

The Prevailing Wage Act: Staying Compliant and Dealing with Contractors

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TOI Annual Educational Conference
November 2018

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The Prevailing Wage Act and You

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Introduction to the Prevailing Wage Act



Liability of Government Official

A. Potential Liability for Government Official

- **Sec. 6.** "Any officer, agent or representative of any public body who willfully violates, or omits to comply with, any of the provisions of this Act...is guilty of a Class A misdemeanor."
- Emphasis on enforcement by the Illinois Attorney General's office

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Potential Liability for the Contractor or Sub-Contractor

- **Sec. 6** "...any contractor or subcontractor, or agent or representative thereof, doing public work as aforesaid, who neglects to keep, or cause to be kept, an accurate record of the names, occupation and actual wages paid to each laborer, worker and mechanic employed by him, in connection with the public work or who refuses to allow access to same at any reasonable hour to any person authorized to inspect same under this Act...is guilty of a Class A misdemeanor."

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Enforcing Party

- **Sec. 6.** "The Department of Labor shall inquire diligently as to any violation of this Act, shall institute actions for penalties herein prescribed, and shall enforce generally the provisions of this Act. The Attorney General shall prosecute such cases upon complaint by the Department or any interested person."

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Public Policy Served by the PWA

- It is the policy of the State of Illinois that a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, shall be paid to all laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works.

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What Is Covered by the PWA?

- This Act applies to the wages of laborers, mechanics and other workers employed in any public works, as hereinafter defined, by any public body and to anyone under contracts for public works. This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.
- No monetary threshold

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Public Works

- **Sec. 2.** "Public works" means all fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds. "Public Works" as defined herein includes all projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through the State or any of its political subdivisions...
- **Payments from special funds**

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Fixed Works

- What is included
 - Buildings?
 - Gardens/Initial Landscaping and continued maintenance?
 - Plumbing?
 - Wiring?
 - Computers?
 - Ceiling tiles?
 - Equipment?
 - Janitorial?

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Construction

- **Sec. 2.**
 - "Construction" means all work on public works involving laborers, workers or mechanics.
 - Includes demolition and/or stand alone demolition
 - This also includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.

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Public Body

- "...Public body" means the State or any officer, board or commission of the State or any political subdivision or department thereof, **or any institution supported in whole or in part by public funds**, and includes every **county, city, town, village, township**, school district, irrigation, utility, reclamation improvement or other district **and every other political subdivision**, district or municipality of the state whether such political subdivision, municipality or district operates under a special charter or not." (Emphasis added.)

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Wage Payment Requirement

- **Sec. 3** "Not less than the general prevailing rate of hourly wages for work of a similar character on public works in the locality in which the work is performed, and not less than the general prevailing rate of hourly wages for legal holiday and overtime work, shall be paid to all laborers, workers and mechanics employed by or on behalf of any public body engaged in the construction or demolition of public works..."

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"General Prevailing Rate of Hourly Wages"

- **Sec. 2.**
 - The terms "general prevailing rate of hourly wages," "general prevailing rate of wages" or "prevailing rate of wages" when used in this Act mean the hourly cash wages plus annualized fringe benefits for training and apprenticeship programs approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training, health and welfare, insurance, vacations and pensions paid generally, in the locality in which the work is being performed, to employees engaged in work of a similar character on public works. (Emphasis added.)

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What Workers Are Covered?

Section 3

- **Sec. 3** "...Only such laborers, workers and mechanics as are directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job, and laborers, workers and mechanics engaged in the transportation of materials and equipment to or from the site, but not including the transportation by the sellers and suppliers or the manufacture or processing of materials or equipment..."

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Section 3 (Ctd.)

- **Sec. 3** "...Only such laborers, workers and mechanics as are directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job..." (Emphasis Added)

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Recap

- "Public Works" or directly associated activity.
- "Construction" (includes maintenance & repair).
- Public Body or projects funded with public money.
- Payment of general prevailing rate of hourly wages.
- Prevailing wage includes wages & benefits.
- Non-governmental employees (includes sub-contractors).
- No dollar minimum.

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Obligations of the Public Body

- Yearly – Sections 4, 7, 8, 9
- Each Job – Sections 4, 5

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Yearly Obligations

- Sections 4, 7, 8, 9
- These establish the requirement for a public body to ascertain the prevailing wage rate for various work classifications

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1. Ascertain Prevailing Wages

Section 9, Paragraph 1

- "To effectuate the purpose and policy of this Act each public body shall, during the month of June of each calendar year, investigate and ascertain the prevailing rate of wages as defined in this Act and publicly post or keep available for inspection by any interested party in the main office of such public body its determination of such prevailing rate of wage and shall promptly file, no later than July 15 of each year, a certified copy thereof in the office of the Illinois Department of Labor."
- Also see Sec. 4.

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Section 9, Paragraph 2

- "The Department of Labor shall during the month of June of each calendar year, investigate and ascertain the prevailing rate of wages for each county in the State. If a public body does not investigate and ascertain the prevailing rate of wages during the month of June as required by the previous paragraph, then the prevailing rate of wages for that public body shall be the rate as determined by the Department under this paragraph for the county in which such public body is located."

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2. Publication and Notice

Section 9, Paragraph 4

- "The public body except for the Department of Transportation with respect to highway contracts shall within 30 days after filing with the Department of Labor, or the Department of Labor shall within 30 days after filing with such public body, publish in a newspaper of general circulation within the area that the determination is effective, a notice of its determination and shall promptly mail a copy of its determination to any employer, and to any association of employers and to any person or association of employees who have filed their names and addresses, requesting copies of any determination stating the particular rates and the particular class of workers whose wages will be affected by such rates."

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3. What If Prevailing Wage Is Revised Mid-Project?

- **Sec 4(d).** "...If the Department of Labor revises the prevailing rate of hourly wages to be paid by the public body, the revised rate shall apply to such contract, and the public body shall be responsible to notify the contractor and each subcontractor, of the revised rate."

– See P.A. 97-0964 – Notification requirements is met by including in contract that prevailing wage is established by IDOL and is available on IDOL website (mandatory).

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Yearly Obligation Overview

- Pass Ordinance in June
- Publish
- Post or keep for inspection
- File certified copy by July 15th with the Illinois Department of Labor
- Mail to Requesting Employers
- Revise with Notice as Required* (PA 97-0964, eff. 1/1/13)

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Obligations for Each Job

Bid Specifications and Contract Notice

- **Sec. 4(a-1).** "The public body or other entity awarding the contract shall cause to be inserted in the project specifications and the contract a stipulation to the effect that not less than the prevailing rate of wages as found by the public body or Department of Labor or determined by the court on review shall be paid to all laborers, workers and mechanics performing work under the contract."

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Forms

**ILLINOIS DEPARTMENT OF LABOR
ADVERTISEMENT FOR BIDS
MODEL LANGUAGE**

Section 4 of the Illinois Prevailing Wage Act requires that a Public Body, in its call for bids (advertisement) shall notify potential contractors that they will be required to compensate their employees at the general prevailing wage rate in the locality wherein the work is performed.

Sample language: Acceptable notification language.

1. All Contracts for the Construction of Public Works are subject to the Illinois Prevailing Wage Act (820 ILCS 130/1-12).

Or

2. Contractor shall not pay less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work under this contract, and shall comply with the requirements of the Illinois Wages of Employees on Public Works Act (820 ILCS 130/1-12).

MODEL CONTRACT LANGUAGE

Not less than the prevailing rate of wages as determined by the (public body) or the Illinois Department of Labor shall be paid to all laborers, workers and mechanics performing work under this contract. All contractor's bonds shall include a provision as will guarantee the faithful performance of such prevailing wage clause as provided by this bid specification or contract.



- This contract calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/01 et seq. ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the "prevailing rate of wages" (hourly cash wages plus fringe benefits) in the county where the work is performed. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website at: <http://www.state.il.us/agency/idol/rates/rates.HTM>. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, including but not limited to, all wage, notice and record keeping duties.

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Notice, Absent Bid or Contract

Section 4 (a-2)

- "When a public body or other entity covered by this Act has awarded work to a contractor without a public bid, contract or project specification, such public body or other entity shall comply with subsection (a-1) by providing the contractor with written notice on the purchase order related to the work to be done or on a separate document indicating that not less than the prevailing rate of wages as found by the public body or Department of Labor or determined by the court on review shall be paid to all laborers, workers, and mechanics performing work on the project."

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Subcontract Notice and Related Liabilities

Section 4(b).

- "It shall also be mandatory upon the contractor to whom the contract is awarded to insert into each subcontract and into the project specifications for each subcontract a written stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract. It shall also be mandatory upon each subcontractor to cause to be inserted into each lower tiered subcontract and into the project specifications for each lower tiered subcontract a stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract. A contractor or subcontractor who fails to comply with this subsection (b) is in violation of this Act."

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Project Postings for Contractors

Section 4(f).

- "It shall be mandatory upon the contractor or construction manager to whom a contract for public works is awarded to post, at a location on the project site of the public works that is easily accessible to the workers engaged on the project, the prevailing wage rates for each craft or type of worker or mechanic needed to execute the contract or project or work to be performed...."

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Section 4(f) (Ctd.)

- "...In lieu of posting on the project site of the public works, a contractor which has a business location where laborers, workers, and mechanics regularly visit may: (1) post in a conspicuous location at that business the current prevailing wage rates for each county in which the contractor is performing work; or (2) provide such laborer, worker, or mechanic engaged on the public works project a written notice indicating the prevailing wage rates for the public works project. A failure to post or provide a prevailing wage rate as required by this Section is a violation of this Act."

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**Certified Payroll Requirements –
Sec. 5(a)(1)**

Any contractor and each subcontractor who participates in public works shall:

- "Make and keep, for a period of not less than 5 years from the date of the last payment on a contract or subcontract for public works, records of all laborers, mechanics, and other workers employed by them on the project; the records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, the worker's gross and net wages paid in each pay period, the number of hours worked each day, and the starting and ending times of work each day, the worker's starting and ending times of work each day, the worker's hourly wage rate, the worker's hourly overtime wage rate..."

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Sec. 5(a)(2).

- "No later than the fifteenth day of each calendar month file a certified payroll for the immediately preceding month with the public body in charge of the project. A certified payroll must be filed for only those calendar months during which construction on a public works project has occurred. The certified payroll shall consist of a complete copy of the records identified in paragraph (1) of this subsection (a), but may exclude the starting and ending times of work each day. The certified payroll shall be accompanied by a statement signed by the contractor or subcontractor or an officer, employee, or agent of the contractor or subcontractor which avers that: (i) he or she has examined the certified payroll records required to be submitted by the Act and such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by this Act; and (iii) the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class A misdemeanor.(Emphasis added.)

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Sec. 5(a)(2). (Ctd.)

- "...Any contractor or subcontractor subject to this Act and any officer, employee, or agent of such contractor or subcontractor whose duty as such officer, employee, or agent it is to file such certified payroll who willfully fails to file such a certified payroll on or before the date such certified payroll is required by this paragraph to be filed and any person who willfully files a false certified payroll that is false as to any material fact is in violation of this Act and guilty of a Class A misdemeanor."

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Public Body Retention Obligations Section 5(a)(2)

- "...The public body in charge of the project shall keep the records submitted in accordance with this paragraph (2) of subsection (a) for a period of not less than 3 years from the date of the last payment for work on a contract or subcontract for public works."
- "...The records submitted in accordance with this paragraph (2) of subsection (a) shall be considered public records, except an employee's address, telephone number, and social security number, and made available in accordance with the Freedom of Information Act..."
- "...The public body shall accept any reasonable submissions by the contractor that meet the requirements of this Section..."

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Violations – Sec. 11

- Any contract not meeting requirements is void
- Contractor cannot recover damages – recovery limited to cost of materials and labor supplied
- Applies to sub-contractors, too
- Worker has claim for shortage in wages (5 yr. SOL)
- Also can recover costs and attorney fees
- Penalty paid to IDOL – 20-50%
- Punitive damages to worker of 2% - 5% monthly

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Criminal Liabilities Under Section 6

- Any officer, agent or representative of any public body who willfully violates, or willfully fails to comply with, any of the provisions of this Act, and any contractor or subcontractor, and any officer, employee, or agent thereof, who as such officer, employee, or agent, has a duty to create, keep, maintain, or produce any record or document required by this Act to be created, kept, maintained, or produced who willfully fails to create, keep, maintain, or produce such record or document as or when required by this Act, is guilty of a Class A misdemeanor.

The Department of Labor shall inquire diligently as to any violation of this Act, shall institute actions for penalties herein prescribed, and shall enforce generally the provisions of this Act. The Attorney General shall prosecute such cases upon complaint by the Department or any interested person.

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Contract Bar- Section 11a

- Violations can lead to a bar from receiving public contracts

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Required for Each Job

- Notice of Prevailing Wage Act in bid and contract or on purchase order or separate document
- Provision in contractor's bond
- Contractor is to include notice in subcontracts; ditto for subs to sub-subs.
- Notice by public body of wage revisions
- Posting by contractor
- Contractor to submit certified payroll
- Retention requirements for public body
- FOIA requirements for public body
- Retention requirements for contractor
- Potential liability to public body
 - Notice
 - Payroll certification
 - Retention/FOIA

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Recent Updates and Questions

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