor's agent who fails to pay the prevailing wage rate determined by the department under sub. (3) or who pays less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor is liable to any affected employee in the amount of his or her unpaid wages or his or her unpaid overtime compensation and in an additional amount as liquidated damages as provided under subd. 2., 3., whichever is applicable.

2. If the department determines upon inspection under sub. (10) (b) or (c) that a contractor, subcontractor, or contractor's or subcontractor's

agent has failed to pay the prevailing wage rate determined by the department under sub. (3) or has paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor, the department shall order the contractor to pay to any affected employee the amount of his or her unpaid wages or his or her unpaid overtime compensation and an additional amount equal to 100 percent of the amount of those unpaid wages or that unpaid overtime compensation as liquidated damages within a period specified by the department in the order.

3. In addition to or in lieu of recovering the liability specified in subd. 1. as provided in subd. 2., any employee for and in behalf of that employee and other employees similarly situated may commence an action to recover that liability in any court of competent jurisdiction. If the court finds that a contractor, subcontractor, or contractor's or subcontractor's agent has failed to pay the or has paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor, the court shall order the contractor, subcontractor, or agent to pay to any affected employee the amount of his or her unpaid wages or his or her unpaid overtime compensation and an additional amount equal to 100 percent of the amount of those unpaid wages or that unpaid overtime compensation as liquidated damages.

5. No employee may be a party plaintiff to an action under subd. 3. unless the employee consents in writing to become a party and the consent is filed in the court in which the action is brought. Notwithstanding s. 814.04 (1), the court shall, in addition to any judgment awarded to the plaintiff, allow reasonable attorney fees and costs to be paid by the defendant.

(b) 1. Except as provided in subds. 2., 4. and 6., any contractor, subcontractor or contractor's or subcontractor's agent who violates this section may be fined not more than \$200 or imprisoned for not more than 6 months or both. Each day that any violation continues is a separate offense.

2. Whoever induces any person who seeks to be or is employed on any project of public works that is subject to this section to give up, waive, or return any part of the wages to which the person is entitled under the contract governing the project, or who reduces the hourly basic rate of pay normally paid to a person for work on a project that is not subject to this section during a week in which the person works both on a project of public works that is subject to this section and on a project that is not subject to this section, by threat not to employ, by threat of dismissal from employment, or by any

other means is guilty of an offense under s. 946.15 (1).

3. Any person employed on a project of public works that is subject to this section who knowingly permits a contractor, subcontractor, or contractor's or subcontractor's agent to pay him or her less than the prevailing wage rate set forth in the contract governing the project, who gives up, waives, or returns any part of the compensation to which he or she is entitled under the contract, or who gives up, waives, or returns any part of the compensation to which he or she is normally entitled for work on a project that is not subject to this section during a week in which the person works both on a project of public works that is subject to this section and on a project that is not subject to this section, is guilty of an offense under s. 946.15 (2).

4. Whoever induces any person who seeks to be or is employed on any project of public works that is subject to this section to permit any part of the wages to which the person is entitled under the contract governing the project to be deducted from the person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 3142.

5. Any person employed on a project of public works that is subject to this section who knowingly permits any part of the wages to which he or she is entitled under the contract governing the project to be deducted from his or her pay is guilty of an offense under s. 946.15 (4), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 3142.

6. Subdivision 1. does not apply to any person who fails to provide any information to the department to assist the department in determining prevailing wage rates under sub. (3) (am) or (ar).

(12) DEBARMENT. (a) Except as provided under pars. (b) and (c), the department shall notify any local governmental unit applying for a determination under sub. (3) and any local governmental unit exempted under sub. (6) of the names of all persons whom the department has found to have failed to pay the prevailing wage rate determined under sub. (3) or has found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor at any time in the preceding 3 years. The department shall include with each name the address of the person and shall specify when the person failed to pay the prevailing wage rate and

when the person paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor. A local governmental unit may not award any contract to the person unless otherwise recommended by the department or unless 3 years have elapsed from the date the department issued its findings or the date of final determination by a court of competent jurisdiction, whichever is later.

(b) The department may not include in a notification under par. (a) the name of any person on the basis of having let work to a person whom the department has found to have failed to pay the prevailing wage rate determined under sub. (3) or has found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor.

(c) This subsection does not apply to any contractor, subcontractor or agent who in good faith commits a minor violation of this section, as determined on a case-by-case basis through administrative hearings with all rights to due process afforded to all parties or who has not exhausted or waived all appeals.

(d) Any person submitting a bid or negotiating a contract on a project of public works that is subject to this section shall, on the date the person submits the bid or negotiates the contract, identify any construction business in which the person, or a shareholder, officer or partner of the person, if the person is a business, owns, or has owned at least a 25% interest on the date the person submits the bid or negotiates the contract or at any other time within 3 years preceding the date the person submits the bid or negotiates the contract, if the business has been found to have failed to pay the prevailing wage rate determined under sub. (3) or to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor.

(e) The department shall promulgate rules to administer this subsection.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60; 2009 a. 28, 276.

Cross-reference: See also chs. DWD 290 and 294, Wis. adm. code.

The liability of a prime contractor for damages to employees of a subcontractor under s. 779.14 (2) did not include wage penalties under s. 66.293 (3) [now sub. (11)]. Consent to be a named party under sub. (3) [now sub. (11)] may occur after one year if the action is for damages under this section in the name of the plaintiffs and other similarly situated employees and was filed within the one-year time period. *Strong v. C.I.R., Inc.* 184 Wis. 2d 619, 516 N.W.2d 719 (1994).

In determining whether a project constitutes a public work, each project must be evaluated separately considering the character, ownership, use, and maintenance of the project, and whether the work is being done for the appropriate municipality. *Elliott v. Morgan*, 214 Wis. 2d 253, 571 N.W.2d 866 (Ct. App. 1997), 96-1904.

Individual employees have a strong privacy interest in their names, particularly when coupled with their occupation, wages and hours, and place of employment, and the public has a strong interest in protecting that privacy. That public interest substantially outweighs the public interest favoring disclosure of the names in a public records request for wage records of private employees performing a government contract subject to this section. *Kraemer Brothers, Inc. v. Dane County*, 229 Wis. 2d 86, 599 N.W.2d 75 (Ct. App. 1999), 98-3061.

ERISA does not preempt the prevailing wage law. *State v. Phillips*, 2000 WI App 184, 238 Wis. 2d 279, 617 N.W.2d 522, 99-3197.

This section is inapplicable to a private corporation contracting for a medical center. 61 Atty. Gen. 426.

Typical turnkey projects financed by industrial development revenue bonds under s. 66.521 are not subject to s. 66.293 (3), concerning prevailing wage rates. 63 Atty. Gen. 145.

Municipalities are subject to sub. (3) on contracts for any project of public works, even if done by the turnkey method. 64 Atty. Gen. 100.

Wisconsin's Prevailing Wage Laws: Why They Have Been Preempted by the Employee Retirement Income Security Act. *Fulton*. 80 MLR 269 (1997).

For additional information, please contact us at:

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