

Minnesota State Colleges and Universities

Prevailing Wage Payroll Collection Procedure Facilities Construction Contracts July 2009

I. Overview

Minnesota prevailing wage law requires that laborers, workers, and mechanics on projects financed in whole or in part by state funds be paid wages comparable to wages paid for similar work in the community as a whole. Minnesota Statutes §§ 177.41 through 177.44. It is the policy of Minnesota State Colleges and Universities to fully comply with applicable provisions of state prevailing wage laws. See System Procedure 6.5.5. Part 9.¹ This document addresses compliance with Minnesota Statutes § 177.43, Subd. 3, the provisions of the law that require the collection of payroll information by contracting agencies.

New requirements effective July 1, 2009: Contracting agencies must collect a greatly expanded list of payroll information from all contractors and subcontractors and new reporting periods. The law now also requires more specific contract provisions notifying contractors of prevailing wage requirements and calls for penalties to college and university contracting entities that fail to provide appropriate notices.

II. Applying Prevailing Wage Laws to Facilities Construction Contracts at Minnesota State Colleges and Universities

A. Contracts Subject to Prevailing Wage Requirements

All system facilities construction contracts are subject to the prevailing wages *except for* contracts or work under a contract where:

- The estimated total cost of completing the project is less than \$2,500 and only one trade or occupation is required to complete it; or
- The estimated total cost of completing the project is less than \$25,000 and more than one trade or occupation is required to complete it.

B. New Contract Language Requirements and Potential Penalties

As of July 1, 2009, where prevailing wage rates apply, the law requires not only that the contract documents specifically state the prevailing wage rates, hours worked each day, total hours, and hourly rates of pay, but additionally that the contracting authority shall incorporate into its proposals and all contracts, the applicable wage determinations for the contract along with contract language provided by the Minnesota

¹ Unless otherwise noted, this guide does not address federal prevailing wage compliance, which may be triggered by federal funding. System representatives handling such projects should consult with the Office of the Chancellor, Facilities Unit for assistance in complying with federal prevailing wage requirements.

Department of Labor and Industry (DLI) to notify the contractor and all subcontractors of the applicability of sections Minnesota Statutes §§ 177.41 to 177.44. (See III below.)

Failure to incorporate the determination or provide the required language into the contracts shall make the contracting authority liable for making whole the contractor or subcontractor for any increases in the wages paid, including employment taxes and reasonable administrative costs based on the appropriate prevailing wage due to the laborers or mechanics working on the project.

III. Compliance

For all system construction contracts executed after July 1, 2009 that are subject to prevailing wage requirements, the following apply:

A. Required Contract and Solicitation Document Language

1. Include the following language as provided by DLI:

Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties

For more information regarding prevailing wage and its application, contact:

*Minnesota Department of Labor and Industry
Prevailing Wage unit
443 Lafayette Road N.
St. Paul, MN 55155
Phone: (651) 284-5091
E-mail: dli.prevwage@state.mn.us
Web: www.dli.mn.gov*

2. Specifically state the prevailing wage rates, prevailing hours of labor and hourly basic rates of pay that are applicable to this contract (providing a link to the DLI Web site is not compliant).

3. Include the following notice language:

As required by Minn. Stat. § 177.43, Subd. 3, all contractors and subcontractors shall submit to the contracting entity certified payroll records

every two weeks that include the information described in Minnesota Statutes §177.30. Use of MnSCU Form 073 will be required for this purpose.

B. Collecting Payroll Records.

For all contracts executed on or after July 1, 2009, **every two weeks** (not later than 14 days after the end of the relevant pay period), contracting entities must collect from each contractor and subcontractor prevailing wage payroll information as described at Minnesota Statutes § 177.30 together with a statement of compliance under oath that is signed by an owner or officer of an employing contractor.

Minnesota State Colleges and Universities shall require use of its ***Prevailing Wage – Payroll Information Form MnSCU073***. Note that to include all the information required to be collected by the 2009 revision of Minn. Stat. § 177.30, this is a two part form: 1) the Prevailing Wage Payroll Information spreadsheet; and 2) the Statement of Compliance. Contractors should be advised that use of this form is mandatory and no other payroll forms will be accepted to meet reporting requirements. Paper or electronic media are acceptable. Note that a *signature* and date are required on the compliance forms for each pay period.

Colleges/Universities and the Office of the Chancellor should establish a system to track compliance with reporting requirements. Contractors should be promptly notified (preferably in writing) of missing, late or incomplete information and directed to become compliant by a specified date.

Contact the Office of the Chancellor, Facilities Unit for assistance in dealing with contractors who are not meeting contract expectations in this regard.

IV. Maintaining Prevailing Wage Payroll Records.

Colleges/Universities and the Office of the Chancellor shall maintain prevailing wage payroll information and corresponding Statements of Compliance for a minimum of three years after final payment has been made on the project, or longer if required by the applicable records retention schedule.

It is recommended that each College/University and the Office of the Chancellor organize its payroll records by project name for easy retrieval.

V. Responding to Requests for Copies of Payroll Records.

Under the Minnesota Government Data Practices Act, the Statement of Compliance forms and prevailing wage information required to be collected is public data. The law requires a response to a request for public data within a reasonable time. Access (viewing) must be provided free at a mutually convenient time and place; if copies are requested, they must be provided, but there may be a charge. On-going data requests (for

example, a request for all payroll records as the project progresses) must be honored, but periodic renewal of such requests may be required as part of a consistent policy.

Contact the requesting party if you are not certain about what is requested – and it is a good idea to re-state the revised request in writing, if appropriate. System personnel may not ask the purpose of the information request.

A college or university may wish to designate a person or office to handle prevailing wage record requests. It need not be facilities personnel, but factors to consider would include ready access to the prevailing wage records and some familiarity with the projects in order to insure that complete records are provided. All prevailing wage record requests should be handled by the designated person or office.

Each college and university should have a copy charge policy for public records. Contact your campus Data Practices Compliance Official (DPCO) for assistance. <http://www.ogc.mnscu.edu/dataprivacy/index.html>. For most paper record requests (up to 100 pages) the charge will be \$.25 per page, which includes postage.

Colleges and universities may provide copies in electronic or some other media (e.g., a disc), or some other format (e.g., a different software application) but the law generally does not require you to provide data in a manner that is different from how you ordinarily maintain the records. Check your campus copy charge policy or <http://www.ipad.state.mn.us/docs/copyfees1303.pdf> for information on calculating charges for records that are provided in a medium other than paper, or records you have agreed to convert to some other format. You may also contact the Office of General Counsel for assistance.

Important: Before providing copies of payroll records, review them to make sure that they do not include SSNs or other private information that has been inadvertently included. Any private data must be “redacted” or removed/blocked (as appropriate) before release. Redacting paper records must be done on copies so that originals remain intact. Ask your campus DPCO for assistance, as necessary.

When responding to a records request, use a cover letter that lists the records that are provided and keep a copy of the letter and the records you provided.

VI. Prevailing Wage Law Enforcement.

The Minnesota Department of Labor and Industry (DLI) has primary enforcement responsibility for prevailing wage laws. Minn. Stat. §§ 177.27 and 177.43, Subd. 6. DLI has information online about its enforcement work, including reporting forms. Any individual who believes that there may be a violation of the prevailing wage standards may file a complaint with DLI.

Minnesota State Colleges and Universities will cooperate, as appropriate, with any DLI prevailing wage investigation. A campus representative who receives correspondence

from DLI should promptly forward a copy to the Office of the Chancellor Facilities Unit and may consult with the Office of General Counsel or the Attorney General's Office (AGO) in determining other appropriate actions. Even if not asked to supply records, DLI will typically notify a state contracting entity of an investigation and its resolution. MnSCU contracting entities will comply with a request from DLI to withhold contract payments in the event of unresolved prevailing wage investigations.

College/University or Office of the Chancellor employees who become aware of a breach of the prevailing wage contract terms shall take appropriate action to enforce contract compliance. Options may include, but are not limited to, referring the matter to DLI for an enforcement investigation, or withholding payment for failure to comply with contract requirements, if approved following consultation with the Office of General Counsel.

If a College/University or the Office of the Chancellor receives a complaint from a third party about prevailing wage compliance, a designated administrator in consultation with the Office of General Counsel and the Office of the Chancellor, Facilities Unit should respond in writing within a reasonable time with appropriate information, including details about how complaints can be filed with DLI.

The Office of General Counsel is also available to assist in dealing with other questions about this procedure. Contact Kris Kaplan at: 651 296-3905, Kristine.kaplan@so.mnscu.edu; or call 651 282-5519.