

Prevailing Wage

Department

About Us

Contact Us

Definitions of Covered Occupations

PWR Rate Publications

PWR Complaint Form

Formulario de Queja

PWR Law Handbook

Coverage Determinations

Ineligible Contractors

Occupational Wage Survey

PWR Advisory Committee

Oregon Revised Statutes

Administrative Rules

Projects Covered By PWR Laws

Wage and Hour: Prevailing Wage

Which Projects Are Covered by the PWR Law?

Public works projects on public land are generally covered by the PWR law if they:

- Cost more than \$50,000;
- Are for construction, reconstruction, major renovation or painting; and
- Directly or indirectly use funds of a public agency.

In addition, public works projects on privately owned land or buildings, often called "public/private projects," may be covered by the PWR law if they:

- Are for construction, reconstruction, major renovation or painting and will use \$750,000 or more in public funds; or
- Are for construction and a public agency or multiple public agencies will occupy or use 25 percent or more of the square footage of the finished project.

Public Works Projects

The term "public works" includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by a public agency to serve the public interest. ORS 279C.800(6)(a)(A)

The term "public works" also includes:

- Projects for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and \$750,000 or more of funds of a public agency; or
- Projects for the construction of a privately owned road, highway building, structure or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency. ORS 279C.800(6)(a)(B) and (C)

The PWR law does not regulate the reconstruction or renovation of privately owned property that a public agency leases. However, it does cover new construction on such property. For example, adding square footage to such a property or building outside the footprint of the existing structure is considered to be construction subject to PWR regulation. ORS 279C.800(6)(b); OAR 839-025-0004(20), (23)

Covered Activities

PWR coverage is determined by the type of work performed on the project, not by what a contract is called. For example, if a project includes covered activities, such as rewiring a major portion of a building, and meets the other jurisdictional requirements of the PWR law, the entire project is covered. Any person employed on a public works project whose duties are manual or physical in nature is a worker required to be paid the applicable prevailing wage rate. OAR 839-025-0004(31)

Construction

Construction includes the initial building of structures and roads. OAR 839-025-0004(5)

Reconstruction

Reconstruction includes the restoration of existing buildings and the restoration, rebuilding or resurfacing of existing roads. OAR 839-025-0004(22)

Major Renovation

Major renovation includes any remodeling or alteration of existing structures or roads that costs more than \$50,000. OAR 839-025-0004(11)

Painting

If a painting project meets the other jurisdictional requirements of the PWR law, the project will be subject to the law.

Hazardous Materials Spills

The PWR law covers the clean up of hazardous materials spills if the project includes construction, reconstruction, renovation or painting. The PWR law does not cover projects that only include picking up and hauling away hazardous materials.

Maintenance Contracts

General maintenance work, such as sweeping, cleaning, and landscaping, is not covered unless it is done as part of a construction, reconstruction, major renovation, or painting project. For example, the PWR law does not apply if maintenance landscaping work such as mowing or pruning is performed on the grounds of an existing building where no other work is being performed. If the same landscaping is part of a major building renovation, however, then it is covered work.

Maintenance work such as repairing or replacing a roof or recarpeting part of a building is considered to be reconstruction work. If a project involving this type of work meets the other jurisdictional requirements of the PWR law, the project will be subject to the law.

Warranty Work

If work done on a project subject to the PWR law is covered by a warranty, all work done under that warranty will also be subject to the PWR law. This is the case even if the warranty is contracted separately from the construction contract.

Demolition The PWR law covers demolition work only if it is to prepare for planned construction or renovation. If no construction is planned to replace the demolished property, the demolition is not covered under the law.

Travel Time

Employees are not entitled to PWR wages for travel time unless they are traveling between the work site and a dedicated pit, tool yard or another covered site. If employees are otherwise entitled to travel time (traveling from job site to job site during the workday, for example), then the employer must pay them an agreed upon rate which is at least minimum wage.

If travel time is compensable time, and if the travel time is related to a public contract, the hours of travel time will count toward daily overtime. For more information, see the Overtime Requirements under the Contractor Responsibilities section of this book.

Excluded Agencies and Workers

The PWR law does not apply to contracts with certain state agencies, although other wage-related regulations often apply. The PWR exemption applies only if the contract is with the agency itself. For example, while the Oregon State Lottery Commission is exempt, a project is not exempt merely because it is funded with lottery money. Agencies that are not regulated by the PWR law are:

- Oregon State Lottery Commission (ORS 461.120)
- Travel Information Council (ORS 377.836)
- People's Utility Districts (OAR 839-025-0100(1)(b))

People's Utility Districts, while exempt from the PWR law, do have their own, similar laws that apply to their projects.

- Oregon Health Sciences University (ORS 353.130)

Although exempt from ORS Chapter 279, OHSU must ensure that prevailing wages are paid to workers.

Excluded Workers

It is not necessary to pay prevailing wages to inmates of the Oregon Department of Corrections assigned to a work release program when working on covered projects. It is also not necessary to pay prevailing wages to Oregon Youth Conservation Corps members when working on covered projects. OAR 839-025-0100(2)

When a public works project is subject to the federal Davis-Bacon Act, Oregon's prevailing wage rate law does not apply to workers enrolled in skill training programs that are certified by the United States Secretary of Transportation under the Federal-Aid Highway Act (23 U.S.C. 113(c)). ORS 279C.838(5)

Only Projects Costing More Than \$50,000 Are Covered

The PWR law regulates only those projects costing more than \$50,000. This amount is based on the cost of the entire project, not individual contracts. The total project cost includes the value of work performed by every person paid by a contractor or subcontractor for the person's work on the project. The price of a project also includes all materials and supplies, if purchased specifically for the project.

The total project cost does not include the value of donated materials or work performed on the project by individuals volunteering to the public agency without pay. ORS 279C.810(2)(a); OAR 839-025-0100(1)(a)

The total project cost also excludes the cost of architectural and engineering services, and the value of agency personnel who design, inspect, manage, supervise or otherwise work on the project.

If a project begins with a total project cost under \$50,000, but change orders increase the project cost to more than \$50,000, the entire project will be subject to the PWR law, including all work already performed on the project.

Only Projects Paid for with Public Funds Are Covered

The PWR law does not apply to projects for which no funds of a public agency are directly or indirectly used. ORS 279C.810(2)(b); OAR 839-025-0100(1)(c)

"Directly used" funds of a public agency include:

- Revenue, money or that which can be valued in money collected for or in the custody and control of a public agency; and
- Money loaned by a public agency, including the loan of proceeds from the sale of conduit or pass-through revenue bonds, for the specific purpose of financing a project. OAR 839-025-0004(9)(a)(A)

"Indirectly used" funds of a public agency means the public agency ultimately bears the cost of all or part of the project; such indirectly used funds include:

- Amortizing the cost of construction over the life of a lease and paying these costs with funds of a public agency during the course of the lease;
- The public agency subsidizing the costs of construction that would normally be borne by the contractor;
- Using insurance proceeds that belong to a public agency to pay for construction. OAR 839-025-0004(9)(a)(B)

"Funds of a public agency" does not include:

- Funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction, reconstruction, major renovation or painting;
- Building and development permit fees paid or waived by the public agency;
- Staff resources of the public agency used to manage a project or to provide a principal source of supervision, coordination or oversight of a project;
- Staff resources of the public agency used to design or inspect one or more components of a project;
- Tax credits or tax abatements;
- Land that a public agency sells to a private entity at fair market value;
- The difference between the fair market value of land and the value of that land after taking into account any requirements, restrictions or other limitations, exclusive of zoning or land use regulations, the public agency imposes on the development or use of the land;
- The value added to land as a result of a public agency's site preparation, demolition or remediation, except for the value added in excess of the expenses the public agency incurred in doing such work;
- Money derived from the sale of bonds that are loaned by a state agency to a private entity, unless the money will be used for a public improvement;
- Bonds or loans from the proceeds of bonds issued in accordance with ORS chapter 289 or ORS 441.525, unless the bonds or loans will be used for a public improvement. ORS 279C.810(1)(a); OAR 839-025-0004(9)(b)

Solar Radiation Devices

Effective January 1, 2011, when solar radiation devices are constructed or installed on publicly-owned property, the work will be subject to the prevailing wage rate law, even if the project does not use any funds of a public agency. HB 3651 Section 1 (Enrolled) OR Law 2010

Retainer Agreements

Public agencies often enter into retainer agreements, sometimes called "on-call contracts," that span one or more years for the performance of maintenance and repair activities that may include construction, reconstruction, major renovation, or painting. Frequently these services are to be provided at multiple agency-owned facilities or locations. Even if none of the individual projects covered by the contract exceed the \$50,000 threshold, the contract is subject to the PWR law if the total contract price exceeds the threshold. Whenever a public agency enters into a contract that exceeds \$50,000 and includes a covered activity (i.e., construction, reconstruction, major renovation or painting), the entire contract is subject to the PWR law.

For example, a county may enter into a retainer agreement for highway maintenance wherein the scope of work includes activities such as sealing cracks in the pavement, filling potholes, repairing culverts, fixing fences, repainting traffic lanes, etc., which have been determined to be covered activities as defined in OAR 839-025-0004. If these maintenance duties are contracted out and the contract value is over \$50,000, the contract would be subject to the PWR law. Additionally, any other work done in support of that contract would also be covered.

Joint Jurisdiction with Federal Government on Some Projects

Regardless of whether or not a public works project over \$50,000 is subject to regulation under the Davis-Bacon Act, if a public agency (other than a federal agency) uses federal funds on the project, the project is subject to the state PWR law. This is because once federal funds are in the custody and/or control of a public agency, they become "funds of a public agency" as defined in the PWR law.

On non-residential projects subject to both state and federal prevailing wage laws, contractors must pay the higher of the state or federal prevailing wage rates to workers. ORS 279C.838; OAR 839-025-0035(2)

While most requirements of the state PWR law apply to projects subject to both state and federal prevailing wage laws, there are a few areas in which the federal requirements take precedence. For projects subject to both state and federal laws advertised on or after January 1, 2008, BOLI will follow federal guidelines for the term "site of work" and for when prevailing wages are due to delivery personnel. (See pages 51-53 for more information.)

Residential Construction Projects

BOLI has modeled its definition of "residential construction" after the U.S. Department of Labor's definition of such projects. Generally, residential construction projects are projects for the construction, reconstruction, major renovation or painting of a single family house or apartment building of no more than four stories in height. The residential project includes all incidental items associated with the project, such as site work, parking areas, utilities, streets and sidewalks. OAR 839-025-0004(24)(a)

Residential Rates

BOLI does not survey residential rates, so residential construction projects subject to Oregon's PWR law are required to use the federal Davis-Bacon wage rates for residential construction projects. These rates can be found on the U.S. Department of Labor's website, www.wdol.gov. The federal residential rates apply to residential construction projects subject to Oregon's PWR law, even if the project is not subject to the federal Davis-Bacon Act. However, if the federal residential rate for a particular trade or classification is ever less than Oregon's minimum wage rate required by ORS 653.025, no less than Oregon's minimum wage must be paid to the worker.

In some instances, there are no applicable federal residential Davis-Bacon wage rates for certain trades or classifications. If a wage rate is needed on a residential project subject to both state and federal prevailing wage rate law, a request for a special wage rate determination should be submitted according to the federal requirements in Title 29 CFR, Part 5.5(a)(1)(ii).

If a wage rate is needed on a residential project that is subject only to Oregon's PWR law, the request for a special wage rate determination must be submitted to BOLI at least 15 days prior to the date the specifications for the project are first advertised. If a public agency fails to request a special wage rate determination as required, the rates in the applicable BOLI rate book will apply to those trades or classifications for which there is no applicable federal residential rate. OAR 839-025-0037

Residential Exemption

If a residential project is predominately for affordable housing and is privately owned, it will not be subject to Oregon's PWR law. "Affordable housing" means the occupants' incomes are no greater than 60 percent of the area median income, or no greater than 80 percent if the occupants are owners. "Predominately" for affordable housing means at least 60 percent of the project is designated for affordable housing. Affordable housing can be considered "privately owned" even if it is owned by a public agency, as long as it is leased to a private entity for 50 years or more, or if the affordable housing is owned by a partnership, as long as the public agency is not a majority owner in the partnership. ORS 279C.810(2)(d)

Multiple Wage Rate Determinations

Some public works projects may involve more than a single construction type. For example, one project may consist of the construction of one building of residential units and one building of commercial space. On such a project, the commissioner may authorize residential wage rates to be paid for work performed in connection with the construction of the residential building, and non-residential prevailing wage rates to be paid for work performed in connection with the construction of the commercial building.

Requests for authorization to use multiple wage determinations on a project must be submitted to BOLI in writing, and must include all relevant details of the project or proposed project.

If the commissioner authorizes multiple wage rate determinations to be used on a project, continued use of the determinations is contingent upon compliance with all of the following:

- The project/contract specifications must clearly delineate the portions of the project subject to each applicable wage rate determination;
- All applicable wage rate determinations must be posted in a conspicuous and accessible location at the site of work, with an explanation of the portions of the project to which each wage rate determination applies;
- The developer or prime contractor must establish adequate controls to ensure that all workers on the project are paid in accordance with the applicable wage rates; and
- Each and every contractor employing workers on the project must prepare, submit and maintain accurate time and payroll records to demonstrate compliance with all wage rate determinations applicable to the project. OAR 839-025-0315

Coverage Determination Requests

When requested to do so by a public agency or other interested party, the commissioner of the Bureau of Labor and Industries will issue a coverage determination about whether a project or proposed project is or would be a public works project. The requests must be submitted to BOLI in writing, must describe all the relevant details of the project or proposed project, and must be accompanied by all documents, records or other information necessary for the commissioner to make the determination. In addition, if the coverage determination request is not submitted by a public agency, the party submitting the request to BOLI must also submit a copy of the request to any public agency associated with the project.

Once BOLI has issued the determination, the requestor or anyone adversely affected by the determination may request reconsideration of the determination or a hearing.

More information about how to submit a coverage determination request, as well as previous coverage determinations issued, can be found on BOLI's website at www.oregon.gov/boli. ORS 279C.815; OAR 839-025-0005

Page updated: May 10, 2010



[Text Only](#) | [State Directories](#) | [Agencies A to Z](#) | [Site Map](#) | [About Oregon.gov](#) | [Oregon.gov](#)
[File Formats](#) | [Oregon Administrative Rules](#) | [Oregon Revised Statutes](#) | [Privacy Policy](#) | [Web Site Feedback](#)



Adobe Reader is required to view PDF files. Click the "Get Adobe Reader" image to get a free download of the reader from Adobe.

