

DEPARTMENT OF LABOR
DIVISION OF LABOR AND INDUSTRY
PREVAILING WAGE SECTION
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Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 11 SOCIOECONOMIC POLICIES

Chapter 11 Prevailing Wage—Contracts for Public Works

**Authority: State Finance and Procurement Article,
§17-204(a), Annotated Code of Maryland**

.01 Definitions.

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.
- (1) "Established locality" means the nearest locality in Maryland which most closely approximates the site of the public work in terms of population, degree of industrialization, and skill of the work force.
 - (2) "Overtime" means:
 - (a) Work performed in excess of 10 hours per calendar day, or work performed on Sundays and legal holidays, including but not limited to:
 - (i) New Year's Day, January 1;
 - (ii) Memorial Day, as observed by either the State or the federal government;
 - (iii) Independence Day, July 4th;
 - (iv) Labor Day, first Monday in September;
 - (v) Thanksgiving Day, fourth Thursday in November; and

(vi) Christmas Day, December 25th.

(b) Payment of overtime to employees for other legal holidays is not prohibited, whether or not the employees are covered by collective bargaining agreements.

(3) "Weighted average rate" for a classification means the rate obtained by adding together the hourly rate paid to each worker in a classification and dividing the total by the number of workers in the classification.

.02 Payroll Records.

- A. Within 14 days after the end of each payroll period, a contractor shall submit electronically to the Commissioner of Labor and Industry and to the contracting public body in a format approved by the Commissioner of Labor and Industry a complete copy of:
- (1) The contractor's payroll records; and
 - (2) Each subcontractor's payroll records.
- B. The Commissioner of Labor and Industry shall be responsible for providing the contractor's or subcontractor's payroll records to the contracting public body, as appropriate.
- C. Form. Payroll records shall:
- (1) Be submitted on the U.S. Department of Labor's Wage and Hour and Public Contracts Division Payroll Form WH-347, or its equivalent;
 - (2) Include either the:
 - (a) Certificate described in State Finance and Procurement Article, §17-220, Annotated Code of Maryland, or
 - (b) Compliance certificate in Payroll Form WH-347, fully completed and executed; and
 - (3) Be numbered serially starting with payroll number one.
- D. Contents. Each payroll record shall:
- (1) Contain only information relevant to the public work project under construction;
 - (2) List:
 - (a) The name, address, and telephone number of the contractor or the subcontractor;
 - (b) The name, location, and project number of the job; and
 - (c) Each employee's:
 - (i) Name and social security number,

- (ii) Current address, unless previously reported,
- (iii) Specific work classification,
- (iv) Daily straight time and overtime hours,
- (v) Total straight time and overtime hours for the payroll period,
- (vi) Rate of pay,
- (vii) Total amount of fringe benefits and the amount of the total that is allocated toward apprenticeship, and
- (viii) Gross wages;

(3) Include for each apprentice, proof that the apprentice is in an apprenticeship program:

- (a) Registered with the Maryland Apprenticeship and Training Council of the Department of Labor; and
- (b) Approved by the Bureau of Apprenticeship and Training of the U.S. Department of Labor.

E. Payroll records are available for inspection during regular business hours at the Division of Labor and Industry.

F. Record Keeping.

(1) The Commissioner shall keep records, for 3 years, of:

- (a) Restitution made to underpaid employees; and
- (b) Liquidated damages assessed in accordance with State Finance and Procurement Article, §§17-201-----17-226, Annotated Code of Maryland.

(2) The Commissioner may not close an investigative file until confirmation of requisite payment, if any, is received.

.03 Compilation of Wage Rate Determination.

A. The Commissioner shall conduct ongoing surveys to obtain and compile wage rate information.

B. The Commissioner shall encourage contractors, contractors' associations, labor organizations, public officials, and other interested parties to submit voluntarily data detailing wage rates paid to workers on various types of construction in all localities. The following apply:

- (1) Rates are determined for various types of construction, such as buildings, bridges, dams, highways, tunnels, sewers, powerlines, railways, airport buildings and runways, wharves, levees, canals, dredging, landing clearing, and excavating;
- (2) A submission shall state the:

- (a) Locality,
- (b) Wage rate or rates paid to a particular trade or craft in that locality, and
- (c) Type of construction for which the rate or rates are paid.

C. The following information shall be considered in making a wage rate determination:

- (1) Payrolls and certified statements setting forth wage rates paid on other projects, and including the:
 - (a) Names and addresses of the contractors and subcontractors,
 - (b) Nature of the project,
 - (c) Dates, location, and approximate cost of the project,
 - (d) Number of workers employed in each classification on the project, and
 - (e) Wage rates and fringe benefits paid to the workers in each classification;
- (2) Signed collective bargaining agreements that include, upon request by the Commissioner, a certificate from the parties describing the agreement's scope and application; and
- (3) Public construction wage rates previously determined by federal and local officials pursuant to prevailing wage legislation.

D. Fringe Benefits.

- (1) For the purposes of prevailing wage determinations, wage rates include bona fide fringe benefits when the payment of fringe benefits is a prevailing practice in the particular locality.
- (2) To determine whether payment of fringe benefits is a prevailing practice in the particular locality, the Commissioner shall consider:
 - (a) The wage rate paid to 50 percent or more of the employees in a given construction classification in the locality used to determine the basic hourly rate;
 - (b) If fewer than 50 percent are paid at the same rate, the wage rate paid to 40 percent or more of the employees in a given construction classification in the locality used to determine the basic hourly rate, or if fewer than 40 percent are paid at the same wage rate, the weighted average rate for employees in a given construction classification in the locality used to determine the basic hourly rate;
 - (c) The subject matter of signed collective bargaining agreements, if any.

E. Scope of Consideration.

- (1) When a determination is made pursuant to State Finance and Procurement Article, §17-208(a)(1), Annotated Code of Maryland:
 - (a) Only information concerning projects currently under construction or completed within 6 months before the date of the request for the determination shall be considered.
 - (b) Only payrolls for labor used within 12 months before the date of the request for the determination shall be considered.
 - (c) If there was no construction of a similar character in the locality for the year preceding the date of the request for determination, wage rates applicable to the nearest established locality shall be considered.
- (2) When a determination is made pursuant to State Finance and Procurement Article, §17-209, the Commissioner shall consider:
 - (a) Only information concerning projects currently under construction or completed within 6 months before the date of the 60 days notice given before making the determination;
 - (b) Only payrolls for labor used within 12 months before the date of the 60 days notice given before making the determination;
 - (c) If there was no construction of a similar character in the locality for the year preceding the date of the 60 days notice given before making the determination, wage rates applicable to the nearest established locality.

F. Supplemental Information.

- (1) If sufficient data is not available to make a determination for those trades and crafts required for the proposed project, a field survey may be conducted in the locality of the proposed project in order to obtain sufficient information upon which to make a wage rate determination.
- (2) If a field survey is impracticable and available information is inadequate, the Commissioner may hold a hearing to obtain information and data upon which to make a wage rate determination for proposed project.

G. Supplemental Wage Rate Determination.

- (1) If a wage rate is not issued for a particular classification or subclassification of workers in a trade or craft, the contractor and subcontractor shall submit, before beginning work, a written statement to the Commissioner listing:
 - (a) The proposed rate of pay and at least three recent jobs of the submitting contractor or subcontractor in the locality of the proposed public work on which the workers in the particular classification or subclassification were paid the proposed rate of pay or less; or

(b) If there is not a substantial number of workers engaged in construction of a similar character in the locality, the Commissioner may consider relevant wage data from at least three recent jobs of the submitting contractor or subcontractor in the nearest established locality.

(2) The wage data and proposed rate of pay are subject to the approval of the Commissioner.

H. Validity of Wage Rate Determinations.

(1) A wage determination initially issued under State Finance and Procurement Article, §17-208(a)(1), Annotated Code of Maryland, for a particular public work in a given locality is effective for 1 year from the date of the determination.

(2) If a wage determination will expire before the call for contract bids is issued, the contracting public body shall request a new wage determination not less than 60 days before the call for bids.

(3) The Commissioner shall correct any wage determination included in a contract if the wage determination contains clerical errors.

.04 Bona Fide Fringe Benefits.

A. If the amount of bona fide fringe benefits paid by an employer exceeds the bona fide fringe benefits rate in a prevailing wage determination, an employer may credit, up to 20 percent of the basic rate, the amount of excess bona fide fringe benefits against the basic wage rate.

B. If the employer does not have a bona fide fringe benefit amount equal to or more than the prevailing wage bona fide fringe benefit amount, the employer shall pay the difference to the employee in basic wages.

C. If a credit of bona fide fringe benefits is applied pursuant to this subsection, the total wages shall equal or exceed the prevailing wage rate.

.05 Rules of Procedure for Hearings.

A. This regulation supplements the requirements of the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, and COMAR 09.01.02 and 09.01.03.

B. The hearing officer shall be the Commissioner of Labor and Industry, or the Commissioner's designee.

C. The hearing officer may:

(1) Administer oaths and affirmations;

(2) Rule on procedural matters and offers of proof and receive relevant evidence;

(3) Regulate the course of the hearing and the conduct of the parties and their counsel;

- (4) Examine any witness;
- (5) Issue subpoenas; and
- (6) Take any other appropriate action authorized by statute or regulation.

D. Hearing Procedure.

- (1) The hearing officer shall:
 - (a) Call the title of the case;
 - (b) Explain briefly the purpose and nature of the hearing;
 - (c) Recite any charges, complaints, or other matters involved; and
 - (d) Administer the oath to all persons who are summoned or who intend to testify.
- (2) Counsel or any party may be heard on any preliminary matter, exception, or motion, and any stipulation entered into by the parties shall be received.
- (3) The following exhibits shall be introduced:
 - (a) If the hearing officer is the Commissioner's designee, a copy of the letter designating the hearing officer to preside at the hearing;
 - (b) If the hearing involves a petition for review:
 - (i) A copy of the verified petition filed with the commissioner,
 - (ii) A copy of the notice of hearing sent to each party entitled to receive notice pursuant to State Finance and Procurement Article, §17-211, Annotated Code of Maryland;
 - (iii) A copy of the protested prevailing wage determination,
 - (iv) Information considered in making the wage rate determination,
 - (v) Wage data or collective bargaining agreements submitted by the petitioner that were not produced prior to the original wage rate determination, upon a showing of good cause why such evidence was not produced in a timely manner;
 - (vi) Recent wage data or wage rates from collective bargaining agreements submitted by the petitioner that became available or effective after the date of the original wage rate determination and before the date of the hearing; and

- (vii) Information obtained by the Commissioner as a result of subsequent investigations pursuant to State Finance and Procurement Article, §17-211, Annotated Code of Maryland;
- (c) If the hearing concerns the applicability of the Prevailing Wage Subtitle, State Finance and Procurement Article, to a project:
 - (i) A copy of the request for determination filed with the Commissioner,
 - (ii) A copy of the notice of hearing sent to the petitioner, the contracting public body, the recognized collective bargaining agent for the particular classification of workers involved, and each person entitled to receive notice pursuant to State Finance and Procurement Article, §17-221 Annotated Code of Maryland, and
 - (iii) Information obtained by the Commissioner as a result of a subsequent investigation pursuant to State Finance and Procurement Article, §17-221 Annotated Code of Maryland;
- (d) If the hearing involves an alleged violation of the Prevailing Wage Subtitle, State Finance and Procurement Article, §§17-201-----17-226, Annotated Code of Maryland:
 - (i) A copy of the notice of hearing sent to the contracting public body, the recognized collective bargaining agent for the particular workers involved, and to each person entitled to notice pursuant to State Finance and Procurement Article, §17-221, Annotated Code of Maryland, and
 - (ii) Information obtained by the Commissioner as a result of the subsequent investigation pursuant to State Finance and Procurement Article, §17-221, Annotated Code of Maryland.
- (4) The Assistant Attorney General shall proceed first and shall present evidence of any investigation made by the Commissioner of Labor and Industry.
- (5) Subject to applicable statutes and rules governing the practice of law, each party or counsel representing a party may:
 - (a) Call witnesses;
 - (b) Offer evidence, including rebuttal evidence;
 - (c) Cross-examine any witness that another party or the agency calls; and
 - (d) Present summation and argument.

E. Determination of Hearing Officer.

- (1) The hearing officer shall issue a written determination, which includes proposed findings of fact and conclusions of law, and a proposed order making disposition of the proceedings.
- (2) The hearing officer shall serve a copy of the determination on each party present or represented at the hearing.
- (3) Unless exceptions to a hearing officer's proposed determination are filed with the Commissioner within 10 working days from the date of the determination, the decision of the hearing officer shall become the final order of the Commissioner.

F. A party aggrieved by a final order of the Commissioner may obtain judicial review by filing a written petition with the appropriate circuit court within 30 days of issuance of final order.

.06 Commissioner's Investigation.

If the Commissioner receives a complaint that an employee under a public work contract was paid less than the prevailing wage rate for that employee's classification, the Commissioner shall investigate the complaint and attempt to resolve the complaint informally within 90 days of receipt of the complaint.

Administrative History

Effective date: July 1, 1981 (8:13 Md. R. II-5)

Regulations .01—.06 repealed and new Regulations .01—.04 adopted effective October 17, 1988 (15:21 Md. R. 2469)

Regulation .01B amended effective July 12, 1999 (26:14 Md. R. 1083)

Regulation .02C amended effective February 9, 1998 (25:3 Md. R. 146)

Regulation .03E amended effective January 23, 1989 (16:1 Md. R. 72)

Regulation .05 adopted effective April 18, 2011 (38:31 Md. R. 509)

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Regulation .05D amended effective September 3, 2012 (39:17 Md. R. 1149)