

for about 80 years.

What is the prevailing wage act in Washington?

Prevailing wage is currently codified as RCW 39.12, which is titled “prevailing wage in public works.” Prevailing wage is defined by law, the following is the definition made by Labor and Industries, “Prevailing wage is an hourly wage with usual benefits and overtime paid in the highest in the largest city in each county to the majority of workers, laborers, mechanics performing the same work.”

In Washington the rates for prevailing wage and enforcement of prevailing wage is empowered to the Washington Department of Labor and Industries (L&I).

L&I are in control over prevailing wages compliance and setting the rates. L&I sets the rates by county for each trade and occupation. They also set those rates twice per year to update.

L&I sets the prevailing wage rates starting with any collective bargaining agreement with any union that exists within the county for that specific work. If there is no collective bargaining agreement, then L&I does what's called a wage and hour surveys for that county and occupation.

For example, for plumbers Asotin County, L&I is there a collective bargaining agreement for plumbers in a certain county. If so, that's the rate used. If not, they will send surveys out to ask plumbers in Asotin County, what are your wages and county hours. L&I then compiles that data and then sets a rate from the surveys collected.

Each rate is set at an occupational level and each occupation is set into a defined trade by the L&I on their website. Trades are sort of the generic scope of work. There are 60+ trades on the L&I website. Examples of trades are Laborers, Plumbers & Pipefitter, Painters, Janitorial services. Within each trade there can be multiple occupations, which is its own job description, and each occupation has its own prevailing wage rate. Each rates has a journey level rate and apprentice level rate. For our contracts, the journey level rate is the default rate. The apprentice level is only for those employees who are approved by the State Apprenticeship Council and are generally rare. Otherwise, anyone who is working on the project is paid at that journey level.

Rates are set by L&I twice a year. L&I publishes prevailing wage rates on the first business day of February and the first business day of August. Those rates become effective 30 days later. This means the dates are effective the first week of March and sometime in the first week of September.

What does our statute require of Contractors

The contractors have to start by making a login for L&I contractor Portal. That portal is freely available for contractors to go in and create their information, the same way as companies can go into WEBS.

On each project the contractor must file a statement of intent to prevailing wages, which is through that portal.

The Contractor must post that intent at the job site.

So at each job site that it's clear that the contractor is failing, paying prevailing wages, and then they must file weekly certified payroll reports with labor and industries at least once a month.

The contractor must have payroll reports on a weekly basis but they only have to file the reports with L&I once a month.

At the very end of the project, the contractor must complete an affidavit of wages paid, submitted through the L&I Contractor portal.

Additionally, each Contractor must ensure that their subcontractors complete the required forms, and that includes anyone who's working on the project under that contractor. Those subcontractors go through those same steps and the Contractor is ultimately responsible for the completion of the Subcontractors forms.

Benefits of Prevailing Wages

The main benefit of prevailing wage in a contract is to ensure that workers are paid a fair rate. Prevailing wages started in the Great Depression, where workers were not receiving fair rates. Prevailing wage is a way to ensure that workers are paid a rate that is at the level of expectation for that type of work performed within that county.

For contracts having the occupations helps to assist in the scope of work. The L&I occupational definitions can provide clarity for what should go into the contract's scope of work. For example, for a janitorial services contract the [occupational description of a janitor](#) from L&I can be used as a starting point to develop the scope of work.

For Contractors prevailing wage sets a clear standard of pay for companies to provide their price. Everyone sort of starts on that same prevailing wage to develop their cost as a starting point for their bid submission.

For contract management, use of prevailing wage is helpful in that L&I will manage most of the compliance with prevailing wage. When issues arise with Contractors and prevailing wage L&I, which means for us in contracting we get a hand it off to labor and industries to enforce prevailing wages.

Research and studies have shown that the use of prevailing wage boosts worker productivity on projects that use prevailing wage reduces injury rates and increases apprenticeship training. On the last one there's a separate rate for apprentices that's usually lower than the prevailing wage, but it must be a certified apprentice. This incentivizes businesses to get certified apprentices so that they don't have to pay them as much. Those apprentices get on the job training and then eventually you can either go into business for themselves or move up to get that journey level.

When does prevailing wage apply to a contract?

In the prevailing wage statute (RCW 39.12.020) prevailing wage applies to all public works and all public building service maintenance contracts.

Given that prevailing wages applies to public works and building service maintenance contracts, you might think that since DES has a public works team, they would always be responsible for prevailing wage procurements. However, there are times when DES Contracts and Procurement teams lead services procurements that have prevailing wage. This difference comes from a conflict between the prevailing wage law and the procurement laws that disagree on what public works means.

Prevailing wage law defines public works as "all work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed by contract..." with an exception for ordinary maintenance. [WAC 296-127-010\(7\)\(a\)](#) and [WAC 296-127-010\(7\)\(b\)](#)

The public works procurement law similarly defines public works as "all work, construction, alteration, repair, or improvements improvement other than ordinary maintenance..." [RCW 39.04.010\(4\)](#)

There is a conflict in that the prevailing wage law defines ordinary maintenance as "maintenance work performed by the regular employees of the state..." [WAC 296-127-010\(7\)\(b\)](#). The public works procurement law does not define ordinary maintenance. In interpreting what ordinary maintenance is the public works procurement law does not use the definition from the prevailing wage, instead ordinary maintenance is taken to mean any maintenance work performed, including by Contractors.

These two definition mean that the prevailing wage law includes ordinary maintenance provided by contractors and DES Public Works team operates under 39.04 that says public works procurement is not ordinary maintenance.

This creates a gap between the prevailing wage law and procurement laws.

In the image prevailing wage law applies to all public work projects, the central light blue circle.

The black circle is DES public works. The circles pretty much overlap with public works procurements almost always requiring prevailing wage, but there is a gap. The little light blue crescent on the left is where DES public works procurement does not contract for ordinary maintenance performed by Contractors, but the prevailing wage law applies to ordinary maintenance performed by contractors. This is where RCW 39.26 for procurement of goods and services applies, since it applies to all procurement of all goods and services, which would include the ordinary maintenance

performed by contractors. This is the area where prevailing wages applies to goods and services procurements, as indicated by the arrow. Examples of scopes of work in this gap are contracts for or involving Janitorial Services, Grounds/landscaping maintenance, Cubicle installation, Graffiti Removal, HVAC Maintenance, IT cabling, Elevator servicing and maintenance, and Derelict vessel removal.



Note the image is not to scale. The goods and services procurements would be a much larger circle and the overlap between goods and services procurements with prevailing wages is very small.

What does that mean for contracts?

What is required in the process for including prevailing wages in solicitations/contracts.

Determine if prevailing wage applies to the scope

Start with an analysis to determine if the scope of the contract is for the ordinary maintenance provided by a contractor. Meaning is it work on a public building, site, or property that is not performed by DES Public Works because it is ordinary maintenance by a contractor. If so, prevailing wage laws will apply to the goods and services contract procured under 39.26. If no, then prevailing wages will not apply and this is moot.

There isn't really a full definition of what ordinary maintenance is because it's not defined in that public works law or in labor and industries law. It depends on who you talk to, the types of contracts that DES has ran in the past that apply prevailing wage are Janitorial Services, Grounds/landscaping maintenance, Cubicle installation, Graffiti Removal, HVAC Maintenance, IT cabling, Elevator servicing and maintenance, and Derelict vessel removal.

Identify applicable prevailing wage rates/occupations

If yes and prevailing wages apply, then we must identify what the applicable occupations are from L&I websites. For questions on which prevailing wage rates would apply to the scope L&I has a team email for questions PW1@lni.wa.gov.

Update the solicitation documents and contract

The identified prevailing wage occupations should be clearly identified in the solicitation for the cost. Usually Exhibit C would be where the prevailing wage rates are indicated. In addition, the solicitation and contract will require some minor updates. In the solicitation give notice that this contract will have prevailing wage as part of it in the introduction. In the contract itself, there are a set of terms at the very end of the backgrounder that can be copy and pasted into the contract and detailed the public works process in and how contractors can comply with RCW 39.12.

Q: which prevailing wage rate applies during the contract.

Since the prevailing wage rates change twice a year in March and September, which rates should the contractors be paying on the contract?

L&I rules defaults to the rate when bids are due or the day that contracts is awarded (if the contract is signed 6 months or more after bids are due). This sets a single rate for the entire project. There are two exceptions. For janitorial contracts, the rate should update annually. For job order contracts, which are large contract and then for each job there is a specific work order. In those cases the rate is the date the work order is signed.

For our internal and small agency teams, it depends on who you're working with, especially for the small agency team on which option the programs want to follow. They can use that L&I default (when the bid is due, or if the bid if the contract is not signed within six months) or using the statewide approach.

For the statewide contracts because our contracts are those long six-year terms, we don't want the rate to be when the date the contract is awarded because now Contracts could be paying the same prevailing rates for entire term when the rates would update 10+ times during the entire term. The DES standard language from the backgrounder is set up is that contractors pay the prevailing wage that is effective on the day that work is performed.

For example, if the prevailing wage changes on March 3rd, the new rate is effective March 3rd based on the language in our templates. Any work that's performed before March 3rd is paid at the earlier rate is, and then work performed March 3rd on until the next change is made is paid with the new rate March 3rd rate.

Q: who has to pay prevailing wage

In general contractors with employees located in the state performing public works defined by L&I must pay prevailing wages. The determination on paying prevailing wage is made on an employee-by-employee basis. It doesn't matter where the contractor is located, it matters where the employees are when they're doing the work.

Exceptions

There are a couple of exceptions that do come up.

The most common is owner operator, anyone who owns the business and is doing the work themselves doesn't have to pay themselves prevailing wages.

- This also applies to sole proprietors, by definition, they own their business and they're the one doing the work, so they don't have to pay themselves prevailing wages.
- Prevailing wage partners is only if it's a partnership the partners are doing the work and each partner owns at least 30% of the company, otherwise, they must pay prevailing wages.
- The rarest owner/operator exception is officers of a corporation. The president, vice president and Treasurer are not required to be paid prevailing wages so long as they each own 30% of the corporation

Another exception that may apply is a family exception on a limited liability company. There is a

special rule for partnership and limited liability companies on families who are doing the work. Prevailing wages does not apply to any family member who is within 3 degrees of relation.

The last exception is very rare, it is for “reciprocal States.” This is for any company who has employees who are temporarily working in Washington and who originate from one of those states that requires approval through L&I to make sure that it is under that reciprocal agreement and that the insurance covered from those states is sufficient for the work performed in Washington. If a contractor is claiming this exception DES would want the confirmation from L&I. Otherwise, prevailing wage applies in Washington when the workers are in Washington.

Q: If prevailing wage applies, must the procurement be conducted under the public works procurement code?

No. Prevailing wage requirements apply to specified activities/contracted services and does not consider under what law the procurement was made. State agency procurements under both the Procurement Code for Public Works (RCW 39.04) and the Procurement Code for Goods/Services (39.26) may trigger prevailing wage requirements.

Q: For goods/services procurements, if prevailing wage applies, do other ‘public works procurement requirements’ apply?

No. The procurement is not procuring under the public works procurement rule. It is procuring under the goods and services rule and applying the rules from prevailing wage. This means none of the public works requirements apply, including the public works responsibility, retainage, bonding, or the use of the public works bidding system.

Q: When must the bidder must complete and a labor and industries training on prevailing wages?

This depends on the business and teams use case.

L&I requires contractors to complete a prevailing wage training unless the business has operated for 3+ years and completed 3 public works projects, otherwise businesses must complete the training before working on the project.

For operations this could be required at time of bid, but is more reasonable to be an addition to the responsibility check. Similar to insurance, the prevailing wage training should be completed before apparent successful bidder notification as part of responsibility. DES would prefer for those companies to have completed the training by the time of the bid, but we understand that with our supplier diversity considerations, a lot of the contracts using prevailing wages have small businesses with limited time and resources to complete extra training and requirements that may not complete the training until an indication of award.

For context the L&I training is online, so it’s always available and it's relatively quick.

Resources

[RCW 39.12](#) – Prevailing Wages On Public Works

[WAC 296-127](#) – Prevailing Wage

[Washington State Department of Labor & Industries](#)

- [Prevailing Wage rates](#)
- [Scopes of work \(trade/occupation\)](#)
- [Contractors](#)