



Prevailing Wage Law Administration

Prepared by:
Anthony J. Adams Jr.
Adams Leclair LLP, Attorneys

LORMAN®

Published on www.lorman.com - November 2021

Prevailing Wage Law Administration, ©2021 Lorman Education Services. All Rights Reserved.



Lorman Education Services is a leading provider of online professional learning, serving individuals and teams seeking training and CE credits. Whether you're looking for professional continuing education or an enterprise-wide learning and development solution, you will find what you need in Lorman's growing library of resources.

Lorman helps professionals meet their needs with more than 100 live training sessions each month and a growing collection of over 13,000 ondemand courses and resources developed by noted industry experts and professionals.

Learn more about Lorman's individual programs, economical All-Access Pass, and Enterprise Packages:

www.lorman.com

ADMINISTRATION

Although the Prevailing Wage Law imposes some responsibilities on the public agency that serves as “owner” of a public works project, most of the administrative onus falls on the prime contractor and its subcontractors.

Initially, the public owner is responsible for notifying BPW or the NYC Comptroller, as the case may be, of new public work projects before they are advertised for bid, identifying the trade classifications that will be relevant to the project, so that the BPW or Comptroller can “make a proper classification of such workers,” and produce an appropriate Prevailing Rate Schedule. § 220(3-a)(a)(i). The public owner is then required to include the PRS with the prime contract documents, including a directive that prevailing wages and supplements be paid for work on the project. *Id.* (3)(a) and (b). Most public agencies who are accustomed to the law do include appropriate notices and copies of the appropriate PRS in their bid documents. However, such a public owner suffers no adverse consequences if it fails to do so, and whether the owner fulfills its obligation or not, the contractors and subcontractors who perform work on a public works project remain liable for compliance with the Prevailing Wage Law. *Matter of Twin State CCS Corp. v. Roberts*, 72 NY2d 897 (1988).

Public owners are also charged generally with enforcing the substantive and administrative requirements of the Prevailing Wage Law against its prime contractors. Labor Law § 223. But again, such an owner suffers no adverse consequences should it fail to do so.

In contrast, Labor Law § 220 imposes three types of administrative responsibilities on each prime contractor on a public works project, and a contractor failing in any of them may suffer financial liability, civil penalties or even criminal prosecution. In general, those responsibilities are (1) to give appropriate notice of prevailing wage requirements to all

employers and employees involved in the work, (2) to create and/or collect from its subcontractors monthly certified payrolls, and to provide them to the public owner and the BPW as required, and (3) to obtain and file with the public owner, certifications from all its subcontractors that they have received copies of all appropriate PRSs, and that they have paid their employees the required prevailing wages and supplements.

1. Notice Requirements

Each contractor and subcontractor on a public work project is required to post a “Notice of Public Work” (see Appendix B) as well as a copy of the applicable Prevailing Rate Schedule “in a prominent and accessible place on the site where the work is performed.” They are also obligated to notify all trades persons in their employ, in writing, of the prevailing rates of wages and supplements for their particular job classification, with their first paystub and every paystub thereafter, and this includes an obligation to provide notice of any updates to that schedule after July 1st of each year. The latter notice must also advise each employee of his or her right to complain to the BPW (or the NYC Comptroller) of any failure to be paid at the proper rate of wages or supplements. § 220(3-a)(a)(ii). Any failure to properly provide such notice subjects the offending contractor or subcontractor to civil penalties ranging from \$50 to \$500 per violation. *Id.*

2. Certified Payrolls

Contractors and subcontractors must also prepare and keep certified payrolls, sworn to under penalties of perjury, listing the name and address of every worker employed in the public work and recording the days and hours worked, the classification of work performed, and the hourly wage rates and supplement rates paid or provided to each such employee. A sample form is included as Appendix C. Such payrolls must be prepared at least monthly, and

every prime contractor is obliged to furnish copies of its own and its subcontractors' certified payrolls as a condition precedent to receiving monthly progress payments for the work. Failure to do so can result in suspension of payment for work performed, and a willful failure to do so subjects the violator to a civil penalty of up to \$1,000 per day. *Id.*, (iii) and (iv).

Furthermore, if a contractor or subcontractor fails to produce all certified payrolls for a particular project to the BPW (or NYC Comptroller) within ten days of demand the prime contractor is subject to having up to \$100,000 withheld from its next progress payment until the requested records have been furnished. *Id.*, (3-a)(c). Any person who willfully fails to produce the requested payroll records within 90 days of demand shall be guilty of a Class A misdemeanor for a first offense, and a Class E felony for a second offense within five years. *Id.*, (d).

3. Subcontractor Verification

Lastly, every subcontractor on a public work project is required to sign a verification under oath that it has "received and reviewed" a copy of the Prevailing Rate Schedule applicable to its work, and agreeing they will pay the applicable prevailing wages and supplements as required and as annually determined. Labor Law § 220-A. See the sample form at Appendix D.

Furthermore, every prime contractor must provide such statements from all its subcontractors to the public owner as a condition precedent to receiving final payment under the public works contract. At the same time, the prime contractor must include a statement identifying, under oath, any amounts then owed to its employees for prevailing wages or supplements, as well as any such amounts known to be owed by its subcontractors. Labor Law § 220-A(2). Any failure by the contractor to collect the required verified statements from

its subcontractors can result in final payment from the owner being reduced or withheld altogether.



LORMAN[®]

📍 2510 Alpine Road Eau Claire, WI 54703

💻 www.lorman.com ☎ 866-352-9539 ✉ customerservice@lorman.com



The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.