



Labor standards in construction webinar

April 18, 2023

Introduction

- Jessica Grosz, director of Labor Standards and Apprenticeship Division
- Karen Bugar, state program administrative director, prevailing-wage and construction misclassification sections
- Stephanie Selb, senior labor investigator, prevailing-wage section
- Ana Vergara, senior investigator, construction misclassification section

Questions during webinar: email david.skovholt@state.mn.us

Labor Standards Division

- Wage and hour section
 - Wage Theft Prevention Act
 - Minnesota Fair Labor Standards Act
 - Minnesota Child Labor Standards Act
 - Women's Economic Security Act
- Prevailing-wage section
 - Minnesota Prevailing Wage Act
- Construction misclassification section

What does wage theft look like?

- Paying less than the required minimum wage or prevailing wage.
- Not paying time and a half for overtime hours.
- Not paying final wages upon separation of employment.
- Requiring work off the clock.
- Pay deductions for short rest breaks.
- Not making contributions to benefit plans for prevailing wage work.
- Misclassifying employees as independent contractors to avoid wage and hour requirements.
- Unlawful paycheck deductions.



Minnesota Prevailing Wage Act

Minnesota Statutes § 177.41-177.44

Prevailing-wage public policy statement

Minnesota Statutes § 177.41

"It is in the public interest that public buildings and other public works be constructed and maintained by the **best means** and **highest quality of labor** reasonably available and that persons working on public works be compensated according to the **real value** of the services they perform. **It is therefore the policy of this state that wages of laborers, workers, and mechanics on projects financed in whole or part by state funds should be comparable to wages paid for similar work in the community as a whole.**" [Emphasis added.]

Our role

- Annually survey for wage rates paid on private and public construction projects
- Annually survey for truck operating costs for Minnesota Department of Transportation (MNDOT) road projects
- Certify wage rates annually for state-financed projects
- Conduct training and outreach to contractors and contracting authorities
- Perform on-site project interviews and investigations
- Receive and investigate complaints about prevailing-wage violations

Prevailing-wage surveys



- **Surveys** are voluntary and those that participate may set the prevailing wage rates where they do business.
- **Prevailing total rate** is the hourly basic rate of pay plus the bona fide fringe benefit contribution paid to the largest number of workers within the same class of labor.
- **Prevailing wage survey forms** are specific to a project (both private and public). A different form should be submitted for every project where work was performed during the survey period.

Email: PWSurvey.DLI@state.mn.us

- Commercial and residential
 - Minimum project cost of \$2,500.
 - May be private or public work.
 - Each worker reported must have a minimum of eight hours on the project.
 - Wages are certified by county.
- Highway and heavy
 - Minimum project cost of \$25,000.
 - May be private or public work.
 - Each worker reported must have a minimum of eight hours on the project.
 - Wages are certified by region, of which there are 10 predefined regions in the state.

Commercial construction

- "**Commercial construction**" means all building construction projects exclusive of residential construction.
- "**Residential construction**" means all construction, remodeling or repairing of single or two-family homes and structures appurtenant thereto including agricultural or farming buildings appurtenant to private farm residences when utilized to carry on primary farming operations.



Highway and heavy construction

- **"Highway and heavy construction"** means all construction projects which are similar in nature to those projects based upon bids as provided under Minnesota Statutes, section 161.32 for the construction or maintenance of highways or other public works and includes roads, highways, streets, airport runways, bridges, power plants, dams and utilities.



What is a contracting authority?

Any state governmental entity providing funding or an entity that is the recipient of state funding, such as a grant, loan or direct appropriation from the Legislature. The Department of Administration also establishes master contracts with approved vendors.

- Direct funding from or a contract with a state agency, such as the Department of Employment and Economic Development, the Department of Natural Resources, Minnesota Pollution Control Agency, Minnesota Housing Finance Agency and the Department of Administration .
- Direct funding from the Legislature .
- Pass-through funding to a municipality or other entity.

Master contracts, grants and loans

- Department of Administration
 - Office of State Procurement
 - Office of Grants Management
- Minnesota State Colleges and Universities
- MNDOT for highway and road projects
- Department of Employment and Economic Development
 - Public facilities authority
 - Other grants and loans

Bids and contracts

"The contracting authority shall incorporate into its proposals and all contracts the applicable wage determinations for the contract."

- Pre-bid
 - Notice to bidders – include prevailing-wage language.
 - Applicable prevailing wage rates.
 - Project assessment, if needed.
 - 116J Certification, if required.

Bids and contracts (cont.)

- Award
 - Prevailing-wage language.
 - Applicable certified wage rates.
- Contract must provide that the contracting agency shall demand:
 - Certified payroll reports not more than 14 days after the end of each pay period.
 - This is a two-part form that includes the statement of compliance.

Exceptions to prevailing wage

Prevailing wage does not apply to a contract or work under a contract which:

- the estimated cost of completing the project (materials and labor) is:
 - less than \$2,500 and only one trade or occupation is involved; or
 - less than \$25,000 and more than one trade or occupation is involved
- the delivery of materials or products by commercial establishments are:
 - air-handling units for buildings (setting in place is covered work, connections and testing are covered work); or
 - casework, windows or doors delivered by truck from a material supplier (installation is covered work)

Prevailing wage also does not apply to persons who are employed and registered in a bona fide apprenticeship program and in required ratios to journeymen.

Prevailing-wage rate example

A contractor assigns a worker the “common laborer” classification; the wage decision incorporated into a contract requires the following:

- **Basic hourly rate** **\$24.00**
- **Fringe benefits** **\$10.90**
- **Total prevailing wage** **\$34.90**

Overtime cannot be less than \$36.00 per hour plus the straight time fringe rate of \$10.90

Prevailing-wage rate

The contractor can comply by paying the following hourly rates:

- \$24 as a wage, plus \$10.90 in fringe benefits;
- \$34.90 as a wage, with **no** fringe benefits;
- \$30 as a wage, plus \$4.90 in fringe benefits; or
- \$22 as a wage, plus \$12.90 in fringe benefits.

Continuing compliance

- Classification clarification, request for rate assignment.
- Certified payroll reporting
 - Electronic submission of Excel forms.
 - Statements of compliance.
- All contractors must be registered or licensed with DLI and have filed with the Secretary of State's Office to perform work in Minnesota.

Forms and resources

Certified payroll and statement of compliance forms may be specific to the contracting authority.

These forms are all project specific and ideally completed prior to bid advertisement:

- Request for rate assignment
- Classification clarification
- Project assessment

Department of Labor and Industry
Labor Standards and Apprenticeship
Division, prevailing-wage section
443 Lafayette Road N.
St. Paul, MN 55155

Email: dli.prevwage@state.mn.us

Phone: 651-284-5091

Enforcement

- On-site visits
- Worker complaints
- Information received from third parties
 - Contracting authority, engineer, architect, other
- Employer submits records demanded related to workers on the project
- Notice of findings or compliance order

Common violations

- Labor code misclassification
- Paying helpers or trainees as laborers
- Not making timely fringe benefit contributions
- Not paying apprentices the prevailing wage rate when working out of ratio
- Not paying scheduled rate increases
- Not paying overtime after eight hours in a day on the project
- Banking overtime hours
- Not reporting all workers on site
- Not reporting and paying owners for their work on site

Responsible contractor requirements

The "responsible contractor" requirements [Sec. 16C.285 MN Statutes](#) were amended in 2019 to include Minn. Stat. §§ 181.03 (prohibited wage practices and retaliation), 181.101 (payment of wages) and 609.52, subd. 2 (19) (criminal wage theft) in the list of laws that contractors must verify they are in compliance with and have not violated during the past three years to be considered eligible to bid on public contracts.

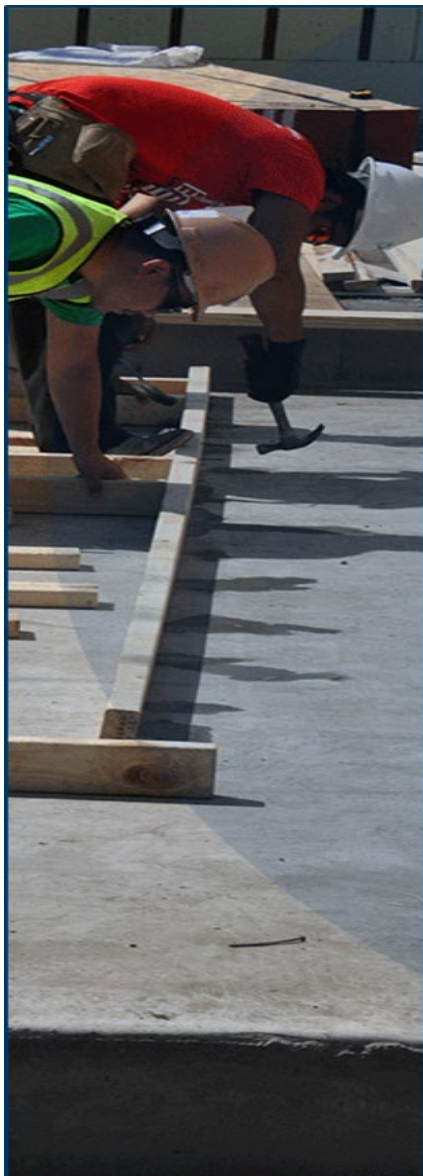


Construction misclassification

Minnesota Statute § 181.723 and chapter 326B

Construction misclassification unit

- Reviews and processes construction contractor registration applications
- Investigates registration and misclassification violations and issues penalties, licensing orders, and other orders when contractors violate the law
- Coordinates referral of other potential violations to other units of Labor Standards or other divisions of DLI



Construction contractor registration

- Who is it for?
 - Persons who perform public or private sector commercial or residential construction or improvement services that are not required by another law to hold a license.
- What must I do before registering as a contractor with the department?
 - Business must have filed with the Secretary of State's Office and be in active status
 - Business from out of state must file as a foreign entity
 - Assumed name or dba must also be filed and in active status with the Secretary of State's Office
 - Must obtain a federal employer identification number
 - Must obtain a Minnesota tax identification number

Construction contractor registration (cont.)



- What is needed to submit an application?
 - Must provide all ownership contact information including social security number
 - Information about your business as described on the previous slide
- You will need to upload the following if applicable:
 - Active business filing with the Secretary of State's Office
 - Certificate of insurance for workers' compensation
 - Documentation of compliance with unemployment insurance laws
 - For businesses with employees, show active unemployment insurance account
- Questions? DLI.register@state.mn.us.

Prohibited activities related to contractor registration

- Contract with or perform construction services for another person without first being registered if required
- Contract with or pay another person to perform construction services if the other person is not registered if required



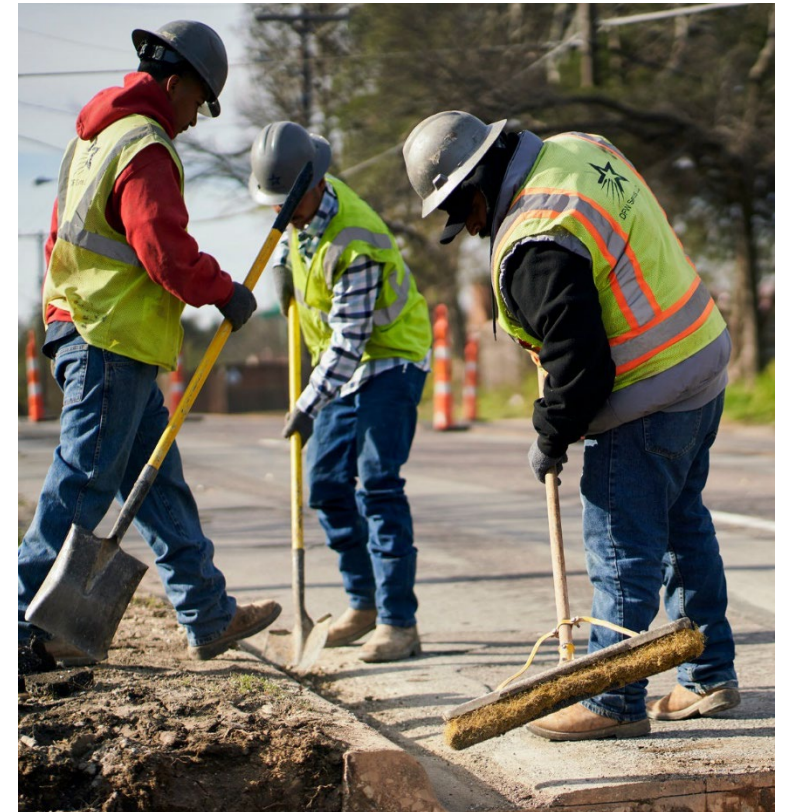
Independent contractor test – all nine elements must be met

1. maintains a separate business with the individual's own office, equipment, materials and other facilities;
2. holds or has applied for a federal employer identification number or has filed business or self employment income tax returns with the federal Internal Revenue Service if the individual has performed services in the previous year;
3. is operating under contract to perform the specific services for the person for specific amounts of money and under which the individual controls the means of performing the services;
4. is incurring the main expenses related to the services that the individual is performing for the person under the contract;



Independent contractor test (cont.)

5. is responsible for the satisfactory completion of the services that the individual has contracted to perform for the person and is liable for a failure to complete the services;
6. receives compensation from the person for the services performed under the contract on a commission or per-job or competitive bid basis and not on any other basis;
7. may realize a profit or suffer a loss under the contract to perform services for the person;
8. has continuing or recurring business liabilities or obligations; and
9. the success or failure of the individual's business depends on the relationship of business receipts to expenditures.



Prohibited activities related to independent contractor status

- An individual shall not hold themselves out as an independent contractor unless the individual meets the independent contractor nine element test.
- A person who provides construction services in the course of their trade, business, occupation, or profession shall not:
 - require an individual through coercion, misrepresentation, or fraudulent means to adopt independent contractor status or form a business entity; or
 - knowingly misrepresent or misclassify an individual as an independent contractor.

DLI enforcement authority

The commissioner's enforcement authority includes access to information and property in order to carry out the purposes of applicable law:

- Enter without delay upon any property, public or private, to obtain information, remedy violations, or conduct surveys, inspections or investigations
- Examine, collect or copy any documents or materials
- Interview non-management employees in private
- Take depositions and issue subpoenas to compel persons to appear to give testimony and produce documents

DLI enforcement authority (cont.)

- Under Minnesota statute 326B.082, DLI can issue notices of violation, administrative orders, stop orders, and licensing orders
 - Suspend or revoke a registration
 - Issue penalties
- DLI shall provide a copy of an order to comply issued to an employer and the disposition of the order or the data set out in the order to comply and its disposition to the following entities:
 - A licensing or regulatory authority of one or more state agencies or agencies of political subdivisions to which the employer is subject
 - A public contracting authority with which the employer is party to a public contract
 - The employees whose interests are affected by the order

Questions?

Prevailing-wage section: 651-284-5091 or dli.prevwage@state.mn.us

Prevailing-wage survey: PWSurvey.DLI@state.mn.us

Construction contractor registration and construction

misclassification section: 651-284-5074 or dli.register@state.mn.us

Labor Standards unit: 651-284-5075 or dli.laborstandards@state.mn.us

Learn more

- Stay up to date with the Labor Standards unit by signing up for the Wage and Hour Bulletin.
- To sign up, visit dli.mn.gov/business/employment-practices/minnesota-wage-and-hour-bulletin or scan the QR code.



Wage and Hour Bulletin



Thank you