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**WISCONSIN LEGISLATIVE COUNCIL  
INFORMATION MEMORANDUM**

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**Prevailing Wage Provisions  
Through December 31, 2016, and After January 1, 2017, as  
Affected by the 2015-17 Biennial Budget Act**

Effective January 1, 2017, the 2015-17 Biennial Budget Act (2015 Wisconsin Act 55) eliminates the prevailing wage law for local projects of public works. The Act also modifies the prevailing wage laws for state and highway projects. For those projects, the Act replaces the state's classification system of workers and the state's calculation of the prevailing wage rates for those workers with the prevailing wage rate determined under the federal Davis-Bacon Act.

This memorandum briefly describes Wisconsin's current prevailing wage laws, and then briefly describes the prevailing wage laws that will be in effect January 1, 2017, as affected by the Biennial Budget Act.

**PROJECTS OF PUBLIC WORKS**

Under Wisconsin law, projects of public works include the erection, construction, repair, remodeling, or demolition of public infrastructure, such as a local highway, street, bridge, building, sanitary sewer, water main, or other facility, that is undertaken by a local governmental unit,<sup>1</sup> the state, or any state agency. Such projects also include the construction or improvement of a highway when the Department of Transportation (DOT) is a party to the project. [ss. 66.0903 (2), 103.49 (2), and 103.50 (2), Stats.]

For all projects of public works, certain requirements apply to various aspects of the project, such as bidding procedures, labor wage provisions, and drug testing of project workers.

This memorandum addresses the labor wage provisions, known as the "prevailing wage requirements." It provides a brief overview of those requirements, sometimes differentiating as to "local," "state," or "highway" projects, when the prevailing wage provisions differ for each project type.

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<sup>1</sup> Local governmental units include political subdivisions of the state, special purpose districts, and any instrumentality or subunit of those political units or districts. [s. 66.0903 (1) (d), Stats.]

## **PREVAILING WAGE PROVISIONS THROUGH DECEMBER 31, 2016**

### ***APPLICABILITY***

Through December 31, 2016, generally any employee working on a project of public works is required to be paid at the prevailing wage rate for the person's trade or occupation. Current law applies to any project for which requests for bids are issued before December 31, 2016. If a project is not subject to bidding requirements, current law applies to a project for which a contract is entered into before December 31, 2016.

### ***Excluded projects***

Not all projects of public works are subject to prevailing wage requirements. In particular, the prevailing wage rate requirements do not apply to a multiple-trade project<sup>2</sup> for which the estimated cost of completion is less than \$100,000, and do not apply to a single-trade project<sup>3</sup> for which the estimated cost of completion is less than \$48,000. These minimum anticipated project cost amounts are commonly referred to as a "threshold" for applicability of the prevailing wage requirements.

For local and state projects, the prevailing wage rate law also does not apply under certain other specified exceptions. For example, the requirements do not apply if all of the labor for a local or state project is being donated for the project, or if a project is for only "minor service or maintenance work."<sup>4</sup> [ss. 66.0903 (5), 103.49 (3g), and 103.50 (2g), Stats.]

### ***Covered employees***

Employees covered under the prevailing wage requirements generally include all laborers, workers, mechanics, and truck drivers who are working on-site at a project of public works.

Wages for certain truck drivers and other employees are subject to the prevailing wage requirements, although not all of their work is on-site, if employed to do any of the following:

- Deliver materials from a facility that is dedicated to the project.
- Deposit materials directly in final place.
- Pick up excavated material or spoil from the project site.

Other truck drivers and employees are excluded from the prevailing wage requirements if the work involves only picking up or delivering materials to a project site, and the work does not fall under the specifically covered categories. [ss. 66.0903 (4), 103.49 (2m), and 103.50 (2m), Stats.]

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<sup>2</sup> A multiple-trade project is one in which no single trade reaches 85% of the project's labor costs. [ss. 66.0903 (1) (em) and 103.49 (1) (br), Stats.]

<sup>3</sup> A single-trade project is one in which 85% or more of the project's labor costs are from a single trade. [ss. 66.0903 (1) (hm) and 103.49 (1) (em), Stats.]

<sup>4</sup> "Minor service or maintenance work" includes projects such as 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 five years, among other minor work on public facilities or equipment that is routinely performed to prevent breakdown or deterioration. [ss. 66.0903 (1) (dr) and 103.49 (1) (bj), Stats.]

### ***PREVAILING WAGE RATE CALCULATION***

The prevailing wage rate is determined by the Department of Workforce Development (DWD) through an annual survey of employers in Wisconsin. DWD compiles the wage rates for each trade or occupation in a county, contiguous counties, or the state, depending on the most closely-available data. [ss. 66.0903 (3) (ar) and (4), 103.49 (2m) and (3) (am), and 103.50 (2m) and (4m), Stats.]

If the majority of hours worked in a particular trade or occupation are paid at the same rate, then that rate is used. However, if there is not one particular rate for a majority of hours, and there is instead a plurality of rates, then the average of the top 51% of wages for hours worked is used. [ss. 66.0903 (1) (g), 103.49 (1) (d), and 103.50 (1) (d), Stats.]

### ***ENFORCEMENT AND PENALTIES***

Any contractor or subcontractor working on a state or local project of public works that is subject to the prevailing wage requirements must keep full and accurate records of the actual wages paid for each person employed on a project of public works. Those records are subject to inspection by DWD, either on its own inquiry, or as requested by any person. If it is found that a person was not properly paid under the law, the employer is liable for the amount of unpaid wages and may be subject to other penalties under the law, including liability for liquidated damages in an amount equal to the unpaid wages, fines and jail-time for each day of offense, and debarment from public works contracts for three years. [ss. 66.0903 (10) to (12) and 103.49 (5) to (7), Stats.]

Records maintained by contractors and subcontractors on a state highway project are likewise subject to inspection by DOT. Highway contractors are also subject to enforcement and penalties under the law, including fines and jail-time for each day of offense. No provisions are included for liquidated damages or debarment. [s. 103.50 (7) and (8), Stats.]

## **PREVAILING WAGE PROVISIONS AFTER JANUARY 1, 2017**

### ***APPLICABILITY***

#### ***Excluded projects***

Beginning with new projects after January 1, 2017,<sup>5</sup> **local projects** of public works are not subject to prevailing wage requirements. This includes projects for political subdivisions of the state (such as a city, village, town, or county), special purpose districts (such as a school district, technical college district, or sewerage district), and any instrumentality or subunit of those political units or districts.

For **state and highway projects**, the threshold for applying the prevailing wage requirements is unchanged after January 1, 2017. The applicability is subject to the same exclusions as under prior law, for a multiple-trade project for which the estimated cost of completion is less than \$100,000, and for a single-trade project for which the estimated cost of completion is less than \$48,000.

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<sup>5</sup> The prevailing wage provisions of the Biennial Budget Act are effective January 1, 2017, and apply to any requests for bids issued on or after that date. If a project is not subject to bidding requirements, the Act applies to a contract that is entered into on or after that date.

For state projects, the other specified exclusions also continue to apply, such as projects with only donated labor and projects for only minor service or maintenance work.

### ***Covered employees***

Employees covered under the modified prevailing wage requirements continue to generally include all laborers, workers, mechanics, and truck drivers who are working on-site at a project. Although not all of the work is on-site, wages for truck drivers and other employees are subject to the prevailing wage requirements, if employed to deliver materials from a facility that is dedicated to the project.

If the work does not involve delivering materials from a facility that is dedicated to a project, other truck drivers and employees are excluded from the prevailing wage requirements, for any work that involves only picking up or delivering materials to a project site. Specifically, beginning with new projects after January 1, 2017, truck drivers and other employees who are depositing materials directly in final place or who are picking up excavated material or spoil from a project site are explicitly excluded from the prevailing wage requirements (unless delivering materials from a facility that is dedicated to the project).

### ***PREVAILING WAGE RATE CALCULATION***

Beginning with new projects after January 1, 2017, the federal prevailing wage rate is applied, for each employee classification, as determined by the U.S. Department of Labor under the Davis-Bacon Act. [40 U.S.C. s. 3142 (b).] Under this calculation method, DWD no longer determines the employee classifications, nor does it conduct an annual survey or determine prevailing wage rates for each trade or occupation.

The U.S. Department of Labor conducts an ongoing, voluntary program for compiling wage rate information. Wage rates are usually compiled by county, for wages paid during the prior year. If insufficient wage data is available for a county, data from surrounding counties may be used, but data from metropolitan counties may not be used as a data source for rural counties, and vice versa. If there is not one particular rate for a majority of workers, and there is instead a plurality of rates, then the average of all wages is used, weighted by the total employees in a classification. [29 C.F.R. ss. 1.1 to 1.9.]

General wage determinations under the Davis-Bacon Act are available online at [www.wdol.gov](http://www.wdol.gov).

### ***ENFORCEMENT AND PENALTIES***

The Department of Administration (DOA) is responsible for the administration and enforcement of all new state prevailing wage projects entered into on or after January 1, 2017, within DOA's facilities development services. Detailed procedural requirements are not specified in the law. Rather, DOA is authorized to promulgate rules to implement and ensure compliance with the prevailing wage requirements for state projects. DWD's role in the process is removed.

DOT is required to maintain administration and enforcement for highway prevailing wage projects, as a part of DOT's general highway construction services.

For new state and highway projects after January 1, 2017, a person who is working on a project may request an inspection of a contractor's payroll records. The law also specifies that if an independent organization investigating compliance with the prevailing wage laws contacts a person who is working on a project, the organization must provide a written statement to the

employee disclosing that it is not affiliated with a state agency, and disclosing the principal source of funding for its investigation.

If it is found that a person was not properly paid under the law for new projects after January 1, 2017, the employer is liable for the amount of unpaid wages, and may be subject to other penalties under the law, including fines and jail-time for each day of offense.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Margit S. Kelley, Senior Staff Attorney, on July 29, 2015.

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