

Kentucky Prevailing Wage Rules

803 KAR 1:030. Hearings on prevailing wage determinations.

RELATES TO: KRS 337.505-337.550

STATUTORY AUTHORITY: KRS 337.520(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.520(1) grants the commissioner the authority to make and revise such rules and administrative regulations as he may deem appropriate to carry out the provisions and purposes of KRS 337.505 to 337.550. The function of this administrative regulation is to set up procedures for any interested person requesting a hearing to be held for the purpose of making or revising a prevailing wage determination.

Section 1. For purposes of KRS 337.505 to 337.550 "any interested person" shall mean:

- (1) Any public authority in the locality where the hearing is held.
- (2) Any contractor eligible by law to bid on public works construction.
- (3) Any association or group representing contractors eligible by law to bid on public works construction.
- (4) Any labor organization representing a class, trade or group of workers within the locality where the hearing is held, which class, trade or group will be affected by the prevailing wage determination of the commissioner.
- (5) Any class, trade, or group of nonunion workers in the locality which will be affected by the prevailing wage determination of the commissioner.

Section 2. Any interested person may request a hearing for the purpose of making or revising a prevailing wage determination by notifying the commissioner in writing stating the locality he wants a hearing held in. The commissioner or his authorized representative will conduct said hearing within a reasonable time. The commissioner in determining what rates of wages prevail shall consider the criteria set forth in KRS 337.520(3)(a), (b) and (c).

Section 3. Upon completion of the aforementioned hearing, the commissioner or his authorized representative shall announce to those present that any interested person who wishes a copy of the commissioner's determination shall notify the commissioner or the Department of Workplace Standards in writing within ten (10) days of the completion of said hearing.

Section 4. Upon completion of the prevailing wage determination, the commissioner shall immediately send copies of said determination to all those interested persons requesting copies pursuant to Section 3 of this administrative regulation. (LAB-3; 1 Ky.R. 49; Am. 119; eff. 11-13-74.)

803 KAR 1:045. Contractors, subcontractors, prevailing rates of wages.

RELATES TO: KRS 337.530

STATUTORY AUTHORITY: KRS 337.520(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.520 authorizes the commissioner to make administrative regulations he may deem appropriate to carry out the provisions and purposes of KRS

337.505 to 337.550. The function of this administrative regulation is to interpret the requirements of payments which may be considered as paying the prevailing rates of wages by contractors and subcontractors.

Section 1. The Statutory Provisions. The statute requires all contractors and subcontractors to pay not less than the prevailing rate of wages in legal tender without any deductions. The statute provides an exemption to this requirement where the employer and employee enter into an agreement in writing at the beginning of or during any term of employment covering deductions for food, sleep accommodations or any similar item if this agreement is submitted by the employer to the department and is approved by the department as fair and reasonable.

Section 2. Free and Clear Payment; Kickbacks. Wages cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or "free and clear." The payment of wages as required by the statute will not be met where the employee kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. This is true whether the kickback is made in cash or in other than cash. For example, if it is a requirement of the employer that the employee must provide a uniform which will be used in, or is specifically required for, the performance of the employee's particular work, there would be a violation of the statute when the cost of furnishing and maintaining the uniform by the employee cuts into the prevailing rate of pay.

Section 3. Payment Made to Person Other than Employee. (1) Taxes which are assessed against the employee and which are collected by the employer and forwarded to the appropriate governmental agency may be deducted from the prevailing rate of wages. This is applicable to the employee's share of social security, as well as other federal, state, or local taxes. No deduction may be made for any tax or share of a tax which the law requires to be borne by the employer.

(2) Where an employer is legally obliged, as by order of a court of competent and appropriate jurisdiction, to pay a sum for the benefit or credit of the employee to a creditor of the employee, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceeding, deduction from wages of the actual sum so paid is not prohibited; provided, that neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction.

(3)(a) Where an employer is directed by a voluntary assignment or order of his creditor, donee, or other third party, deductions from wages of the actual sum so paid is not prohibited, provided, that neither the employer nor any person acting in his behalf or interest, directly or indirectly, derives any profit or benefit from the transaction.

(b) No payment by the employer to a third party will be recognized as a valid payment of wages required by the statute where it appears that such payment was part of a plan or arrangement to evade or circumvent the statute. For the protection of both employer and employee, it is suggested that full and adequate record of all assignments and orders be kept and preserved.

(c) Under the principles stated in paragraphs (a) and (b) of this subsection, employers will be permitted to deduct from wages sums paid at the employee's direction to third persons for the following purposes: sums paid, as authorized by the employee, for the purchase in his behalf of Savings Bonds; union dues paid pursuant to a collective bargaining agreement with bona fide representatives of the employees; employees' accounts with merchants independent of the employer; insurance premiums; voluntary contributions to churches and charitable, fraternal, athletic, and social organizations or societies from which the employer receives no profit or benefit directly or indirectly. (1 Ky.R. 833; eff. 5-14-75.)

803 KAR 1:055. Applicability of prevailing wage requirements.

RELATES TO: KRS 337.505-337.550

STATUTORY AUTHORITY: KRS 337.520(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.510(2) requires that all public works construction contracts with public authorities contain a stipulation that not less than the prevailing hourly rate of wages as determined by the Commissioner for the Department of Workplace Standards shall be paid to all laborers, workmen and mechanics performing work under the contract. KRS 337.530(1) provides that all public works contractors and subcontractors shall strictly comply with the prevailing wage requirements. The Commissioner of Workplace Standards is given authority through KRS 337.520(1) to make administrative regulations necessary to carry out the provisions and purposes of the prevailing wage statute and prevent the circumvention or evasion of the statute. The function of this administrative regulation is to set forth the criteria for determining what constitutes performing work under a public works contract and thus makes the prevailing wage requirements applicable.

Section 1. Coverage Criteria. (1) The manufacture or fabrication of construction materials or components by a construction contractor or subcontractor are deemed to be performed under the public works contract if such manufacture or fabrication is performed at the site of the public works project or other adjacent or nearby property used by the contractor or subcontractor.

(2) The "site of the project" is defined as follows:

(a) The "site of the project" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (b) of this subsection, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site".

(b) Except as provided in paragraph (c) of this subsection, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the project" provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(c) Not included in the "site of the project" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular public works contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or material person which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the project." Such permanent previously established facilities are not a part of the "site of the project", even where the operations for a period of time may be dedicated exclusively, or nearly so to the performance of a contract.

(3) Transportation of materials on the "site of the project" by employees of contractors or subcontractors for use at the "site of the project" is performing work under the contract and is thus covered by the prevailing wage provisions. Trucking firms engaged to haul materials for use at the "site of the project" from fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., which are part of the "site of the project" are deemed to be subcontractors and their employees are accordingly covered by the prevailing wage requirements. (16 Ky.R. 2088; eff. 5-10-90.)

803 KAR 1:085. Fringe benefits.

RELATES TO: KRS 337.505-337.550

STATUTORY AUTHORITY: KRS 337.520(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.520(1) authorizes the commissioner to make administrative regulations he may deem appropriate to carry out the provisions and purposes of KRS 337.505 to 337.550. The function of this administrative regulation is to interpret the prevailing wage and fringe benefit provisions of KRS 337.505 to 337.550.

Section 1. Definitions. (1) "Prevailing wage" is defined pursuant to KRS 337.505(1) and (2).

(2) "Bona fide fringe benefits" means those benefits which are common in the construction industry and established under a standard plan or program.

Section 2. The Basic Hourly Rate of Pay. The basic hourly rate paid shall be that part of a laborer, workman, and mechanic's wage which the commissioner would have determined and included in his determination as the portion of the wage in which a cash payment was made directly to the laborer, workman, and mechanic. It shall not include fringe benefits.

Section 3. Rate of Contribution for Fringe Benefits. (1) The commissioner is obligated to make a separate finding of the rate of contribution of fringe benefits. Only the amount of contributions for fringe benefits which meets the requirements of KRS 337.505-337.550 shall be considered by the commissioner.

(2) The rate of contribution shall be an hourly rate and shall be reflected in the wage determination as an hourly rate.

Section 4. Contribution Irrevocably Made to a Trustee or to a Third Person. (1) Under the fringe benefits provisions of KRS 337.505 the amount of contributions for fringe benefits shall be made to a trustee or to a third person irrevocably.

(2) The third person shall not be affiliated with the employer.

(3) The trustee shall assume the usual fiduciary responsibilities imposed upon trustees by applicable law.

(4) The trust or fund shall be set up in a way that shall prevent the employer from recapturing any of the contributions paid in or in any way diverting the funds to his own use or benefit.

(5) Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this shall not prevent the return to the employer any sums which he had paid in excess of the contributions actually called for by the plan; for example, where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained.

Section 5. Plan or Program. A fringe benefit shall not be eligible for consideration under this part unless:

(1) It provides fringe benefits described in the statute;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the employees affected.

Section 6. Specific Fringe Benefits. (1) Employers may take credit for contributions made under conventional plans, pursuant to KRS 337.505(2), which are funded under a trust or insurance program.

(2) Where the plan is not the conventional type described in the preceding subsection, it will be necessary for the commissioner to examine the facts and circumstances to determine whether they are "bona fide" in accordance with the requirements of the statute. Employers seeking credit for such plans shall request specific permission from the commissioner.

(3) KRS 337.505(2) excludes fringe benefits which an employer is obligated to provide under federal, state or local law. These types of fringe benefits shall not receive any credit and shall not be recognized as part of the prevailing wage rate. For example, payment for workers' compensation insurance shall not be considered payments for fringe benefits under the statute.

Section 7. Meeting Wage Determination Obligations. An employer may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination in the following ways, by paying:

(1) Not less than the basic hourly rate to the laborers, workmen, and mechanics and by making the contributions for the fringe benefits in the wage determination, as specified therein.

(2) Not less than the basic hourly rate to the laborers, workmen, and mechanics and by making contributions for fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination.

(3) In cash directly to the laborers, workmen, and mechanics the basic hourly rate and by making an additional cash payment in lieu of the required benefits.

Section 8. Overtime Payments. (1) The law includes amounts paid by an employer for fringe benefits in the computation of overtime under KRS 337.540(3). In no event shall the rate upon which premium pay for overtime is calculated be less than the amount determined by the commissioner as the basic hourly rate. Contributions by employees shall not be excluded from the basic rate upon which overtime is computed; that is, an employee's basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The employer's contributions for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the rate below the basic hourly rate contained in the wage determination.

(2) The statute permits an employer to pay a cash equivalent of any fringe benefits found prevailing by the commissioner. Such a cash equivalent would also be excludable in computing the rate upon which overtime is computed. (1 Ky.R. 155; 12-11-74; Am. 20 Ky.R. 3110; 21 Ky.R. 16; eff. 7-7-94.)