24.17.120 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – HEAVY CONSTRUCTION SERVICES

(1) The commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations engaged in heavy construction services statewide. Although the commissioner establishes wage rates and fringe benefit rates, including travel, zone pay, and per-diem allowance rates separately, an employer's obligation to pay the "prevailing rate of wages" includes paying the combined value of both wages and fringe benefits, including travel, zone pay, and per-diem.

(2) The commissioner uses various data sources to determine the standard prevailing rate of wages.

(a) The standard prevailing rate of wages may be based upon an annual statewide survey of licensed electrical contractors, licensed plumbers, and registered construction contractors engaged in work performed to commercial building codes, as provided for by 18-2-414, MCA, who are licensed or registered on February 1 of the year in which the survey is being conducted.

(b) The standard prevailing rate of wages may instead be based upon applicable federal Davis-Bacon Act rates for heavy construction services in effect on a statewide basis for Montana as of September 1 of that year.

(c) If, with respect to any given occupation, there is a difference in the standard prevailing rate of wages (including the value of fringe benefits) surveyed for under this section, and the applicable federal Davis-Bacon Act rates in effect statewide for heavy construction services in Montana as of September 1 of that year, the commissioner shall adopt the higher of the two as the standard prevailing rate of wages.

(3) Based on survey data collected by the department statewide, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Where a wage rate is adopted from a collective bargaining agreement, applicable zone pay or travel pay, if any, must be adopted from that same agreement. If the wage rate is adopted from collective bargaining agreements which have equal wage rates and different zone pay or travel pay, the zone pay or travel pay must be adopted from the agreement covering more employees. Wage rates calculated through the survey for each occupation will be established using the following procedure:

(a) If a minimum of 40 or more workers are reported for the occupation statewide and 50 percent or more of those workers receive the same wage, then the statewide surveyed prevailing wage rate for that occupation is the higher of:

(i) that wage; or

(ii) the highest applicable collectively bargained rate.

(b) If 40 or more workers are reported for the occupation statewide but 50 percent of those workers are not paid the same wage, then the statewide surveyed prevailing wage rate for that occupation is the higher of:

(i) the weighted average wage; or

(ii) the highest applicable collectively bargained rate.

(c) If less than 40 workers are reported for the occupation statewide, the surveyed prevailing wage rate is the highest applicable collectively bargained rate for that occupation statewide.

(d) If less than 40 workers are reported for the occupation statewide and a collective bargaining agreement does not exist for the occupation, the federal Davis-Bacon Act rate for heavy construction services for the occupation in effect statewide for Montana on September 1 of that year is the prevailing wage rate for that occupation.

(e) No wage rate will be established for an occupation where:

(i) a minimum of 40 workers is not reported statewide;

(ii) a collective bargaining agreement does not exist; and

(iii) a federal Davis-Bacon Act rate for heavy construction services has not been established on a statewide basis as of September 1 of that year.

(4) Based on survey data collected by the department statewide, the commissioner will compile fringe benefit information for a given occupation statewide that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. Where a fringe benefit is adopted from a collective bargaining agreement, applicable per diem, if any, must be adopted from that same agreement. If the fringe benefit is adopted from collective bargaining agreements which have equal fringe benefits and different per diem, the per diem must be adopted from the agreement covering more employees. A single fringe benefit rate calculated through the survey for each occupation will be established for bona fide benefits paid or contributed to approved plans, funds, or programs for health insurance, life insurance, pension or retirement, vacations, holidays, and sick leave using the following procedure:

(a) If a minimum of 40 or more workers are reported for the occupation statewide and 50 percent or more of those workers receive the same dollar value of fringe benefits, then the statewide surveyed prevailing fringe benefit rate for that occupation is the higher of:

(i) that fringe benefit; or

(ii) the highest applicable collectively bargained fringe benefit rate.

(b) If 40 or more workers are reported for the occupation statewide but 50 percent of those workers are not paid the same fringe benefit rate, the surveyed prevailing fringe benefit rate for that occupation statewide is the higher of:

(i) the weighted average fringe benefit rate; or

(ii) the highest applicable collectively bargained fringe benefit rate.

(c) If less than 40 workers are reported for the occupation statewide, the surveyed prevailing fringe benefit rate is the highest applicable collectively bargained fringe benefit rate for that occupation statewide.

(d) If less than 40 workers are reported for the occupation statewide and a collective bargaining agreement does not exist for the occupation, the federal Davis-Bacon Act rate for heavy construction services for the occupation in effect statewide for Montana on September 1 of that year is the surveyed prevailing fringe benefit rate for that occupation.

(e) No fringe benefit rate will be established for an occupation where:

(i) a minimum of 40 workers is not reported statewide;

(ii) a collective bargaining agreement does not exist; and

(iii) a federal Davis-Bacon Act rate for heavy construction services has not been established on a statewide basis as of September 1 of that year.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604, within the time set by the commissioner.

(b) The commissioner may request clarification, additional information, or independent verification of information submitted pursuant to this rule.

(c) Wage information received during public comment for the update of prevailing wage rates or fringe benefits will not be considered.

(6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine whether the rate is incorrect. If found to be incorrect, the prevailing wage and fringe benefit rates will revert to the last published wage and fringe benefits rate for that occupation that was adopted via the rulemaking and public hearing process. For purposes of this rule, wage information which was not submitted during the survey does not indicate that a rate is incorrect. For temporary rates which have not been adopted via the rulemaking and the public hearing process, a corrected rate will be calculated based on information collected and submitted.

(7) It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or desires that the commissioner consider, to timely deliver such information to the commissioner.

Authorizing statute(s): 18-2-431, MCA

Implementing statute(s): 18-2-401, 18-2-402, 18-2-403, 18-2-414, 18-2-419, MCA

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