**12** **DEPARTMENT OF LABOR**

**170 BUREAU OF LABOR STANDARDS**

**Chapter 13: RULES GOVERNING THE ESTABLISHMENT AND USE OF FAIR MINIMUM WAGE RATES ON STATE CONSTRUCTION PROJECTS**

**Summary**: The purpose of this Chapter is to establish definitions and procedures to ensure the consistent and fair administration of the Minimum Wage Rates on State Construction Projects Law as presented in 26 MRSA Chapter 15.

**Section I: Definitions**

For purposes of the law and these rules, the following words have these meanings:

1. "Advisory Board" means the Minimum Wage and Benefit Rate on Construction Projects Advisory Board as established in 26 MRSA §1307‑A and constituted in this chapter.
2. "Benefits" means payments, other than wages, made to a worker or to a third party on behalf of the worker, such as a deferred contribution plan. The definition of benefits in 26 MRSA §1308 is expanded to include registered apprenticeship training and education and Earned Paid Leave if applicable. Benefits do not include Unemployment Compensation, Workers' Compensation, Paid Family Medical Leave, or other contributions required by law except for Earned Paid Leave. Benefits also do not include general training, use of a company vehicle, or other provisions of goods or services which benefit or convenience the employer.
3. "Bureau" means the Bureau of Labor Standards within the Department of Labor.
4. “Certified Payroll Survey” or “CP Survey” means a survey conducted as described in 26 MRSA §1308-1 paragraph B.
5. “Collection Period” means the timeframe when the Bureau can accept new wage data from survey respondents. This period immediately follows the observation period. This is currently set by statute to end after the second week of October.
6. "Contractor" means an owner, executive, or manager of a company performing work in the construction industry.
7. “Construction Classification” or “Construction Class” refers to one of four types of construction project. These are:
8. Residential – construction activities in NAICS Industry Group 2361 (Residential Construction), or specialty trade construction work specific to single-family and two-family dwellings.
9. Building – all construction activities in NAICS Subsector 236 (Construction of Buildings), except those specified in (1) above.
10. Highway and Earthwork – Construction activities listed in NAICS Industry Groups 2372 (Land Subdivision) and 2373 (Highway, Street, and Bridge Construction), except the construction of bridges, elevated highways and overpasses which are classified in (4) below.
11. Heavy and Bridge – all construction activities in NAICS Subsector 237 (Heavy and Civil Engineering Construction), except those in (3) above.
12. “Davis-Bacon Survey” or “DB Survey” means a survey conducted as described in 26 MRSA §1308-1 paragraph C.
13. "Director" means the Director of the Bureau of Labor Standards.
14. "Filing date" means the day a public agency or its representative receives an official wage determination.
15. “Mailed Survey” means a survey conducted as described in 26 MRSA §1308-1 paragraph A.
16. “Median” means a geometric median calculated using hourly wage rates and hourly benefit rates. This pair of rates forms a total compensation package
17. “NAICS” stands for North American Industry Classification System. A NAICS code is a 6-digit industry identifier based on the primary economic activity of a business. NAICS codes used are those published by the U. S. Office of Management and Budget in 2022. The U.S. Bureau of Labor Statistics' “BLS-Only NAICS Codes” addendum are also used. This addendum separates residential and non-residential specialty trade contractors.
18. “Observation Period” means a timeframe of work performed to be reported to the Bureau for calculating wage determinations. This is currently set by statute to be the second and third weeks of July.
19. "*Per diem* in lieu of wages" means an allowance paid to a worker to cover personal expenses such as meals, travel, lodging, and incidental expenses.
20. “Region” means a group of adjoining counties with at least one metropolitan county, defined by the federal Davis-Bacon program in the 2022 Building survey as: Androscoggin, Cumberland, Kennebec, Penobscot, Sagadahoc, and York. Regions will be identical between all the surveys which the Bureau conducts. The Bureau will not combine data between regions when calculating local rates.
21. "Registered Apprentice", is a person participating in a registered apprenticeship program as defined in 26 MRS, §1314. The holder of an apprentice license issued by the Maine Department of Professional and Financial Regulation is not a registered apprentice.
22. "Temporary or Emergency Repairs" means unplanned construction activities necessary to perform as soon as an issue is found.
23. “Total Compensation Package” means the hourly wage rate and the hourly benefit rate for a trade.
24. "Trade" means a construction work activity engaged in by an individual worker. The Bureau will use the US Office of Management and Budget's 2018 version of the Standard Occupational Classification (SOC) Manual to categorize individual trades.
25. “Wages” means payment(s) made to the worker in exchange for work performed. This includes all payments made based on an hourly rate, such as overtime, stipends, shift differential, or longevity.
26. “Week” used in relation to the start and end times for the survey, means a 7-day period starting on Sunday and running through Saturday (e.g. the second week of the month begins on the Sunday between the 8th and the 14th and ends on the Saturday between the 14th and 20th).
27. "Worker" means a person engaged in a construction trade that is eligible for coverage under a rate determination. It includes work leaders who primarily perform trades work, even if they have some supervisory responsibilities. It excludes owner-operators who qualify as bona fide independent contractors.

**Section II: Advisory Board of Minimum Wage and Benefit Rates on Construction Projects**

1. The Advisory Board will consist of eight members to be appointed by the Director as follows:
2. A worker, not covered by a collective bargaining agreement, engaged in a building construction trade;
3. A worker, covered by a collective bargaining agreement, engaged in a building construction trade or the representative of a union covering a building construction trade;
4. A worker, not covered by a collective bargaining agreement, engaged in a highway or heavy and bridge construction trade;
5. A worker, covered by a collective bargaining agreement, engaged in a highway or heavy and bridge construction trade or the representative of a union covering a highway or heavy and bridge construction trade;
6. A building contractor that is not a signatory to a collective bargaining agreement;
7. A building contractor that is a signatory to a collective bargaining agreement;
8. A highway or heavy and bridge contractor that is not a signatory to a collective bargaining agreement; and
9. A highway or heavy and bridge contractor that is a signatory to a collective bargaining agreement.
10. The Director serves as chair of the Advisory Board. The Director may designate a person from the Bureau staff to preside as chair in the Director's absence.
11. The Director may designate a person from the Bureau staff to serve as Secretary to the Advisory Board.
12. The Director shall call meetings as deemed necessary. The Director or their designee will set the agenda for each meeting.
13. The Advisory Board will provide advice through discussion and consensus.

**Section III: Overview of Process**

1. The Bureau will design survey methods to govern the collection, processing, and reporting of wage and benefit information. The Standards and Guidelines for Statistical Surveys, published in 2006 by the federal Office of Management and Budget, is used as guidance.
2. Section IV lists general methods used in all surveys the Bureau conducts. This includes the target population for all surveys.
3. Section V lists methods specific to each individual survey. This includes the sampling frame for each survey.
4. Section VI lists the Bureau’s requirements for survey respondents to comply with 26 MRSA §1308 1-A.It includes guidance forreporting the appropriate trade, wage, benefit, county, or construction classification for workers.
5. Section VII describes how the Bureau will calculate and compare the median wage and benefit rates for each survey.
6. Part A lists rules which apply to the calculation of rates and comparison of results for all surveys.
7. Part B details how the results of the mailed survey are compared against the results of the certified payroll survey. This includes an order of precedence for selecting the highest rates.
8. Part C describes how trades in the Davis-Bacon wage determinations convert to SOC codes. It also describes how to compare the median total compensation packages to the results from Part B.
9. Section VIII lists how the Bureau will make rate determinations available. This includes a 30-day notice period where rate determinations are publicly available before going into effect. This section also lists requirements the Bureau has for contractors and subcontractors to comply with 26 MRSA §1309 and §1310.
10. Section IX describes enforcement of the law and rules. It describes the requirements the Bureau has for employers to keep payroll records and classify and compensate workers appropriately.

**Section IV: General Survey Procedure**

1. The design of the surveys is as follows:
2. The target population are workers whose Standard Occupational Classification (SOC) code
   1. Is in the Minor Group 472 (Construction Trades Workers); 474 (Other Construction and Related Workers); or 475 (Extraction Workers), excluding trades specific to Oil and Gas, or Underground Mining; or
   2. Has a corresponding labor classification recognized by the federal Wage and Hour Division as being subject to Davis-Bacon wage determinations; or
   3. Is a trade for which the Bureau has historically published Prevailing Rates; or
   4. Is determined to be related to construction trades and in a category as defined in §1308 (1)(B).
3. If Prevailing Rates are not determined for a trade for 5 years, or if there is no survey data for a trade for 3 years, the Bureau will remove that trade from the target population. The Bureau may also remove trades from the target population if it believes there will not be 10 or more workers in Maine during the observation period.
4. The Bureau will make a reasonable effort to ascertain the wage and benefit rates in collective bargaining agreements for trades in the target population. If a collective bargaining agreement covers 10 or more trade workers in every region, the Bureau may use those wage and benefit rates instead of including the trade in a survey.
5. The Bureau may make minor changes to the survey design as part of a pilot study to gauge the effect on received data quality and response rate. Pilot studies cannot be undertaken with the intent of affecting Prevailing Rates.
6. The collection and processing of data for the surveys is as follows:
7. The Bureau will make a reasonable number of attempts to solicit respondents for wage and benefit information.
8. The Bureau will accept new data through the end of the collection period. If a respondent does not submit complete information before the end of the collection period, the Bureau will provide notice of an additional 15 business days from the date of the notice to complete their submission before calculating rates.
9. Survey data will be used for statistical purposes only.
10. The Bureau will classify data from residential construction projects as building construction.

**Section V: Specialized Survey Procedures**

1. For the Mailed Survey only:
2. The Bureau will update the sampling frame annually, comprised of the following:
   1. Businesses in the Department's Enhanced Quarterly Unemployment Information (EQUI) file with a NAICS code in the 23 (Construction) sector, excluding Residential Construction.
   2. Temporary help and business support servicers known to supply workers to construction sites, such as flagging services.
   3. Businesses who have previously volunteered data under Part iii(a) below.
3. The Bureau will conduct a census of businesses in the sampling frame who employ 5 or more workers. The Bureau may use weighting methods to sample a subset of this group. The Bureau may also develop methods to exclude employers from the sampling frame if they are likely to be exempt from data collection.
4. The Bureau may include additional sets of data generated during the observation period from the following sources:
   1. Survey submissions made by Maine businesses not part of the sampling frame who employ workers in the target population.
   2. Certified payroll submissions made to State letting agencies under 26 §1311 by Maine businesses not part of the sampling frame.
   3. Payroll submissions made to the federal Department of Labor for the Davis-Bacon Wage Survey by Maine businesses not part of the sampling frame.
   4. Wage and benefit rates established under collective bargaining agreements for Maine workers whose data was not recorded in the mailed survey.
5. For the Certified Payroll Survey only:
6. The sampling frame are State letting agencies who collect certified payroll records for public works construction.

1. The Bureau will not collect or consider certified payroll records from public works projects subject to the federal Davis-Bacon Act.
2. For the Davis-Bacon Survey only:
3. The sampling frame are Davis-Bacon rates published by the federal Department of Labor’s Wage and Hour Division’s Branch of Wage Surveys, or the successor division which conducts the federal Davis-Bacon Wage Survey.
4. All Davis-Bacon wage determinations are assumed to be calculated using data from 10 or more workers. The Federal Wage and Hour Division may provide data to negate this assumption.
5. The Bureau will not adopt Davis-Bacon wage determinations for trades which cannot reasonably be compared to the results of the mailed survey or certified payroll survey, or are based on data from less than 10 workers

**Section VI: Collection of Wage and Benefit Information**

1. Employers and letting agencies surveyed by the Bureau for wage and benefit information will report for all workers during the observation period.
2. Workers who have no hours worked during the observation period (e.g. vacation, sick leave, etc.) will be reported according to their regular work schedule
3. Workers with more than one trade, wage rate, benefit rate, county, or construction classification will be reported once as how they spend most of their work hours. Workers who spend an equal or unknown amount of time with more than one trade, wage rate, benefit rate, county, or construction classification will be reported as follows:
   * 1. Trades and construction classifications will be reported as whichever is closest to the primary economic activity of the employer.
     2. Wage and benefit rates will be reported at the highest rate earned during the observation period.
     3. County will be reported as the county where work was performed which is closest to the employer’s physical location.
4. Construction trades will be classified as work performed, or the skills, education, or training needed to perform the work.
5. Apprentices and trainees are classified with the journeymen and masters of the trades they receive training in.
6. Helpers and aides not in formal training for the trade they are assisting are classified as Construction Laborers.
7. Welders are classified as the trade to which the welding is incidental.
8. Construction classifications will be reported as the project on which the work is being performed, e.g. workers on a building project would be classified in building construction classification. If working on a sewerage treatment plant project, these same workers would be classified in the heavy and bridge construction classification.
9. The Bureau may request that respondents provide data as:
10. The hourly wage and benefit rates which workers are compensated for; or
11. The total wages and benefits earned, either through working or the use of accrued time off, and the total number of hours compensated.
12. The Bureau may request that respondents convert the total benefits paid to an hourly rate. The conversion will be accomplished using the following formula:

(C/H) x F = Hourly Benefit Rate, where

C equals the cost or value of the benefit for some period.

H equals the yearly hours worked by the worker.

F is the time adjustment factor:

If C is the annual cost, F equals 1.

If C is the quarterly cost, F equals 4.

If C is the monthly cost, F equals 12.

If C is the biweekly cost, F equals 26.

If C is the weekly cost, F equals 52.

**Section VII:**  **Calculation of Fair Minimum Wage and Benefit Rates**

1. **General Provisions**
2. When performing calculations, the Bureau will not combine data from two or more surveys.
3. Calculations of all-industry, statewide, and local rates will only be compared at the same levels of locality (e.g. statewide rates will not be compared against local rates, and local rates will not be compared across different regions).
4. If a trade has two or more total compensation packages as the median, the Bureau will use the total compensation package with the highest wage component.
5. If two total compensation packages being compared are equal, the total compensation package with the higher wage component will be chosen.
6. **Comparing results of the Mailed Survey and the Certified Payroll Survey**
7. The Bureau will calculate a median total compensation package for every trade with 10 or more workers at the all-industry, statewide, and region levels.
   1. The Bureau will not determine or enforce a Prevailing Rate for trades with fewer than 10 workers in both the mailed survey and the certified payroll survey.
8. When comparing the results of the all-industry rates, the Bureau will select the highest total compensation package for a given trade.
9. When comparing the results of both the statewide and the local rates in each region, the following order of precedence is used:
   1. If both surveys report 10 or more trade workers in the region, the Bureau will choose the highest total compensation package for the trade;
   2. If only one survey reports 10 or more trade workers in a region, the Bureau will choose that survey’s total compensation package for the trade:
   3. If neither survey reports 10 or more workers for a trade in a locality, the Bureau will use the all-industry rate for the trade if it exists.
10. **Comparing Results Against the Davis-Bacon Survey**
11. Once the comparison in part B is complete, the Bureau will obtain the Davis-Bacon wage determinations for the building, highway, and heavy construction classifications for a given county, using the most recent wage determinations as of the date when the comparison in part B was completed. The residential construction classification rates will not be used.
12. Every trade in a Davis-Bacon wage determination will be converted to the single, most comparable SOC code based on the Bureau’s knowledge and expertise. The Bureau may consider information available from U.S. DOL about the trade when making the conversion. The Bureau will not consider any SOC codes if a corresponding all-industry rate was not found as part of the calculation in Part B.
13. When comparing the Davis-Bacon wage determinations of the converted SOC trades against the rates chosen from Part B, the highest total compensation package will be the final Prevailing Wage and Benefit Rates for the given county.

**Section VIII: Issuance of Determinations**

1. Wage determinations will be published to the Bureau’s website for a 30-day notice period, after which these rates go into effect.
   * 1. The Bureau may correct clerical errors found in wage determinations without a 30-day notice period.
2. Wage determinations have no expiration date. Wage determinations will list the effective date of the prior set of determinations they replace.
3. Requests for determinations must use the process and web page specified by the Bureau.
4. The Bureau will assign building construction wage determinations to residential construction projects.
5. If a wage determination request involves construction from more than one category, the Bureau will issue separate wage determinations for each category.
6. A public agency or its representative must include a statement in any bid notice that a wage determination is in effect for the duration of the project. The bid package must contain the wage determination(s) for the project. The contract must stipulate the winning bidder provides the included wage determination(s) to all subcontractors.

**Section IX: Enforcement**

* + 1. The Bureau and its Director will enforce these rules and laws they are based on.
    2. Contractors and subcontractors will keep a copy of the project wage determination(s) at the work site. Wage determinations must be posted in a prominent location, easily accessible by their workers.

1. Contractors and subcontractors on projects without a static work site (e.g. a rural road resurfacing project) may meet this requirement by giving each worker a copy of the wage determination. Wage determinations must be provided within the first full day that the worker is on the project. The contractor or subcontractor must be able to document that each worker has received a copy of the wage determination.
   * 1. Employers must keep a record for each payroll period of every worker who worked on the job site. These records must be current to within three days of the latest pay period paid, and be retained, preserved, and open to inspection by a Bureau representative for at least three years after completion of the project. These records must contain the name, trade or job title, hourly wage and benefit rate(s), and total wages and benefit(s) paid.
2. The trade listed on these records is not binding on the Bureau. The trade for which a worker should be paid may be determined through job site inspections or interviews with the affected worker(s), any co‑workers, or any supervisors who are working or have worked on the site.
   * 1. Each day a worker is not paid in accordance with the law and these rules is a separate violation.
     2. Workers on covered projects must receive wages at a rate greater than or equal to the Prevailing Wage determined by the Bureau.
     3. Workers on covered projects must receive a combination of wages and benefits at a rate greater than or equal to the total compensation package determined by the Bureau.
3. Contractors may increase the hourly wage component of a worker's total compensation package as a substitute to providing the Prevailing Benefit rate.
   * 1. Records of employee benefits paid must be recorded on a per hour basis as presented in Section VI.
     2. An employer who violates 26 MRS sections 1301-1307 will be issued a Notice of Violation in writing. Employers will have 15 business days from the date of issuance to request an appeal in writing, which may include email. Appeals will be governed by the appeals process set out in 12-170 C.M.R. ch 9, section III.

STATUTORY AUTHORITY:

26 MRSA §42

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