

WisDOT let projects contain prevailing wage rates ONLY if federally funded

Currently, there is no Wisconsin state prevailing wage law. If the project is funded with **state funds only**, there are no prevailing wage rates. **If the project is funded with any federal funds**, then the federal law known as Davis-Bacon requires that federal prevailing wage rates be paid. As of right now, the best way to determine if a project is state funded or federally funded is to contact the Labor Compliance Specialist for the county where the project is.

Who is entitled to receive prevailing wage?

Workers who work in classifications covered under the contract must be paid the prevailing wage. The types of classifications include truck drivers, landscapers, traffic control, laborers, operating engineers, consultant engineering staff who perform manual labor, etc. Work that is administrative, clerical, technical, or supervisory is NOT covered by prevailing wages, although, supervisors and others must be paid the prevailing wage for any time spent working in a covered classification and be included in the weekly submitted payrolls.

Wage rates posted on project site if a federally funded project

Wages vary depending on type of work, county where work is performed, and date the contract was let. **According to federal law, federal prevailing wage rates must be posted on the project site.** Job postings are usually on a board near the project's field office. The prime contractor's project manager or WisDOT staff can direct you to the wage board.

Benefits your employer can provide as part of your wage

The prevailing wage includes rates for benefits, such as health insurance, pension, vacation, and holidays. The actual benefits you receive can include other legitimate benefits such as life insurance, disability, accident insurance, etc. Not included as benefits are payments to the Transportation Education Fund (TEF), payments for food, lodging, or mileage; unemployment compensation; workers' compensation; or similar benefits. When providing benefits, your employer **must** inform you ***in writing*** when you are eligible and should tell you how you can obtain more information on how to use the benefits.

Effect of benefits on your "take-home" pay

The benefit rate is added to the contract base hourly rate to determine the "straight-time total package" for the classification. The "overtime total package" is one and a half times the contract base rate or your base hourly rate if higher, plus the hourly fringe benefit rate.

Your employer has the choice to pay the total package rates entirely on your paycheck as a cash benefit or they can pay part to union benefit funds or other legitimate benefit funds. Your base hourly rate of pay or your benefit package may vary; however, your "total package" should at least equal prevailing wage. Bona fide fund benefits must be deposited no less than quarterly to the employee's account.

Overtime on WisDOT contracts

Wisconsin state overtime law applies to all hours worked in excess of 40 in the workweek. Wis. Stat. 103.01-03; Wis. Admin. Code § DWD 274 (2018)

Personal deductions need your written permission

Any deduction, other than those required by law, requires your written permission. Any deduction that benefits your employer, rather than you, is unlawful.

All wages and cash benefits for workers must be paid weekly

All workers on WisDOT let construction projects performing covered work must be paid weekly.

The driving portion of a truck driver's payment must be computed at the hourly rate for truck driving.

Employee vs. Owner/Operator

Red flags are raised when a truck driver does not own his/her truck and leases a truck from a contractor. Some of the flags are:

- You are asked to complete an IRS W-9, Request for Taxpayer Id Number and Certification
- You are asked to purchase Workers' Compensation Insurance
- You are told where to park the truck at night
- You are told where to work
- You work for a "fixed" amount or "hourly" rate
- You are not free to work where you want
- You are not free to work when you want
- You do not pay for fuel, maintenance, or repair of the truck
- You do not find your own work
- You do not advertise your services to the public
- You have very little investment in your business
- You cannot realize a profit or loss based on how you manage your business

This list does not include everything needed to make a determination concerning your employment relationship.

When prevailing wage applies to truckers

Prevailing Wages Required

- Hauls from a Dedicated AND Virtually Adjacent Source (round trip)
- Hauling material or supplies from one location on the site of work to another location on the site of work
- Time spent loading/unloading materials on the site of work if such time is more than de minimis
- Excavated material or spoil hauled to a site indicated in contract (round trip)

No Prevailing Wages Required (if such time is de minimis or less)

- Hauls from a Non-Dedicated Source
- Time spent loading/unloading materials on the site of work if such time is de minimis or less
- Delivery of materials by employees of a bona fide material supplier
- Excavated material or spoil hauled off site of work

Questions about whether a source is dedicated or not can be directed to WisDOT project staff or the WisDOT Labor Compliance Specialist for the geographic area.

WisDOT trucking guidelines are located here: <http://wisconsindot.gov/Pages/doing-bus/civil-rights/labornwage/trckng.aspx>.

Penalties for not paying full wage

Any employer found guilty of violating the wage laws may be fined and convicted of a felony for each offense. Each day is a separate offense. **If an employer requires an employee to give back (“kick-back”) any part of the wage, the employer can be fined and convicted of a felony.**

Records every worker should keep

Fill out your time sheet to accurately show the work you did and the hours you worked; employers can't pay you correctly without this information. In addition, keep your own written record of this information. Each day, write down: the hours you worked at each job classification; project information (highway, county, WisDOT project number, construction zone limits); and prime contractor. Keep copies of any other records that could be used to determine any wage claim, such as check stubs, trip tickets, and time sheets.

What to do if you are not being paid the prevailing wage

First, ask your employer for an explanation. If you can't resolve it with your employer, contact the Labor Compliance Specialist for the region where the work was performed. Action can be taken only for work on WisDOT projects.

Claims are confidential

All complaints are confidential. Maintaining this confidentiality may limit the ability to completely resolve your claim or to do so in a timely manner. The Labor Compliance Specialist will discuss your situation and options with you.

How to file a wage claim

All claims must be in writing, therefore a “Wages Claim” form will be sent to you by the Labor Compliance Specialist. The completed form must be returned with copies of any records that support your claim. If you have no proof for your claim, it may be impossible to resolve it.

Employer retaliation is prohibited

Employees who have filed complaints or provided information cannot be discriminated against or discharged on account of such activity. If adverse action is taken against an employee for engaging in protected activity, the affected employee or the US Department of Labor may file suit for relief, including reinstatement to his/her job, payment of lost wages, and damages.

Wage and Equal Employment Opportunity (EEO) Interviews

Employees and representatives of WisDOT are authorized to interview contractor employees on projects. Workers who are interviewed should not fear retaliation for participating in wage and EEO interviews.

WisDOT Regional Labor Compliance Specialists

Southwest Region

Madison office (Columbia, Dane, Dodge, Green, Iowa, Jefferson, Lafayette, Rock and Sauk counties)
2101 Wright St., Madison, WI 53704
(608) 242-8040 Fax: (608) 243-3380

La Crosse office (Crawford, Grant, Juneau, La Crosse, Monroe, Richland, and Vernon counties)

3550 Mormon Coulee Road, La Crosse, WI 54601
(608) 785-9051 Fax: (608) 785-9969

I-39/90 and Verona Road Mega Project

111 Interstate Blvd., Edgerton, WI 53534
(608) 884-1178 Fax: (608) 221-6627

Southeast Region (Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington, and Waukesha counties)

141 N.W. Barstow, P.O. Box 798
Waukesha, WI 53187-0798
(262) 521-5358 Fax: (262) 548-5906

North/South Mega Project

(262) 521-5337 Fax: (262) 548-5906

Zoo Interchange Mega Project

(262) 548-5923 or (262) 521-5337 Fax: (262) 548-5906

Northwest Region (Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Jackson, Pepin, Pierce, Polk, Rusk, Sawyer, St. Croix, Taylor, Trempealeau, and Washburn counties)

1701 N. 4th Street, Superior, WI 54880
(715) 392-7977 Fax: (715) 394-2340

Northeast Region (Brown, Calumet, Door, Fond du Lac, Kewaunee, Manitowoc, Marinette, Oconto, Outagamie, Sheboygan, and Winnebago counties)

944 Vanderperren Way, Green Bay, WI 54304
(920) 492-5728 Fax: (920) 492-0144

WIS 441 Mega Project

(920) 492-5657 Fax: (920) 492-0144

North Central Region (Adams, Florence, Forest, Green Lake, Iron, Langlade, Lincoln, Marathon, Marquette, Menominee, Oneida, Portage, Price, Shawano, Vilas, Waupaca, Waushara, and Wood counties)

510 N. Hanson Lake Road, Rhinelander, WI 54501
(715) 365-5732

Aeronautics

4802 Sheboygan Ave., Room 701
P.O. Box 7914
Madison, WI 53707-7914
(608) 264-7607
Fax: (608) 267-6748



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Have I received my full wage and benefits?

Applies to projects let after the prevailing law change of September, 2017.

Additional information:

<http://wisconsindot.gov/Pages/doing-bus/civil-rights/labornwage/prevaling-wage-compliance.aspx>

