



NEW MEXICO

Q1. When was the state prevailing wage law adopted (or repealed) and most recently amended?

A1. Adopted 1937. Latest amendment 2009. N.M. Stat. Ann. §§ 13-4-11 to 13-4-17 (2012).

Q2. Have there been any recent challenges to enforcement of the state prevailing wage law?

A2. Yes. *See ABC v. New Mexico Labor and Indust. Comm'n* (1st Jud. Dist. Ct. 2008) (striking down efforts by the Commission to evade the statutory requirements for consideration of actual wages paid in each locality). In response to this case, the state legislature amended the statute purportedly to allow state officials to place greater reliance on collective bargaining agreements in determining the prevailing wage. However, subsequent litigation by ABC and other contractor groups led the Labor Relations Division to withdraw previously established wage rates as arbitrary and capricious and to initiate a new rulemaking to establish proper procedures for determining prevailing wages. *See* Letter of Director George P. Marquez, Jr. dated June 10, 2011. In March, 2012, the Division published new regulations governing the setting of wage rates that require the Division to consider additional wage data submissions beyond the collective bargaining rates. *See* NMAC 11.1.2 (as amended March 15, 2012). The following link to the web site of the New Mexico Labor Relations Division provides a detailed explanation of the new wage setting process:

<http://www.dws.state.nm.us/LaborRelations/LaborInformation/PublicWorks>

Q3. What is the monetary threshold for coverage?

A3. The law applies to every contract or project in excess of \$60,000. N.M. Stat. Ann. § 13-4-11-A.

Q4. Does the law cover more than "construction" work, and if so, what type of work has been found to be included or excluded from such coverage of "construction."

A4. The law covers construction, alteration, demolition and repair, including painting and decorating, of public buildings, public works and public roads of the state and that requires or involves the employment of mechanics, laborers or both. N.M. Stat. Ann. § 13-4-11-A.

Q5. How is the prevailing wage determined?

A5. See the discussion in A2 above regarding the 2012 amendments to the wage setting regulations issued by the State Labor Relations Division. See NMAC 11.1.2 (as amended March 15, 2012). <http://www.dws.state.nm.us/LaborRelations/LaborInformation/PublicWorks>.

- Q6. Are job duties published and are there any special work assignment restrictions?**
A6. Yes. See N.M. Admin. Code 11.1.2.13. The Labor Division conducted open meetings in May, 2012 to determine whether changes should be made to any of the listed job classification duties. See <http://www.dws.state.nm.us/LaborRelations/LaborInformation/PublicWorks>. It is recommended that nonunion contractors should contact the Department to determine whether any hidden work assignment restrictions apply, particularly to the extent that specific wage determinations appear to be based upon union wage scales.
- Q7. Are there any restrictions on recognition or crediting of fringe benefits?**
A7. Yes. See the discussion in A2 and A5 above regarding the 2012 amendments to the wage setting regulations issued by the State Labor Relations Division. See NMAC 11.1.2 (as amended March 15, 2012).
<http://www.dws.state.nm.us/LaborRelations/LaborInformation/PublicWorks>
- Q8. At what point does the law require payment of time-and-one-half for overtime?**
A8. Over 40 hours a week. See N.M. Stat. Ann. § 50-4-22-D.
- Q9. Are there defined apprenticeship ratios?**
A9. Not specifically in the prevailing wage law, but see N.M. Admin. Code 11.1.2.3, regulating apprenticeship standards generally, and incorporated by reference.
- Q10. Are there criminal and civil penalties and is there a private right of action in addition to state enforcement?**
A10. There is a private right of action and civil penalties. N.M. Stat. Ann. § 13-4-14.