Chapter 39.12 RCW
PREVAILING WAGES ON PUBLIC WORKS

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RCW 39.12.010 Definitions. (1) The "prevailing rate of wage" is the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or

occupation is the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage is mathematically determined by the number of hours worked in such period of time.

(2) The "locality" is the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" includes the amount of:

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

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

(4) An "interested party" includes a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, a joint labor-management cooperation committee established pursuant to the federal labor management cooperation act of 1978, a Taft-Hartley trust, and the director of labor and industries or the director's designee.

(5) An "inadvertent filing or reporting error" is a mistake and is made notwithstanding the use of due care by the contractor, subcontractor, or employer. An inadvertent filing or reporting error includes a contractor who, in good faith, relies on a written determination provided by the department of labor and industries and pays its workers, laborers, and mechanics accordingly, but is later found to have not paid the proper prevailing wage rate.

(6) "Unpaid prevailing wages" or "unpaid wages" means the employer fails to pay all of the prevailing rate of wages owed for any workweek by the regularly established payday for the period in which the workweek ends. Every employer must pay all wages, other than usual benefits, owing to its employees not less than once a month. Every employer must pay all usual benefits owing to its employees by the regularly established deadline for those benefits.

(7) "Rate of contribution" means the effective annual rate of usual benefit contributions for all hours, public and private, worked during the year by an employee (commonly referred to as "annualization" of benefits). The only exemption to the annualization requirements is for defined contribution pension plans that have immediate participation and vesting.

(8) "Contractor" means any prime contractor, subcontractor, or other employer as defined by rules adopted by the department of labor and industries. "Contractor" includes 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. [2025 c 99 s 2; (2025 c 99 s 1 expired January 1, 2026); 2024 c 7 s 2; 2019 c 242 s 2; 1989 c 12 s 6; 1985 c 15 s 1; 1965 ex.s. c 133 s 1; 1945 c 63 s 3; Rem. Supp. 1945 s 10322-22.]

Effective date—2025 c 99 s 2: "Section 2 of this act takes effect January 1, 2026." [2025 c 99 s 5.]

Expiration date—2025 c 99 s 1: "Section 1 of this act expires January 1, 2026." [2025 c 99 s 4.]

Effective date—2024 c 7: "This act takes effect January 1, 2026." [2024 c 7 s 4.]

Findings—2024 c 7: See note following RCW 39.12.130.

Findings—2019 c 242: "The legislature finds:

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

(2) Revisions to chapter 39.12 RCW are long overdue and are necessary to appropriately address filing and reporting procedures and penalties, which are necessary to strengthen enforcement of and deterrence from repeat and/or willful violations of the chapter." [2019 c 242 s 1.]

Effective date—2019 c 242: "This act takes effect January 1, 2020." [2019 c 242 s 6.]

Severability—1985 c 15: See note following RCW 39.12.065.

RCW 39.12.015 Industrial statistician to make determinations of prevailing rate. (1) All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.

(2) The time period for recovery of any wages owed to a worker affected by the determination is tolled until the prevailing wage determination is final.

(3)(a) 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. For trades and occupations with

more than one collective bargaining agreement in the county, the higher rate will prevail.

(b) 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, the industrial statistician may employ other appropriate methods to establish the prevailing rate of wage. [2019 c 29 s 2. Prior: 2018 c 248 s 1; 2018 c 242 s 1; 1965 ex.s. c 133 s 2.]

Intent—2019 c 29: "The legislature intends that the methodology for establishing the prevailing rates of wages under this act applies only to affordable housing, homeless and domestic violence shelters, and low-income weatherization and home rehabilitation programs." [2019 c 29 s 1.]

Effective date—2019 c 29: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2019]." [2019 c 29 s 5.]

Publication of wage rates—Effective date—2019 c 29: See note following RCW 39.12.017.

RCW 39.12.017 Industrial statistician to establish prevailing rate for residential construction—Wage and hour surveys. (1) For residential construction, the industrial statistician shall establish the prevailing rate of wage by conducting wage and hour surveys. If the industrial statistician determines that information received from a survey is insufficient to determine the prevailing rate of wage for a trade under this subsection, the industrial statistician shall employ other appropriate methods to establish the prevailing rate of wage.

(a) The industrial statistician shall conduct the initial surveys required by this subsection (1) as soon as feasible after April 17, 2019. These surveys shall cover fiscal year 2018.

(b) The industrial statistician shall conduct a wage and hour survey following the initial survey or otherwise reestablish a prevailing rate of wage for each trade covered by this section at least every five years, and after the initial survey may stagger the surveys for workload purposes.

(2)(a) Until the industrial statistician has established a prevailing wage rate under subsection (1)(a) of this section and except as provided in (b) of this subsection, the industrial statistician shall establish the wage rate by:

(i) Identifying the residential prevailing wage rate in effect on August 30, 2018, for that trade (rate A);

(ii) Determining the year most recent to 2018, but not earlier than 2007, in which the wage rate for that trade was adjusted (year A);

(iii) Determining the percentage change in the annual average hourly wages reported for construction workers in Washington state, as

calculated by the United States bureau of labor statistics' state and area employment, hours, and earnings estimates, from year A to 2019;

(iv) Adding the percentage change from (a)(iii) of this subsection to one hundred percent (percentage A); and

(v) Multiplying rate A by percentage A.

(b) If the residential construction wage rate in effect for a trade on August 31, 2018, is the same as the wage rate in effect on August 30, 2018, the industrial statistician must adopt the wage rate in effect for the trade on August 31, 2018, until a wage rate is established under subsection (1)(a) of this section.

(3) For purposes of this section:

(a) "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 the basement, in the following categories:

(i) 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;

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

(iii) Homeless shelters and domestic violence shelters.

(b) "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. [2019 c 29 s 3.]

Publication of wage rates—Effective date—2019 c 29: "The industrial statistician must establish and publish wage rates under RCW 39.12.017(2) within thirty days after April 17, 2019. The wage rates take effect thirty days after publication." [2019 c 29 s 4.]

Effective date—Intent—2019 c 29: See notes following RCW 39.12.015.

RCW 39.12.020 Prevailing rate to be paid on public works and under public building service maintenance contracts—Posting of statement of intent—Exception. The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the jobsite: PROVIDED, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor's local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request:

(1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW 39.12.040; and

(2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to workers or other persons regularly employed by the state, or any county, municipality, or political subdivision created by its laws. [2007 c 169 s 1; 1989 c 12 s 7; 1982 c 130 s 1; 1981 c 46 s 1; 1967 ex.s. c 14 s 1; 1945 c 63 s 1; Rem. Supp. 1945 s 10322-20.]

RCW 39.12.021 Prevailing rate to be paid on public works—Apprentice workers. Apprentice workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council pursuant to chapter 49.04 RCW, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers. [1989 c 12 s 8; 1963 c 93 s 1.]

RCW 39.12.026 Surveys—Applicability by county—Electronic option. (1) In establishing the prevailing rate of wage under RCW 39.12.010, 39.12.015, and 39.12.020, all data collected by the department of labor and industries may be used only in the county for which the work was performed.

(2) The department of labor and industries must provide registered contractors with the option of completing a wage survey electronically. [2015 3rd sp.s. c 40 s 2; 2003 c 363 s 206.]

Effective date—2015 3rd sp.s. c 40: See note following RCW 39.04.320.

Findings—Intent—2003 c 363 ss 201-206: See note following RCW 49.04.141.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

RCW 39.12.030 Contract specifications must state minimum hourly rate—Stipulation for payment—Residential and commercial construction work. (1) The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work to which the state or any county, municipality, or political subdivision created by its laws is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work

contemplated by the contract, and the contract shall contain a stipulation that such laborers, workers, or mechanics shall be paid not less than such specified hourly minimum rate of wage. If the awarding agency determines that the work contracted for meets the definition of residential construction, the contract must include that information.

(2) If the hourly minimum rate of wage stated in the contract specifies residential construction rates and it is later determined that the work performed is commercial and subject to commercial construction rates, the state, county, municipality, or political subdivision that entered into the contract must pay the difference between the residential rate stated and the actual commercial rate to the contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work under the contract. [2009 c 62 s 1; 1989 c 12 s 9; 1945 c 63 s 2; Rem. Supp. 1945 s 10322-21.]

RCW 39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid—Alternative procedure. (1)(a) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it is the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages must include:

(i) The contractor's registration certificate number; and

(ii) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

(b) Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate must state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it is the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an affidavit of wages paid before the funds retained according to the provisions of RCW 60.28.011 are released to the contractor. On a public works project where no retainage is withheld, the affidavit of wages paid must be submitted to the state, county, municipality, or other public body charged with the duty of disbursing or authorizing disbursement of public funds prior to final acceptance of the public works project. If a subcontractor performing work on a public works project fails to submit an affidavit of wages paid form, the contractor or subcontractor with whom the subcontractor had a contractual relationship for the project may file the forms on behalf of the nonresponsive subcontractor. Affidavit forms may only be filed on behalf of a nonresponsive subcontractor who has ceased operations or

failed to file as required by this section. The contractor filing the affidavit must accept responsibility for payment of prevailing wages unpaid by the subcontractor on the project pursuant to RCW 39.12.020 and 39.12.065. Intentionally filing a false affidavit on behalf of a subcontractor subjects the filer to the same penalties as are provided in RCW 39.12.050. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of $5,000 or less as allowed under RCW 39.04.152 is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency must retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency must require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.011. Within thirty days of receipt of the affidavit of wages paid, the awarding agency must submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid must be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in this subsection (2), the awarding agency must pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section may be interpreted to allow an awarding agency to subdivide any public works project of more than $5,000 for the purpose of circumventing the procedures required by subsection (1) of this section. [2023 c 395 s 29; 2019 c 434 s 6; 2013 c 113 s 5; 2012 c 129 s 1; 2009 c 219 s 2; 2007 c 210 s 4; 1991 c 15 s 1; 1982 c 130 s 2; 1981 c 46 s 2; 1975-'76 2nd ex.s. c 49 s 1; 1965 ex.s. c 133 s 3; 1945 c 63 s 4; Rem. Supp. 1945 s 10322-23.]

Effective date—2023 c 395 ss 1-30, 32-34, 36, and 37: See note following RCW 39.04.010.

Findings—Intent—2023 c 395: See note following RCW 39.04.010.

Finding—Intent—2019 c 434: See note following RCW 35.23.352.

RCW 39.12.042 Compliance with RCW 39.12.040—Liability of public agencies to workers, laborers, or mechanics. If any agency of the state, or any county, municipality, or political subdivision created by its laws shall knowingly fail to comply with the provisions of RCW 39.12.040 as now or hereafter amended, such agency of the state, or county, municipality, or political subdivision created by its laws, shall be liable to all workers, laborers, or mechanics to the full extent and for the full amount of wages due, pursuant to the prevailing wage requirements of RCW 39.12.020. [1993 c 404 s 3; 1989 c 12 s 11; 1975-'76 2nd ex.s. c 49 s 2.]

Effective date—1993 c 404: See note following RCW 39.12.070.

RCW 39.12.050 False statement, failure to file, or failure to post document required to be posted—Penalty—Unpaid wages lien against bond and retainage—Prohibitions on bidding on future contracts—Hearing—Exception. (1) Any contractor or subcontractor who files a false statement or fails to file any statement or record required to be filed or fails to post a document required to be posted under this chapter and the rules adopted under this chapter, shall, after a determination to that effect has been issued by the director after hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of $500 for each false filing or failure to file or post, and shall not be permitted to bid, or have a bid considered, on any public works contract until the penalty has been paid in full to the director. The civil penalty under this subsection does not apply to a violation determined by the director to be an inadvertent filing or reporting error. The burden of proving, by a preponderance of the evidence, that an error is inadvertent rests with the contractor or subcontractor charged with the error. Civil penalties shall be deposited in the public works administration account.

To the extent that a contractor or subcontractor has not paid wages at the rate due pursuant to RCW 39.12.020, and a finding to that effect has been made as provided by this subsection, such unpaid wages constitute a lien against the bonds and retainage as provided in RCW 18.27.040, 18.106.410, 19.28.041, 39.08.010, and 60.28.011.

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

The director shall issue his or her findings that a contractor or subcontractor has violated the provisions of this subsection after a hearing held subject to the provisions of chapter 34.05 RCW, unless a notice of violation is not timely appealed. A notice of violation not timely appealed is final and binding, and not subject to further appeal. [2023 c 88 s 3; 2019 c 242 s 3; 2009 c 219 s 3; 2001 c 219 s 1; 1985 c 15 s 3; 1977 ex.s. c 71 s 1; 1973 c 120 s 1; 1945 c 63 s 5; Rem. Supp. 1945 s 10322-24.]

Effective date—Findings—2019 c 242: See notes following RCW 39.12.010.

Severability—1985 c 15: See note following RCW 39.12.065.

RCW 39.12.055 Prohibitions on bidding on future contracts. Except as otherwise provided in RCW 49.105.040, a contractor shall not be allowed to bid on any public works contract for one year from the date of a final determination that the contractor has committed any combination of two of the following violations or infractions within a five-year period:

(1) Violated RCW 51.48.020(1) or 51.48.103;

(2) Committed an infraction or violation under chapter 18.27, 18.106, 19.28, or 70.87 RCW for performing work as an unregistered or unlicensed contractor; or

(3) Determined to be out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW. [2023 c 145 s 6; 2023 c 88 s 4; 2009 c 197 s 3; 2008 c 120 s 3.]

Reviser's note: This section was amended by 2023 c 88 s 4 and by 2023 c 145 s 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Rules—Implementation—2009 c 197: See note following RCW 39.04.320.

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

RCW 39.12.060 Director of labor and industries to arbitrate disputes. Such contract shall contain a further provision that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the department of labor and industries of the state and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute. [1989 c 12 s 10; 1965 ex.s. c 133 s 4; 1945 c 63 s 6; Rem. Supp. 1945 s 10322-25.]

Arbitration of disputes: Chapter 49.08 RCW.

Uniform arbitration act: Chapter 7.04A RCW.

RCW 39.12.065 Investigation of complaints—Notice of violation—Hearing—Exception—Remedies—Penalties—Waiver or reduction. (1) Upon complaint by an interested party, the director of labor and industries shall cause an investigation to be made to determine whether there has been compliance with this chapter and the rules adopted hereunder, and if the investigation indicates that a violation may have occurred, the

department of labor and industries may issue a notice of violation for unpaid wages, penalties, and interest on all wages owed at one percent per month. A hearing shall be held following a timely appeal of the notice of violation in accordance with chapter 34.05 RCW. The director shall issue a written determination including his or her findings after the hearing unless a notice of violation is not timely appealed. A notice of violation not timely appealed is final and binding, and not subject to further appeal. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees.

A complaint concerning nonpayment of the prevailing rate of wage shall be filed with the department of labor and industries no later than 60 days from the acceptance date of the public works project. The department may not charge a contractor or subcontractor with a violation of this section when responding to a complaint filed after the 60-day limit. The failure to timely file such a complaint does not prohibit the department from investigating the matter and recovering unpaid wages for the worker(s) within two years from the acceptance of the public works contract. The department may not investigate or recover unpaid wages if the complaint is filed after two years from the acceptance of a public works contract. The failure to timely file such a complaint also does not prohibit a claimant from pursuing a private right of action against a contractor or subcontractor for unpaid prevailing wages. The remedy provided by this section is not exclusive and is concurrent with any other remedy provided by law.

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

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

(b) If the claimant was employed by the contractor or subcontractor on the public works project, the bond filed by the contractor or subcontractor with the department of labor and industries as provided in RCW 18.27.040, 18.106.410, and 19.28.041;

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

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

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

(3) A contractor or subcontractor that is found, in accordance with subsection (1) of this section, to have violated the requirement to pay the prevailing rate of wage is subject to a civil penalty of not less than $5,000 or an amount equal to 50 percent of the total prevailing wage violation found on the contract, whichever is greater,

interest on all wages owed at one percent per month, and is not permitted to bid, or have a bid considered, on any public works contract until such civil penalty has been paid in full to the director. If a contractor or subcontractor is found to have participated in a violation of the requirement to pay the prevailing rate of wage for a second time within a five-year period, the contractor or subcontractor is subject to the sanctions prescribed in this subsection and as an additional sanction is not allowed to bid on any public works contract for two years. Civil penalties shall be deposited in the public works administration account. If a previous or subsequent violation of a requirement to pay a prevailing rate of wage under federal or other state law is found against the contractor or subcontractor within five years from a violation under this section, the contractor or subcontractor shall not be allowed to bid on any public works contract for two years. The two-year period runs from the date of notice by the director of the determination of noncompliance. When an appeal is taken from the director's determination, the two-year period commences from the date the notice of violation becomes final. A contractor or subcontractor is not barred from bidding on any public works contract if the contractor or subcontractor relied upon written information from the department to pay a prevailing rate of wage that is later determined to be in violation of this chapter. The civil penalty and sanctions under this subsection do not apply to a violation determined by the director to be an inadvertent filing or reporting error. The burden of proving, by a preponderance of the evidence, that an error is inadvertent rests with the contractor or subcontractor charged with the error. To the extent that a contractor or subcontractor has not paid the prevailing wage rate under a determination issued as provided in subsection (1) of this section, the unpaid wages constitute a lien against the bonds and retainage as provided herein and in RCW 18.27.040, 18.106.410, 19.28.041, 39.08.010, and 60.28.011.

(4) The director may waive or reduce a penalty or additional sanction under this section including, but not limited to, when the director determines the contractor or subcontractor paid all wages and interest or there was an inadvertent filing or reporting error. The director may not waive or reduce interest. The department of labor and industries shall submit a report of the waivers made under this section, including a justification for any waiver made, upon request of an interested party.

(5) If, after the department of labor and industries initiates an investigation and before a notice of violation of unpaid wages, the contractor or subcontractor pays the unpaid wages identified in the investigation, interest on all wages owed at one percent per month, and penalties in the amount of $1,000 or 20 percent of the total prevailing wage violation determined by the department of labor and industries, whichever is greater, then the violation is considered resolved without further penalty under subsection (3) of this section.

(6) A contractor or subcontractor may only utilize the process outlined in subsection (5) of this section if the department of labor and industries has not issued a notice of violation that resulted in final judgment under this section against that contractor or subcontractor in the last five-year period. If a contractor or subcontractor utilizes the process outlined in subsection (5) of this section for a second time within a five-year period, the contractor or subcontractor is subject to the sanctions prescribed in subsection (3) of this section and may not be allowed to bid on any public works

contract for two years. [2023 c 88 s 5; 2019 c 242 s 4; 2009 c 219 s 4; 2001 c 219 s 2; 1994 c 88 s 1; 1985 c 15 s 2.]

Effective date—Findings—2019 c 242: See notes following RCW 39.12.010.

Severability—1985 c 15: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 15 s 4.]

RCW 39.12.070 Fees authorized for approvals, certifications, and arbitrations. (1) The department of labor and industries may charge fees to awarding agencies on public works for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid. The department may also charge fees to persons or organizations requesting the arbitration of disputes under RCW 39.12.060. The amount of the fees shall be established by rules adopted by the department under the procedures in the administrative procedure act, chapter 34.05 RCW. Except as provided in subsection (3) of this section, the fees shall apply to all approvals, certifications, and arbitration requests made after the effective date of the rules. All fees shall be deposited in the public works administration account. The department may refuse to arbitrate for contractors, subcontractors, persons, or organizations which have not paid the proper fees. The department may, if necessary, request the attorney general to take legal action to collect delinquent fees.

(2) The department shall set the fees permitted by this section 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. 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 or less, as determined by the director of labor and industries in accordance with this subsection. For the 2019-2021 biennium, the fees shall not be more than twenty dollars.

(3) If, at the time an individual or entity files an affidavit of wages paid, the individual or entity is exempt from the requirement to pay the prevailing rate of wage under RCW 39.12.020, the department of labor and industries may not charge a fee to certify the affidavit of wages paid. [2019 c 193 s 1; 2014 c 148 s 1; 2008 c 285 s 2; 2006 c 230 s 1; 1993 c 404 s 1; 1982 1st ex.s. c 38 s 1.]

Effective date—2008 c 285 s 2: "Section 2 of this act takes effect July 1, 2008." [2008 c 285 s 3.]

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Effective date—2006 c 230: "This act takes effect July 1, 2007." [2006 c 230 s 3.]

Effective date—1993 c 404: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 404 s 4.]

RCW 39.12.080 Public works administration account. The public works administration account is created in the state treasury. The department of labor and industries shall deposit in the account all moneys received from fees or civil penalties collected under RCW 39.12.050, 39.12.065, and 39.12.070. Appropriations from the account may be made only for the purposes of administration of this chapter, including, but not limited to, the performance of adequate wage surveys, and for the investigation and enforcement of all alleged violations of this chapter as provided for in this chapter and chapters 49.48 and 49.52 RCW. During the 2017-2019 fiscal biennium the legislature may direct the state treasurer to make transfers of moneys in the public works administration account to the state general fund. It is the intent of the legislature to use the moneys transferred in the 2017-2019 biennium to support apprenticeship programs. During the 2025-2027 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the public works administration account to the general fund such amounts as reflect the excess fund balance of the account. [2025 c 424 s 933; 2018 c 299 s 923; 2006 c 230 s 2; 2001 c 219 s 3; 1993 c 404 s 2.]

Effective date—2025 c 424: See note following RCW 9.46.100.

Effective date—2018 c 299: See note following RCW 43.41.433.

Effective date—2006 c 230: See note following RCW 39.12.070.

Effective date—1993 c 404: See note following RCW 39.12.070.

RCW 39.12.100 Independent contractors—Criteria. For the purposes of this chapter, an individual employed on a public works project is not considered to be a laborer, worker, or mechanic when:

(1) The individual has been and is free from control or direction over the performance of the service, both under the contract of service and in fact;

(2) The service is either outside the usual course of business for the contractor or contractors for whom the individual performs services, or the service is performed outside all of the places of business of the enterprise for which the individual performs services, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal

income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract of service, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and

(7) On the effective date of the contract of service, if the nature of the work performed requires registration under chapter 18.27 RCW or licensure under chapter 18.106, 19.28, or 70.87 RCW, the individual has the contractor registration and contractor licenses required by the laws of this state including chapters 18.27, 18.106, 19.28, and 70.87 RCW. [2023 c 88 s 6; 2009 c 63 s 1.]

RCW 39.12.105 Finishing work—Independent contractor misclassification. (1) If a contractor or subcontractor engages three or more independent contractors, as described in RCW 39.12.100, to perform the same type of covered finishing work at the same time on a public works project, the department of labor and industries, upon a referral for investigation, must investigate to determine whether the individuals performing the work have been misclassified as independent contractors.

(2) A referral for investigation under this section may be made by:

(a) The state, county, municipality, or political subdivision awarding the public works contract;

(b) Any contractor or subcontractor on the public works project;

(c) Any labor organization that represents individuals performing covered finishing work on the public works project; or

(d) Any individual performing covered finishing work on the project.

(3) If the department of labor and industries finds, following an investigation under this section, that any individual performing covered finishing work has been misclassified as an independent contractor, the contractor or subcontractor that engaged the individual is subject to all applicable requirements, liabilities, and penalties under this chapter. Following this finding, the department of labor and industries shall make the appropriate referrals under Titles 50 and 51 RCW.

(4) For purposes of this section, "covered finishing work" means work in drywall, flooring, tiling, painting, and glazier and glasswork. [2026 c 105 s 1.]

RCW 39.12.110 Failure to provide or allow inspection of records. Any employer, contractor, or subcontractor who fails to provide requested records, or fails to allow adequate inspection of records in an investigation by the department of labor and industries under this chapter within sixty calendar days of service of the department's request may not use the records in any proceeding under this chapter to challenge the correctness of any determination by the department that wages are owed, that a record or statement is false, or that the employer, contractor, or subcontractor has failed to file a record or statement. [2011 c 92 s 1.]

RCW 39.12.120 Payroll records—Filing—Noncompliance—Provision to interested parties. (1) Each contractor, subcontractor, or employer shall keep accurate payroll records for three years from the date of acceptance of the public works project by the contract awarding agency, showing the employee's full name, address, social security number, trade or occupation, classification, straight and overtime rates, hourly rate of usual benefits, and hours worked each day and week, including any employee authorizations executed pursuant to RCW 49.28.065, and the actual gross wages, itemized deductions, withholdings, and net wages paid, for each laborer, worker, and mechanic employed by the contractor for work performed on a public works project.

(2) A contractor, subcontractor, or employer shall file a copy of its certified payroll records using the department of labor and industries' online system at least once per month. If the department of labor and industries' online system is not used, a contractor, subcontractor, or employer shall file a copy of its certified payroll records directly with the department of labor and industries in a format approved by the department of labor and industries at least once per month.

(3) The department of labor and industries shall provide, upon request, a copy of an employer's certified payroll records to an interested party. A joint labor-management cooperation committee may only use the information provided under this subsection for purposes of filing complaints under RCW 39.12.065 and may not use the information for any other purpose, including union organizing or commercial activity.

(4) A contractor, subcontractor, or employer's noncompliance with this section constitutes a violation of RCW 39.12.050. [2025 c 99 s 3; 2019 c 242 s 5.]

Effective date—Findings—2019 c 242: See notes following RCW 39.12.010.

RCW 39.12.130 Contractors—Debarment, sanctions—Notice of violation. (1) For the purposes of enforcing this chapter, if a contractor has substantially identical operations, corporate, or management structure to another entity that has been debarred or otherwise sanctioned under RCW 39.12.050, 39.12.055, 39.12.065, or any associated rule, then the contractor is subject to the same debarment or sanction as that other entity. These sanctions include: Penalties issued under this chapter; findings of violations that the department of labor and industries count toward a bar on bidding on public works;

and debarment, prohibiting bidding on public works. The department of labor and industries may enforce this section under the enforcement provisions of this chapter and associated rules.

(2) The director may issue a notice of violation under this section to a contractor described in subsection (1) of this section to extend the sanctions of a debarred or sanctioned entity imposed through a final and binding order or agreement to the contractor. A hearing must be held following a timely appeal of the notice of violation in accordance with chapter 34.05 RCW. The director shall issue a written determination including his or her findings after the hearing unless a notice of violation is not timely appealed. A notice of violation not timely appealed is final and binding, and is not subject to further appeal. [2024 c 7 s 3.]

Findings—2024 c 7: "The legislature finds that government contracts should not be awarded to those that knowingly and intentionally violate Washington state's prevailing wage laws. The legislature also finds that businesses that follow the law and pay workers appropriately are placed at a competitive disadvantage to those that reduce costs by failing to pay prevailing wages or failing to file or falsely file with the Washington state department of labor and industries or sanctioned under RCW 39.12.055. In order to create a consistent, fair playing field for businesses and avoid taxpayer contracts going to those that repeatedly violate the law and illegally withhold money from workers, the state should amend the state prevailing wage laws to extend those businesses' sanctions to their substantially identical companies. These sanctions include penalties issued under chapter 39.12 RCW; findings of violations that the department of labor and industries count toward a bar on bidding on public works; and debarment, prohibiting bidding on public works." [2024 c 7 s 1.]

Effective date—2024 c 7: See note following RCW 39.12.010.