

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PROFESSIONAL REGULATIONS
LEGAL NOTICE OF PROMULGATION OF RULES**

The Division of Professional Regulations, under the authority granted by Chapter 13 of Title 37 of the General Laws of Rhode Island, 1956, as amended, may adopt, amend, modify and reject general and special rules and regulations under Chapter 35 of Title 42 of the General Laws of Rhode Island as amended, and proposes:

The amendment of existing Rules as follows:

RULES AND REGULATIONS RELATING TO PREVAILING WAGES

- 1) Any contractor who has been awarded a contract for a Public Works Project in excess of \$1,000.00, or any subcontractor performing work on said project, shall be liable for the payment of prevailing wages under this chapter regardless of whether or not the prevailing wages were listed in the contract between the contractor and the awarding authority of the state or political sub-division, as required by law.
- 2) Any contractor who has been awarded a contract for a Public Works Project in excess of \$1,000.00, shall be liable for the payment of prevailing wages under this chapter regardless of whether or not a subcontractor may be the primary obligor. The contractor shall ensure that a subcontractor pays the prevailing wage to his employees and otherwise complies with the provisions of R.I.G.L. Chapter 37-13.
- 3) Before awarding a contract for a Public Works Project, an awarding authority shall first determine from the Director of Labor and Training whether the proposed contractor has been debarred under R.I.G.L. 37-13-16, and shall notify all bidders that the prevailing wage is required as a condition of the contract.
- 4) All complaints filed for noncompliance with Chapter 13, Title 37 of the General Laws of Rhode Island shall be in writing, and on forms issued by the Department of Labor. The written complaints must be filed with the Department of Labor and Training within twenty-four (24) months of the completion of the project.
- 5) Any contractor or subcontractor doing work on a Public Works Project, must pay the prevailing wage for the classification of the work performed by an apprentice unless such apprentice is registered under and apprenticeship program sanctioned by the Rhode Island Department of Labors and Training's Apprenticeship Council.
- 6) The Director of Labor and Training shall notify an awarding authority of the name of any contractor that has violated any provisions of this chapter.
- 7) Any proceeding to debar a contractor from bidding on a Public Works Project under the provisions of R.I.G.L. Chapter 37-13, may be brought against the principals, officers of

successors in interest of such contractor, where such principals, officers or successors in interest are responsible for the violation of this chapter.

8) “No person, contractor, firm, business or corporation shall by any special contract or arrangement with an employee or by any other means exempt himself from coverage from R.I.G.L. Chapter 37-13. For purposes of this chapter individuals performing any service shall be deemed to be employees and shall be subject to the provisions of Chapter 37-13 even though the employee may hold share(s) of stock in the enterprise. Such presumption of employee status shall not apply if it is shown that the individual has been and will continue to be free from control and direction in connection with the performance of such service under this contract, and such service is performed either outside the usual course of business for which the service is performed or is performed outside of all places of business of the enterprise; and, said individual is customarily engaged in an independently established occupation, profession or business of the same nature as involved in the service performed. The failure to withhold federal or state income taxes or unemployment compensation from an employee’s wages, or to provide workers’ compensation coverage for employees, shall not be used for the purposes of making a determination hereunder. The president and treasurer of a corporation or any officer or agent having management of such corporation shall be deemed the employer hereunder.”

9) The Department of Labor and Training will be guided by the General Wage Decisions in accordance with Section 37-13-8 of the General Laws of Rhode Island. Said General Wage Decisions shall be effective upon filing with the Rhode Island Secretary of State’s Office.

10) In order to comply with Section 37-13-13 of the General Laws of Rhode Island, contractors shall execute a fully completed RI Certified Weekly Payroll Form, Appendix A, for each week of work performed on the project ~~a certified payroll record shall be a weekly compilation of all wages, taxes and benefits paid and/or withheld from employees.~~

11) ~~Where the Director of Labor and Training has found a violation and entered a decision, the contractor and/or subcontractor shall pay all wages due, interest and penalties assessed within thirty (30) days of the date of the decision. The Director of Labor and Training shall upon application by the faulting contractor and/or subcontractor, extended the period for payment, provided a request is made within twenty (20) days of the date of decision and a written agreement or repayment is entered into by the Director of Labor and Training and the contractor and/or the subcontractor. The repayment agreement shall become void in the event the contractor and/or subcontractor fail to make payments as agreed. The Director of Labor and Training may enter into consent agreements with contractors and/or subcontractors to resolve all issues under R.I.G.L. Chapter 37-13.~~

12) In enforcing the provisions of Chapter 13 of Title 37, the Director of Labor and Training may order an awarding authority to withhold a percentage of the contract price from a contractor and/or subcontractor. The amount withheld shall be equal to the amount of the wage due, interest and penalties to satisfy the decision.

13) All service and maintenance contracts with the State of Rhode Island or political subdivision therefore shall comply with the provisions of Chapter 13, Title 37 where the contract price exceeds \$1,000.00 and the work includes alterations, installation, repairs or construction.

14) The Director of Labor and Training hereby adopts the position of the United State's Department of Labor that all independent contractors and/or subcontractors shall comply with the provisions of Chapter 13, Title 37.

15) Each contractor awarded a contract with a contract price in excess of one thousand dollars (\$1000.00) for public works, and each subcontractor who performs work on public works, shall keep those certified weekly payroll records required by 37-13-13 and on the forms set forth in Regulation 10 above, in a safe and secure location for a period of ~~seven~~ (~~7~~) two (2) years from the date such work was performed. Any Awarding Authority that has received certified weekly payroll records from any contractor or subcontractor shall also keep the certified payroll records in a safe and secure location for this same time period. These certified weekly payroll records shall be made available to the Director of the Department of Labor and Training immediately upon his/her request directed to a contractor, subcontractor, or Awarding Authority.

16) The prevailing rate of wages and payments made to or on behalf of employees, as set forth in Chapter 37-13, for general contractors and subcontractors, shall be determined as of the date of the awarding of the contract for public works to the general contractor and shall remain effective until such time as those rates are modified pursuant to R.I.G.L. §37-13-8.

17) The Department of Labor and Training, in making its investigation and determination of prevailing wages pursuant to 37-13-8, shall not determine or address jurisdictional disputes between trade or trades.

18) All complaints filed with the Department of Labor and Training pursuant to Chapter 37-13 shall include information sufficient to establish a *prima facie* claim, and the Department may reject any complaint that does not establish such claim. This information shall include, but shall not be limited to: evidence of the actual work performed by the employee(s) involved in the complaint; the location(s) and the exact date(s) the work in question was performed; and evidence that the correct prevailing wage was not in fact received.

19) The Director of Labor and Training hereby adopts the United States Department of Labor's bona fide fringe benefit credits and accompanying rules and regulations ~~method(s) of computing hourly fringe benefit credits.~~

20) The Apprentice Ratio applied to "Public Works" jobs in this state shall be that ratio set and adopted by the Rhode Island Apprenticeship Council.

21) Owners, supervisors, or foremen who spend more than 20% of their work week performing manual work on the public works site must be documented as employees on the contractor's RI

Certified Weekly Payroll Form, Appendix A, and must show payment of the applicable prevailing wage rate.

DEFINITIONS

- A. Successor in interest is one who continues to retain the same right, control or interest in a new business, firm, or corporation which purchased or merged with a former business, firm or corporation.
- B. A Principal is a person who has a majority of the ownership of a business, firm or corporation.
- C. “prevailing wage law”
 - i “prevailing wage law means R.I.G.L. §37-13-1 et.seq.
- D. “public work”
 - i. “public work” means grading, clearing, demolition, improvement, completion, repair, alteration or construction on any public site;
 - ii. the term “public work” does not include”
 - a. grading, clearing, demolition, improvement, completion, repair, alteration or construction on any public site for which no salary or wages or in kind payments are paid or owed;
 - b. ordinary maintenance work performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually or annually) or on a routine basis to service, check, or replace items or parts that are not broken; or work that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary.
- E. “heavy construction”
 - i. “heavy construction” means those construction projects that are not properly classified as either “building”, “highway”, or “residential”. Projects within the heavy classification are distinguished on the basis of their particular project characteristics, like complex engineering and industrial nature, and separate wage determinations;
 - ii. Examples of heavy construction include, but are not limited to power plants, pipelines, mass transit lines, marine and port facilities, sewage and solid waste facilities, landfills wastewater treatment facilities, sanitary, storm and sewer facilities, water supply facilities, transmission lines, aqueducts, water treatment facilities, desalination plant facilities, dams and reservoirs and the laying of fiber optic cable;

- F. “public agency”
- i. “public agency” means the State of Rhode Island, any awarding agency or authority of the State of Rhode Island, those agencies listed at R.I.G.L. §37-13-7(d), any Rhode Island city, town or village or any division of same, or any person or other entity acting on behalf of any public agency as defined herein;
- G. “public works contractor”
- i. “public works contractor” means the prime contractor, and each and every subcontractor, performing public work or heavy construction on any public works project site;
- H. “public works contract”
- i. “public works contract” means any contract, purchase order, or any other legal agreement, in writing, for public work or heavy construction on a public sight to be performed by a public constrictor on behalf of a public agency for a fixed or determinable amount of \$1,000 or more;
 - ii. payments made through contracts with third parties on behalf of a public agency shall be deemed public works contracts if public funds are utilized;
- I. “construction”
- i. “construction” means construction activity, as distinguished from manufacturing, furnishing of materials or servicing and maintenance work and includes, without limitation, the construction of buildings, structures, improvements of all types and heavy construction work:
 - ii. construction work includes altering, remodeling, demolishing existing structures, installation of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the public works site by the employee of the public works contractor;
- J. “public works site”
- i. “public works site” means the physical place or places where the heavy construction or public work called for in the public works contract takes place or will remain and is owned or will be owned by the public agency;
 - ii. the physical place(s) where the public work or heavy construction is to occur also means other adjacent or nearby property used by the public works contractor which can reasonably be said to be included in the public works site;
 - iii. except as otherwise provided in this section, fabrication plants, mobile factories, batch plants borrow pits, job headquarters, tool yards and the like, are part of the site of the building or construction job provided they are dedicated to the performance of the public works project, and are so located in the State of Rhode Island;

vi. physical place(s) which are not owned by a public agency but which are developed under contract and in anticipation of being owned by a public agency shall be considered a public works site.

K. “public works project”

“public works project” means public work or heavy construction work at any public works site for a public purpose for which the prevailing wage law applies.

APPENDIX A



RI Dept of Labor & Training - Division of Workforce Regulation & Safety
Professional Regulation Unit/Prevailing Wage Section
 1511 Pontiac Avenue Building 70
 P.O. Box 20247 Cranston, RI 02920-0943

RI Certified Weekly Payroll

Contractor: _____ Subcontractor: _____
 Address: _____ Address: _____
 City/Town: _____ State: _____ Zip Code: _____ City/Town: _____ State: _____ Zip Code: _____
 Phone #: _____ Email: _____ Phone #: _____ Email: _____
 For Week Ending: _____ Project/Location: _____ Wage Decision #: _____ Decision Date: _____

Name, Address Phone & SS # of Employee	Work Classification Apprentices %	Date:	Hours Worked Each Day							Total Hrs	Hourly Rate	Hourly Fringe Benefit	Gross	Deductions			Net					
			S	M	T	W	T	F	S					Social Security	Medi- care	Withheld Federal State		RI TDI	*Other			
	P.S.																					
	P.O.																					
	R.H.																					
	R.O.																					
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	R.O.																					

Legend: P.S.-Prevailing Wage Standard Hours P.O.-Prevailing Wage Overtime Hours R.H.-Regular Hours R.O.-Regular Overtime Hours

*Note: Deductions reported in the "other" column must

STATEMENT OF COMPLIANCE

I _____ do hereby state:

(print name of signatory party)

(title)

(1) That I pay or supervise the payment of the persons employed by _____ on the

(contractor or subcontractor)

_____ : that during the payroll period commencing on the _____ day of _____, 20____, and ending

(project)

the _____ day of _____, 20____, all persons employed on said project have been paid the full weekly wages earned,

that no rebates have been or will be made either directly or indirectly to or on behalf of said _____

(contractor or subcontractor)

from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Rhode Island General Law Chapter 28-14.

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in the appropriate wage determination for the project; that the classifications set forth therein for each laborer or mechanic conform with the work they performed.

(3) That the apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with the Rhode Island State Apprenticeship Council.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS OR PROGRAMS

In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made when due, to appropriate programs for the benefit of such employees.

Fringe Benefits Explanation: Bona fide fringe benefits are those paid to approved plans, funds or programs except those required by Federal or State Law.

Please specify the type of benefits provided:

1.) Medical or hospital care _____

2.) Pension or Retirement _____

3.) Life Insurance _____

4.) Disability _____

5.) Vacation, sick, holiday _____

6.) Other (please specify) _____

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the rate schedule.

(5) In accordance with Chapter 37-13-13, it is mandatory that contractors use these forms for all Rhode Island Department of Labor requests for certified copies of payroll. Failure to submit information on these forms will constitute non-compliance by the responding contractor. These forms must be signed by the owner or an officer of the corporation, certifying that this is a true and exact copy of their payroll records.

PLEASE PRINT Name and title of owner or officer of the corporation

SIGNATURE

DATE

The willful fabrication of any of the above statements may subject the contractor or subcontractor to a \$100 per day fine and be deemed guilty of a misdemeanor.

Copies of the aforementioned proposed amendments to the Rules are available for public inspection at the Rhode Island Department of Labor & Training, Division of Professional Regulations, 70-2, 1511 Pontiac Avenue, Cranston, RI 02920 between the hours of 9:00 a.m. and 3:00 p.m.

In the development of the proposed amendments consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory regulatory provisions; and (3) significant economic impact on small businesses as defined in Chapter 35 of Title 42 of the General Laws, which may result from the proposed amendments. Based on available information, no significant economic impact was identified nor are there any alternative approaches, duplications or overlaps with other state regulations.

Written comments regarding the proposed amendments are welcomed and will be accepted within twenty (20) days of the date of publication of this notice. Please address all comments or inquiries to Ron D'Ambruoso, Acting Assistant Director, Workforce Regulation & Safety, Department of Labor and Training, 1511 Pontiac Avenue, Cranston, RI 02920.

In accordance with Rhode Island General Law, Section 42-35-3, an oral hearing on these proposed amendments will be granted if requested by twenty-five (25) persons or a governmental subdivision or agency, or by an association having not less than twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of the date of this publication of notice. If a hearing is properly requested, it shall be held on Wednesday, May 18, 2011 at the Department of Labor and Training, Division of Workforce Regulation & Safety, Bldg. 70-2, 1511 Pontiac Avenue, Cranston, RI 02920.

Signed this 11th day of April 2011

**Charles J. Fogarty
Director
RI Department of Labor and Training**