

CHAPTER 5200
DEPARTMENT OF LABOR AND INDUSTRY
WAGES AND LABOR

5200 1020 PREVAILING WAGE
 DETERMINATIONS
 5200 1030 BASIS FOR EACH DETERMINATION
 5200 1050 SURVEY PROCEDURES

5200 1060 DETERMINING LARGEST NUMBER OF
 WORKERS AND PREVAILING WAGE
 RATE

5200.1020 PREVAILING WAGE DETERMINATIONS.

Subpart 1. **Highway and heavy construction.** The department shall, at least once each calendar year, determine and certify prevailing wage rates applicable to state projects which are similar in nature to highway and heavy construction projects.

Subp. 2. **Commercial type construction.** The department shall, upon the request of any state agency that is contemplating the advertisement for bids on a state project which is similar in nature to commercial construction projects, determine and certify prevailing wage rates applicable to said state project if a certification has not been made within the 6-month period prior to the request.

Subp. 3. **Information required for certification request.** Minnesota Statutes, section 177.43, subdivision 4, provides that the prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay for all trades and occupations required in any contemplated project shall be ascertained before the state asks for bids. A request to establish prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay for all trades and occupations required in the contemplated project must be sent to the department and shall include the:

- A. Popular or descriptive name of project.
- B. Project number.
- C. Exact location of project by county and city, village, or township.
- D. Estimated costs of the total construction contracts to be awarded.
- E. Anticipated date for soliciting or advertising for bids.
- F. Anticipated date for awarding of contracts.
- G. Proposed date for commencement of work on project.
- H. Estimated date of completion of project.

I. General description of the type of facility and facilities which will constitute the completed contracts. For example, two-story brick and concrete building about 200 feet by 400 feet with concrete floor, wood roof deck on wood laminated beams, and includes plumbing, heating, and electrical work. Outside work includes excavating, blacktopping, grading, sidewalks, fencing, driveways, parking areas, and miscellaneous areas.

- J. Desired date of receipt of prevailing wage rate schedule.

K. Statement as to whether the federal government or any of its agencies will furnish by loan or grant any part of the funds used in this contract or prescribe a schedule of prevailing wage rates.

The department must be notified about ensuing projects as far in advance as possible. A request to determine or ascertain prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay for all trades and occupations required on any contemplated project must be made not less than 60 days before soliciting bids.

Subp. 4. **Residential type construction.** Prevailing wage rates applicable to state projects which are similar in nature to residential construction projects will

be made upon request of a governmental official involved in the bidding process for a state project who desires such rates for insertion in a specific contract proposal.

Subp. 5. **Survey data; recent.** Each wage survey shall be based upon work performed in the 12 months preceding the date the survey is commenced and the resulting wage determinations will be certified following the close of the survey.

Subp. 6. **Survey procedure.** Except as provided in subpart 7, all prevailing wage determinations shall be based upon the survey procedures contained in these parts.

Subp. 7. **Public hearing.** The department shall, pursuant to Minnesota Statutes, sections 177.43, subdivision 4, and 177.44, subdivision 3, conduct public hearings when necessary to determine county wage rate determinations. Such hearings shall be conducted withm the county for which wage rates are being determined and shall be conducted as contested cases by a hearing examiner from the Office of Administrative Hearings.

Statutory Authority: *MS s 175.171*

History: *8 SR 2274*

5200.1030 BASIS FOR EACH DETERMINATION.

Subpart 1. **County and labor class basis.** Individual prevailing wage rates shall be made on a county by county basis and each prevailing wage rate shall be based upon work performed solely within the applicable class of labor.

Subp. 2. **Labor classes.** For each county surveyed, the department shall issue wage determinations for:

A. highway and heavy construction projects for all classes of labor commonly or customarily used in those construction projects; and

B. state projects other than highway and heavy construction for all classes of labor expected to be used in the contemplated project for which the prevailing wage rate is being determined.

Subp. 2a. **Projects to be surveyed, criteria.** From information on file and submitted by interested persons, the department shall select projects of a character similar to the project for which the prevailing wage rate is being determined. The selections shall be made from projects on which construction work was done in the 12 months preceding the survey and which are located in the county in which the contemplated project is located, or, if necessary, from adjacent counties.

A. If two or more projects of a character similar to the project contemplated have been performed in the county in which the project is to be located, and if this group of projects provides wage rate data for the major classes of labor to be used in the project for which the prevailing wage is being determined, the wage determination for those classes of labor shall be based solely upon that work.

B. Where classes of labor expected to be utilized in the contemplated project for which the prevailing wage determination is being made are not all represented in the projects in item A, but work was performed in those classes of labor in two or more projects in any county physically adjacent to the county being surveyed, the department shall establish the wage determination for those classes of labor based solely upon those adjacent county projects.

C. Where no work was performed in a class of labor either in the county being surveyed or in any adjacent Minnesota county, no wage rate will be determined for that class of labor.

D. In determining a wage rate for a class of labor based upon work performed in adjacent counties, all workers in a class of labor in all adjacent

counties shall be totaled and the wage rates shall be based upon the wage rate paid to the largest number as determined in accordance with parts 5200.1020 to 5200.1060.

Subp. 3. **Frequency of determination.** Following certification of wage rates for a county, no wage rates for additional classifications of labor shall be made for that county until such time that a subsequent survey of the county is required pursuant to Minnesota Statutes, section 177.43, subdivision 4 or 177.44, subdivision 4.

Statutory Authority: *MS s 175.171*

History: *8 SR 2274*

5200.1050 SURVEY PROCEDURES.

Subpart 1. **Scope.** The purpose of each county survey is to develop a data base upon which to determine prevailing wage rates for those classes of labor expected to be used on contemplated state projects based upon wage rates paid to the same classes of labor on similar projects in the area. In establishing the data, the procedural steps in subparts 2 to 4 shall be taken.

Subp. 2. **Wage reports.** The department shall regularly request from contractors, contractor organizations, labor organizations, and any other interested person, on forms available from or approved by the department, reports of construction wage rates paid by contractors on various types of projects. The reports must be kept on file by the department according to the county in which the project for which the report is received was performed. The reports must list the name and address of the contractor, the name of the project, the location of the project, a description of the project, a description of the work performed on the project, the approximate dollar cost of the project, the names of employees who worked on the project, together with the class of labor for each employee, the wage rate paid each employee on the project, and the hourly cost of fringe benefits for health and welfare, pension, vacation, apprenticeship or training, and any other economic benefits paid for each employee. The forms shall be signed and dated by the organization or individual providing the information attesting that the information provided is true and correct.

Subp 2a. **Union wage reports.** The department shall also keep local union wage and employment reports, on forms provided or approved by the department. The reports must set forth the classes of labor, trade, or occupation covered, the effective date of the contract, wage and fringe benefits paid under the contract, the duration of the contract, the dates of all adjustments to wages and fringe benefits together with the amount of the adjustments on each date, the geographic area where the contract is effective, the number of members employed within the geographic area covered by the contract, the type of projects covered by the contract, and a list of all contractors or employer associations signatory to the contract. The local union wage reports are to be signed and dated by a representative from the local union attesting that the information provided is true and correct.

Subp. 2b. **Mailing lists.** The department shall also keep and maintain a mailing list of governmental officials, district, county, and city engineers, city clerks, administrators, and zoning officials for each county. The department shall also keep and maintain a mailing list of contractors, contractor associations, labor organizations, and other individuals who have requested to be on a mailing list to be notified when any county survey is about to be taken.

Subp. 2c. **Notification of survey.** Upon initiation of a wage survey, the department must notify the county engineer and all city engineers, city clerks, administrators, and zoning officials in the county to be surveyed. The notice will request local officials to submit reports of construction in the county in the preceding 12 months. The report shall include the names of the contractors and their addresses. The department must also notify all contractors, contractor

associations, labor organizations, and other individuals who have requested to be notified when a survey for any county is about to be taken. That notice will request that interested individuals submit reports on forms available from or approved by the department concerning construction performed in the county during the preceding 12 months. The notice shall state that all reports of construction in the county must be returned to the department no later than 33 days following the date upon which the notice of the survey is mailed by the department. Information not timely received by the department shall not be used in establishing the prevailing wage rate for any class of labor. Any unsigned or incomplete forms received prior to the final date for receipt of the forms shall be returned to the individual, contractor, or labor organization, to the extent the individual, contractor, or labor organization can be identified, with a request that the form be properly completed. The department may use incomplete reports where the entity completing the form has provided all the information it has. If that form is not received by the department within 15 days from the date it is returned by mail to the individual, contractor, or labor organization, it shall be excluded from the survey. In no event shall information on unsigned reports of construction in the county be utilized in making wage determinations. All reports must be signed and dated by the organization or individual making the report attesting that the information provided is true and correct.

Subp. 3. [Repealed by amendment, 8 SR 2274]

Subp. 3a. **Reports, attestations.** Reports of construction wage rates and local union wage and employment reports shall specify that the individual signing the report attests that the information on the report is true and correct. The form shall specify that willful falsification of any information on the report may result in civil or criminal prosecution.

Subp. 3b. **On-site visits.** In addition to receiving and compiling the information described in subparts 2 to 4, the department shall make on-site visits to the offices of contractors or governmental representatives for the purposes of collecting project data and for auditing payrolls when necessary for the determination of prevailing wage rates.

Subp. 4. **County abstract.** The number of workers in each class of labor and their respective wage rates shall be determined and reflected on a county abstract.

Statutory Authority: *MS s 175.171*

History: *8 SR 2274*

5200.1060 DETERMINING LARGEST NUMBER OF WORKERS AND PREVAILING WAGE RATE.

Subpart 1. **Policy.** Each wage rate determination shall be based upon the actual wage rates paid to the largest number of workers within each labor classification reported in the survey.

Subp. 2. **Procedure.** For purposes of determining the largest number of workers, each worker within a class of labor and his total hourly rate paid shall be tabulated.

A. Total hourly rate includes the hourly rate plus the hourly contribution for all wage and fringe benefits.

B. The largest number of workers with identical rates of pay within each classification shall determine the specific prevailing wage rate.

C. When determining the prevailing wage rate and there is an equal number of workers (which represent the greatest number of workers) with differing hourly wage rates, the prevailing wage rate shall be the highest wage rate paid to those workers.

Example: four workers at \$7 per hour; four workers at \$8 per hour; two workers at \$8.50 per hour. The prevailing wage rate will be determined as \$8 per hour.

D. Where a worker performs work on more than one project within the county, he shall be counted only once in the class of labor and at the wage rate paid on the most recent project within the time period of the survey.

Subp. 3. **Collectively bargained rate.** If the prevailing wage rate determined for any given class of labor represents a collectively bargained rate, then the comparable current collectively bargained rate for the class of labor in the county where the project covered by the prevailing wage determination is located shall be the prevailing wage rate.

Subp. 4. **Noncollectively bargained rate.** If the prevailing wage rate determined represents a rate other than a collectively bargained rate for any given class of labor, the rate so determined shall be the prevailing wage rate.

Subp. 5. **Change in rate due to contractual changes.** If the prevailing wage rate for any given class of labor represents a collectively bargained rate, and the collectively bargained rate for that class of labor will change during the 12 months immediately following the date upon which the wage rate is determined according to the terms of the collective bargaining contract by which the rate is established, the department shall certify that the rate for that class of labor shall also change accordingly on the effective date of the change pursuant to the collective bargaining contract.

Statutory Authority: *MS s 175.171*

History: *8 SR 2274*