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.