



## OFFICE OF PROCUREMENT

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### DIVISION OF BUSINESS RELATIONS AND COMPLIANCE

#### PREVAILING WAGE LAW

## FREQUENTLY ASKED QUESTIONS

*Effective on July 1, 2009, the Prevailing Wage Law is patterned after the Federal Davis-Bacon and State of Maryland's prevailing wage laws. It requires the prevailing wage be paid to workers on County financed construction contracts that are valued at more than \$250,000. The prevailing wage is the rate paid for comparable work in the private sector within the County. The Prevailing Wage rates are calculated annually by the State, based on surveys of construction company employers.*

1. *How does it work?*

The law is modeled after the federal Davis-Bacon Act and is designed to ensure that construction workers employed under public works contracts are paid the going rate for their services. It also prohibits the misclassification of workers into lower paying job categories; gives the County the ability to withhold payments if a violation of the law is found; and imposes reporting requirements to track compliance.

2. How is Prevailing Wage generally defined?

Prevailing Wage means the wage rate paid by employers that is determined by a governmental authority, based upon a particular geographic area, for a given class of labor and type of project. The purpose of a prevailing wage is to ensure that construction workers who work on public work contracts are paid the going rate for their services.

3. Does Montgomery County have a prevailing wage law?

Yes, the Montgomery County Council of Montgomery County, Maryland passed a prevailing wage law, effective with contracts signed on or after July 1, 2009, that applies to County financed construction contracts valued at \$250,000 or more.

4. On construction projects subject to the Federal or State prevailing wage law, would the County prevailing wage law apply?

No, if the Federal or State prevailing wage law applies to a construction project, the County law does not apply.

5. What constitutes a County financed construction contract?

A County financed construction contract is a contract for construction work that is awarded by the County or where County funds are used to finance all or part of the cost of the contract.

6. Who benefits from the Prevailing Wage Law?

Montgomery County's prevailing wage law assures construction workers appropriate wage rates and requires construction contractors awarded county contracts to pay their workers the amount specified by law. The law regulates the hours of labor, rates of pay, conditions of employment, and obligations of employers.

For the workers, the Prevailing Wage represents the fairness and basic respect they deserve in return for the work they do.

The law commits to employers who bid on construction contracts that they will not be underbid by employers who pay as little as they can to workers.

**Wage Determinations:**

- The County prevailing wage rates are established by the State Commissioner of Labor and Industry. Wage determinations establish the wage and fringe benefit rates for each classification of worker by county for one year. The law requires employees on County public works contract to be paid overtime for hours in excess of 10 hours in a single day, and for work performed on a Sunday or a legal holiday. Contractors found to be paying wages below the prevailing wage rate may be assessed liquidated damages of \$20 per day for each worker paid less than the established rate.

**Certified Payroll Statements:**

- Contractors on County funded construction projects covered by the Prevailing Wage Law are required to submit certified payroll statements for straight time and overtime work. Certified payrolls must be submitted to the Compliance Monitor within 14 days after the end of the payroll period. Liquidated damages for late submission of payrolls total \$10 for each calendar day the records are late.

7. Are there any other construction contracts under which the County's prevailing wage would not apply?

Yes, the prevailing wage law does not apply to the following:

- County financed construction contracts of less than \$250,000;
- County financed construction contracts that are subject to a Federal or State prevailing wage law;
- non-competitive contracts awarded under Section 11B-14 of the County Code;
- contracts with a public entity;
- contracts where the contractor is expressly precluded from complying with the County's prevailing wage law by the terms of a Federal or State law, contract or grant;
- bridge contracts under Section 11B-42 of the County Code;
- cooperative procurements under Section 11B-40 of the County Code; or
- emergency procurements under Section 11B-16 of the County Code.

8. How are the prevailing wages set?

The State of Maryland Commissioner of Labor and Industry conducts an annual wage survey for all work classifications among construction contractors across the state. From this data, the State develops the prevailing wage to be paid for each work classification and project type for each county. Montgomery County utilizes the prevailing wage rates specified in the schedule generated as a result of this survey.

9. Do the prevailing wage rates apply to employees of a subcontractor?

Yes, if a project is deemed to fall under the prevailing wage law, the prevailing wage rates apply to employees of the prime contractor and any and all subcontractors.

10. How can I find out what the prevailing wage rate is for a particular job?

The law requires that the prevailing wage rates be posted in a prominent and easily accessible place at the worksite during the entire time work is being performed, in English and any other language that is primarily spoken by the employees at the work site.

11. When is overtime paid?

Under the County law, overtime is paid in any one of three instances:

- work more than 10 hours in any single calendar day
- work more than 40 hours in a workweek
- work on a Sunday or a legal holiday

12. If my employer is non-union, am I entitled to the prevailing wage?

Yes, all employees performing work on a construction project that falls under the County's prevailing wage law are entitled to the prevailing wage, regardless of union or non-union status.

13. If I am a contractor or a subcontractor on a county construction contract that is subject to the County's prevailing wage law, how do I find out how comply with the law?

If there is a Preconstruction Conference held before the start of construction, the County's vendor charged with ensuring compliance will fully explain what is required to comply with the prevailing wage law. For other construction contracts subject to the Prevailing Wage law that do not require such conferences, please contact the Prevailing Wage Program Manager at 240-777-9918.

14. Do contractors and subcontractors have to submit payroll records?

Yes, contractors and subcontractors must submit certified payroll records within 14 days after the end of each payroll period. This must be done on a web-based system using software utilized by the County's compliance vendor, LCPTracker. The LCPTracker system is a paperless, online system of entering payroll information. Rather than submitting paper Prevailing Wage Payroll forms, contractors and subcontractors enter all payroll and related information online. The contractor or subcontractor will need a computer and an internet connection. (Public computers are available at County public libraries.) Training is available through self-guided online tutorials available when a contractor logs in to the system. You may also access an overview of the LCP Tracker system at: [www.LCPtracker.com](http://www.LCPtracker.com).

15. What information is included on the certified payroll records?

Certified payroll records must contain accurate information detailing the name and location of the job, the name, address and telephone number of the contractor or subcontractor, and each employee's name, current address (unless previously reported) specific work classification, daily straight and overtime hours, total straight time and overtime hours, total straight time and overtime hours for the payroll period, rate of pay fringe benefits by type and amount and gross wages.

16. What if the payroll records are submitted late?

If payroll records are submitted late the County will assess liquated damages of \$10 per calendar day that the records are late.

17. How long must contractors and subcontractors keep payroll records?

Contractors and subcontractors must keep payroll records not less than 5 years after the work is completed.

18. Does the County investigate wages paid on a project?

Yes, the Chief Administrator Officer or a designee may perform random or regular audits and investigate any complaint of a violation of the Prevailing Wage Law.

19. What happens if a contractor or subcontractor underpays a worker?

If a contractor or subcontractor underpays a worker, this is known a misclassification. The contractor or subcontractor must pay the affected employee the full amount of wages due under the prevailing wage law. If a contractor or subcontractor misclassifies a worker, the County will assess liquidated damages of \$20 per day for each day the worker is not paid the proper prevailing wage for his/her work classification.

20. Can an employer terminate a worker for filing a complaint?

No, the law specifically states that a contractor or subcontractor must not discharge or otherwise retaliate against an employee for asserting any right under the law or for filing a complaint of a violation.

In the event that a contractor discharges or otherwise retaliates against an employee for asserting any rights under the law or for filing a complaint of a violation, the aggrieved employee may file a complaint by completing the Prevailing Wage Complaint Form.

21. How does a person file a complaint?

A person may file a complaint by completing the Prevailing Wage Complaint Form, which is located on the County's Prevailing Wage Law webpage. The complaint form must be completed and signed. The County only pursues claims that have been substantiated.

#### Contact Us:

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