

Chapter DWD 290

CONTRACTS FOR CONSTRUCTION OF PUBLIC WORKS

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DWD 290.001 Scope. This chapter applies to all prevailing wage rate determinations under ss. 66.293 and 103.49, Stats., and to the certification of prevailing wage rates and the notification of minor subcontractors under s. 103.50, Stats.

History: Cr., Register, September, 1997, No. 501, eff. 10-1-97.

DWD 290.01 Definitions. The following definitions shall apply in wage rate determinations made by the department pursuant to this chapter:

(1) "Allowable rate" means the rate determined by the department from its review of a collective bargaining agreement by subtracting items which do not represent bona fide fringe benefits.

Note: This term is used in s. DWD 290.015 (3). Two examples of items which do not represent bona fide fringe benefits are industry or contract administration funds.

(2) "Area" has the same meaning as in ss. 66.293 (1) (a), 103.49 (1) (a) and 103.50 (1) (a), Stats.

(3) "Building or work" includes construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work, excepting for the delivery of mineral aggregate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

(4) "Contractor," under s. 66.293 (3) (g) and (h), Stats., means a person, including a construction manager or consultant who has entered into a contract with a municipality for a project of public works.

(5) "Department" means the state of Wisconsin department of workforce development.

(6) "Employer," as used in these rules and in s. 66.293 (3) (f), Stats., includes any contractor, subcontractor, agent or other person, doing or contracting to do all or a part of the work.

(7) "Employees working on the project" means laborers, workers and mechanics employed directly upon the site of the work.

(8) "Erection, construction, remodeling, or repairing" means all types of work done on a particular building or work at the site thereof in the construction or development of the project, including without limitation, erecting, construction, remodeling, repairing, altering, painting and decorating, the transporting of materials and supplies to or from the building or work done by the employees of the contractor, subcontractor, or agent thereof, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work, by persons employed by the contractor, subcontractor, or agent thereof.

(9) "Highway, street, or bridge construction" includes curb, gutter and sidewalk projects, and excludes without limitation because of enumeration street lighting systems, sanitary sewer, storm water sewer and water service and main construction projects, unless an integral part of the highway, street or bridge construction.

(10) "Hourly contributions" are the hourly contributions, or equivalent, for economic or fringe benefits in addition to the hourly basic rates. Payments for food, lodging, mileage, riding time, waiting time, call-in pay, overtime and other similar items are excluded. The rate of contribution or cost which is ordinarily an hourly rate, and the number of hours of work on which it is payable, will be reflected in the wage determination as such. If the contributions or costs for certain economic or fringe benefits are expressed in a formula or method of payment other than an hourly rate, the department may, at its discretion, express in the wage determination the rate of contribution or cost used in the formula or method of payment. The equivalent converted per hour value of the contribution or cost expressed in a formula or method of payment other than an hourly rate will be included in the prevailing hourly wage rate.

Note: Specific economic and fringe benefits. (Interpretation)

(a) The term "other economic benefit" as used in s. 103.49, Stats., is the so-called "open end" provision. This was included so that new fringe benefits may be recognized by the department as they become prevailing. A particular fringe benefit need not be recognized beyond a particular area in order for the department to find that it is prevailing in that area.

(b) To insure against considering and giving credit to any and all economic and fringe benefits some of which might be illusory or not genuine, the qualification required by the department is that such economic and fringe benefits must be bona fide. No difficulty is anticipated in determining whether a particular economic or fringe benefit is bona fide in the ordinary case where benefits are those common in the construction industry and which are established under a usual fund, plan or program. The following are typical conventional economic and fringe benefits: medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide economic and fringe benefits, but only where the employer is not required by other federal, state, or local law to provide any of such benefits. Employers may take credit for contributions made under such conventional plans without requesting the approval of the department.

(c) Economic and fringe benefits which an employer is obligated to provide under other federal, state, or local law are excluded. No credit may be taken under s. 66.293, Stats., for the payments made for such benefits. For example, payments for worker's compensation insurance under either a compulsory or elective state statute are not payments for economic or fringe benefits under s. 66.293, Stats. The omission in s. 103.49, Stats., of any expressed reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide economic and fringe benefits under s. 103.49, Stats.

(a) *Contribution irrevocably made by an employer to a trustee or to a third person.* Contributions for economic or fringe benefits made to a trustee or to a third person irrevocably will be considered in ascertaining hourly contributions. The "third person" must be one who is not affiliated with the employer. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund, except those used for appren-

ticeship training, must be set up in such a way that in no event will the employer be able to recapture any of the required contributions paid in or in any way to divert the funds.

Note: Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the employer of sums which were paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the employer. In such case the return by the insurance company to the employer of sums paid in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the employer, will not be deemed a recapture or diversion by the employer of contribution made pursuant to the plan.

(b) **Fund, plan or program.** The contributions for economic and fringe benefits must be made pursuant to a bona fide fund, plan or program.

Note: The phrase "fund, plan or program" is intended merely to recognize the various types of arrangements commonly used to provide economic and fringe benefits through employer contributions. In interpreting this phrase, the department will be guided by the experience of the United States department of labor and United States treasury department in administering the Employee Retirement Income Security Act of 1974, of the U.S. department of labor in administering other related programs, and of the Wisconsin state insurance commissioner in administering employee welfare funds under ch. 641, Stats.

(c) **Unfunded plans.** 1. The reasonable anticipated costs to an employer pursuant to an enforceable written commitment to carry out a financially responsible plan or program, will be considered economic and fringe benefits.

Note: These provisions are intended to permit the consideration of economic and fringe benefits meeting the requirements and which are provided from the general assets of an employer.

2. No type of economic or fringe benefit is eligible for consideration as a so-called unfunded plan unless:

- a. A copy has been supplied to the department;
- b. It could be reasonably anticipated to provide benefits described in s. 103.49, Stats., and this subsection;
- c. It is a bona fide commitment; and
- d. The plan or program providing the benefits has been communicated in writing to the laborers, workers and mechanics affected.

Note: As in the case of other economic and fringe benefits payable under s. 66.293, Stats., an unfunded plan or program must be "bona fide" and not a mere simulation or sham for avoiding compliance with s. 66.293, Stats.

(11) "Laborers, workers, mechanics and truck drivers" includes subjourneypersons and properly registered and indentured apprentices but excludes clerical, supervisory, and other personnel not performing manual labor.

(12) "Locality" means the geographical area from which the persons in the trades or occupations to be used in the performance and execution of the project will normally be secured for employment on such public works or other similar projects.

(13) "Minor subcontract" means a subcontract with an estimated cost that is less than \$2,000.00 and an estimated work duration of less than 3 days.

(14) "Prevailing hourly basic pay rates" are the hourly wage rates on which overtime payments are computed, and represent regular straight-time hourly wage rates before deductions or withholdings.

(15) "Prevailing hours of labor" has the same meaning as in s. 103.49 (1) (c), Stats..

(16) (a) "Prevailing wage rate" has the same meaning as in ss. 66.293 (1) (g), 103.49 (1) (d), and 103.50 (1) (d), Stats.

(b) In calculating the weighted average of the "highest-paid 51% of hours worked" in a trade or occupation, the department shall include all hours worked at the wage and corresponding fringe benefits that include the highest-paid 51% of hours worked.

(17) "Project of public works" includes building or work involving the erection, construction, remodeling or repairing,

under contract with a Wisconsin municipality as defined in s. 66.293 (3) (b), Stats.

(18) (a) "Site of work" means the physical place or places where the construction called for in the contract will remain when work on it has been completed and other adjacent or nearby property used by a contractor or subcontractor in connection with the project.

(b) "Site of work" includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards and similar facilities, when these facilities are substantially dedicated to the performance of the contract or project and are located in proximity to the actual construction location.

(c) "Site of work" does not include:

1. A permanent home office, branch plant establishment, fabrication plant or tool yard whose location and continued operation is determined without regard to a particular contract or project.

2. A fabrication plant, batch plant, borrow pit, job headquarters, tool yard or similar facility which is established by a supplier of materials before the opening of bids, whether or not the operations of the facility may be substantially dedicated to the performance of the contract for a period of time.

(19) "Subcontractor" means any subcontractor of a contractor and subcontractor of a subcontractor, regardless of tier of subcontractor.

(20) "Subjourneyperson" means a worker who primarily works under the direction of, and directly assists, a skilled trade employe by frequently using the tools of a specific trade. "Subjourneyperson" does not include an apprentice, a laborer, a heavy equipment operator or a truck driver.

(21) "Trade or occupation" means one of the job classifications that identifies the specific work regularly done by laborers, workers and mechanics in the erection, construction, remodeling or repairing of any building or any other works projects, on a contract basis on projects that are similar to the contract work in the area. The duties, kinds of work, and other component elements envisioned by the department for job classifications of trades and occupations are those which prevail and are historically recognized in the construction industry for work on projects of a character similar to the contract work.

(22) "Wage determination" includes the original determination and subsequent determinations modifying or otherwise changing the provisions of the original determination.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67; am. (intro.), (1), (4), (9) (a), (c) 1., (c) 2a, (10), (11), (12), (14), (15), r. and recr. (8) and (9) (intro.), cr. (16) to (18), Register, January, 1976, No. 241, eff. 2-1-76; am. (4) to (6), (9) (d), (10) to (13) and (15), Register, January, 1986, No. 361, eff. 2-1-86; am. (intro.), (2), cr. (1), (13), (16) (b) and (18), renum. (3) to (14) and (16) to (18) to be (12), (21), (7), (11), (16) (a), (14), (10), (22), (17), (3), (9), (8), (5), (4) and (19) and am. (11), (16) (a), and (5), r. (15); corrections made under s. 13.93 (2m) (b) 1., Register, September, 1997, No. 501, eff. 10-1-97.

DWD 290.015 Collecting and compiling wage rate information. (1) **ANNUAL SURVEY.** For the purpose of making prevailing wage rate determinations, the department shall conduct an annual survey of employers and compile the prevailing wage rate for each trade or occupation in each area. The survey shall consist of forms mailed by the department to employers for completion and return.

Note: The form referred to in this subsection may be obtained from the Department of Workforce Development, Equal Rights Division, P. O. Box 8928, Madison, WI 53708.

(2) **SURVEY DEADLINE.** The department shall include a deadline date on the forms sent to employers. A survey form shall be accepted for initial compilation if it is received at the department's offices with a postmark that is on or before the deadline date and it is properly completed.

(3) **COLLECTIVE BARGAINING AGREEMENTS.** If a collectively bargained wage rate and fringe benefit package is found to prevail in a particular area for a particular trade or occupation on a particular type of work and that rate is identical to an allowable rate in a

collective bargaining agreement for that trade or occupation which has been filed with the department during the current survey period, the department shall include in its determinations any future contractual increase or decrease provided for in the collective bargaining agreement or a successor agreement that is filed before January 1 of the calendar year following the end of the survey period. The department may determine premium pay, with the exception of height pay, pay for work with particular products, shift differential, and supervisory pay.

(4) **CORRECTIONS.** The department may correct errors in compiling data from the completed surveys, based upon its own determination or its inquiry to an employer.

(5) **INSUFFICIENT DATA.** If the wage rate data which the department may consider from all sources is insufficient to determine the prevailing wage rate for a particular trade or occupation in a particular area or for a particular type of project, the department may consider wage rate data compiled for a similar trade or occupation.

(6) **INITIAL DETERMINATIONS AND RECALCULATION REQUESTS.**
(a) The department shall issue its initial prevailing wage determinations based on the annual survey. Any person may request a recalculation of any portion of an initial determination, based upon the submission of the evidence required by s. 66.293(3) (bm) or 103.49 (3) (b), Stats., if the request and the accompanying evidence are received at the department's offices within 30 days after the initial determination date.

(b) The department will accept a recalculation request on the basis of evidence that the employer did not receive a survey, that the employer properly mailed a survey form which the department did not receive, or that the survey data previously submitted was erroneous. Except as provided in sub. (6m), a recalculation request will not be granted for the consideration of data that could have been submitted as a part of the annual survey but was not submitted on time.

Note: The department is required to affirm or modify the initial determination within 15 days after the date on which the department receives the request for recalculation. ss. 66.293 (3) (bm), 103.49 (3) (b).

(6m) **RECALCULATION REQUESTS FOR THE 1996 SURVEY.** For recalculation requests which pertain to the 1996 survey, the department will accept for consideration data that could have been submitted as a part of the annual survey but was not submitted on time.

(7) **FINAL DETERMINATIONS.** The department shall issue its final annual prevailing wage determinations after it has issued decisions on all timely recalculation requests.

History: Cr. Register, January, 1986, No. 361, eff. 2-1-86; correction in (5) (c) and (7) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1987, No. 378; r. and recr., Register, September, 1997, No. 501, eff. 10-1-97.

DWD 290.02 Apprentices. (1) Apprentices may work at less than the prevailing wage rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program administered by the U.S. department of labor, a state agency recognized by the U.S. department of labor, or under Wisconsin's apprenticeship law, ch. 106, Stats.

(2) Any employe who is not properly registered as an apprentice under sub. (1) shall be paid not less than the prevailing wage rate applicable to the work actually performed.

(3) Apprentices shall be paid a percentage of the applicable journeyman's hourly basic rate of pay specified in the wage determination issued for a project.

(4) The appropriate hourly basic rate percentage shall be obtained from each apprentice's indenture.

(5) Except as provided in this subsection, apprentices shall receive all fringe benefits specified for the appropriate journeyman classification in the wage determination issued for a project. If the department determines that a different practice prevails for

the payment of such benefits, then the fringe benefits shall be paid in accordance with that determination.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67; am. Register, January, 1976, No. 241, eff. 2-1-76; r. and recr. Register, January, 1986, No. 361, eff. 2-1-86.

DWD 290.025 Subjourneypersons. (1) The department shall include a determination of one or more subjourneyperson wage rates for a particular trade or occupation in a prevailing wage determination under the criteria set forth in this section.

(2) The department shall determine whether there are at least 500 countable hours reported for a particular trade or occupation within a county, whether a collectively bargained wage rate and fringe benefit package prevails in the county for that trade or occupation, whether that wage rate is identical to an allowable rate in a collective bargaining agreement for that trade or occupation which has been filed with the department during the current survey period, and whether the collective bargaining agreement includes a wage rate for a classification equivalent to a subjourneyperson. If these conditions are present, the department shall determine subjourneyperson wage rates for the particular trade or occupation, based on the wage rates in the collective bargaining agreement applicable to that county. The department shall not consider data from contiguous counties when making a determination under this subsection.

(3) As an alternative to sub. (2), the department shall determine whether there are at least 500 countable hours reported for a particular trade or occupation within a county and whether the majority of the total hours reported for the trade or occupation were worked under collective bargaining agreements. If these conditions are present, the department shall determine subjourneyperson wage rates for the particular trade or occupation in accordance with the collective bargaining agreement that covers the greatest number of employes in the particular trade or occupation and is applicable to that county. The department shall not consider data from contiguous counties when making a determination under this subsection.

(4) If neither the conditions in sub. (2) nor the conditions in sub. (3) are met, and there are at least 500 countable hours reported for a particular trade or occupation within a county, then the department shall determine subjourneyperson wage rates under this subsection.

(a) The entry-level subjourneyperson hourly basic rate of pay shall be equal to 35% of the journeyperson's hourly basic rate of pay for the trade or occupation plus 35% of the journeyperson's fringe benefit package.

(b) The regular subjourneyperson hourly basic rate of pay shall be equal to 65% of the journeyperson's hourly basic rate of pay for the trade or occupation plus 65% of the journeyperson's fringe benefit package.

(c) The hourly basic rate of pay under par. (a) or (b) shall not be less than the minimum wage.

(d) An employe shall not be employed at the entry-level subjourneyperson wage rate after one year of cumulative service in the trade or occupation. After one year of cumulative service, the employe shall be advanced to the regular subjourneyperson wage rate or be enrolled in an apprenticeship program or the employer shall not employ that employe on any project subject to a prevailing wage rate determination.

(e) The department shall determine wage rates for subjourneypersons in accordance with the following required job site ratios:

Number of journeypersons in the trade or occupation employed on the job site	Maximum allowable number of subjourneypersons (either entry-level or regular) employed on the job site
1	1
5	2
9	3
13	4
more than 13	1 for every 4 journeypersons

(f) Subject to the job site ratios in par. (e), an employer may employ one person as an entry-level subjourneyperson for each current apprentice employed in the same trade or occupation.

(g) As an alternative to par. (f) and subject to the job site ratios in par. (e), an employer may employ one person as an entry-level subjourneyperson if the employer has no current apprentice in the same trade or occupation but did employ an apprentice in the same trade or occupation within the last 5 years who completed his or her apprenticeship during that time.

(h) The department shall not consider data from contiguous counties when making a determination under this subsection.

History: Cr., Register, September, 1997, No. 501, eff. 10-1-97.

DWD 290.03 Classification of laborers, workers and mechanics. (1) Wages paid for work done in any given trade or occupation shall be computed at a wage rate not less than the prevailing wage rate listed in the determination. The type of work done for the most similar trade or occupation, and not a previously assigned occupational title, shall determine the required minimum prevailing wage rate payable. The applicable rate for the type of work done shall be determined according to the prevailing local practices in the area.

(2) A laborer, worker, mechanic or truck driver who is regularly employed to process, manufacture, pick up or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured materials or products is not entitled to receive the prevailing wage rate or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor unless any of the following applies:

(a) The laborer, worker, mechanic or truck driver is employed to deliver mineral aggregate such as sand, gravel or stone that is immediately incorporated into the work, and not stockpiled or further transported by truck, to or from the site of a project that is subject to this chapter by depositing the material substantially in place, directly or through spreaders from the transporting vehicle.

(b) The laborer, worker, mechanic or truck driver is employed to transport excavated material or spoil from and return to the site of a project that is subject to this chapter.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67; am. Register, January, 1976, No. 241, eff. 2-1-76; am. Register, January, 1986, No. 361, eff. 2-1-86; renun. to be (f), cr. (2), Register, September, 1997, No. 501, eff. 10-1-97.

DWD 290.035 Classification of projects. (1) **AGRICULTURAL.** (a) An agricultural construction project includes all buildings, structures or facilities that are primarily used for agricultural or farming purposes and excludes commercial and residential buildings.

(b) Examples of agricultural construction projects include, but are not limited to, barns, breeding facilities, cribs, fencing, greenhouses that are not incidental to retail, irrigation or water wells, land clearing, manure pits, sheds, silos, stables, storage and out-buildings, and training, riding and exhibition facilities.

(2) **BUILDING.** (a) A building construction project includes sheltered enclosures with access for the purpose of housing per-

sons, machinery, equipment and supplies. It includes all construction of these structures, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving. A structure need not be habitable to be a building construction project. The installation of heavy machinery or equipment does not change the character of a building construction project.

(b) Examples of building construction projects include, but are not limited to, apartment buildings comprising five stories and above, arenas that are enclosed, auditoriums, automobile parking garages, banks and financial buildings, barracks, bathhouses, bleachers that are indoor or outdoor, churches, city halls, civic centers, commercial buildings, courthouses, detention facilities, dormitories, fire stations, grandstands, hospitals, hotels, industrial buildings, institutional buildings, libraries, mausoleums, motels, museums, nursing and convalescent facilities, office buildings, out-patient clinics, passenger and freight terminal buildings, police stations, post offices, power plants, prefabricated buildings, restaurants, retirement homes, schools, service stations, shopping centers, stadiums, stores, subway stations, theaters, warehouses, and water and sewage treatment plant buildings.

(3) **HEAVY.** (a) A heavy construction project includes projects that are not properly classified as building, residential, agricultural or highway construction projects under subs. (1), (2), (4) and (5).

(b) Examples of heavy construction projects include, but are not limited to, antenna towers, breakwaters, caissons other than buildings or highways, canals, channels, channel cut-offs, chemical complexes or facilities other than buildings, cofferdams, coke ovens, dams, demolition that is not incidental to construction, dikes, docks, drainage projects, dredging projects, electrification projects that are outdoors, flood control projects, golf courses other than buildings, industrial incinerators other than buildings, irrigation projects, jetties, kilns, land drainage that is not incidental to other construction, land reclamation, landfills, levees, locks, oil refineries, pipelines, ponds, pumping stations that are pre-fabricated drop-in units, railroad construction, reservoirs, revetments, sewage collection and disposal lines, sewers, shoreline maintenance, ski tows, storage tanks, swimming pools that are outdoor with no buildings, subways other than buildings, tipples, tunnels, unsheltered piers and wharves, viaducts other than highway, water mains, waterways, water supply lines that are not incidental to buildings, water and sewage treatment plants other than buildings, and water wells other than residential or agricultural.

(4) **HIGHWAY.** (a) A highway construction project includes roads, streets, highways, bridges, runways, taxiways, alleys, trails, paths, parking areas, sidewalks and other similar construction not incidental to agricultural, building, heavy or residential construction projects.

(b) Examples of highway construction projects include, but are not limited to, airport runways, airport taxiways, alleys, base courses, bituminous treatments, bridle paths, concrete pavement, curbs, excavation and embankment for road construction, fencing for highways, grade crossing elimination such as overpasses or underpasses, guard rails on highway, gutters, highway or pedestrian bridges, highway signs, medians, parking lots, parkways, resurfacing streets and highways, roadbeds, roadways, shoulders, stabilizing courses, storm or sanitary sewers and water supply lines incidental to road construction, street paving, surface courses, and trails.

(5) **RESIDENTIAL.** (a) A residential construction project includes single family houses or apartment buildings of no more than four stories in height. It includes all incidental items such as water wells, site work, driveways, parking areas, utilities, and private sidewalks.

(b) Examples of residential construction projects include, but are not limited to, town or row houses, apartment buildings com-

prising four stories or less, condominiums comprising 4 stories or less, single family houses, garages and outbuildings, and student housing comprising four stories or less.

History: Cr., Register, September, 1997, No. 501, eff. 10-1-97.

DWD 290.04 Straight time wages. (1) An employer performing work subject to a department wage determination may discharge minimum wage obligations for the payment of straight time wages and economic and fringe benefits by paying in cash, making payments or incurring costs for bona fide economic or fringe benefits a) identical to, or of the same type as the ones found prevailing by the department and included in the wage determination, or b) not of the type found prevailing by the department, but filed with and regulated by either the United States secretary of labor under the Employee Retirement Income Security Act of 1974, or state of Wisconsin commissioner of insurance under ch. 641, Stats., or by a combination thereof. Before an employer can be given credit for any other unfunded economic or fringe benefit plan, the employer must supply a copy of the plan to the department and comply with all of the other provisions of s. DWD 290.01 (10) (c).

(2) Unconventional plans must be approved by the department before credit will be given for costs under s. 66.293 (3), Stats.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67; r. and recr. Register, January, 1976, No. 241, eff. 2-1-76; am. (1), Register, September, 1990, No. 418, eff. 10-1-90; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484.

DWD 290.05 Overtime wages. All hours worked by a laborer, worker or mechanic in excess of the prevailing hours of labor per day or per calendar week, must be paid at a rate at least 1½ times the hourly basic rate of pay. Sums paid by an employer for fringe and economic benefits shall be excluded in the computation of the overtime premium. In no event can the rate upon which the overtime premium is calculated be less than the amount determined by the department as the hourly basic rate of pay (i.e., cash rate). Nor can the rate upon which the overtime premium is calculated be less than the straight time cash payment made to the laborer, worker or mechanic, or be less than the hourly basic rate of pay, if it is higher. Contributions by employees are not excluded from the rate upon which the overtime premium is computed; that is, an employee's overtime premium rate is computed on the taxable earnings before any deductions are made for the employee's contributions to economic and fringe benefits. The employer's contributions, costs or cash payments for economic and fringe benefits may be excluded in computing the overtime premium rate so long as the exclusions do not reduce the overtime premium rate below the hourly basic rate contained in the wage determination.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67; r. and recr. Register, January, 1976, No. 241, eff. 2-1-76; am. Register, January, 1986, No. 361, eff. 2-1-86.

DWD 290.06 Laborers, workers and mechanics subject to s. 66.293, Stats. Every laborer, worker or mechanic employed directly upon the site of the work by the employer shall be subject to s. 66.293, Stats., regardless of the contractual relationship alleged to exist.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67; am. Register, January, 1976, No. 241, eff. 2-1-76; am. Register, January, 1986, No. 361, eff. 2-1-86.

DWD 290.07 Payrolls and records. Every employer shall keep and, upon request of the department or the contracting municipality, promptly furnish copies of any or all payrolls and records relating to work done, hours worked, and wages paid to laborers, workers or mechanics, and shall allow the department to examine original records relating to any and all work as required by s. 66.293 (3) (e) and (f), Stats.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67; r. and recr. Register, January, 1976, No. 241, eff. 2-1-76; am. Register, January, 1986, No. 361, eff. 2-1-86.

DWD 290.08 Wage determinations for individual projects. (1) A municipality shall request the department to ascertain the prevailing wage rate, hours of labor and hourly basic pay rates for all trades or occupations required to complete any project of public works which meets or exceeds the dollar thresholds provided in s. DWD 290.155.

(2) The request shall be made on the form numbered ERD-5719, which shall be provided at no charge by the department.

(3) The department may be notified about ensuing projects as far in advance as possible. However, the official request to the department to ascertain and determine the prevailing wage rate, hours of labor and hourly basic pay rates for all trades and occupations required in the work contemplated shall be made between 50 and 60 days before making a contract by direct negotiation or soliciting bids.

(4) A prevailing wage rate determination that is issued on or before June 30 in a particular year shall remain in effect for the remainder of the calendar year. A prevailing wage rate determination that is issued after June 30 shall remain in effect for 180 days.

Note: "Application For A Prevailing Wage Rate Determination", form ERD-5719, may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67; r. and recr. Register, January, 1976, No. 241, eff. 2-1-76; r. and recr. Register, January, 1986, No. 361, eff. 2-1-86; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; cr. (4), Register, September, 1997, No. 501, eff. 10-1-97.

DWD 290.09 Procedure for requesting exemption from applying to department for wage determinations.

(1) The petition of any municipality for exemption from applying to the department for ascertainment and determination of prevailing wage rates, hours of labor and hourly basic pay rates pursuant to s. 66.293 (3) (d), Stats., should be sent to the department and shall include:

(a) A certified copy of the ordinance or other enactment setting forth the standards, policy, procedure and practice followed in ascertaining and determining prevailing wage rates, hours of labor and hourly basic pay rates in all trades and occupations required in the work contemplated.

(b) A current schedule of prevailing wage rates, hours of labor and hourly basic pay rates for all trades and occupations required for any project of public works, except highway, street or bridge construction, setting forth:

1. Trades and occupations required.

2. Prevailing wage rates, hourly basic pay rates, hourly contributions for economic or fringe benefits, and prevailing hours of labor per day and per week for such trades and occupations.

3. Types of projects of public works, by kind and size on which such rates and hours apply.

4. Types of such economic or fringe benefits.

5. Effective dates of such rates, contributions and hours.

(c) Frequency of, method of, and responsibility for updating the schedule of prevailing wage rates, hours of labor and hourly basic pay rates.

(d) Name, title, address and phone number of person to whom the exemption order is to be mailed.

(2) Upon request of the department, the municipality shall also supplement its petition with information pertinent to determining the granting of an exemption.

(3) An exemption will be granted for a period no longer than 18 months. A new petition shall be filed with the department each time continuation of the exemption is desired beyond the termination date granting such exemption.

(4) Each exemption is subject to revocation for cause at any time, and also subject to observance of the applicable provisions of Wisconsin laws, rules and regulations of the department, and of the agreements included in the petition and application. The provisions of ch. DWD 290 and ss. 66.293 (3) (a), (e), (f), (g), (h),

(i), (j), (k), (m), (n) and 103.49 (1) and (2), Stats., remain in effect and are not included within an exemption.

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67; r. and recr. Register, January, 1976, No. 241, eff. 2-1-76; am. (4), Register, September, 1990, No. 418, eff. 10-1-90; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484.

DWD 290.10 Procedure for an administrative review. (1) This section applies to a request for review by a local government unit under s. 66.293 (3) (br), Stats., or a state agency under s. 103.49 (3) (c), Stats.

(2) A request for review by a local governmental unit or a state agency will be accepted for consideration if the request meets the following requirements:

(a) The request is in writing.

(b) The request is made within 30 days from the date the determination was issued. A request is timely under this section if it is received by mail with a postmark date within the review period.

(c) The request is made at least 10 days before the date that construction contracts are awarded or negotiated.

(d) The request includes wage rate information for the contested trade or occupation on at least 3 projects of the same type located in the city, village or town where the proposed project is located and on which some work was performed within the applicable survey period and which was previously considered by the department in issuing the determination.

(3) In the course of its review, the department shall consider wage rate information from all other similar projects on which work was performed within the city, village or town during the applicable survey period. The department shall follow the same calculation criteria employed in the survey determinations.

Note: The department is required to affirm or modify the determination within 15 days after the date on which the department receives the request for review. ss. 66.293 (3) (br), 103.49 (3) (c).

History: Cr. Register, January, 1967, No. 133, eff. 2-1-67; r. and recr. Register, January, 1976, No. 241, eff. 2-1-76; r. and recr. Register, January, 1986, No. 361, eff. 2-1-86; am. (1) (c), Register, June, 1987, No. 378, eff. 7-1-87; am. (1) (c), Register, September, 1990, No. 418, eff. 11-1-90; correction in (1) (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; r. and recr., Register, September, 1997, No. 501, eff. 10-1-97.

DWD 290.11 Procedure for filing a wage determination with a municipality which did not request or incorporate a required wage determination into a contract.

(1) When a municipality does not request or incorporate the prevailing wage rate determination required under s. 66.293 (3), Stats., the department's notification of noncompliance required by s. 66.293 (3) (j), Stats., shall include:

(a) Brief description of project.

(b) Brief explanation of requirements of s. 66.293 (3), Stats.

(c) A request for the submission of the same information as set forth in s. DWD 290.08 (1).

(d) A request for the names and addresses of all contractors, subcontractors, agents or other persons doing or contracting to do all or any part of the work, type of work each is responsible for, and hourly basic rates of pay and types and amount of hourly and other contributions for economic and fringe benefits each paid, is paying or intends to pay on the project.

(e) Deadline date for the department's filing of the prevailing wage rate determination is within 30 days after department has given notice to the municipality of noncompliance.

(f) Deadline date for the municipality's filing of the department's requested information is a maximum of 10 days from the department's notification of noncompliance.

(2) A request for review of a wage determination issued pursuant to sub. (1) may be filed with the department within 30 days from the date issued. The department shall follow the procedures prescribed in s. DWD 290.10 in conducting such a review.

(3) Under the circumstances described in sub. (1), the municipality shall either terminate the contracts and resolicit bids using the determination, or incorporate the determination retroactive to the beginning of construction through supplemental agreement or through a change order, provided that the employer is compensated for any increases in wages resulting from such change. The method of incorporation of the determination and the adjustment in contract or bid price, where appropriate, shall be in accordance with applicable procurement law.

History: Cr. Register, January, 1976, No. 241, eff. 2-1-76; r. and recr. (2), cr. (3), Register, January, 1986, No. 361, eff. 2-1-86; am. (1) (intro.), Register, June, 1987, No. 378, eff. 7-1-87; correction in (1) (c) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484; r. and recr., Register, September, 1997, No. 501, eff. 10-1-97.

DWD 290.12 Posting wage rates and hours. (1) A clearly legible copy of the determination issued by the department or exempted municipality for the project, together with the provisions of s. 66.293 (3) (a) and (e), Stats., shall be kept posted in at least one conspicuous and easily accessible place at the project site by the employer engaged on the project and such notice shall remain posted during the full time any laborers, workers or mechanics are employed on the project.

(2) Within 7 days of the date that work is first performed by a minor subcontractor, a contractor or subcontractor that hires a minor subcontractor shall either provide a copy of the prevailing wage rate determination for the project to the minor subcontractor or provide written notification to the minor subcontractor that the work to be performed is subject to a prevailing wage rate determination issued by the department.

History: Cr. Register, January, 1976, No. 241, eff. 2-1-76; am. Register, January, 1986, No. 361, eff. 2-1-86; am. (1) (intro.), Register, June, 1987, No. 378, eff. 7-1-87; renum. to be (1), cr. (2), Register, September, 1997, No. 501, eff. 10-1-97.

DWD 290.13 Evidence of compliance by agent and subcontractor.

Each agent and subcontractor shall file with the contractor, upon completion of their portion of work on the public works project, an affidavit stating that all of the provisions and requirements of s. 66.293 (3), Stats., have been fully complied with and that full and accurate records have been kept which clearly indicate the name, trade or occupation of every laborer, worker, or mechanic employed on the project, the number of hours worked by each employe and the actual wages paid therefor. The affidavit shall state where these records shall be kept and the name, address and telephone number of the person who shall be responsible for keeping them. These payroll records shall be retained and made available for a period of at least 3 years following the completion of the project of public works and shall not be removed without prior notification to the municipality.

History: Cr. Register, January, 1976, No. 241, eff. 2-1-76; r. and recr. Register, January, 1986, No. 361, eff. 2-1-86.

DWD 290.14 Evidence of compliance by contractor.

Upon completion of the project of public works and prior to final payment therefor, each contractor shall file with the municipality an affidavit stating:

(1) That the contractor has complied fully with the provisions and requirements of s. 66.293 (3), Stats., and ch. DWD 290; that the contractor has received evidence of compliance from each of the agents and subcontractors; and the names and addresses of all of the subcontractors and agents who worked on the project.

(2) That full and accurate records have been kept, which clearly indicate the name and trade or occupation of every laborer, worker or mechanic employed by the contractor in connection with work on the project. The records shall show the number of hours worked by each employe and the actual wages paid therefor; where these records shall be kept and the name, address and telephone number of the person who shall be responsible for keeping them. The records shall be retained and made available for a period of at least 3 years following the completion of the project

of public works and shall not be removed without prior notification to the municipality.

Note: For ss. DWD 290.13 and 290.14, completion of the entire project means the last day on which physical work was performed on the site of the project.

History: Cr. Register, January, 1976, No. 241, eff. 2-1-76; r. and recr. (2), Register, January, 1986, No. 361, eff. 2-1-86; correction in (1) made under s. 13.93 (2)(b) 7., Stats., Register, April, 1996, No. 484.

DWD 290.15 Adjusting minimum project cost of completion. Every year, the department shall adjust the minimum estimated project cost of completion figures for both single-trade and multi-trade public works projects on the basis of the change in the construction cost index as published in the engineering news-record.

Note: The Engineering News-Record is a weekly publication of the McGraw-Hill Companies, 1221 Avenue of the Americas, New York, NY 10020. A construction cost index is published in the "Construction Economics" section of each issue.

History: Cr. Register, January, 1976, No. 241, eff. 2-1-76; emerg. r. and recr., eff. 2-13-98; r. and recr. Register, August, 1998, No. 512, eff. 9-1-98.

DWD 290.155 Minimum estimated project costs. This chapter does not apply to any single-trade public works project for which the estimated cost of completion is below \$33,000, and any multi-trade public works project for which the estimated cost of completion is below \$164,000.

Note: Section 103.49 (1), Stats., defines "single-trade public works project" as "a public works project in which a single trade accounts for 85% or more of the total labor cost of the project," and "multi-trade public works project" is defined as "a public works project in which no single trade accounts for 85% or more of the total labor cost of the project."

History: Cr. Register, November, 1976, No. 251, eff. 12-1-76; r. and recr. Register, January, 1980, No. 289, eff. 2-1-80; am. Register, May, 1982, No. 317, eff. 6-1-82; am. Register, December, 1984, No. 348, eff. 1-1-85; am. Register, June, 1987, No. 378, eff. 7-1-87; am. Register, October, 1990, No. 418, eff. 11-1-90; am. Register, November, 1993, No. 455, eff. 12-1-93; am., Register, September, 1997, No. 501, eff. 10-1-97; emerg. am. eff. 2-13-98; am. Register, August, 1998, No. 512, eff. 9-1-98; emerg. am. eff. 1-4-99; am. Register, May, 1999, No. 521, eff. 6-1-99.

DWD 290.16 Cost of inspection. Any person may request an inspection under s. 66.293 (3) (m), Stats. The request shall be made in writing, identifying the project, employer and trade or occupation involved and including a statement to the effect that the requestor is willing to pay for the complete cost of the inspection if the employer is found to be in compliance. The department shall maintain a record of the cost it incurs in making the inspection and this amount shall be charged to the requestor if the employer subjected to the inspection is found to be in compliance.

History: Cr. Register, January, 1976, No. 241, eff. 2-1-76; r. and recr. Register, January, 1986, No. 361, eff. 2-1-86.

