

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PROFESSIONAL REGULATIONS**

RULES AND REGULATIONS RELATING TO PREVAILING WAGES

As Amended: November 2012
 March 2012

- 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 the applicable Prevailing Wage (amount listed in the General Wage Decisions (Davis-Bacon Wage Determinations) 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. The Fringe Benefit Credit amount listed in the applicable General Wage Decisions (Davis-Bacon Wage Determinations) must always be paid in full as either a bona fide Fringe Benefit Credit or cash equivalent or both.
- 2) Any contractor who has been awarded a contract for a Public Works Project in excess of \$1,000, shall be liable for the payment of prevailing wages regardless of whether or not a subcontractor may be the primary obligor. The contractor shall ensure that a subcontractor pays the prevailing wage to its employees and otherwise complies with the provisions of R.I.G.L. Chapter 37-13.
- 3) Pursuant to RIGL §37-13-4, all public works projects shall be done by contract. Before awarding a contract for a Public Works Project, an awarding authority shall first determine from the Department of Labor and Training's website, www.dlt.ri.gov/pw, Debarment List, whether the proposed contractor has been debarred under R.I.G.L. §37-13-16 and shall then disqualify all such debarred contractors. In addition, the awarding authority shall notify all bidders that the Prevailing Wage is required as a condition of the contract.
- 4) All alleged violations of noncompliance with Chapter 13, Title 37 of the General Laws of Rhode Island shall be made in writing, and on forms issued by the Department of Labor and Training. The written complaints must be filed with the Department of Labor and Training on the Department's written complaint form within twenty-four (24) months of the completion of the project.
- 5) For apprentices registered pursuant to R.I.G.L. § 28-45-1 et al., a percentage of the Base Hourly Rate of Pay must be taken in accordance with the scale listed in the apprentice's apprenticeship agreement. If the employee is not registered as an apprentice pursuant to RIGL § 28-45-1 et al., then the employee must be paid the full Prevailing Wage according to the General Wage Decisions (Davis-Bacon Wage Determinations) for the classification of the work actually performed. Moreover, all general contractors and subcontractors who perform work on any Public Works contract awarded by the state and valued at one million dollars (\$1,000,000) or more

shall employ apprentices required for the performance of the awarded contract. The number of apprentices shall comply with the apprentice to journeyman ratio for each trade approved by the Department of Labor and Training. State awarding authorities may determine from the Department of Labor and Training's website, www.dlt.ri.gov/apprenticeship whether all contractors and subcontractors have a registered apprenticeship program. Apprentices found to be working out of the applicable journeyman to apprentice job site ratios shall be paid at the full applicable journeyman Prevailing Wage. See Appendix A, Job Site Ratios for Licensed and Unlicensed Trades, Rules and Regulations Relating to Labor Standards for the Registration of Apprenticeship Programs Under Title 28, Chapter 45, Apprentice Programs in Trade & Industry.

- 6) 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, or successors in interest of such contractor, where such principals, officers or successors in interest are responsible for the violation of this chapter.
- 7) The Department of Labor and Training will be guided by the General Wage Decisions (Davis-Bacon wage determinations) in accordance with Section 37-13-8 of the General Laws of Rhode Island.
- 8) In order to comply with Section 37-13-13 of the General Laws of Rhode Island, contractors and subcontractors shall execute a fully completed RI Certified Weekly Payroll Form, Appendix A, for each week of work performed on the project and shall furnish the fully executed RI Certified Weekly Payroll Form to the awarding authority on a monthly basis for all work completed in the preceding month. However, federal forms may be submitted to the Rhode Island Department of Transportation. If the Department of Labor and Training investigates any contractor awarded a contract from the Rhode Island Department of Transportation, the contractor shall furnish the Department of Labor and Training a fully executed certified payroll on the RI Certified Weekly Payroll Form, Appendix A, within ten (10) days of request. All awarding authorities shall furnish the Department of Labor and Training any requested certified payroll within ten days of request. The Department of Labor and Training may impose a penalty of up to five hundred dollars (\$500) for each calendar day of noncompliance with this section.
- 9) In compliance with Section 37-13-13, when the general or primary contract is one million dollars (\$1,000,000) or more, each contractor or subcontractor shall maintain on the work site a fully executed RI Certified Prevailing Wage Daily Log, Appendix B, listing the contractor's employees employed each day on the public works site; the RI Certified Prevailing Wage Daily Log shall be available for inspection on the public works site at all times; this rule shall not apply to road, highway, or bridge public works projects. Where applicable, contractors must furnish both the Rhode Island Certified Prevailing Wage Daily Log, Appendix B, together with the Rhode Island Weekly Certified Payroll, Appendix A, to the appropriate awarding authority. The Department of Labor and Training may impose a penalty of up to five hundred

dollars (\$500) for each calendar day of noncompliance with this section; mere errors or omissions in the RI Certified Prevailing Wage Daily Log shall not be grounds for imposing a penalty under this section

- 10) 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.
- 11) In enforcing the provisions of Chapter 13 of Title 37, when any contractor or subcontractor fails to comply with RIGL 37-13-13(a) and (b), the Director of Labor and Training may order an awarding authority to withhold all future payments until such time as the contractor or subcontractor has fully complied. The amount withheld from any subcontractor shall be proportionate to the amount attributed or due the offending subcontractor as determined by the awarding authority.
- 12) 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 one thousand dollars (\$1,000.00) and the work includes alterations, installation, repairs or construction. See Definitions herein for exceptions.
- 13) Each contractor awarded a contract with a contract price in excess of one thousand dollars (\$1000.00) for public works, each subcontractor who performs work on public works and each awarding authority awarding any such contract, shall keep those certified weekly payroll records required by 37-13-13 and on the forms set forth in Regulation 8 above, in a safe and secure location for a period of five (5) years from the date such work was performed. These certified weekly payroll records shall be made available to the Director of the Department of Labor and Training within ten (10) days of request to any contractor, subcontractor, or awarding authority.
- 14) 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.
- 15) 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.
- 16) All alleged violations of non-compliance with Chapter 37-13 filed with the Department of Labor and Training 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; verification of the funding source; and evidence that the correct prevailing wage was not in fact received.

17) The Director of Labor and Training hereby adopts the United States Department of Labor's definition of bona fide fringe benefit credits. These benefits may include medical or hospital coverage, life insurance, disability insurance (not workers' compensation), pension, 401k, apprentice costs (books, tuition) or holiday, sick, vacation/personal time. State mandated unemployment insurance, travel, gas reimbursement, company vehicle, uniforms and discretionary bonuses are not bona-fide fringe benefits. In addition, in order for the plan to be acceptable, the following stipulations must be met:

- Contributions must be irrevocable and for the employee's benefit;
- Contributions must be made regularly and at least on a quarterly basis;
- Contributions must not be required by law (i.e.: taxes, workers' compensation, social security, etc.);
- Contributions made for fringe benefit plans for prevailing wage work may not be used to fund the plan for periods of non-prevailing wage work;
- The amount of contributions for fringe benefits must be paid irrevocably to a trustee or third party.

If the fringe benefits are anticipated to be paid from general assets of the contractor (ex. holidays, sick and vacation days, profit sharing, etc.), the contractor must set aside, in an escrow account the amount of money the contractor plans to claim as a fringe benefit credit for the prevailing wage project. For example, if a contractor wants to claim credit for 10 paid holidays per year, the contractor must calculate the amount that will be paid (10 holidays x 8 hours x \$10/hour = \$800) and place those funds in an escrow account. In the event that an employee leaves the company before the end of the calendar year and prior to the completion of the project, any remaining escrowed funds must be paid to the employee. The allowable hourly credit must be determined separately and documented for each employee since the credit is based on figures that will usually vary for each individual, depending on their benefit contribution amount, type of benefits, hours worked, etc. In addition, only the employer's contribution toward a benefit may be used to calculate the allowable hourly credit.

18) Owners, supervisors, or foremen performing manual work on the public works site must be documented as employees on the contractor's RI Certified Weekly Payroll Form, Appendix A, which must show payment of the applicable prevailing wage rate.

19) Pursuant to RIGL §37-13-10, overtime shall be calculated on the Base Hourly Rate of Pay listed in the General Wage Decisions (Davis-Bacon Wage Determinations) and not the Fringe Benefit Credit amount. The full Fringe Benefit Credit amount listed in the General Wage Decisions (Davis-Bacon Wage Determinations) must be added to the adjusted Base Hourly Rate of Pay.

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” 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.
- 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” 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” 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 any public work or heavy construction on a public site to be performed by a public contractor 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 or subcontractor consistent with RIGL §37-13-7(c);
- J. “public works site”
- i. “public works site” means the physical place or places, but not a privately owned residence 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 or subcontractor which can reasonably be said to be included in the public works site;
 - iii. 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” means public work or heavy construction work at any public works site for a public purpose for which the prevailing wage law applies.
- L. “Employee” means any person employed by an employer. This definition shall be interpreted consistent with the definition of “employee” under 29 U.S.C. 203(e) and the Fair Labor Standards Act, including any exemptions thereto under said Act applicable to employment in Rhode Island.
- M. “Employer” means any person acting directly or indirectly in the interest of an employer in relation to an employee. This definition shall be interpreted consistent with the definition of “employee” herein and the definition of “employer” under 29 U.S.C. 203(d) of the Fair Labor Standards Act, including any exemptions thereto under said act applicable to employment in Rhode Island;

- N. "Independent Contractor" means any natural person, business, corporation or entity of any kind that provides goods or services to another and that does not qualify as an "employee" as provided for herein;
- O. "Residential Construction" means projects consisting of single family homes and apartments up to and including four (4) stories.
- P. "Fringe Benefit" means a benefit that is granted by an employer to an employee by company policy that involves a monetary cost such as holiday pay, vacation pay, health insurance, bona fide pension plans, etc. Benefits required by law such as workers compensation, unemployment premiums and matching social security are not considered "fringe benefits" and cannot be used as a credit against the fringe benefit portion of the rate. Authorized fringe benefit credits may be deducted from prevailing wages owed pursuant to Regulation 17.
- Q. "Prevailing Wage" means the Base Hourly Rate of Pay plus the Fringe Benefit Credit which are listed on the General Wage Decisions (Davis-Bacon Wage Determinations) developed by the U.S. Department of Labor and adopted by the Rhode Island Department of Labor and Training.
- R. "Base Hourly Rate of Pay" means the rate of pay identified for the trade as "Rates" on the General Wage Decisions (Davis-Bacon Wage determinations).
- S. "Fringe Benefit Credit" means the amount identified as "Fringes" for the trade on the General Wage Decisions (Davis-Bacon Wage determinations).

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	RI TDI		*Other	
			P.S.																	
		P.O.																		
		R.H.																		
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Legend: P.S. - Prevailing Wage Standard Hours P.O. - Prevailing Wage Overtime Hours R.H. - Regular Hours R.O. - Regular Overtime Hours

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.

