



OVERVIEW OF PREVAILING WAGES

Thursday, February 11, 2016

Country Springs Hotel, 2810 Gold Rd. Pewaukee, WI

A photograph of a two-lane asphalt road with yellow dashed center lines and solid yellow edge lines, stretching into the distance. The road is flanked by rolling green hills under a bright blue sky with wispy white clouds. The sun is visible on the horizon, creating a lens flare effect.

Overview of Changes To The Prevailing Wage Law: Old State Law versus New State Law



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Objectives of Presentation

- ❖ Educate contractors on New Prevailing Law**
- ❖ Obtain feedback from contractors to record concerns and questions for consideration by WisDOT**



Presentation Outline

- ❖ History of Prevailing Wage
- ❖ Current Law vs. New Law
- ❖ Application of New Law
- ❖ Challenges
- ❖ Q & A



Prevailing Wage – A History

- ❖ Existed in some form for 125 years
- ❖ Kansas Law of 1891
- ❖ Davis-Bacon Act of 1931.



Why have Prevailing Wage Law ?

- ❖ Laws enacted to discourage awarding public works contracts to low balling employers who underbid local employers by paying workers substantially less than normally received by workers in an area.
- ❖ No other way to protect local employers due to low bid requirements.
- ❖ Employers required to base bids on prudent planning, good management and supervision and the skill and efficiency of their workers and not solely on the wages paid to their workers.

New State Prevailing Wage Law

- **2015 Wis. Act 55 changes State prevailing wage laws.**
- **The changes take effect January 1, 2017.**





SUMMARY OF CHANGES

- ❖ Definition of Prevailing Wage
- ❖ Enforcement of Law
- ❖ Setting of Rates
- ❖ Labor Classifications
- ❖ Trucking Requirements

OLD LAW v NEW LAW





Current Prevailing Wage Laws

- ❖ Wisconsin has 3 separate and controlling prevailing wage rate laws. Each law covered a different type of public works project.
- ❖ [Section 66.0903, Wisconsin Statutes](#) covers projects bid or negotiated by a local governmental unit.
- ❖ [Section 103.49, Wisconsin Statutes](#) covers projects bid by a state agency, except state highway and bridge projects.
- ❖ [Section 103.50, Wisconsin Statutes](#) covers state highway and bridge projects bid by the Department of Transportation.



New Prevailing Wage Law

Two set of statutes govern prevailing wage:

- **Section 84.062, Wis. Stats.
(WisDOT)**
- **Section 16.856, Wis. Stats
(Department of Administration)**
- **Some sections repealed in Chapter 103**



New Prevailing Wage Law for WisDOT Projects

- **Wisconsin has a prevailing wage law for construction as defined in Section 16.856, Wis. Stats which refers to wages set under the Davis Bacon Act**

DAVIS BACON ACT





What is Davis Bacon Act?

Davis Bacon Act (DBA) enacted by Congress on March 3, 1931, to assure local workers a fair wage and to provide local contractors a fair opportunity to compete for local federal government contracts



Old Prevailing Wage Rate

The hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for a majority of the hours worked in a trade or occupation on projects in an area.



New Definition of Prevailing Wage

- “‘Prevailing wage rate’ has the meaning given in s.16.856 (1) (f).”
 - Section 84.062(1)(c), Wis. Stats.
- “‘Prevailing wage rate’ means the applicable prevailing wage rate for an area, as determined by the U.S. department of labor under 40 USC 3142.”
 - Section 16.856(1)(f), Wis. Stats.

Enforcement of Prevailing Wage (Current Law)

- ❖ The Department of Workforce Development was traditionally the state agency with primary responsibility for enforcement.
- ❖ Some assistance from the Dept. of Justice and local governmental units.
- ❖ WisDOT had enforcement authority on all state highway and bridge projects.





Enforcement of New Law

- ❖ **WisDOT enforces Chapter 84, Wis. Stats.**
 - **Section 84.001(1), Wis. Stats.**

- ❖ **Department of Administration enforces Chapter 16, Wis. Stats.**
 - **Section 16.002(1), Wis. Stats**





Who Sets the Rates ?

Current Law

- ❖ DWD sets rate under current law using Annual DWD survey of employers.
- ❖ DWD calculated projected prevailing wage rates for each county to become effective January 1 of the following year. These preliminary hourly rates were called the “initials,” and published on the department’s website.





Who Sets the Wage Rate?

New Law

❖ DWD:

- ❖ Will not set prevailing wage rates under section 16.856, Wis. Stats.

❖ WisDOT Projects

- ❖ WisDOT will have to use the prevailing wage set by USDOL

❖ Prevailing wage for locally let projects:

- ❖ No prevailing wage because Section 66.0903, Wis. Stats. (2013-14) is repealed.

Will the Wage Rate Change?

- **Short Answer:**
- Rates may be the same or different
New law mandates WisDOT to use rates set by USDOL which may be different than those set under current Wisconsin Law.





Labor Classifications (Current Law)

- ❖ DWD publishes a “Dictionary of Occupational Classifications and Work Descriptions” that describes, in detail, the primary purpose and typical duties performed by each classification that it recognizes.
- ❖ Dictionary found on DWD’s web site at the following address:

http://dwd.wisconsin.gov/er/prevaling_wage_rate/dictionary_1.htm





Will the Classifications of Labor be the Same ?

New Law for WisDOT Projects

- **Short Answer:**

- Classifications may not match what is currently described in DWD Classifications
- Classifications of Labor is different under the USDOL Standard Occupational Classifications
 - <http://www.onetonline.org/>
 - <http://www.bls.gov/soc/>



Will the Classifications of Labor be the Same ?

❖ Non WisDOT Projects

❖ Department of Administration (DOA) will promulgate rules, which will govern:

❖ State vertical construction projects

and

❖ Locally let projects

Trucking Under Current Law

Current Law

- ❖ Haul is covered based on type of material, source of material, and in final place.
- - *Section 103.50(2m), Wis. Stats. (2013-14).*
- ❖ Distinction for “depositing material directly in final place, from the transporting vehicle or through spreaders from the transporting vehicle.” for hauls from commercial source





Impact of New Law on Trucking

- ❖ Haul is covered based on **source** of material only i.e. “dedicated” . Spoil is not covered
- *Section 84.062(2m), Wis. Stats.*
- ❖ Prevailing wage may apply for hauls from commercial source for time spent “on site of work” if the time spent on “site of work” is not “de minimus”. Commute time from the source to the job site is not covered.
- ❖ Spoil maybe covered if used on the job site for backfill because it could fall under “site of work” requirement. If hauled away from site commute time from the “project site” to a undedicated site may not be covered.



What Remains Unchanged

- **Hourly basic rate of pay**
- **Bona fide economic benefit**
- **Statutory minimums**
- **Overtime and holiday pay unchanged**
- **“Prevailing hours of labor” for any trade or occupation in any area means 10 hours per day and 40 hours per week and may not include any hours worked on a Saturday or Sunday or on any of the following holidays.**

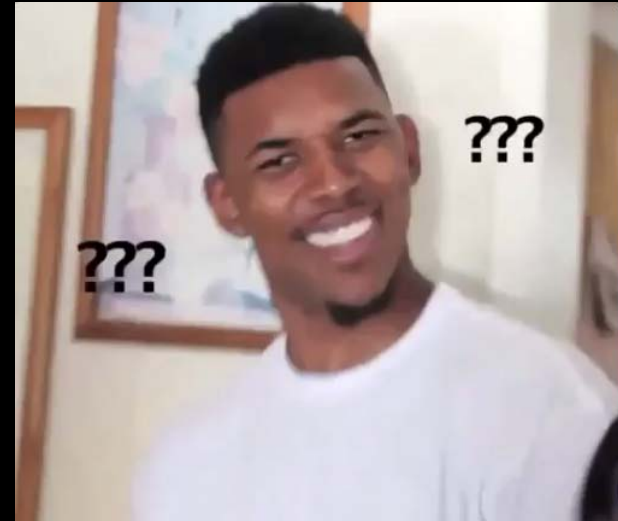


When Will The Law be Effective

- Changes in prevailing wage “first appl[y]”:
 - Request for bids issued on January 1, 2017.
 - Contract entered into on January 1, 2017. {2015 Wis. Act 55 sections 9350(3q), 9351(3q).}
- Contracts for 2017 construction season may be advertised as early as preceding summer. (i.e. 2016).
- Contracts for 2017 construction season may be advertised as late as 2017.

Application of New Law

SCENARIO 1



ABC Contractor is working on various WisDOT projects in 2017. Which law will apply?

Application of New Law

SCENARIO 2



- A truck driver, an employee of XYZ Trucking Company, is delivering mineral aggregate from a commercial source. Is the haul covered under the New Prevailing Wage Law ?

Application of New Law

SCENARIO 3

Jane Doe is an employee of ABC Contractor and is working the third shift. What rate of pay will apply?





Challenges

❖ Two laws at work in 2017

- ❖ Section 103.50, Wis. Stats. (2013-14).

- ❖ Section 84.062, Wis. Stats.

❖ DOA rules will replace DWD guidance.

❖ Education of industry and workers.

❖ Pay for 3rd shift work? No DBRA equivalent

❖ Future pay increases issue

❖ Classification Issue

QUESTIONS?



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