

Prevailing Wage must be adopted in June

(820 ILCS 130)

The Prevailing Wage Rate ordinance must be adopted annually in June.

The Certified Payroll Requirements apply to all contractors and subcontractors that participate in public works projects, keeping in mind the definition of “public works” is quite extensive, including projects “paid for wholly or in part out of public funds.”

Public Act 98-740 added that "public works" does not include work performed for soil and water conservation purposes on agricultural lands, whether or not done under public supervision or paid for wholly or in part out of public funds, done directly by an owner or person who has legal control of those lands. Public Act 98-756 that makes a slight change in the length of time contractors/subcontractors are to keep paperwork (see ilga.gov/legislation/publicacts/98/098-0756.htm)

All contractors and subcontractors are required to submit certified payroll records on a monthly basis (no later than the “tenth day of each calendar month”) to the public body in charge of the construction projects, along with a statement verifying that the records are true and accurate. Individuals can be held personally responsible for failing to comply with the requirements of the law. The following list is provided to assist with understanding the applicability of the law to projects that occur in your township, but is not an exhaustive list. For questions about the Act, contact your attorney.

Both the township and road district (in separate ordinances) shall obtain the prevailing rate of hourly rates, or accept the determination of the Illinois Department of Labor, in their locality and pass an ordinance or resolution indicating such. Additionally, they shall promptly file a certified copy of the resolution to the Illinois Department of Labor. (820 ILCS 130/9) The resolution can be sent to:

Illinois Department of Labor
Conciliation and Mediation Division
900 S Spring St
Springfield, Illinois 62704

The following bullet points outline further steps in the process in order to be in compliance with the requirements of the law (but again, is not a completely exhaustive list).

- The township and road district must specify that the prevailing rate of hourly wages in the locality where the work is performed is to be paid to all persons employed on the project in the following:

- 1) Require it in the call for bids for the contract;
- 2) cause for the rates to be inserted in the contract; and
- 3) require documentation in all contractors' bonds.

The following is an example of a statement that public bodies may wish to include in their contracts, purchase orders or bids in order to provide proper written notification as required under Public Act 96-0437:

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.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>.

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.

- All bid specifications and all contracts are required to list the Prevailing Rate of Wages for all employee classifications that may be necessary to complete the project. (This also applies to a contractor's bid accepted as an agreement for public works).
- If the Department of Labor revises the Prevailing Rates of Hourly Wages during a project, the most recent rates apply to all contracts. **The township and/or road district can be held responsible for failing to notify the contractor and each subcontractor of revised rates, and can face penalties for violating this and other portions of the Act (see below).** Revised rates are available from the following website; www.illinois.gov/idol or by contacting the Illinois Department of Labor.
- No public works project shall be initiated unless full compliance with the Prevailing Wage Act is enforced. Any contract for public works awarded at a time when the prerequisites of the Act have not met shall be void and the contractor is prohibited from recovering any damages for the contract.

Specifically, **Public Act 96-0437** was enacted in order to enhance the notice requirements under the Prevailing Wage Act. Among the new notice requirements, Public Act 96-0437 requires public bodies awarding contracts

to provide the contractor with written notice on the purchase order or other separate document that the project is subject to the Prevailing Wage Act when a public works project is awarded without a public bid, contract or project specification. **In addition, public bodies that fail to provide proper written notification to a contractor that a project is subject to the Act will be held financially responsible for any interest, penalties or fines. Similarly, contractors that fail to notify their subcontractors that a project is subject to prevailing wage requirements will be held responsible for any interest, penalties or fines.** However, regardless of whether they were properly notified, contractors that fail to pay the proper wages to their workers are still responsible for all back wages owed to those workers.

In addition, **Public Act 96-0058** was enacted in order to clarify that “public works” includes all projects funded in whole or in part through **bonds, grants, loans or other funds made available by or through the State or any of its political subdivisions.** These political subdivisions include municipalities, counties and state agencies, such as the Illinois Finance Authority, the Illinois Housing Development Authority and regional economic development authorities.

Another public act, **Public Act 96-0186**, amends the law to explicitly cover all demolition work undertaken by a public body, regardless of whether or not the demolition work is in conjunction with a public works construction project. Prior to this change, there was some disagreement as to whether such demolition work was covered if it was not related to a public works construction project.

Questions regarding landscaping may be accessed at the Illinois Department of Labor’s website <http://www.illinois.gov/idol/FAQs/Pages/Landscaping.aspx>. For more information, please visit the Department of Labor website at: www.illinois.gov/idol.