

## **What is prevailing wage?**

In the state of West Virginia, a wage of no less than the prevailing hourly rate of wages as established each year by the West Virginia Division of Labor (Division) shall be paid to all workmen employed by or on behalf of any public authority engaged in the construction of a public improvement. (§21-5A-2) All “workmen” engaged in the construction activity are entitled to receive the established hourly rate of wages as established by the Division for the classification of work being performed in the county where the work is actually performed.

## **What jobs are covered?**

The prevailing wage statute includes, but is not limited to, the following projects. *Any questions relating to the applicability of the prevailing wage statute to specific projects must be submitted to the Division in writing. Such requests are to be sent to the attention of Larry I. Walker, Wage & Hour Director, West Virginia Division of Labor, Building 6, Room 749-B, Charleston, West Virginia 25305.*

- Public improvement construction projects that are performed by or on behalf of any public authority that is authorized to engage in construction activity. The term public authority includes West Virginia state agencies; county commissions; city municipalities; public service commissions, etc. (§ 21-5A-1(1); § 42CSR7-2.5 § 21-5A-1 (5) § 21-5A-1 (2))
- Projects that are funded at least in part by monies provided by the West Virginia Economic Development Authority. (Chapter 31 of the WV Code)
- Projects financed by (TIF) tax increment financing. (Chapter 7, Article 11B of the WV Code)

§ 21-5A-1 (1) The term “public authority” as used in this article shall mean any officer, board or commission or other agency of the state of West Virginia or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported in whole or in part by public funds of the state of West Virginia or its political subdivisions, and this article shall apply to expenditures of such institutions made in whole or in part from such public funds.

§ 42CSR7-2.5 A “public authority” includes any officer, board or commission or other agency of the State of West Virginia, or any political subdivision thereof, or any authority created by the Legislature of West Virginia.

§ 21-5A-1 (5) The term “public improvement” as used in this article, shall include all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures upon which construction may be let to contract by the state of West Virginia or any political subdivision thereof.

§ 21-5A-1 (2) The term “construction” as used in this article shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. The term “construction” shall not be construed to include temporary or emergency repairs.

### **How are the rates determined and where do I find them?**

The rates for each trade classification are set each year by the Division during the 1<sup>st</sup> week of January for Building, Heavy and Highway construction projects. The rate for each category is determined separately. The posted rates are available for review on the Secretary of State's website @ [www.wvsos.org](http://www.wvsos.org). A link to that site is also available from this website. Once there, you'll see a listing of all fifty five West Virginia counties in alphabetical order. For Building rates, simply choose the county in which your project is being performed. To find the rates for Heavy and Highway projects, you'll need to first choose "**Heavy and Highway**" (highlighted in green) which is found in the second paragraph prior to the listing of counties. Heavy and Highway rates are listed by classification of work instead of the project locality.

### **There are two (2) rates for each classification. Which rate do I pay?**

The established prevailing wage rate is separated in two (2) parts for each classification of work. The first part is the "basic hourly" rate and the second part is the "fringe benefit" rate. *Both rates must be added together to determine the total prevailing wage rate requirement.*

### **What if I don't provide fringe benefits? Do I still have to pay the fringe benefit amount?**

The "basic hourly" rate, must be paid "in full" to all workmen regardless of whether or not the employees are receiving fringe benefits. The "fringe benefit" portion of the rate has been separated from the "basic hourly" rate to allow employers the opportunity to "credit off" their hourly monetary costs for providing fringe benefits to their employees. When fringe benefits are not being provided, the total of both rates are to be paid directly to the employee as wages. *Employees must receive the full benefit of the "total prevailing wage package" which is calculated by adding the basic hourly rate and the fringe benefit rate together.* For example (The basic hourly rate + the fringe benefit rate = the total prevailing wage package)

### **What is considered a fringe benefit?**

A fringe benefit is 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. (§§ 42CSR7-2.15 & 42CSR7-2.8) All fringe benefit plans must be authorized by the employee before they can be used as a credit against the fringe benefit portion of the rate. *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.*

- Employers may calculate the monetary cost of a qualified fringe benefit by dividing the annual cost for that benefit by 2080 hours for each employee. (annual benefit cost / 2080 hours)
- When benefits such as vacation pay or sick leave are used as a credit against the fringe benefit portion of the rate, those benefits must be paid directly to the employee and cannot be forfeited upon separation of employment.

### **How do I know which rate to pay?**

The appropriate prevailing wage rate is based on the type of work being performed and not the classification of the worker or their experience level. The location (county) and type of project are also a consideration as different rates apply to Building, Heavy and Highway projects for the same type of work. Descriptions of work for each trade classification are provided along with the established rates under the titles of “descriptions” and “appendices”. *Any questions relating to the proper classification(s) of work for a specific job description must be submitted in writing to the Division. All requests must include a complete scope of work and project description. Such requests are to be sent to the attention of Larry I. Walker, Wage & Hour Director, West Virginia Division of Labor, Building 6, Room 749-B, Charleston, West Virginia 25305.*

### **When does overtime apply on prevailing wage projects?**

Overtime hours on prevailing wage projects are paid at time and half and are based on hours actually worked over forty (40) in a seven consecutive day workweek as determined by the employer. Time and a half is only paid on the “basic hourly” portion of the rate. The “fringe benefit” portion of the rate is always paid at straight time regardless of the number of hours worked.

### **Do owners, corporate officers and salaried employees have to be paid the prevailing wage?**

With the exception of sole proprietors, all workmen on prevailing wage projects must be paid at the established hourly rate for the type of work performed regardless of whether they’re paid by the hour or receive a regular salary. Whenever a salaried employee works on a prevailing wage project, that person’s gross salary must equal or exceed the amount of wages they would have been entitled to for the work they performed had they been a regular hourly employee. For example, if an employee normally receives a weekly gross salary of \$800.00 but works forty (40) hours on a prevailing wage project that has an established hourly rate of \$30.00 per hour for the type of work being performed; that employee’s weekly salary would have to be increased to \$1200.00 for that particular pay period.

*NOTE: To qualify as a “sole proprietor”, the individual performing the work must be registered as a “sole proprietorship” with the West Virginia Department of Tax & Revenue. Any work performed by an employee of a sole proprietor must be paid at the established prevailing wage rate for the type of work being performed.*

**Do I need to complete certified payrolls and if so, where do I get the forms?**

The submission of weekly certified payroll records is normally required by the federal government (for projects under their jurisdiction), the public authority or the general contractor for the duration of the project. Although this agency does not require the routine submission of certified payrolls, we do request them as part of a prevailing wage investigation as they normally contain the same recordkeeping information that is required under the state prevailing wage statute. However, if the employee names and addresses are not listed, that information must be submitted in addition to the certified payrolls. (See our Fact Sheet for Record Keeping Requirements for Public Improvement Projects)

The actual certified payroll forms are available on our website under Wage & Hour / Forms and on the United States Department of Labor's (USDOLs) website @ [www.dol.gov/esa/whd/forms/wh347\\_legacy/pdf](http://www.dol.gov/esa/whd/forms/wh347_legacy/pdf).