

2007-08 Statutes updated through October 31, 2010

103.50 Highway contracts. (1) DEFINITIONS. In this section:

(a) “Area” means the county in which a proposed project 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.

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

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

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

(d) 1. Except as provided in subd. 2., “prevailing wage rate” for any trade or occupation 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 in the area.

2. If there is no rate at which a majority of the hours worked in the trade or occupation in the area is paid, “prevailing wage rate” 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 in that area.

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

(2) PREVAILING WAGE RATES AND HOURS OF LABOR. No person performing the work described in sub. (2m) in the employ of a contractor, subcontractor, agent or other person

performing any work on a project under a contract based on bids as provided in s. 84.06 (2) to which the state is a party for the construction or improvement of any highway may be permitted to work a greater number of hours per day or per week than the prevailing hours of labor; nor may he or she be paid a lesser rate of wages than the prevailing wage rate in the area in which the work is to be done determined under sub. (3); except that any such person may be permitted or required to work more than such prevailing hours of labor per day and per week if 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.

(2m) 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 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 that is subject to this section or from a facility dedicated exclusively, or nearly so, to a project 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 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 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 and return to 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.

(3) INVESTIGATIONS; DETERMINATIONS.

The department shall conduct investigations and hold public hearings necessary to define the trades or occupations that are commonly employed in the highway construction industry and to inform itself as to the prevailing wage rates in all areas of the state for those trades or occupations, in order to ascertain and determine the prevailing wage rates accordingly.

(4) CERTIFICATION OF PREVAILING WAGE RATES. The department of workforce development shall, by May 1 of each year, certify to the department of transportation the prevailing wage rates in each area for all trades or occupations commonly employed in the highway construction industry. The certification shall, in addition to the current prevailing wage rates, include future prevailing wage rates when such prevailing wage rates can be determined for any such trade or occupation in any area and shall specify the effective date of those future prevailing wage rates. If a construction project extends into more than one area there shall be but one standard of prevailing wage rates for the entire project.

(4m) WAGE RATE DATA. In determining prevailing wage rates for projects that are subject to this section, the department shall use data from projects that are subject to this section, s. 66.0903, 66.0904, or 103.49 or 40 USC 3142.

(5) APPEALS TO GOVERNOR. If the department of transportation considers any determination of the department of workforce

development as to the prevailing wage rates in an area to have been incorrect, it may appeal to the governor, whose determination shall be final.

(6) CONTENTS OF CONTRACTS. A reference to the prevailing wage rates determined under sub. (3) and the prevailing hours of labor shall be published in the notice issued for the purpose of securing bids for a project. If any contract or subcontract for a project that is subject to this section is entered into, the prevailing wage rates determined under sub. (3) 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 of workforce development, that 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. For the information of the employees working on the project, the prevailing wage rates determined by the department, the prevailing hours of labor and the provisions of subs. (2) and (7) shall be kept posted by the department of transportation in at least one conspicuous and easily accessible place on the site of the project.

(7) PENALTIES. (a) Except as provided in pars. (b), (d) and (f), 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 a violation continues is a separate offense.

(b) Whoever induces any person who seeks to be or is employed on any project 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 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).

(c) Any person employed on a project 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 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).

(d) Whoever induces any person who seeks to be or is employed on any project 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.

(e) Any person employed on a project 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.

(f) Paragraph (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) or (4).

(8) ENFORCEMENT AND PROSECUTION.

The department of transportation shall require adherence to subs. (2), (2m) and (6). The

department of transportation may demand and examine, and every contractor, subcontractor and contractor's or subcontractor's agent shall keep and furnish upon request by the department of transportation, copies of payrolls and other records and information relating to compliance with this section. Upon request of the department of transportation or upon complaint of alleged violation, the district attorney of the county in which the work is located shall investigate as necessary and prosecute violations in a court of competent jurisdiction. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

History: 1977 c. 29 s. 1654 (8) (c); 1979 c. 269; 1985 a. 332 ss. 143, 144, 253; 1989 a. 228; 1993 a. 492; 1995 a. 215, 225; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 ss. 629, 672; 2001 a. 30; 2009 a. 28.

Cross-reference: See s. 227.01 (13) (t) for provision that determinations of hours, wages and truck rentals need not be filed as rules but are subject to review under ch. 227.

Cross-reference: See also ch. DWD 290, Wis. adm. code.

WERC had no jurisdiction to enforce wage rates on a highway project as an unfair labor practice when the complaining union had no members among the employees affected and was not seeking to represent them. *Chauffeurs, Teamsters & Helpers v. WERC*, 51 Wis. 2d 391, 187 N.W.2d 364 (1971).

The department may not make more than one annual certification of the prevailing hours of labor or prevailing wage rates to apply to state highway project contracts. 59 Atty. Gen. 23.

Federal law does not preempt application of Wisconsin's prevailing wage law, s. 103.50, to truck drivers who perform transportation and delivery work pursuant to joint federal-state highway contracts. *Frank Brothers, Inc. v. DOT*, 409 F.3d 332 (2005).

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