WSR 26-17-085
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Order 25-10—Filed August 18, 2026, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-12-093.

Title of Rule and Other Identifying Information: Chapter 296-127 WAC, Prevailing wage; establishing prevailing wage rates from multiple collective bargaining agreements, including a dispute resolution process.

Hearing Location(s): On September 23, 2026, at 1:30 p.m., at the Department of Labor and Industries (L&I), 12806 Gateway Drive South, Tukwila, WA 98168. The hearing will start at 1:30 p.m. and will continue until all oral comments are received;

On September 24, 2026, at 1:30 p.m., via virtual/telephonic at https://teams.microsoft.com/meet/22174653595461?p=8gBtLts1mI1Gzzw9PN, Meeting ID 221 746 535 954 61, Passcode af9kf3d9; or dial in by phone 833-322-1218, Phone Conference ID 342 918 454#. The hearing will start at 1:30 p.m. and will continue until all oral comments are received; and

On September 30, 2026, at 9:30 a.m., via virtual/telephonic at https://teams.microsoft.com/meet/252685024394889?p=TPaPCIDaikNZxR4oWk, Meeting ID 252 685 024 394 889, Passcode qF9E2oB3; or dial in by phone 833-322-1218, Phone Conference ID 205 254 918#. The hearing will start at 9:30 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: December 1, 2026.

Submit Written Comments to: Ethan Whitener, L&I, Division of Labor Standards, Prevailing Wage Program, P.O. Box 44530, Olympia, WA 98504-4530, email PWRules@Lni.wa.gov, fax 360-902-5300, beginning August 19, 2026, 8:00 a.m., by October 2, 2026, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Ethan Whitener, phone 360-890-6139, fax 360-902-5300, TTY 1-800-833-6388, email PWRules@Lni.wa.gov, by September 18, 2026, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule-making proposal is to clarify the semi-annual prevailing wage update and provide a dispute resolution process. The proposed rules create a clear process for establishing the relevant collective bargaining agreements (CBA) for a given occupation, as well as resolving disputes. The proposed rules amend three existing sections in rule and add two new sections under chapter 296-127 WAC, to:

- Define trade and occupation as already used by L&I and the construction industry to clarify the wage update process;
- Clarify the documentation that L&I may require during the semi-annual wage update;
- Require L&I to notify interested parties when it makes certain decisions;
- Specify the criteria used by the prevailing wage program to analyze CBAs and determine whether they should be used to set a wage rate for a specific occupation and county; and
- Formalize the process for disputing a collectively bargained wage rate that L&I publishes for a trade and occupation during the semi-annual wage update.

Reasons Supporting Proposal: This will benefit stakeholders, specifically those within the prevailing wage community, including business, labor and workers, L&I, and the general public, by providing consistency and transparency throughout the wage update process.

Statutory Authority for Adoption: Chapter 39.12 RCW, Prevailing wages on public works.

Statute Being Implemented: Chapter 39.12 RCW, Prevailing wages on public works.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Ethan Whitener, Tumwater, Washington, 360-890-6139; Implementation and Enforcement: David Speer, Tumwater, Washington, 360-869-6129.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Proposed rules are procedural and interpretive only and do not impose costs on businesses.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 18, 2026
Joel Sacks
Director

RDS-7317.1

AMENDATORY SECTION (Amending WSR 25-09-126, filed 4/22/25, effective 1/1/26)

WAC 296-127-010 Definitions for chapter 296-127 WAC. (1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department or his or her duly authorized deputy or representative.

(3) "Industrial statistician" means the industrial statistician of the department.

(4) "Assistant director" means the assistant director of the ((~~fraud prevention and labor standards (FPLS) division or his or her~~)) division that includes the prevailing wage program or their duly authorized deputy or representative.

(5) "Contractor" means:

(a) The prime contractor, and each and every subcontractor, required to be registered under chapter 18.27 RCW and/or licensed under chapter 19.28 RCW, that performs any work on a public works project

site, and/or is required to pay industrial insurance premiums as a construction company.

(b) Employers engaged in shipbuilding and ship repair, building service maintenance, and any fabricator or manufacturer that produces nonstandard items specifically for a public works project.

(c) Employers that contract with contractors or subcontractors for the purpose of the production and/or delivery of materials pursuant to the terms of WAC 296-127-018.

(d) An entity, however organized, with substantially identical operations, corporate, or management structure to an entity that has been found in violation under RCW 39.12.050, 39.12.055, or 39.12.065, or any associated rules. The nonexclusive factors used to determine substantial identity include an assessment of whether there is: Substantial continuity of the same business operation; use of the same machinery, equipment, or both tangible and intangible real or personal property; similarity of jobs and types of working conditions; continuity of supervisors; and similarity of product or services. An entity with operational, corporate, and management structures distinct from an entity that has been found in violation under RCW 39.12.050, 39.12.055, or 39.12.065, or any associated rules, shall not be deemed a substantially identical entity.

(6) The term municipality shall include every city, county, town, district, political subdivision, or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

(7)(a) The term "public work" shall include:

(i) All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed by contract, purchase order, or any other legal agreement and that is executed at the cost of the state of Washington or of any municipality. The source of the funding shall not determine the applicability of the statute, and may include, but is not limited to, such sources as those payments made through contracts with insurance companies on behalf of the insured state or municipality;

(ii) All work, construction, alteration, enlargement, improvement, repair, and/or demolition which, by law, constitutes a lien or charge on any property of the state or of a municipality;

(iii) All work, construction, alteration, repair, or improvement, other than ordinary maintenance that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least 50 percent of the project by one or more state agencies or municipalities, pursuant to RCW 39.04.260;

(iv) Maintenance, except ordinary maintenance as defined by (b)(ii)(A) and (B) of this subsection, when performed by contract. Maintenance is defined as keeping existing facilities in good usable, operational condition;

(v) Janitorial and building service maintenance as defined by WAC 296-127-023, when performed by contract, on public buildings and/or assets; and

(vi) The fabrication and/or manufacture of nonstandard items produced by contract specifically for a public works project as defined by (a)(i) through (v) of this subsection.

(b) The term "public work" shall not include:

(i) Work, construction, alteration, enlargement, improvement, repair, demolition, and/or maintenance for which no wage or salary compensation is paid, consistent with the requirements of RCW 35.21.278; or

(ii) Ordinary maintenance.

(A) Ordinary maintenance is defined as maintenance work performed by the regular employees of the state or any county, municipality, or political subdivision created by its laws.

(B) For housing authorities when contracting with a property management services company for purposes of operating a housing project, as defined in RCW 35.82.030. Rental and other project revenues collected by a property management services company from the housing project's tenants and used to pay administrative operating and ordinary maintenance costs incurred by the company under the terms of the contract with the authority shall be treated as private funds, and any resulting services as executed at the cost of the property management services company and the housing project's tenants, until the net operating revenues are distributed to the authority for its exclusive use and control. For the purposes of this subsection, "ordinary maintenance" only includes: Routine repairs related to unit turnover work; grounds and parking lot upkeep; and repairs and cleaning work needed to keep a property in a clean, safe, sanitary, and rentable condition that are customarily undertaken or administered by residential property management services companies. "Ordinary maintenance" does not include repairs that would be considered replacement capital repairs or scheduled regular maintenance work on plumbing, electrical, or HVAC/R systems or their components.

(8) "Contract" means a contract, purchase order, or any other legal agreement in writing for public work to be performed for a fixed or determinable amount, which is duly awarded after advertisement and competitive bid. A contract that is awarded from a small works roster, or under the emergency provisions of state law, need not be advertised.

(9) "Residential construction" means construction, alteration, repair, improvement, or maintenance of single family dwellings, duplexes, apartments, condominiums, and other residential structures not to exceed four stories in height, including basement, in the following categories:

(a) Affordable housing, including permanent supportive housing and transitional housing, which may include common spaces, community rooms, recreational spaces, a management office, or offices for the purposes of service delivery;

(b) Weatherization and home rehabilitation programs for low-income households; and

(c) Homeless shelters and domestic violence shelters.

"Residential construction" does not include the utilities construction (such as water and sewer lines), or work on streets, or work on other structures unrelated to the housing.

(10) "Trade," for the purposes of the wage update process, means the section titles for the scope of work descriptions in chapter 296-127 WAC, or as otherwise listed by the department. The term "craft" as commonly used in industry practice has the same meaning as "trade."

(11) "Occupation," for the purposes of the wage update process, means a specific role or set of duties performed within a trade as covered by the scope of work descriptions in chapter 296-127 WAC. The terms "job classification" and "subclassification" as commonly used in industry practice and by the department have the same meaning as "occupation."

AMENDATORY SECTION (Amending WSR 19-15-119, filed 7/23/19, effective 8/23/19)

WAC 296-127-011 Documentation and time for determining prevailing wage. (1) Prevailing wage rates for all public work contracts will be determined by the industrial statistician and published on the first business day of February and the first business day of August of each year. These rates shall become effective ((~~thirty~~)) 30 days after the date of publication. However, the industrial statistician may revise an established prevailing wage rate in response to an administrative or judicial finding overturning the established rate, or at any time necessary to correct an error, with such revision becoming effective ((~~thirty~~)) 30 days after the date of publication. However, in the event of an emergency as determined by the director of the department, such revised rate shall take effect upon publication.

(2) The department shall establish deadlines for the submission of requested information which may include, but is not limited to:

(a) Completed wage surveys, for inclusion of submitted data in the survey computations;

(b) Newly ratified collective bargaining agreements for inclusion in the semiannual prevailing wage publication;

(c) Notice of collectively bargained wage and benefit adjustments, and/or relevant contractual changes, for inclusion in the semiannual prevailing wage publication; ((~~and~~))

(d) Notice of changes in apprenticeship standards and incremental wage rates for inclusion in the semiannual prevailing wage publication;

(e) Written description(s) of the type and nature of the work, work processes, tools, and equipment for any new occupation with a distinct wage rate in the most current collectively bargained agreement;

(f) Examples of work contracts associated with the collective bargaining agreement that correspond to work performed by the trade and occupation under review;

(g) A list of other interested parties that the submitter believes are possibly affected by the rate; and

(h) Any additional documentation requested by the department to establish the prevailing wage rate.

(3) The department will notify interested parties, as defined by RCW 39.12.010(4), when:

(a) Multiple collective bargaining agreements have been submitted for the same trade and occupation;

(b) It receives a request to publish wage rates for an occupation that did not have a published rate in the most recent wage publication; or

(c) It receives a request to eliminate an occupation.

(4) The applicable prevailing wage rates for a given public works contract will be determined as follows:

(a) For all public works contracts, except janitorial or building service maintenance contracts, the applicable prevailing wage rates shall be the rates that are in effect on the date when bids by prime contractors are due for submission to contract awarding agencies. These rates shall remain in effect for the duration of the contract.

(b) If contracts are not awarded within six months of the date bids are due, the applicable prevailing wage rates shall be those that are in effect on the date the contract is awarded. These rates shall remain in effect for the duration of the contract.

(c) For work orders issued under job order contracts pursuant to chapter 39.10 RCW, the appropriate prevailing wage rates shall be the rates that are in effect on the date when the individual work order is issued.

((~~(4)~~)) (5) If a contract for public work is not awarded pursuant to bids, the applicable prevailing wage rates shall be those that are in effect on the date when the contract is executed. These rates shall remain in effect for the duration of the contract.

((~~(5)~~)) (6) A schedule of the applicable prevailing wage rates must be included by:

(a) Contract awarding agencies, in the bid specifications and contract documents for each contract.

(b) Contractors, in the bid and/or contract documents provided to subcontractors.

AMENDATORY SECTION (Amending WSR 19-15-119, filed 7/23/19, effective 8/23/19)

WAC 296-127-019 Survey methodology. (1) The industrial statistician shall establish prevailing wage rates by:

(a) Conducting wage and hour surveys for established trades and occupations;

(b) Adopting the wage and benefit adjustments established in collective bargaining agreements for those trades or occupations where the most recently established prevailing wage rates were derived from a collective bargaining agreement; and/or

(c) In instances when the procedures established in (a) and (b) of this subsection are not feasible, employing other methods deemed appropriate by the industrial statistician as set ((~~out~~)) forth in subsection (8) of this section and in WAC 296-127-075.

(2) The department will determine the identity of employers to be surveyed for a specific trade or occupation by:

(a) Mailing trade and occupation questionnaires to all contractors whose registration under chapter 18.27 RCW or license under chapter 19.28 RCW is active;

(b) Mailing trade and occupation questionnaires to Washington state department of transportation prequalified contractors; and

(c) Compiling and maintaining lists of employers that are not required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, but that employ workers in building service maintenance, in shipbuilding or ship repair, in the fabrication and/or manufacture of nonstandard items produced specifically for a public works project, and/or in the production and delivery of materials as defined in WAC 296-127-018. Trades and occupations utilized by the shipbuilding and ship repair industries shall not have their survey data com-

bined with their construction counterparts, for the purpose of establishing prevailing wage rates for that industry.

(3)(a) Wage survey forms will be mailed to:

(i) Those contractors and employers whose businesses currently are active and were active during the established survey period, and whose response to the trade and occupation questionnaire indicates that they employ one or more of the trades or occupations being surveyed; and

(ii) Labor unions representing workers in the trades or occupations being surveyed.

(b) The department annually shall mail to statewide trade associations and statewide labor organizations a proposed schedule of trades intended to be surveyed during the upcoming fiscal year. In addition, the department shall notify those statewide trade associations and labor organizations, reasonably known to be affected, of the mailing of wage surveys.

(4) Data reported on survey forms may be verified by the department, and will be used only when submitted on behalf of or by:

(a) Individual contractors identified by a contractor registration number that currently is valid, and was valid during the established survey period;

(b) Employers that are not required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, that directly employ and supervise workers as employees in building service maintenance, in shipbuilding or ship repair, in the manufacture of nonstandard items specifically produced for a public works project, or in the production and delivery of materials, as defined in WAC 296-127-018;

(c) Labor unions submitting wage and hour data on behalf of contractors and/or employers who are signatory to those unions' collective bargaining agreements covering the trade or occupation being surveyed; or

(d) Interested parties providing wage and hour data by trade and occupation from certified payroll records and/or from hours reported by trade and occupation on affidavits of wages paid, according to guidelines established by the department.

(5) The department shall use affidavit forms that include a requirement that contractors report the actual number of hours worked by each trade and occupation utilized on the public works project for which the affidavit is filed.

(6) Valid data reported on wage surveys shall be calculated, as follows:

(a) If the majority of hours reported for a trade or occupation in the largest city in a county is paid at the same wage rate, then that rate shall be established as the prevailing wage rate.

(b) If the same wage rate is not reported to have been paid for the majority of hours reported in the largest city in a county for a trade or occupation, then the average wage rate shall be established as the prevailing wage rate, based on a weighted average of the hours, wages, and benefits reported in the largest city.

(c) If a statistically significant number of hours fails to be reported for the largest city in a county, then the average wage rate for the county is established as the prevailing wage, based on a weighted average.

(7) Survey data will not be accepted if the data report the hours and wages of those who are exempt from the prevailing wage requirements of chapter 39.12 RCW, as defined in WAC 296-127-026.

(8)(a) The industrial statistician may utilize alternative methods to establish prevailing wage rates consistent with the terms of (b) of this subsection. These methods include, but are not limited to:

(i) The use of wage and hour data from the department of employment security;

(ii) The use of wage and hour data from the industrial insurance division of the department of labor and industries;

(iii) The use of data from surveys performed by the United States Department of Labor, wage and hour division; or

(iv) The use of wage and hour data reported to the department on affidavits of wages paid.

(b) These alternative methods will not be used for trades or occupations for which surveys had been completed as of the effective date of this section unless a subsequent survey produces insufficient data. In addition, these alternative methods may be used under circumstances that include, but are not limited to, the following:

(i) To establish prevailing wage rates for a new trade or occupation where a survey is not immediately feasible;

(ii) In response to an administrative or judicial determination of invalid wage rate or scope of work description;

(iii) In response to changes or additions in licensing, safety, or other requirements of other state agencies, departments or divisions; or

(iv) To establish rates for industries and trades and occupations generally not surveyed, in order to meet the requirement of having established wage rates for publication in contract or bid specifications as required by RCW 39.12.030.

(9) Any party that submits false information under this section shall, after a determination to that effect has been issued by the director after a hearing pursuant to chapter 34.05 RCW, forfeit as a civil penalty the sum of ((~~five hundred dollars~~)) $500.

NEW SECTION

WAC 296-127-075 Methods for establishing wage rates from collective bargaining agreements. (1) Prevailing wage rates for all public work contracts will be determined by the industrial statistician as provided in RCW 39.12.015 and 39.12.017.

(2) Except as provided in RCW 39.12.017, and notwithstanding RCW 39.12.010(1), the industrial statistician shall establish the prevailing rate of wage by adopting the hourly wage, usual benefits, and overtime paid for the geographic jurisdiction established in collective bargaining agreements for those trades and occupations that have collective bargaining agreements. Ratified collective bargaining agreements, relevant contractual changes, wage rate schedules, negotiated overtime and special shift provisions, and any other supporting documentation must be provided by the deadlines in WAC 296-127-011 to be considered by the industrial statistician.

(3) For trades and occupations with more than one collective bargaining agreement in the county, the higher rate prevails.

(4) Collective bargaining agreements that established the previous prevailing wage rate at the time of the semi-annual wage setting submission period for each trade and occupation shall serve as the default source of data for updating prevailing wage rates. The department shall use the wage adjustments outlined in these collective bar-

gaining agreements as the baseline when conducting semi-annual wage reviews and adjustments, unless subject to this section.

(5) The industrial statistician may request documentation to verify that a collective bargaining agreement represents the applicable trade and occupation and should be considered during the semi-annual wage update. Criteria to evaluate the collective bargaining agreement may include, but is not limited to, the following:

(a) The occupation aligns with the scope of work in rule for the trade under consideration;

(b) Employers have paid workers for performing the trade and occupation at the rate in the collective bargaining agreement;

(c) Setting the rate does not conflict with other department determinations or scopes of work; and

(d) Any other relevant criteria.

(6) For trades and occupations in which there are no collective bargaining agreements in the county, the industrial statistician shall establish the prevailing rate of wage as defined in RCW 39.12.010 by conducting wage and hour surveys. In instances when there are no applicable collective bargaining agreements and conducting wage and hour surveys is not feasible or insufficient, the industrial statistician may employ other appropriate methods to establish the prevailing rate of wage as set forth in WAC 296-127-019.

NEW SECTION

WAC 296-127-080 Dispute resolution process for the semi-annual wage update. (1) If an affected interested party disputes the department's decision to prevail a collectively bargained rate during the semi-annual wage update, the interested party must:

(a) Write a protest letter to the prevailing wage industrial statistician identifying the disputed wage rate for a specific trade and occupation, and provide any documentation to support the dispute;

(b) Send the letter and supporting documentation electronically or by mail to the prevailing wage program; and

(c) File the dispute within 15 days of the wage publication date.

(2) During the dispute process, the disputed prevailing wage rate that will be in effect will remain in effect until the department has rendered its decision.

(3) The department will review the dispute and any supporting documentation and will either modify, reverse, or affirm the original decision.

(4) Only the affected interested parties may dispute the rate.