

PREVAILING WAGE POLICY CITY OF MEMPHIS

I. POLICY STATEMENT

The City of Memphis promotes the economic and beneficial development of the City of It is in the interest of the City of Memphis to award contracts for the construction, alteration and/or repair of buildings or public works to responsible bidders. The City of Memphis has determined that responsible bidders are those who, among other things, pay responsible wages and benefits to their employees. It is the policy of the City of Memphis, that a responsible bidder, awarded a contract by the City of Memphis, that falls within the guidelines of the Prevailing Wage Ordinance, must comply with the most current Prevailing Wage Rates at the time of bid. The Prevailing Wage Rates shall be the most current rate schedule, established for Region 1, by the Tennessee Department of Labor, which includes Memphis and Shelby County and will include fringe benefits as described in the published schedule issued by the Memphis & Shelby County Building Trades Council in effect on September 16, 2003, the date in which Section 2-333 (e) (1) was adopted by the Memphis City Council. Furthermore, the recipient will classify their employees according to the State of Tennessee, Department of Labor and Workforce Development, Classification of Workers, and if applicable, adhere to the guidelines for apprentice and apprenticeship programs.

A. Scope

Any firm, individual, partnership or corporation that is awarded a contract by the City of Memphis for the construction of, improvement, enlargement, alteration or replacement of a City of Memphis public work or project in excess of \$500,000 and any sub-contractor of such public work or project in excess of \$50,000 (hereinafter referred to as "Recipient"), shall be required by the City of Memphis to pay local Prevailing Wages for laborers, workmen, mechanics or others, as listed by the Tennessee Department of Labor, Classification of Workers, established for Region 1, at the time the project is bid and continue until the completion of such project.

Contracts for the construction of, demolition, improvement, enlargement, alteration or replacement of a City of Memphis public work or project shall not be deliberately divided into multiple contracts for the sole purpose of circumventing the Prevailing Wage Ordinance.

For compliance purposes, all bidders will have the opportunity to request clarification of this policy during the standard pre-bid conference. By way of bid submission, it is understood that all bidders will strictly adhere to this policy.

B. Prevailing Wage Commission

The Prevailing Wage Commission is composed of nine (9) members, including the City of Memphis Finance Director or his designee, who shall serve as chairman of the committee, the City of Memphis Public Works Director or his designee and a Memphis City Council member as designated by the City Council Chairman. Six members shall be appointed by the Mayor and approved by City Council and shall serve two (2) years {Two (2) shall be representatives of the Memphis Buildings and Construction Trades Council, two (2) shall be representatives of the West Tennessee Chapter of the Associated Builders and Contractors, Inc. and two (2) shall be representatives of a local Minority Contractor Association}, as set forth by the Prevailing Wage Ordinance, Chapter 2, Article VI, Division 7, Section 2-333 and adopted by the Memphis City Council.

C. Prevailing Wage Rates and Fringe Benefits

The prevailing wage rate for the City of Memphis shall be the most current wage rates published by the State of Tennessee, established for Region 1, which includes Memphis and Shelby County.

Fringe benefits required pursuant to Ordinance No. 5014, City of Memphis, Code of Ordinances, are the rates published by the Memphis and Shelby County Building and Construction Trades Council.

D. Award Recipient

In order for the Prevailing Wage Office to operate more efficiently and communicate more effectively, it is the responsibility of the award recipient to inform the Prevailing Wage Office of the contracts they award to subcontractors and the amount of those contracts.

E. Certified Payroll Reports

The award recipient and sub-contractors shall maintain a weekly payroll report, beginning with the first week of work on the project and for every week thereafter until the project is complete. Payroll reports shall be maintained in numerical order with the first report marked as #1 and the final payroll marked as "FINAL".

- **1. Payroll Format** The award recipient and any sub-contractors may use any legible format approved by the City of Memphis, Prevailing Wage Commission.
- **2. Payroll Certification** The weekly payroll report shall be deemed certified once it is signed and provides standard language inclusion. The standard language can be found on the reverse side of the Department of Labor, Form WH-347 or WH-348.
- **3. "No Work" Payroll** "No Work" payrolls must be submitted whenever there is a temporary break during work on a project. The "No Work" week should be numbered in succession with the weeks that work was performed.

- **4. Payroll Report Submission** Weekly payroll reports shall be submitted on a monthly basis to the Prevailing Wage Office. It is the responsibility of the award recipient to review ALL payroll reports for proper compliance prior to submitting such reports to the Prevailing Wage Office. The recipient is responsible for the full compliance of all sub-contractors and will be held accountable for any wage restitution.
- **5. Payroll Retention** The award recipient and all sub-contractors shall retain certified payroll reports and other basic records such as time cards for at least one year after the project is complete in accordance with TCA 12-4-411 (b). In addition, the award recipient is required to retain certified payroll reports for all sub-contractors who worked on the project for a period of one year after the project is complete.
- **6. Payroll Review** In addition to submitting weekly payroll reports on a monthly basis to the Prevailing Wage Office, each recipient and their sub-contractors must make their payroll records available for review to authorized representatives from the Prevailing Wage Office.

F. Filing Scheduled Wages, Employment of Apprentices

It shall be required that the award recipient and their subcontractors, performing under the terms of the Prevailing Wage Ordinance, file with the Prevailing Wage Office a schedule of wages to be paid their apprentice.

II. REPORTING REQUIREMENTS

A. Completing a Payroll Report

Payroll reports shall include the following: employee name, address, social security number, project name and project number, recipient and/or sub-contractor name, worker classification, apprentice or trainee if applicable, payroll numbered consecutively, dates & days of the week (Note: if there is a temporary break in work during the week, a payroll stating "No Work" must be submitted), hours worked during the week, employee rate of pay, gross wages earned and any applicable tax deductions or fringe benefits.

- **1. Employee Information** The employee's name, address and social security number need only be reported on the first payroll report that the employee works. Thereafter, the address and social security number need only be reported if there is a change in the information.
- **2. Project Name and Contractor Information -** Each payroll should list the project name, project address, project number, contract number, the recipient and/or subcontractor and the corresponding address.
- **3. Worker Classification -** Each employee must be classified based on the type of work they actually perform and according to the Tennessee Department of Labor, Classification of Workers.

- **4. Apprentice or Trainee** The first payroll on which an apprentice or trainee appears must be accompanied by a Schedule of Wages and a copy of their apprentice or trainee registration in an approved Bureau of Apprenticeship Training program. The payroll record must also identify the level in which the apprentice is working during the applicable pay period (Ex. 1st period, 2nd period, 1st year, 2nd year, etc.). Note: Anytime the apprentice has a change in status during the project an updated registration should be submitted to the Prevailing Wage Office.
- **5. Split Classifications -** For an employee with split classifications, list the employee once for each classification, distribute the hours of work accordingly and list the rate of pay and gross earnings for each classification.
- **6. Hours Worked -** The payroll should reflect only the regular and overtime hours worked on the project.
- **7. Rate of Pay** Indicate the basic hourly rate of pay for each employee as described in the Tennessee Prevailing Wage Rate Schedule.
- **8. Gross Wages -** Indicate the gross amount of wages earned for work performed on the project.
- **9. Deductions** Indicate the amount of FICA, Withholding Tax and if applicable "Other" when a voluntary deduction is withheld. A voluntary deduction must be authorized in writing and signed by the employee. A short note from the employee is all that is needed and should accompany the first payroll that identifies the deduction.
- **10. Fringe Benefits -** Effective September 16, 2003, the Memphis City Council passed Ordinance # 5014, to include fringe benefits for workers. Included, as fringe benefits will be health/life insurance, pension or retirement savings and payments to an approved apprenticeship fund. Indicate the amount of fringe benefits paid in the deduction section under "Other" or "Fringe Benefits" column.
- 11. Net Pay Indicate the net amount of wages paid for the week.

B. Statement of Compliance

The statement of compliance establishes certification of payroll. It is located on the reverse side of a standard, Department of Labor, payroll Form WH–347, which is the preferred payroll report form.

C. Signature

The payroll must show the original signature by a principal of the firm or an authorized agent of the firm. Signature authorization for persons other than a principal of the firm should be submitted with the first payroll.

D. Payroll Inspection

Payroll records are a matter of public record and are therefore, open to the public pursuant to the Tennessee Open Records Act. Upon written request to the City Attorney's Office, such records shall be made available for public inspection. However, prior to inspection all confidential information such as social security numbers, addresses and garnishments will be redacted. All payroll records will be stored securely in the Prevailing Wage Office at City Hall, 125 N. Main St., Room 1B15, Memphis, TN.

III. DEFINITIONS

The following definitions help explain the terms used in payroll reporting:

A. Apprentice and Trainees

The only workers who can be paid less than the prevailing wage rate for their work classification are the apprentice and trainees registered in an approved B.A.T. apprenticeship or training program. Approved programs are those that are registered with the Department of Labor, Bureau of Apprenticeship and Training (B.A.T.). Apprentice and Trainees shall be paid a percentage of the journeyman wage in accordance with the Tennessee Department of Labor, Prevailing Wage Rate schedule.

B. Deductions

You may have payroll deductions, as permitted by the Department of Labor Regulations 29 CFR, Part 3. Allowable deductions are insurance premiums, retirement, savings accounts and any other legally permissible deduction authorized by the employee. Deductions may also be made for payment on judgments and other financial obligations legally imposed against the employee.

C. Employee

Employee defines a worker who performs the work of a "laborer" or "mechanic" regardless of any contractual relationship, which may be alleged to exist between a prime contractor or subcontractor and such person.

D. Fringe Benefits

Fringe Benefits required pursuant to City of Memphis, Code of Ordinances, are the rates published by the Memphis and Shelby County Building and Construction Trades Council as of September 16, 2003.

E. Laborer or Mechanic

The term "laborer" or "mechanic" means anyone who is performing construction work on the project, including trade journeymen (i.e. carpenters, plumbers, sheet metal workers etc.) apprentice and trainees.

1. Working Foreman – Foreman or supervisors that regularly spend more than 20% of their time performing construction work are covered "laborers" and "mechanics" for labor standard purposes.

2. Exclusions – People whose duties are primarily administrative, managerial or clerical are excluded.

F. Proper Designation of Trade

Each award recipient must select a classification for the worker based on the actual type of work they perform. The recipient and sub-contractors must pay each worker at least the minimum prevailing wage rate for that classification regardless of their level of skill. The only workers who can be paid less than the rate for their craft are apprentice and trainees who are registered in an approved Bureau of Apprenticeship Training Program (BAT).

G. Award Recipient/Prime Contractor

The award recipient is the prime contractor who is awarded the contract by the City of Memphis.

H. Sub-Contractor

The sub-contractor is any contractor who is awarded a contract by the award recipient/prime contractor and works or has workers on the City of Memphis project. The sub-contractor is required to comply with the Prevailing Wage Ordinance if the contract for work is in excess of \$50,000.

IV. PAYROLL REVIEW AND CORRECTIONS

A. Job Site Interview

A job site interview will be coordinated for the Prevailing Wage representative through a City of Memphis project manager. A Prevailing Wage representative will visit the job site and conduct interviews with employees. It is the responsibility of the recipient to allow the employees to interview with the Prevailing Wage representative. The interviews will be confidential and every effort will be made to ensure that the interviews cause little disruption to the work in progress.

B. Project Payroll Review

The Prevailing Wage representative may compare the information on the interview form to the corresponding payroll to ensure that the worker was properly listed on the payroll report for the day, work classification and rate of pay. The Prevailing Wage representative will also review the payroll submissions to make certain that the payrolls are complete and signed; and the employees are paid no less than the prevailing wage rate for the worker classification listed.

C. Correction Procedures

The following areas represent common causes of payroll error in the preparation of payroll reports:

- 1. Missing Address and/or Social Security Number If the first payroll on which an employee appears does not contain the employee's address and/or social security number, the recipient will be asked to submit the missing data. A revised certified payroll providing the information will be necessary.
- **2. Worker Classification** If the payroll shows a worker classification that does not appear on the Prevailing Wage Rates schedule, the recipient will be asked to reclassify the employee in accordance with the Tennessee Department of Labor, Classification of Workers
- **3.** Wage Rate If the worker is paid less than the hourly wage listed on the Prevailing Wage Rate schedule for the indicated work classification, the recipient will be asked to pay restitution to the affected worker.
- **4. Computation Violations** If the payroll computations (hours worked times rate of pay), deductions or net pay show errors, wage restitution will be required if underpayment of wages is a result from those errors. After the third offense the recipient will be deemed in violation of the ordinance for non-compliance and will be given thirty (30) calendar days to rectify the compliance violation. If the recipient fails to rectify the compliance violation after thirty (30) calendar days, the recipient may be subject to penalties, and sanctions, as set forth in City Ordinance No. 4665, Section 2-333, H.
- **5. Signature** Payroll reports must be signed by the recipient or an authorized agent. If the payroll report is not signed, the report becomes void as a certified payroll document and the recipient will be asked to correct the error.
- **6. Incomplete Payroll or Revised Payroll** If any information is missing from the certified payroll report (i.e. Primary contractor, project number and address, week of pay period and the corresponding days, etc.) the recipient will be asked to submit a corrected payroll record.

V. RESTITUTION FOR UNDERPAYMENT OF WAGES

Where underpayment of wages has occurred, the employer will be required to pay wage restitution to the affected employee. Wage restitution must be paid promptly in the full amount due, less the permissible and authorized deductions.

A. Notification to the Award Recipient/ Prime Contractor

A Prevailing Wage Representative will notify the award recipient/prime contractor in writing if underpayments are found during the payroll review process. The notice will be sent certified and describe the underpayments. Additionally, the notice will provide instructions for computing and documenting the restitution to be paid. The award recipient is allowed thirty (30) calendar days from the date of notification to correct underpayments and pay restitution. If the employer is a subcontractor, the subcontractor will make the computations and restitution payments and furnish the required

documentation to the Prevailing Wage Office through the Award Recipient/Prime Contractor. All correspondence should be sent by certified mail.

B. Computing Wage Restitution

Wage restitution is the difference between the hourly wage paid to the employee and the prevailing wage rate required, as stated on the Prevailing Wage Rates schedule, for all hours worked where underpayment occurred. The difference in the wage rate is called the adjustment rate. The adjustment rate times the number of hours worked, equals the gross amount of restitution due the employee.

C. Corrected/Revised Payroll

The award recipient/prime contractor or subcontractor will be required to submit a corrected payroll record indicating the restitution paid to each employee. The corrected payroll will reflect the period of time restitution was paid and should list each worker who received restitution pay, as well as, their work classification, total number of hours worked, the adjustment rate, the gross amount paid, deductions and the net amount paid. A signed statement of compliance must accompany the corrected payroll.

D. Employee Signature

Employee signature is required as evidence that the employee received restitution pay.

E. Review of Corrected Certified Payroll

A Prevailing Wage Representative will review the corrected payroll to ensure that full restitution was paid. The award recipient/prime contractor shall be notified in writing if any discrepancies are found and will be required to make additional payments, if necessary. The award recipient is allowed seven (7) calendar days from the date of notification to make additional payments.

VI. ADMINISTRATIVE REVIEW

A. Compliance Review

Compliance reviews and other investigations may result in findings of non-compliance. If non-compliance violations are found, the primary goal, in every case and at every step in the process, is to reach agreement concerning how the violation can be corrected. A Prevailing Wage Representative will work informally with the recipient to reach an agreement for compliance. The award recipient will have an opportunity to provide additional information to the representative that will explain inconsistencies and/or resolve the discrepancies. If an agreement can not be met, the Prevailing Wage Representative will complete a written report of non-compliance and submit it to the award recipient. The award recipient will be permitted thirty (30) calendar days from the date the report is received to correct the non-compliance violation. If after thirty (30) calendar days, the award recipient does not respond to the written report, the matter will be brought before the Prevailing Wage Commission for further review.

B. Prevailing Wage Commission Review

The Prevailing Wage Commission will review the report and the arguments against the findings, presented in the hearing request. The award recipient may present its case before the Commission. The Prevailing Wage Commission may affirm or modify the findings based upon the materials presented. The Prevailing Wage Commission will notify the award recipient in writing the results of its decision. The recipient will have ten (10) calendar days, from the date of receipt, to correct any decisions made by the Prevailing Wage Commission.

C. Violations, Penalties and Sanctions

An award recipient who knowingly or willfully fails to comply with the provisions of the Prevailing Wage Ordinance as determined by the Prevailing Wage Commission shall be fined not less than the maximum amount allowable under T.C.A. 6-54-306 for each violation. The award recipient who is found to have knowingly or willingly committed two (2) violations of this Ordinance in any twenty-four (24) month period shall be prohibited from being awarded a contract by the City of Memphis for a period of twenty-four (24) months from adjudication of the second violation.

No construction company shall retaliate against an employee who reports a potential violation.