



# **PREVAILING WAGE RATE LAW 101**

**Senate Workforce Committee**

**June 3, 2015**

# TOPICS



- **Prevailing Wage Rate Basics**
- **Coverage of the PWR Laws**
- **Agency Responsibilities**
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- **Construction Industry Survey**
- **Definitions of Covered Occupations**
- **Bonds**
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# Prevailing Wage Rate Basics

- **Prevailing Wage Rate (PWR) laws were first passed in 1959; based on the Davis-Bacon Act.**
- **In 1994, voters rejected a measure to repeal the PWR laws. In 1995 and 2005, the laws were substantially amended by the legislature.**
  - **For a full history of the PWR laws, see pages 3-14 in the PWR Laws Handbook.**
- **The prevailing wage is a minimum wage that must be paid to a worker for the type of work performed on a covered project, consisting of an hourly base rate and an hourly fringe benefit rate.**

# Purpose of Prevailing Wage Rate Laws

- **To protect local contractors from unfair competition;**
- **To promote local participation in public construction and maintain community established compensation standards;**
- **To encourage the training and education of workers in industry skill standards;**
- **To encourage contractors to use the fringe benefit funds for actual benefits for their employees.**

ORS 279C.805

# Coverage of the Law

## Two-step Test

- **Does the definition of “public works” apply?  
ORS 279C.800(6), OAR 839-025-0004(20)**
- **Do any of the exemptions from the law apply?  
ORS 279C.810, OAR 839-025-0100**

# Coverage – First Step

## Definition of Public Works

**(A) Construction, reconstruction, major renovation or painting that is carried on or contracted for by a public agency to serve the public interest;**

ORS 279C.800(6)(a)

# Coverage – First Step

## Definition of Public Works (cont.)

**(B) Construction, reconstruction, major renovation or painting on privately owned property and project will use \$750,000 or more of funds of a public agency, or**

**(C) Privately owned construction and public agency will occupy or use 25% or more of the square footage of completed project.**

ORS 279C.800(6)(a)

# Coverage – First Step

## Definition of Public Works (cont.)

**(D) Installation or construction of a device, structure or mechanism that uses solar radiation on public land, premises, structures or buildings, regardless of cost of project and whether project uses public funds.  
(2010 HB 3651, effective 1/1/11)**

ORS 279C.800(6)(a)



# Coverage – First Step

## Definition of Public Works (cont.)

**(E) Construction, reconstruction, major renovation or painting of a road, highway, building, structure or improvement of any type that occurs, with or without using funds of a public agency, on real property that the Oregon University System (OUS), or an institution in the OUS, owns. (2013 HB 2646, effective 1/1/14)**

ORS 279C.800(6)(a)

# Coverage – First Step

## “Public Works” does not include:

- The reconstruction or renovation of privately owned property that is leased by a public agency.

ORS 279C.800(6)(b)(a)

- Defined as: “improvements of all types within the framework or footprint of an existing building or structure.”

OAR 839-025-0004(23)

# Coverage – Second Step

## Exemptions from the Law:

- 1. Projects with a total project cost of \$50,000 or less.**  
*(Except for projects on public property with a solar component.)*
  - **\$50,000 threshold includes all contracts for materials, supplies and labor.**
  - **Project may be made up of multiple contracts; each contract is subject to PWR so long as the combined price of all contracts awarded is over \$50,000.**

ORS 279C.810(2)(a)

# Coverage – Second Step

## Exemptions from the Law:

2. **Projects for which no funds of a public agency are directly or indirectly used. (*Except for projects on public property with a solar component, and any C/R/MR/P projects on OUS property.*)**

ORS 279C.810(2)(b)

3. **Projects for residential construction that are privately owned and that predominantly provide affordable housing.**

ORS 279C.810(2)(d)

# Questions About Coverage

**BOLI provides coverage determinations when requested:**

- **Requestor must submit all information necessary to make the determination.**
- **BOLI will make the determination within 60 days of receiving all necessary information.**
- **Procedure for making a request and determinations issued are posted on BOLI's web site.**
- **The requestor or anyone adversely affected or aggrieved by the determination can request a hearing.**

ORS 279C.817

# Agency Responsibilities

**Found on pages 32-43 in the PWR Law handbook:**

- **Planned Public Improvement Forms**
- **Required Specification and Contract Language**
- **Ensuring a Payment Bond is Filed**
- **Notice of Public Works Form**
- **Paying the PWR Fee**
- **Certified Payroll Reports and Withholding Requirements**
- **Division of Projects is Prohibited**

# **Contractor Responsibilities**

**Found on pages 44-61 in 2014 PWR Laws handbook:**

- **Public Works Bond**
- **Contract Language**
- **Posting Rates on Site**
- **Paying the Correct Rate of Pay**
- **Paying Overtime Appropriately**
- **Calculating Fringe Benefit Credits**
- **Paying Apprentices Correctly**
- **Certified Payroll Reports/Withholding**
- **Required Records**
- **Construction Industry Survey**

# Construction Industry Survey

- **Survey helps determine the prevailing wage rates; is required to be completed by all contractors who perform any type of non-residential construction.**
- **All contractors are surveyed once each year; usually mailed out in July, response due in Sept.**
- **Survey asks for 4 weeks of wage information: 2/12, 5/12, 8/12, 11/12.**
- **Individual responses are private.**
- **Survey is mandatory.**

ORS 279C.815



# Construction Industry Survey (cont.)

- **After surveys have been submitted, Employment Department compiles the data; using this information, the Commissioner determines the prevailing wage rates. Generally:**
  - **If more than 50% of hours reported for an occupation in a region are union hours, the union rate prevails.**
  - **If less than 50% of hours reported for an occupation in a region are union hours, a statewide average rate is applied.**

ORS 279C.815

# Definitions of Covered Occupations

- **All “workers” performing labor on a PWR project site must be paid the appropriate prevailing wage rate.** ORS 279C.840(1)
- **A “worker” is a person whose duties are manual or physical in nature.** OAR 839-025-0004(32)
- **Workers must be paid according to the type of work being performed.**
- **Contractors can use BOLI’s Definitions of Covered Occupations book, or they can contact the PWR Unit to help correctly classify workers.**

# Bonds

**BOLI generally has access to two types of bonds to help ensure workers on public works projects are fully paid: 1) payment bonds and 2) public works bonds.**

- **ORS 279C.600 *et seq.* gives BOLI authority to file a notice of claim against a bond.**
- **When ORS 279C.380 applies to a public improvement contract, generally contracts over \$100,000 will require the contractor to have a payment bond.**
- **Generally, any employer who must pay prevailing wages must file a \$30,000 public works bond with CCB before beginning work on a PWR project.**

ORS 279C.836

## **Bonds (cont.)**

**After an investigation, if BOLI finds prevailing wages are owed to workers:**

- Will attempt to collect wages owed from employer.**
- If employer refuses to pay, BOLI will file a claim against the employer's public works bond.**
- If employer doesn't have a public works bond, or if more than \$30,000 in wages is owed, BOLI will file a claim against the prime contractor's payment bond.**
- Without these bonds, it can be difficult to collect the prevailing wages owed to workers.**

# Links to PWR Resources

## **PWR Law Handbook:**

[http://www.oregon.gov/boli/WHD/PWR/Pages/W\\_PWR\\_Pwrbk.aspx](http://www.oregon.gov/boli/WHD/PWR/Pages/W_PWR_Pwrbk.aspx)

## **Prevailing Wage Rate Books and Amendments:**

[http://www.oregon.gov/boli/WHD/PWR/Pages/pwr\\_state.aspx](http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx)

## **Definitions of Covered Occupations:**

[http://www.oregon.gov/boli/WHD/PWR/docs/defs\\_occ.pdf](http://www.oregon.gov/boli/WHD/PWR/docs/defs_occ.pdf)

## **BOLI Website:**

<http://www.oregon.gov/BOLI/Pages/index.aspx>

# **BOLI Contacts**

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