

WSR 21-14-045
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 1, 2021, 9:13 a.m., effective July 1, 2021, 9:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 39.12.070 requires labor and industries (L&I) set the fees "at a level that generates revenue that is as near as practicable to the amount of the appropriation to administer this chapter, including, but not limited to, the performance of adequate wage surveys, and to investigate and enforce all alleged violations of this chapter, including, but not limited to, incorrect statements of intent to pay prevailing wage, incorrect certificates of affidavits of wages paid, and wage claims, as provided for in this chapter and chapters 49.48 and 49.52 RCW." L&I completed budget projections considering the continuation of a twenty dollar fee, as well as several other alternatives. L&I concluded that the twenty dollar fee, rather than a higher fee, will result in a modest drawdown from existing funds. However, L&I concludes that it has a sufficient cushion to maintain the twenty dollar fee until a permanent rule is implemented later in the year considering further budget projections.

Purpose: Prior to 1993, the filing fees charged on for each statement of intent to pay prevailing wages (intent) form and each affidavit of wages paid (affidavit) form were \$12.50. In 1993, SHB 1219 created a dedicated account, the public works administration account, and limited the filing fee to no more than \$25. WAC 296-127-040 was amended to set a \$25 filing fee on the intent and WAC 296-127-045 was amended to set the affidavit filing fee at \$25.

By 2006, the \$25 filing fee was inadequate to run the prevailing wage program. A partial fix was made: The 2006 legislation, SSB 5236, eliminated a transfer to the general fund of thirty percent of the revenue received into the public works administration account.

In 2008, EHB 3381 addressed many fees charged to "implement programs that protect and improve Washington's health, safety, education, employees, and consumers," including the intent and affidavit fees. Section 2 of EHB 3381 amended RCW 39.12.070. The amended statute (RCW 39.12.070) set the intent and affidavit filing fee at \$40. The administrative rules, WAC 296-127-040 for the intent and WAC 296-127-045 for the affidavit, were both amended to charge the filing fee set in RCW 39.12.070 for the form filing fee.

In 2014, SHB 1254 (effective June 12, 2014) amended RCW 39.12.070 adding a new subsection (3) to the statute that eliminates the filing fee for (only the) affidavits that are filed by an entity that is exempt from paying prevailing wages.

2019's Prevailing wage program fees—Determination—Limit Act amends RCW 39.12.070 related to setting fees for administration of the prevailing wage program and the fee for approval of a statement of intent to pay prevailing wages and certifying an affidavit of wages paid (sections 1 and 2, chapter 193, Laws of 2019, SB 5566). The words "or less" were added after the law's statement: "However, the fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid shall be forty dollars" and another sentence added to the statute stating: "For the 2019-2021 biennium, the fees shall not be more than twenty dollars." This provision expires at the end of the biennium, so the provisions are neces-

sary to implement the expiration of the provision from sections 1 and 2, chapter 193, Laws of 2019, SB 5566.

The rules still refer to the filing fee set in RCW 39.12.070, but the statute no longer sets a precise filing fee and the biennium is ending. In order for L&I to continue to process and approve or certify the intent and affidavit forms, rule making is required to set the intent and affidavit filing fees that will be charged after the end of the 2019-2021 biennium.

This emergency rule is adopted under chapter 296-127 WAC, Prevailing wage. On June 22, 2021, L&I filed a Preproposal statement of inquiry (CR-101) to initiate permanent rule making for these requirements.

Citation of Rules Affected by this Order: Amending WAC 296-127-040 and 296-127-045.

Statutory Authority for Adoption: Section 1, chapter 193, Laws of 2019; RCW 39.12.070.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: In order for L&I to continue to process and approve or certify the intent and affidavit forms, rule making is required to set the intent and affidavit filing fees that will be charged after the end of the 2019-2021 biennium.

There are approximately one thousand public agencies that contract for public work in Washington state. Under the provisions of RCW 39.12.040, these agencies cannot make payment, release contract retainage, or accept the contract work as complete without the required approved and certified intent and affidavit forms. This means a rule setting the filing fees that allow processing of these forms needs to be in place or many payments on public works will not be possible under the law. Without the legal ability to make payments, public works will come to a statewide standstill.

Immediate adoption of administrative rules setting the filing fees for the intent form and for the affidavit form are necessary for the preservation of the public health, safety, or general welfare (allowing public works to proceed without interruption). The time requirements regarding notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 1, 2021.

Joel Sacks

OTS-3153.1

AMENDATORY SECTION (Amending WSR 08-17-072, filed 8/19/08, effective 9/19/08)

WAC 296-127-040 Statement of intent to pay prevailing wages.

(1) All statements of intent to pay prevailing wages submitted to the industrial statistician of the department shall be accompanied by (~~the fee set in RCW 39.12.070~~) a twenty dollar filing fee for each statement. Fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies statements of intent for its own contracts shall provide to the industrial statistician each month the number of statements of intent certified and quarterly shall send the fee set in RCW 39.12.070 for each statement of intent to pay prevailing wages it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, and 2008 c 285. WSR 08-17-072, § 296-127-040, filed 8/19/08, effective 9/19/08. Statutory Authority: RCW 39.12.070. WSR 94-01-100, § 296-127-040, filed 12/16/93, effective 1/16/94. Statutory Authority: RCW 43.22.270. WSR 90-24-053, § 296-127-040, filed 12/3/90, effective 1/3/91. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 88-22-046 (Order 88-22), § 296-127-040, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-040, filed 8/27/82.]

AMENDATORY SECTION (Amending WSR 08-17-072, filed 8/19/08, effective 9/19/08)

WAC 296-127-045 Affidavit of wages paid. (1) All affidavits of wages paid submitted to the industrial statistician of the department shall be accompanied by (~~the fee set in RCW 39.12.070~~) a twenty dollar filing fee for each affidavit of wages paid. All fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies affidavits of wages paid for its own contracts shall provide to the industrial statistician each month the number of affidavit of wages paid it has certified and quarterly shall send the fee set in RCW 39.12.070 for each affidavit of wages paid it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, and 2008 c 285. WSR 08-17-072, § 296-127-045, filed 8/19/08, effective 9/19/08.]

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