

Title 43  
Legislative Rules

(2)

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~  
Minimum Wage Rate Board

SERIES ~~VII~~ I  
(1966) e

SUBJECT: Rules and Regulations for the West Virginia Prevailing Wage Act.

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The following legislative rules and regulations are promulgated pursuant to the provisions of Article 5A, Chapter 21 of the Code of West Virginia, "Wages for Construction of Public Improvements" in order to provide for proper administrative and enforcement of the provision of the Act.

*Section 1 General*

REGULATION 1 e

1.1 PURPOSE AND SCOPE

Every contract to which the State of West Virginia, or any political subdivision thereof, or any authority created by the Legislature of the State of West Virginia, including any officer, board or commission or agency of the State of West Virginia, is a party, for construction, re-construction, demolition, improvement, enlargement, painting, decoration, alteration and/or repair work (other than temporary or emergency repairs) which requires or involves the employment by any contractor or sub-contractor of laborers, mechanics, skilled and semi-skilled laborers and apprentices, in the performances of services directly upon the public work project must include in its specifications a provisions stating the Fair Minimum Wage Rates as determined by the Commissioner of Labor, which shall be paid for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed.

Every person paid by a contractor or a sub-contractor in the manner prescribed by Law under Chapter 21, Article 5, of the Code of West Virginia, for his labor in the construction, re-construction, demolition, alteration and/or repair work (other than temporary or emergency repairs) done under a bona fide Rehabilitation Program or a bona fide Manpower Training Program is "employed" and "receiving wages".

Work performed under a bona fide rehabilitation program arranged by and at a State institution primarily for teaching and upgrading the skills and employment opportunities of the inmates of such institutions is not to be considered public work performed by a public body as defined in the Act and these regulations.

1.2 Authority - WV Code 21-5A et seq. ; 21-5

1.3 Filing Date - December 29, 1982

1.4 Effective Date - January 1, 1983

authorized representatives.

(c) The term "Department" means the West Virginia Department of Labor.

(d) The term "Maintenance Work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

(e) The term "Public Body" or "Public Authority" means any officer, board or commission or other agency of the State of West Virginia, or any political subdivision thereof, or any authority created by the Legislature of West Virginia.

(f) The term "Public Work" means construction, re-construction, demolition, improvement, enlargement, painting, decoration, alteration and/or repair work (other than temporary or emergency repairs) done under contract and paid for in whole or in part out of the funds of a public body, but shall not include work performed under a bona fide Rehabilitation Program or a bona fide Manpower Training Program.

(g) The term "apprentice" means a person employed and working under a bona fide apprenticeship program, directly related to the particular craft involved in the construction industry. Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program, registered with and approved by the Bureau of Apprenticeship Training, United States Department of Labor.

(h) The term "bona fide" means that program which is made in good faith without interest of deceit. Rehabilitation Programs are those under the jurisdiction of the Division of Vocational Rehabilitation of the Department of Education and Manpower. Training programs are those certified by the Department of Employment Security to the Division of Vocational Education, Department of Education.

(i) The term "emergency" means an unforeseen combination of circumstances which calls for immediate action, and is synonymous with crisis, pinch, strait and necessity.

(j) The term "temporary" means lasting for a time only; existing or continuing for a limited time, not permanent.

(k) The term "locality" means any political subdivision, or combination of the same, with the county in which the construction is to be performed, except that if there is not available in the county of sufficient number of competent skilled laborers, workmen and mechanics to perform such construction work efficiently and properly, and may include one or more counties in this State adjacent to the one on which the construction is to be performed and from which such skilled laborers, workmen and mechanics may be obtained in sufficient numbers to perform the construction.

(l) The term "craft" means those special skills and trades which are recognized by custom and usage in the building and construction industry.

(m) The term "classification" means those specific categories of jobs which are performed within a "craft" such as a laborer who can be classified as a blacksmith, pipelayer, mucker-chucker, etc.

(n) The term "Prevailing Wages", "Wage Rates", "Minimum Wage Rates" and "Fair Minimum Wage Rates" shall mean those rates as determined by the Commissioner,

as payable in the locality in which the public work is to be performed, for the respective crafts and classifications, and shall include "Fringe Benefits" as required by the Act.

(o) The term "Fringe Benefits" shall mean those benefits granted by an employer that involves a money cost without affecting basic wage rates which includes compensation for holidays and fair minimum overtime.

(p) The term "Collective Bargaining Agreement" means the agreement or agreements negotiated between the historically established and recognized bargaining representatives for the employers and of the workmen for the particular crafts or classifications involved providing for applicable wage rates, hours of work, working conditions and contributions for employee benefits as defined in subsection (o) of this section.

(q) The term "Authorized Deduction" means those deductions which are authorized by Section 3, Article 5, Chapter 21 of the Code of West Virginia.

(r) The term "holdback pay" means the wages earned during the days between the end of the pay period and payday.

(s) The term "non-wilful violations" shall mean the result of an honest misinterpretation, a valid dispute as to the meaning or application, or a mere erroneous preparation of the payroll document -- all not attributable to willful negligence.

### Section 3 - REQUIRED PROVISIONS TO BE CONTAINED IN ALL ADVERTISED SPECIFICATIONS AND CONTRACTS FOR PUBLIC WORK

The specifications for every contract for any public work as defined herein shall contain at least the following conditions, provisions and requirements:

(a) The Fair Minimum Wage Rates as shall have been determined by the Commissioner of Labor which must be paid to the workmen employed in the performance of the contract.

The contract shall specifically provide that the contractor and/or sub-contractor or sub-contractors shall pay no less than the wage rates as determined in the decision of the Commissioner and shall comply with the conditions of the West Virginia Act on Wages for Construction of Public Improvements passed March 11, 1961 and made effective ninety days from passage, and the regulations pursuant thereto, to assure the full and proper payment of said rates. Further, the wage rates as determined shall be printed on the bidding blanks and attention should be specifically noted to these facts within the body of the advertisement for bids.

(b) The contract shall contain the stipulation that such workmen shall be paid no less than such prevailing wage rates and such other provisions to assure payment thereof as heretofore set forth in this section.

(c) The contract provisions shall apply to all work performed on the contract by the contractor and/or sub-contractor or sub-contractors.

(d) The contractor shall insert in each of his sub-contract or sub-contracts all of the stipulations contained in these required provisions and such other stipulations as may be required.

(e) The contract shall provide that no workmen may be employed on the public work except in accordance with the classifications set forth in the decision of the Commissioner. In the event that additional of different classifications are necessary, the procedure set forth in Section 10 of these regulations shall be followed.

(f) The contract shall provide that all workmen employed or working on the public work shall be paid unconditionally, regardless of whether any contractual relationship exists of the nature of any contractual relationship which may be alleged to exist between any contractor, sub-contractor(s) and workmen, not less than once a week without deduction or rebate, on any account, either directly or indirectly, except authorized deductions, the full amounts due, less hold back pay of no more than three days, computed at the rates applicable to the time worked in the appropriate classification.

Nothing in the contract, the Act or these regulations shall prohibit the payment of more than the Fair Minimum Wage Rates as determined by the Commissioner to any workman on public work.

(g) The contract shall provide that the contractor and each sub-contractor shall post for the entire period of construction the wage determination decisions of the Commissioner in a prominent and easily accessible place or places at the site of the work. The posted notice of wage rates must contain the following information:

1. Name of project.
2. Name of public authority for which it is being constructed.
3. The crafts and classifications of workmen listed in the Commissioner's Fair Minimum Wage Rate Determination for the particular locality.
4. The Fair Minimum Wage Rates determined for each craft and classification.
5. A statement advising workmen that if they have been paid less than the fair minimum wage rate for their job classification or that the contractor, and/or sub-contractor or sub-contractor(s) are not complying with the Act, or these regulations in any manner whatsoever may recover from such contractor and/or sub-contractor(s) the difference between the same and the posted Fair Minimum Rate of Wages, and in addition thereto a penalty equal in amount to such difference, and a reasonable Attorney's fee. The limitation to such civil action by the workman is a period of three years and venue of such action shall be in the county where the work is performed.

(h) The contract shall provide that the contractor and each sub-contractor shall keep an accurate record showing the name, craft and/or classification, number of hours worked per day, and the actual hourly rate of wage (including fringe benefits) to each workman employed by him in connection with the public work and such record must include any deductions from each workman. The record shall be preserved for a period of at least three years after termination of the termination of the contract, and shall be open at all reasonable hours to the inspector of the Commissioner and the public authority which let the contract, its officers and agents.

(i) The contract shall provide that apprentices will be permitted to work only when they are registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft and/or classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program or the recognized ration of the joint apprenticeship council having jurisdiction in the trade area, whichever is less. An employee listed on the payroll at an apprentice

wage rate, who is not registered as above stated, shall be paid the Fair Minimum Wage Rate determined by the Commissioner for the classification of the work actually performed. Further, the contractor and/or sub-contractor or sub-contractor(s), will be required to furnish to the Commissioner written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates, for the locality, prior to using any apprentices on the public work.

(j) Wages shall be paid without any deductions except authorized deductions.

(k) Payment of compensation to workmen for work performed on public work on a lump sum basis, or a piece work system, unless such piece rate method, at the time of payment of the resultant wages, is computed on an hourly basis and are not less than the Fair Minimum Wage Rate determined to be prevailing.

(l) The contract shall also provide that the contractor and each sub-contractor shall file a statement at the request of the Commissioner and a final statement at the conclusion of the work on the contract with the Commissioner, under oath, certifying that all workmen have been paid wages in strict conformity with the provisions as prescribed by this Section 3 of these regulations, or if any wages remain unpaid to set forth the amount of wages due and owing each workman respectively.

(m) No person, for himself or another, shall not request, demand or receive, either before or after workmen are employed in construction on a public improvement, that they or anyone of them pay over money or other things of value or pay back, return, donate, contribute or give any part or all of their wage, or thing of value, to any person, upon the statement, representation or understanding that failure to comply with such request or demand will prevent them or any one of them from procuring or retaining employment, and any person who directly or indirectly aids, request or authorizes any other person to violate any of the provisions of this sub-section (m) shall be guilty of a misdemeanor and fined not less than fifty dollars and not more than two hundred fifty dollars.

(n) Certain crafts traditionally have used laborers or helpers for journeymen training and it is recognized that this is the practice in certain geographic and craft trade areas. The use of laborers or helpers where apprentices' wages are determined is not authorized and constitutes a violation. In geographic areas where such laborers or helpers are recognized sub-classifications to crafts, they will be included in the pre-determined schedule of Fair Minimum Wage Rates.

(o) The provisions of the Act and these regulations may be incorporated by reference in the contract, except that the schedule of fair minimum wages shall be attached to and made a part of the specifications and contract.

#### Section 4 - DUTY OF THE PUBLIC AUTHORITY

(a) Any public authority authorized to let to contract the construction of a public improvement, shall before advertising for bids for construction thereof, the Fair Minimum rates of wages to be paid by the successful bidder to the workmen in the various categories, branches or classes of the construction to be performed; and such schedule of wages shall be attached to and made a part of the specifications for the construction and shall be printed on the bidding blanks.

(b) The public authority shall submit a certified statement to the Commissioner when the contract is awarded to the effect that wage schedules had been attached to specifications and bidding blanks and made a part of the contract. The certification

shall also include a statement of the cost, the name of the contractor, the starting date of the project and estimated time for completion.

(c) The final payment to the contractor shall be withheld until such time as the public authority, who is charged with the disbursement of the funds has ascertained and so certified to the Commissioner that the wage rates as determined by the Commissioner are paid. Further, final payment shall be withheld if the Commissioner notifies public authority that the contractor is in violation of the Act or these regulations.

Section 5 - PREVAILING WAGE ESTABLISHED AT REGULAR INTERVALS -- HOW DETERMINED -- HEARINGS ON OBJECTIONS -- JUDICIAL REVIEW

(a) The Department of Labor, from time to time, shall investigate and determine the prevailing hourly rate of wages in the localities in this State. Determinations thereof shall be made annually on January one of each year and shall remain in effect during the successive year: Provided, however, that such rates shall not remain in effect for a period longer than fifteen months from the date they are published.

In determining such prevailing wage rates, the Department of Labor may ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, and such rates as are paid generally within the locality if this State where the construction of the public work is to be performed.

(b) A copy of the determination so made shall be filed with the Secretary of State under the provisions of this Act and Chapter 29A, (State Administrative Procedures) of the Code of West Virginia. Copies shall be supplied to all persons requesting same within ten days after such filing or as provided for in Chapter 29A of the Code of West Virginia.

(c) At any time within fifteen days, after such filing, any affected person may object, in writing, to the determination by filing such written notice with the Commissioner stating specific grounds of the objection.

(d) Within ten days of the receipt of such objection, the Commissioner shall set a date for a hearing and that date shall be within thirty days after receipt of the objection by written notice as to the time and place for said hearing, and such notice shall be at least ten days prior to the date set so as to enable the objector to be present.

(e) Within ten days of the conclusion of such hearing the Commissioner shall rule and make a decision based upon evidence presented. Such decision shall be filed with the Secretary of State and a copy to all parties by personal service or registered mail.

(f) Any person affected may appeal the aforementioned decision to the Minimum Wage Rate Board within ten days after such filing. The Board shall hear the appeal within twenty days in Charleston and shall render its decision within ten days after the conclusion of the hearing.

(g) Any party affected by the proceedings in sub-section (g) may, within thirty days, appeal the Board's decision to the Circuit Court of the County wherever the project is to be performed. The decision of such Circuit Court may be appealed to the Supreme Court of West Virginia by any person affected thereby in the manner provided by Law for appeals in civil action.

(h) This sub-section will illustrate the proceedings set forth in sub-section (a) through (h).

1. The Commissioner files the determined wage rates on January 1. If by January 16 (within 15 days) an affected party protests or objects, then the Commissioner by January 26 (within 10 days) sets a date for the hearing. This hearing cannot be set for a date later than February 5 (10 days prior to hearing date).

2. If the hearing is concluded on February 15, a decision must be rendered by February 25 (within 10 days) and certified as provided.

3. Any person affected may appeal the Minimum Wage Board no later than March 7 (within 10 days) and the Board shall hear the appeal by March 27 (within 20 days) and the Board shall render a decision by April 6 (within 10 days).

4. Any person affected by the Board's decision may appeal to the Circuit Court of the county wherein the project is contemplated at a date no later than May 6 (within 30 days) and the Circuit Court's decision may be appealed to the Supreme Court of Appeals of West Virginia in the manner provided by Law for appeals in civil actions.

(i) To further simplify this procedure, the following table should be studied:

January 1	- Wage rates are determined
January 16	- Objection (within 15 days)
January 26	- Commissioner sets hearing date (within 10 days)
February 5	- Objector notified (10 days prior to hearing)
February 15	- Hearing (within 30 days after objection)
February 25	- Commissioner's Decision (within 10 days after hearing)
March 7	- Appeal to Minimum Wage Rate Board (within 10 days)
March 27	- Hearing by Board (within 20 days)
April 6	- Decision by Board (within 10 days)
May 6	- Objector's Appeal to Circuit Court (within 30 days)
	Further appeal as provided by Law.

EXPLANATION: Maximum periods are used to illustrate and this does not mean that an objection cannot be made on January 1, (the same date on which rates were filed,) and a hearing set on the same day, (if the objectors agree that they can be present,) and the Commissioner can render a decision on the same day.

(j) Pending the decision on appeal, the rates for the preceding year shall remain in effect.

## Section 6 - POSTING OF WAGE RATES

The contractors and sub-contractor(s) on the public work project shall post, in a prominent and easily accessible place, a clearly legible statement of all fair minimum wage rates to be paid the several classes of workmen employed on the public improvement.

## Section 7 - RECORDS AND INSPECTION

(a) The contractor and each sub-contractor or the officer of the public authority in charge of the construction of a public improvement shall keep an accurate record.

There is no mandatory format, however, all payrolls must contain the following information:

1. The employee's full name, address, and social security number. (This is necessary on the first payroll on which his name appears; thereafter, only his name, unless a change of name or address.);
2. The employee's classification;
3. The employee's hourly wage rate, and where applicable, his overtime hourly wage rate;
4. The daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted);
5. The itemized deductions made;
6. The net wages paid;

(b) If space on the payroll form is limited, supplemental data may be recorded, if it is easily accessible to the payroll form.

(c) Appropriate codes are permissible to replace classification names on payrolls, provided a key to such code is submitted to the Commissioner for retention in his files.

(d) All records pertaining to the Public Improvement Project shall be preserved for a period of no less than three years.

## Section 8 - PENALTIES FOR VIOLATION OF ACT

(a) Any contractor or sub-contractor who willfully and knowingly violates any provision of the Act or these regulations shall be fined not less than fifty dollars nor more than two hundred fifty dollars.

(b) Any workmen, on the public improvement, who is paid less than the posted fair minimum rate of wages, may recover from his employer the difference between the same and the posted rate, plus a penalty equal in amount to such difference, and a reasonable Attorney's fee or fees. The venue of such action shall be in the county where the work is performed.

(c) It shall be unlawful for any person, for himself or another, to request, demand, or receive, either before or after workmen are employed on a public work

project, that they (workmen) pay back, return, donate, contribute or give any part or all of their wages, or thing of value to any person, upon the statement, representation or understanding that failure to comply with such request or demand will prevent them or any one of them from procuring or retaining employment; and any person who directly or indirectly aids, requests, or authorizes such a violation shall also be guilty of a misdemeanor and fined not less than fifty dollars nor more than two hundred fifty dollars.

#### Section 9 - SEVERABILITY

Each section and sub-section of the Act and these regulations is hereby declared to be an independent section or sub-section, and if any section, sub-section, sentence, clause or phrase of the Act or these regulations shall for any reason be held unconstitutional, the validity of the remaining phrases, clauses, sentences, sub-sections and sections shall not be affected thereby.

#### Section 10 - AMENDMENTS OR REGULATIONS

(a) Any person wishing a revision of any of the terms of the regulations in this part with respect to classifications or any other pertinent facts, may submit to the Commissioner, a written petition setting forth the changes desired and the reasons for proposing them.

(b) The Commissioner, upon inspection of the petition, and believing that the grounds are reasonable, may schedule a hearing with due notice to interested persons, or make other provisions for affording interested persons an opportunity to present data, views and arguments relating to any proposed changes.