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STATUTORY MINOR CORRECTION

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CHAPTER 839

BUREAU OF LABOR AND INDUSTRIES

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ARCHIVES DIVISION SECRETARY OF STATE & LEGISLATIVE COUNSEL

FILING CAPTION: Correcting Section Numbering for OAR 839-025-0035

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AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Changing a rule's title or correcting a rule's internal section numbering as allowed by ORS 183.360(2)

AMEND: 839-025-0035

RULE TITLE: Payment of Prevailing Rate of Wage

RULE SUMMARY: Corrects the section numbering in OAR 839-025-0035 to account for missing section (7).

RULE TEXT:
(1) Every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed. Additionally, all wages due and owing to the workers shall be paid on the regular payday established and maintained under ORS 652.120.
(2) When a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), if the state prevailing rate of wage is higher than the federal prevailing rate of wage, the contractor and every subcontractor on the project shall pay no less than the state prevailing rate of wage as determined under ORS 279C.815.
(3) Every person paid by a contractor or subcontractor in any manner who is performing work subject to the prevailing wage on a public works project must receive no less than the applicable prevailing rate of wage, regardless of any contractual relationship alleged to exist. Thus, for example, if partners are themselves performing the duties of a worker, the partners must receive no less than the prevailing rate of wage for the hours they are so engaged.

(4) A person employed on a public works project and who is spending more than 20% of their time during any workweek in performing duties which are manual or physical in nature as opposed to mental or managerial in nature is a worker and must be paid no less than the applicable prevailing rate of wage. Mental or managerial duties include, but are not limited to, administrative, executive, professional, supervisory or clerical duties.
(5) A person employed on a public works project for the manufacture or furnishing of materials, articles, supplies or equipment (whether or not a public agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a worker required to be paid the applicable prevailing rate of wage unless the employment of the person is performed in connection with and at the site of the public works project.
(6)(a) As used in this section, "construction contractor or construction subcontractor" includes a person who enters into a public works contract to produce work at a satellite location.
(b) A person who is employed by a commercial supplier of materials or supplies that is not a construction contractor or construction subcontractor on the project, or a person who contracts with a commercial supplier of materials or supplies that is not a construction contractor or subcontractor on the project, to transport materials or supplies on a public works project is not required to be paid a prevailing rate of wage, provided the person's activities at the site of work or a satellite location are limited to driving, delivering the materials or supplies, or waiting for materials or supplies to be loaded or unloaded.
(c) A person who is employed by a commercial supplier of materials or supplies, or who contracts with a commercial supplier of materials or supplies, and performs non-delivery-related work on the site of work or a satellite location, is a worker and must be paid no less than the applicable prevailing rate of wage.
(d) A person employed by a construction contractor or construction subcontractor to transport materials or supplies on a public works project is a worker and must be paid no less than the applicable prevailing rate of wage for work performed in connection with the transportation of materials or supplies, unless the person's activities on the public works project are limited to driving, delivering the materials or supplies, or waiting for materials or supplies to be loaded or unloaded and the aggregate amount of time spent performing such duties does not exceed two hours in a "work day," as that term is defined in OAR 839-025-0050. When this subsection requires the payment of the prevailing wage for delivery-related work, the wage must be paid for all work that is performed entirely within a satellite site or entirely within the site of work, including delivery-related work performed between the site described in OAR 839-025-0004(35)(a) and the facilities described in OAR 839-025-0004(35)(b).
(e) Notwithstanding subsections (a) to (d) of this section, when a public works project is subject to the Davis-Bacon Act, a person transporting materials and supplies to or from the site of the project is entitled to be paid the prevailing wage in accordance with federal law, including any regulations adopted or guidelines issued in accordance with the Davis-Bacon Act.
(7) A person employed on a public works project for personal services, as that term is defined in ORS 279C.100, as opposed to construction work, is not a worker required to be paid the prevailing rate of wage.
(8) Every apprentice, as defined in OAR 839-025-0004, must be paid not less than the appropriate percentage of the applicable journey worker's wage rate and fringe benefits as determined pursuant to ORS 279C.800 to 279C.870. Any worker on a public works project who is not an apprentice as defined in OAR 839-025-0004, or who is not employed by a training agent, or who is not working pursuant to the standards of the apprentice's apprenticeship program, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of apprentices employed exceeds the ratio permitted in the applicable standards, all apprentices so employed must be paid not less than the applicable journey worker's prevailing wage rate for work actually performed.
(9) Every trainee must be paid not less than the appropriate percentage of the applicable journey worker's wage rate and fringe benefits determined pursuant to ORS 279C.800 to 279C.870. Any worker on a public works project who is not a trainee, or who is not employed by a training agent, or who is not working pursuant to the standards of the trainee's program, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of trainees employed exceeds the ratio permitted in the applicable standards,

all trainees so employed must be paid not less than the applicable journey worker's prevailing wage rate for work actually performed.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 279C.808

STATUTES/OTHER IMPLEMENTED: ORS 279C.800-279C.870