
HOUSE BILL 1072

State of Washington

66th Legislature

2019 Regular Session

By Representatives Sells, Doglio, Gregerson, Valdez, Appleton, Jinkins, Goodman, Bergquist, Stanford, and Ormsby; by request of Attorney General

Prefiled 01/02/19. Read first time 01/14/19. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to enhancing the prevailing wage laws to ensure
2 contractor and owner accountability and worker protection; amending
3 RCW 39.12.010, 39.12.050, and 39.12.065; adding a new section to
4 chapter 39.12 RCW; creating a new section; prescribing penalties; and
5 providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds:

8 (1) That from the shift in the 1980s from criminal to civil
9 penalties for prevailing wage violations that the law needs some
10 enhancements to effectively provide the department of labor and
11 industries with the ability to utilize its civil remedies to both
12 discourage and penalize repeat and willful violations of the law.

13 (2) The doctrine of substantial compliance shall not be used by
14 the department of labor and industries in the application and
15 construction of chapter 39.12 RCW. Anyone engaged in public works
16 construction is presumed to know the requirements of chapter 39.12
17 RCW.

18 (3) Revisions to chapter 39.12 RCW are long overdue and are
19 necessary to appropriately address filing and reporting procedures
20 and penalties, which are necessary to strengthen enforcement of and
21 deterrence from repeat and/or willful violations of the chapter.

1 **Sec. 2.** RCW 39.12.010 and 1989 c 12 s 6 are each amended to read
2 as follows:

3 (1) The "prevailing rate of wage" (~~(, for the intents and purposes~~
4 ~~of this chapter, shall be)~~) is the rate of hourly wage, usual
5 benefits, and overtime paid in the locality, as hereinafter defined,
6 to the majority of workers, laborers, or mechanics, in the same trade
7 or occupation. In the event that there is not a majority in the same
8 trade or occupation paid at the same rate, then the average rate of
9 hourly wage and overtime paid to such laborers, workers, or mechanics
10 in the same trade or occupation (~~(shall be)~~) is the prevailing rate.
11 If the wage paid by any contractor or subcontractor to laborers,
12 workers, or mechanics on any public work is based on some period of
13 time other than an hour, the hourly wage (~~(for the purposes of this~~
14 ~~chapter shall be)~~) is mathematically determined by the number of
15 hours worked in such period of time.

16 (2) The "locality" (~~(for the purposes of this chapter shall be)~~)
17 is the largest city in the county wherein the physical work is being
18 performed.

19 (3) The "usual benefits" (~~(for the purposes of this chapter~~
20 ~~shall)~~) includes the amount of:

21 (a) The rate of contribution irrevocably made by a contractor or
22 subcontractor to a trustee or to a third person pursuant to a fund,
23 plan, or program; (~~and~~)

24 (b) The rate of costs to the contractor or subcontractor, which
25 may be reasonably anticipated in providing benefits to workers,
26 laborers, and mechanics pursuant to an enforceable commitment to
27 carry out a financially responsible plan or program which was
28 communicated in writing to the workers, laborers, and mechanics
29 affected, for medical or hospital care, pensions on retirement or
30 death, compensation for injuries or illness resulting from
31 occupational activity, or insurance to provide any of the foregoing,
32 for unemployment benefits, life insurance, disability and sickness
33 insurance, or accident insurance, for vacation and holiday pay, for
34 defraying costs of apprenticeship or other similar programs, or for
35 other bona fide fringe benefits, but only where the contractor or
36 subcontractor is not required by other federal, state, or local law
37 to provide any of such benefits; and

38 (c) The effective annual rate of contributions for all hours,
39 public and private, worked during the year by an employee, commonly
40 referred to as annualization of benefits.

1 (4) An "interested party" (~~for the purposes of this chapter~~
2 ~~shall~~) includes a contractor, subcontractor, an employee of a
3 contractor or subcontractor, an organization whose members' wages,
4 benefits, and conditions of employment are affected by this chapter,
5 and the director of labor and industries or the director's designee.

6 (5) An "inadvertent filing or reporting error" is a mistake that
7 occurs only once and is made notwithstanding the use of due care by
8 the contractor or employer.

9 (6) "Unpaid prevailing wages" or "unpaid wages" means the
10 employer fails to pay all compensation owed for any workweek by the
11 regularly established pay day for the period in which the workweek
12 ends. Every employer must pay all wages, other than fringe benefits,
13 owing to its employees not less than twice a month.

14 **Sec. 3.** RCW 39.12.050 and 2009 c 219 s 3 are each amended to
15 read as follows:

16 (1) Any contractor or subcontractor who files a false statement
17 or fails to file any statement or record required to be filed or
18 posted under this chapter and the rules adopted under this chapter,
19 shall, after a determination to that effect has been issued by the
20 director after hearing under chapter 34.05 RCW, forfeit as a civil
21 penalty the sum of five hundred dollars for each false filing or
22 failure to file, and shall not be permitted to bid, or have a bid
23 considered, on any public works contract until the penalty has been
24 paid in full to the director. The civil penalty under this subsection
25 (~~shall~~) does not apply to a violation determined by the director to
26 be an inadvertent filing or reporting error. The director shall
27 consider whether or not the contractor or employer has attended the
28 required training under RCW 39.04.350 both for determining if the
29 violation may be applied and for enhancing the curriculum of the
30 required training provided by the department. The burden of proving
31 that an error is inadvertent rests with the contractor or employer
32 charged with the error. Civil penalties shall be deposited in the
33 public works administration account.

34 To the extent that a contractor or subcontractor has not paid
35 wages at the rate due pursuant to RCW 39.12.020, and a finding to
36 that effect has been made as provided by this subsection, such unpaid
37 wages (~~shall~~) constitute a lien against the bonds and retainage as
38 provided in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

1 (2) If a contractor or subcontractor is found to have violated
2 the provisions of subsection (1) of this section for a second time
3 within a five year period, the contractor or subcontractor (~~shall~~
4 ~~be~~) is subject to the sanctions prescribed in subsection (1) of this
5 section and shall not be allowed to bid on any public works contract
6 for one year. The one year period (~~shall~~) runs from the date of
7 notice by the director of the determination of noncompliance. When an
8 appeal is taken from the director's determination, the one year
9 period (~~shall~~) commences from the date of the final determination
10 of the appeal.

11 The director shall issue his or her findings that a contractor or
12 subcontractor has violated the provisions of this subsection after a
13 hearing held subject to the provisions of chapter 34.05 RCW.

14 **Sec. 4.** RCW 39.12.065 and 2009 c 219 s 4 are each amended to
15 read as follows:

16 (1) Upon complaint by an interested party, the director of labor
17 and industries shall cause an investigation to be made to determine
18 whether there has been compliance with this chapter and the rules
19 adopted hereunder, and if the investigation indicates that a
20 violation may have occurred, a hearing shall be held in accordance
21 with chapter 34.05 RCW. The director shall issue a written
22 determination including his or her findings after the hearing. A
23 judicial appeal from the director's determination may be taken in
24 accordance with chapter 34.05 RCW, with the prevailing party entitled
25 to recover interest on the wages at the highest rate allowed under
26 RCW 19.52.025, and reasonable costs and attorneys' fees.

27 A complaint concerning nonpayment of the prevailing rate of wage
28 shall be filed with the department of labor and industries no later
29 than (~~thirty~~) one hundred twenty days from the acceptance date of
30 the public works project. The failure to timely file such a complaint
31 (~~shall~~) does not prohibit the department from investigating the
32 matter in pursuit of the recovery of unpaid wages for the worker(s).
33 However, the department may only recover owed wages and may not
34 charge a contractor or subcontractor with a violation of this section
35 if the complaint is filed after the one hundred twenty day limit. The
36 failure to timely file such a complaint also does not prohibit a
37 claimant from pursuing a private right of action against a contractor
38 or subcontractor for unpaid prevailing wages. The remedy provided by

1 this section is not exclusive and is concurrent with any other remedy
2 provided by law.

3 (2) To the extent that a contractor or subcontractor has not paid
4 the prevailing rate of wage under a determination issued as provided
5 in subsection (1) of this section, the director shall notify the
6 agency awarding the public works contract of the amount of the
7 violation found, and the awarding agency shall withhold, or in the
8 case of a bond, the director shall proceed against the bond in
9 accordance with the applicable statute to recover, such amount from
10 the following sources in the following order of priority until the
11 total of such amount is withheld:

12 (a) The retainage or bond in lieu of retainage as provided in RCW
13 60.28.011;

14 (b) If the claimant was employed by the contractor or
15 subcontractor on the public works project, the bond filed by the
16 contractor or subcontractor with the department of labor and
17 industries as provided in RCW 18.27.040 and 19.28.041;

18 (c) A surety bond, or at the contractor's or subcontractor's
19 option an escrow account, running to the director in the amount of
20 the violation found; and

21 (d) That portion of the progress payments which is properly
22 allocable to the contractor or subcontractor who is found to be in
23 violation of this chapter. Under no circumstances (~~shall~~) does any
24 portion of the progress payments be withheld that are properly
25 allocable to a contractor, subcontractor, or supplier, that is not
26 found to be in violation of this chapter.

27 The amount withheld shall be released to the director to
28 distribute in accordance with the director's determination.

29 (3) A contractor or subcontractor that is found, in accordance
30 with subsection (1) of this section, to have violated the requirement
31 to pay the prevailing rate of wage (~~shall be~~) is subject to a civil
32 penalty of not less than (~~one~~) five thousand dollars or an amount
33 equal to (~~twenty~~) fifty percent of the total prevailing wage
34 violation found on the contract, whichever is greater, and (~~shall~~)
35 is not (~~be~~) permitted to bid, or have a bid considered, on any
36 public works contract until such civil penalty has been paid in full
37 to the director. If a contractor or subcontractor is found to have
38 participated in a violation of the requirement to pay the prevailing
39 rate of wage for a second time within a five-year period, the
40 contractor or subcontractor (~~shall be~~) is subject to the sanctions

1 prescribed in this subsection and as an additional sanction (~~shall~~)
2 is not (~~be~~) allowed to bid on any public works contract for two
3 years. Civil penalties shall be deposited in the public works
4 administration account. If a previous or subsequent violation of a
5 requirement to pay a prevailing rate of wage under federal or other
6 state law is found against the contractor or subcontractor within
7 five years from a violation under this section, the contractor or
8 subcontractor shall not be allowed to bid on any public works
9 contract for two years. A contractor or subcontractor (~~shall~~) is
10 not (~~be~~) barred from bidding on any public works contract if the
11 contractor or subcontractor relied upon written information from the
12 department to pay a prevailing rate of wage that is later determined
13 to be in violation of this chapter. The civil penalty and sanctions
14 under this subsection (~~shall~~) do not apply to a violation
15 determined by the director to be an inadvertent filing or reporting
16 error. To the extent that a contractor or subcontractor has not paid
17 the prevailing wage rate under a determination issued as provided in
18 subsection (1) of this section, the unpaid wages (~~shall~~) constitute
19 a lien against the bonds and retainage as provided herein and in RCW
20 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

21 (4) If, after a complaint has been filed, the contractor or
22 subcontractor elects to pay the unpaid wages that precipitated the
23 complaint, interest on the wages at the highest rate allowed under
24 RCW 19.52.025, and penalties in the amount of one thousand dollars or
25 twenty percent of the total prevailing wage violation determined by
26 the department of labor and industries, whichever is greater, is
27 considered resolved without further penalty under subsection (3) of
28 this section.

29 (5) If a contractor or subcontractor utilizes the process
30 outlined in subsection (4) of this section for a second time within a
31 five-year period, the contractor or subcontractor is subject to the
32 sanctions prescribed in subsection (3) of this section and as an
33 additional sanction, may not be allowed to bid on any public works
34 contract for two years.

35 NEW SECTION. Sec. 5. A new section is added to chapter 39.12
36 RCW to read as follows:

37 (1) Each contractor shall keep accurate payroll records for three
38 years from the date of acceptance of the public works project by the
39 contract awarding agency, showing the employee's full name, address,

1 social security number, trade or occupation, classification, straight
2 and overtime rates, hourly rate of usual benefits, and hours worked
3 each day and week, including any employee authorizations executed
4 pursuant to RCW 49.28.065, and the actual gross wages, itemized
5 deductions, withholdings, and net wages paid, for each laborer,
6 worker, and mechanic employed by the contractor for work performed on
7 a public works project.

8 (2) A contractor shall, at least biweekly file a copy of its
9 certified payroll records using the department of labor and
10 industries' online system and/or directly with the awarding agency in
11 a format approved by the department.

12 (3) A contractor's noncompliance with this section constitutes a
13 violation of RCW 39.12.050.

14 NEW SECTION. **Sec. 6.** This act takes effect January 1, 2020.

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