

MICHIGAN FAIR CONTRACTING CENTER (MFCC)

FORWARD

Building and Construction projects which are publicly financed are governed by scores of regulations and laws. This publication is directed to both employers and employees, who hopefully will find it to be a valuable education resource.

MICHIGAN FAIR CONTRACTING CENTER (MFCC)

MFCC is a Michigan non-profit organization that provides educational services on public construction projects to ensure compliance with all applicable prevailing wage rate regulations and related standards.

This booklet is printed by the Michigan Fair Contracting Center and is made available to stakeholders in the construction industry. The information contained in this booklet should not be construed as legal advice, but is intended to provide a general knowledge of prevailing wage laws. The laws cited in this booklet are current at the time of printing.

For assistance, please contact us at the phone number and address listed on the front.

OVERVIEW OF REQUIREMENTS ON PUBLIC PROJECTS

DAVIS-BACON PREVAILING WAGE RATES: Contractors are required to pay rates and fringes established by the federal government as the minimum rate. A schedule of wage rates must be posted on the construction site where it may be easily seen by all employees.

MICHIGAN PREVAILING WAGE RATES: Contractors are required to pay rates and fringes established by the state government as the minimum rate. A schedule of wage rates must be posted on the construction site where it may be easily seen by all employees.

LOCAL GOVERNMENT PREVAILING WAGE RATES: Local government bodies such as municipalities often mandate payment of prevailing wages through their local ordinances or policy. Contractors are required to pay the rates and fringes that are required under the local ordinance or policy.

KICKBACK OF PAY: It is unlawful for an employee to give up or "kickback" any wages on a Federal or State funded construction project.

APPRENTICES: Apprentices must be registered with an approved Office of Apprenticeship program to qualify for apprenticeship rates.

UNDERSTANDING TYPES OF CONSTRUCTION AND HOW THE LAWS ARE APPLIED

Construction falls into four basic categories:

1. Private construction
2. Federal taxpayer financed construction
3. State taxpayer financed construction
4. Local taxpayer financed construction

In this booklet we will describe the prevailing wage laws that are applicable to Federal and State financed projects, which mandate the payment of prevailing wages. With respect to local taxpayer financed projects, such as those under the jurisdiction of a municipality, payment of prevailing wages varies depending on the local ordinances. These are addressed on a case-by-case basis, and more information can be obtained by contacting the Michigan Fair Contracting Center.

Many Federal and State projects may require that a certain level of wages known as Prevailing Wages (which is different from the Minimum Wage Law) be paid to workers.

PREVAILING WAGE LAWS

Whether it is an Airport, Interstate Highway, State Highway, County Road, Bridge, River Levee, Sewer, Waterline, Public Housing, University, School, or Park, the Federal Davis-Bacon Act or Michigan Prevailing Wage Act 166 may apply, and require all contractors and subcontractors to pay construction employees the wages, benefits, and overtime rates that are specified by the contract. The wages and benefits required to be paid can differ on each federal or state project, depending on the classification of work performed and the location (county) of the project. The actual contract documents for each separate project will specify the exact wages and benefits to be paid for the location where the project is constructed.

CLASSIFICATIONS AND WAGE RATES

This is a common area where violations can occur, because employers are unfamiliar with the State and Federal Government classification of workers. Workers are often misclassified at a lower wage and benefit package than is required for the actual classification of the work they are performing.

Both employers and workers should know and understand the classification of work being performed. Once the classification is determined, the prevailing wages and benefits can be determined from the wage schedule.

Each separate craft classification requires a certain basic wage rate and fringe benefits for that particular trade. Each trade has a specific title.

IT IS IMPORTANT TO NOTE, THAT CLASSIFICATIONS ON STATE AND FEDERAL PROJECTS ARE BASED ON THE TYPE OF WORK BEING PERFORMED, AS OPPOSED TO THE EMPLOYEE'S TITLE.

An employee may perform work that falls under a classification other than what they were hired for. In this case, the pay may be higher for the craft work they are performing. If it is higher, they must be paid the higher wages and fringe benefits for any time worked in a craft classification calling for a higher rate.

APPRENTICES

(29 C.F.R. - 5.2 (n) (1) In order for workers to be recognized as apprentices on state and federal construction projects they must be enrolled in a "bona fide" apprenticeship program registered with the Office of Apprenticeship (OA), under the U.S. Department of Labor. Persons not registered in a recognized apprenticeship program may not be paid less than the journeyman prevailing wage. For regulatory requirements - reference (title 29 C.F.R. parts (29) (30).

HOW TO DETERMINE STATE OR FEDERAL JURISDICTION

The projects we are concerned with are federally or state financed construction projects which mandate the payment of prevailing wages. On these projects contractors are required to post wage rates at the job site. If it is a federal project, it will have a wage determination by the U.S. Department of Labor. If it is a state project, it will have a wage schedule by the Michigan Department of Licensing and Regulatory Affairs. . The proper wage determination sheet must be posted at the site.

Contractors are also required by law on Federal projects to submit certified payroll records to the contracting agency. While on State projects, certified payroll may be required by the contracting agent, but it is not part of the State Prevailing Wage Law.

LAWS APPLICABLE TO FEDERAL PROJECTS

FEDERAL PROJECTS

DAVIS-BACON ACT

Davis-Bacon Act, 40 U.S.C. 27a; 29CF.R. part 5, Prevailing Wage rates must be paid to workers on federal public works projects that are in excess of \$2,000. The Federal Prevailing Wage Law is known as the Federal Davis-Bacon Act; named after Congressman Davis and Senator Bacon. The law, which went into effect in 1931, requires that on Federal Construction Projects involving \$2,000 or more in taxpayer money, the Federal Prevailing Wage be applied.

COPELAND ANTI-KICKBACK ACT

(18 U.S.C. 879) The Act makes it punishable by a fine up to \$5,000.00 and/or by imprisonment up to five years to induce any person working on a federally funded or assisted construction project to give up any part of the compensation to which they are entitled under Davis-Bacon or Related Acts.

FEDERAL PUBLIC WORKS PROJECTS

A public works project is any contract in excess of \$2,000 that is entered into for the actual construction, alteration and/or repair, painting and decorating — financed in whole or in part from federal funds. There are exceptions to this condition. For example, some Farmers Home Administration (FmHA) projects do not require Davis-Bacon payments. MFCC can assist in determining if the project of interest requires Davis-Bacon payments.

FEDERAL PREVAILING WAGE DETERMINATIONS

The wage most often paid in the locality where the work is performed is considered the prevailing wage for that locality. The prevailing rate is the predetermined hourly wage for the classification of work performed, including benefits. ***This is established by the U.S. Department of Labor.***

For example, the U.S. Department of Labor has determined that the below listed rates are applicable for Highway projects in Wayne County, Michigan. These rates are current as of October 14, 2011.

<u>Classification</u>	<u>Rates</u>	<u>Fringes</u>
Carpenter	\$25.79	\$13.97
Laborer (group 1)	\$24.39	\$11.78
Operating Engineer (dozer, backhoe, loader)	\$28.41	\$19.75
Operating Engineer (bobcat)	\$20.95	\$19.75

PLEASE NOTE:

(1.) Some classifications have more than one division of pay. Check the actual Wage Determination sheet for the project to determine classification(s). (2.) Overtime on federal projects must be paid at one and one half times the base wage rate for all hours over 40 hours worked in a work week.

(Overtime pay is not required on fringe benefits.)

FRINGE BENEFITS - FEDERAL PROJECTS

Wages on federal projects fall in two categories, (1) the basic wage and (2) fringe benefits. The contract documents for each separate project will specify the base wage rate plus a separate amount for fringe benefits. These rates can differ for each craft classification. Employers can legally pay earned fringe benefits in one of two ways. (1) Paying the full base wage and the amount of the fringe benefit on the employee's check or, (2) by paying the base wage on the check and paying the amount of fringe benefit into health insurance and/or retirement plans. If employer's pay fringe benefits into health insurance and/or retirement programs, they must communicate in writing the employee's right to receive benefits from these plans. Additionally, these plans must be approved by the U.S. Department of Labor. Even though fringe benefits on federal projects may cover more than one program - retirement benefits and health insurance are listed as one rate.

POSTING OF WAGES AT PROJECT SITE - FEDERAL AND STATE PROJECTS

On federal and state projects contractors must post a copy of the wages and fringe benefits in an easily seen and accessible area at the project site. The posted wage sheet will list the basic wage rate and fringe benefits for each separate craft classification.

PAYROLL RECORDS - FEDERAL PROJECTS

On federal Davis-Bacon projects, employer's must submit **Certified Payroll Records** each week to the contracting agency (Public Body) showing each employee's name, classification(s) of work performed and actual wages and benefits paid. Both employers and workers should keep accurate records for each separate project worked on, along with the classification(s) of work performed in order to substantiate compliance.

COMPLIANCE - FEDERAL PROJECTS

It is important that both workers and employers keep accurate records for each day and for each separate project worked on. The classification(s) worked and the amount of time spent working in each classification should be well documented. These records must coincide with the **Certified Payroll Records**, and the contracting agency or the U.S. Department of Labor will be able to determine compliance. Falsification of certified payroll records is a criminal violation and can result in \$5,000 fine, 5 years in prison, or both. If a contractor is found out of compliance for not paying the prevailing wage, backwages must be paid to the workers based on the prevailing wage rates.

LAWS APPLICABLE TO STATE PROJECTS

STATE PROJECTS

MICHIGAN PUBLIC ACT 166

Michigan's Prevailing Wage Law is Public Act 166. By law, prevailing wage rates are the rates contained in the collectively bargained agreements covering the location of the state project. The purpose of establishing prevailing wages is to provide rates of pay for workers on construction projects. The state or a schools district is considered the contracting agent and is responsible for these projects financed with state monies.

STATE PUBLIC WORKS PROJECT

Any state project which is financed or sponsored in whole or in part by the State of Michigan.

STATE PREVAILING WAGE DETERMINATIONS

The wages are paid in the county where the work is performed and is determined by the Michigan Department of Licensing and Regulatory Affairs according to the collectively bargained agreements for the county.

PAYROLL RECORDS - STATE PROJECTS

On state prevailing wage projects, employers must keep and maintain an accurate record showing name, occupation, and the wages and benefits paid to each construction worker on the project. These records must be available for inspection by the Michigan Department of Licensing and Regulatory Affairs. .

COMPLIANCE - STATE PROJECTS

It is important that both workers and employers keep accurate records for each day and for each separate project worked on. The classification(s) worked and the amount of time spent working in each classification should be well documented. By comparing employer's records to the employee's payroll records, the contracting agency or the Department of Licensing and Regulatory Affairs will be able to determine compliance should an issue of compliance arise. Violating the Michigan Prevailing Wage Law, will subject the contractor to being listed on the State of Michigan's Prevailing Wage Violators list. Contractors will also be required to pay backwages at the prevailing wage rate to the workers.

OFFICE TO HELP MICHIGAN EMPLOYERS AND WORKERS WITH COMPLIANCE

Michigan Fair Contracting Center

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Michigan Department of Licensing and Regulatory Affairs

(Wage and Hour Division)
(517) 322-1825
www.michigan.gov/wagehour

MIOSHA

(517) 322-1814

U.S. Department of Labor (Wage and Hour Compliance)

www.dol.gov
Wage & Hour Information
(866) 4US-WAGE