

# STATE FUNDED ONLY CONSTRUCTION CONTRACTS

## SPECIAL PROVISIONS DIVISION A - LABOR

### I. INTRODUCTION

- A. **Policy Statement.** It is in the public interest that public buildings and other public works projects be constructed and maintained by the best means and the highest quality of labor reasonably available and that persons working on public works projects be compensated according to the real value of the services they perform.<sup>1</sup>
- B. **State Regulations Govern.** This Contract is subject to the Minnesota Prevailing Wage Act<sup>2</sup>, Minnesota Fair Labor Standards Act<sup>3</sup>, Minnesota Rules<sup>4</sup>, Minnesota Department of Labor and Industry (MnDLI) Wage Decision(s), and the MnDLI Truck Rental Rate Schedule.
- C. **Purpose.** These provisions: (1) outline your obligations under state and federal laws, rules and regulations; (2) explain the requirements necessary to demonstrate compliance; and (3) explain the processes that the Department will undertake to ensure compliance.
- D. **Questions or Resources.** Please visit the Minnesota Department of Transportation (MnDOT) Labor Compliance Unit (LCU) website at: [www.dot.state.mn.us/const/labor](http://www.dot.state.mn.us/const/labor).

### II. DEFINITIONS

Many of the terms used in these provisions are defined in MnDOT's Standard Specifications for Construction,<sup>5</sup> unless defined below.

- A. **Apprentice.** A Worker at least 16 years of age who is employed to learn an apprenticeable trade or occupation in a registered apprenticeship program.<sup>6</sup>
- B. **Bona Fide.** Made or carried out in good faith; authentic.<sup>7</sup>
- C. **Certified Payroll Report (CPR).** A report comprised of two components; (1) a payroll report, and (2) a statement of compliance report.<sup>8</sup>
- D. **Contractor.** An individual or business entity that is engaged in construction or construction service-related activities including trucking activities either directly or indirectly through a Contract, or by Subcontract with the Prime Contractor, or by a further Subcontract with any other person or business entity performing Work.<sup>9</sup>
- E. **Employer.** An individual, partnership, association, corporation, business trust, or other business entity that hires a Worker.<sup>10</sup>
- F. **Fringe Benefit.** An employment benefit given in addition to a Worker's wages or salary.<sup>11</sup>
- G. **Independent Truck Owner/Operator (ITO).** An individual, partnership, or principal stockholder of a corporation who owns or holds a vehicle under lease and who contracts that vehicle and the owner's services to an entity which provides construction services to a public works project.<sup>12</sup>

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<sup>1</sup> Minn. Stat. 177.41

<sup>2</sup> Minn. Stat. 177.41 to 177.44

<sup>3</sup> Minn. Stat. 177.21 to 177.35

<sup>4</sup> Minn. R. 5200.1000 to 5200.1120

<sup>5</sup> MnDOT Standard Specifications for Construction, Section 1103

<sup>6</sup> Minn. Stat. 178.011, Subdivision 2

<sup>7</sup> The American Heritage College Dictionary, Third Edition, 2000

<sup>8</sup> Minn. R. 5200.1106, Subpart 10

<sup>9</sup> Minn. R. 5200.1106, Subpart 2(D)

<sup>10</sup> Minn. Stat. 177.42, Subdivision 7

<sup>11</sup> The American Heritage College Dictionary, Third Edition, 2000

<sup>12</sup> Minn. R. 5200.1106, Subpart 7(A)

- H. **Journeyworker.** A person who has attained a level of skill, abilities, and competencies recognized within and industry as having mastered the skills and competencies required for the trade or occupation.<sup>13</sup>
- I. **Prime Contractor.** An individual or business entity that enters into a Contract with the Department.<sup>14</sup>
- J. **Subcontract.** A Contract that assigns some obligations of a prior Contract to another party.<sup>15</sup>
- K. **Substantially In Place.** Mineral aggregate is deposited on the project site directly or through spreaders where it can be spread from or compacted at the location where it was deposited.<sup>16</sup>
- L. **Total Prevailing Wage Rate.** The sum of the prevailing hourly “basic” and “fringe” rate that is established in a Wage Decision.
- M. **Trucking Broker (Broker).** An individual or business entity, the activities of which include, but are not limited to: contracting to provide trucking services in the construction industry to users of such services, contracting to obtain such services from providers of trucking services, dispatching the providers of the services to do Work as required by the users of the services, receiving payment from the users in consideration of the trucking services provided, and making payment to the providers for the services.<sup>17</sup>
- N. **Trucking Firm/Multiple Truck Owner (MTO).** Any legal business entity that owns more than one vehicle and hires the vehicles out for services to Trucking Brokers or Contractors on public works projects.<sup>18</sup>
- O. **Truck Rental Rate Schedule.** A document prepared by the MnDLI through a Contractor survey process that identifies the required hourly Total Prevailing Wage Rate and operating cost for various types of trucks that perform hauling activities (Work) under a Contract that is funded in whole or in part with state funds.<sup>19</sup>
- P. **Wage Decision.** A document prepared by the MnDLI through a Contractor survey process that identifies the required hourly basic rate of pay and hourly Fringe Benefits for various labor classifications that perform Work under a Contract that is funded in whole or in part with state funds.<sup>20</sup>
- Q. **Work (Work).** All construction activities associated with a public works project, including any required hauling activities on-the-site-of or to-or-from a public works project and conducted pursuant to a Contract, regardless of whether the construction activity or Work is performed by the Prime Contractor, subcontractor, Trucking Broker, Trucking Firm (MTO), ITO, independent contractor, or employee or agent of any of the foregoing entities.<sup>21</sup>
- R. **Worker (Laborer or Mechanic).** A Worker in a construction industry labor class identified in or pursuant to Minnesota Rules 5200.1100, Master Job Classifications.<sup>22</sup>

### III. APPLICATION & UNDERSTANDING

- A. **Provisions & Prevailing Wage Rates Apply.** These provisions, along with the prevailing Wage Decision(s) that are incorporated into the Contract, apply to all Contractors contracting to do all or part of the Work.<sup>23</sup>

<sup>13</sup> Minn. Stat. 178.011, Subdivision 9

<sup>14</sup> Minn. R. 5200.1106, Subpart 2(C)

<sup>15</sup> The American Heritage College Dictionary, Third Edition, 2000

<sup>16</sup> Minn. R. 5200.1106, Subpart 5(C)

<sup>17</sup> Minn. R. 5200.1106, Subpart 7(C)

<sup>18</sup> Minn. R. 5200.1106, Subpart 7(B)

<sup>19</sup> Minn. R. 5200.1105

<sup>20</sup> Minn. R. 5200.1020 to 5200.1060

<sup>21</sup> Minn. R. 5200.1106, Subpart 2(A)

<sup>22</sup> Minn. R. 5200.1106, Subpart 5(A)

<sup>23</sup> Minn. Stat. 177.44, Subdivision 1

- B. **Truck Rental Rates Apply.** The Truck Rental Rate Schedule incorporated into the Contract applies to all hired trucking entities that perform covered hauling activities related to the project.<sup>24</sup>
- C. **Prevailing Wage Terms Must Be Included in All Contracts.** The Prime Contractor is required to ensure that all subcontractors performing Work receive the Contract Wage Decision(s), Truck Rental Rate Schedule, and a copy of these provisions with their written Subcontracts, agreements and/or purchase orders.<sup>25</sup>
- D. **Responsible for Understanding All Requirements.** Each Contractor is responsible for understanding all laws, rules, regulations, plans, and specifications that are incorporated physically, or by reference, into the Contract.<sup>26</sup>
- E. **E-Verify.** For services valued in excess of \$50,000, the Contractor certifies that as of the date of services performed on behalf of State, the Contractor will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work under the contract. The Prime Contractor is responsible to collect all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with the Prime Contractor and made available to the State upon request.

#### IV. **VENDOR REGISTRATION**

**Vendor Registration Required.** A Contractor that performs Work, supplies material, or product must be registered with MnDOT. The Contractor must complete and submit a vendor form<sup>27</sup> to the MnDOT LCU<sup>28</sup>, along with all applicable documentation that is required. This registration process is separate and distinct from other state agency requirements.

#### V. **LABOR CLASSIFICATIONS**

- A. **Labor Classification Assignment.** A Worker must be paid at least the Total Prevailing Wage Rate in the same or most similar trade or occupation.<sup>29</sup> To determine the appropriate labor classification for a Worker, a Contractor must refer to the Wage Decision(s) incorporated into the Contract, the labor classification descriptions for laborers and special crafts established in Minnesota Rules or the United States Department of Labor's Dictionary of Occupational Titles.<sup>30</sup>
- B. **Labor Classification Clarification & Disputes.** A Contractor needing assistance in determining a labor classification must submit a Classification Clarification Request<sup>31</sup> to the MnDOT LCU for a written decision. If the Contractor chooses to contest the classification assignment, it must provide written notice to the MnDOT LCU. The MnDOT LCU will forward the matter to the MnDLI for a final ruling.
- C. **Performing Work in Multiple Labor Classifications.** For Workers performing Work in multiple labor classifications, the Contractor must compensate at a minimum the Total Prevailing Wage Rate, and report the hours worked, in each applicable labor classification.<sup>32</sup>

#### VI. **WAGE DECISION(S) & WAGE RATE(S)**

- A. **Applicability of a Highway and Heavy Wage Decision.** A highway and heavy Wage Decision applies to a Worker that is engaged in a construction activity or performing Work to construct or maintain a highway or other public works project, such as a road, street, airport runway, bridge,

<sup>24</sup> Minn. Stat. 177.44, Subdivision 3

<sup>25</sup> MnDOT Standard Specifications for Construction, Section 1801

<sup>26</sup> MnDOT Standard Specifications for Construction, Section 1701

<sup>27</sup> [www.dot.state.mn.us/const/labor/documents/forms/contractorform2016.pdf](http://www.dot.state.mn.us/const/labor/documents/forms/contractorform2016.pdf) for [www.dot.state.mn.us/const/labor/documents/forms/truckvendorform2016.pdf](http://www.dot.state.mn.us/const/labor/documents/forms/truckvendorform2016.pdf)

<sup>28</sup> [lcusupport.dot@state.mn.us](mailto:lcusupport.dot@state.mn.us)

<sup>29</sup> Minn. Stat. 177.44, Subdivision 1

<sup>30</sup> Minn. R. 5200.1101 and 1102 and USDOL Dictionary of Occupational Titles

<sup>31</sup> <http://www.dot.state.mn.us/const/labor/documents/forms/classification-clarification-request.pdf>

<sup>32</sup> Minn. Stat. 177.44, Subdivision 1

power plant, dam or utility<sup>33</sup> that is external to a sheltered enclosure (structure). This includes, but is not limited to, the following Work: site clearing; grading; excavating backfilling; paving; curbs; gutters; sidewalks; culverts; bridges; lighting systems; traffic management systems; installing of utilities out from an exterior meter; fuel islands; communication towers; or other activities similar to highway and/or heavy Work.

- B. **Applicability of a Commercial Wage Decision.** A commercial Wage Decision applies to a Worker that is engaged in a construction activity or performing Work to construct a sheltered enclosure (structure) with walk-in access for the purpose of housing persons, machinery, equipment or supplies.<sup>34</sup> This includes, but is not limited to, the following Work: constructing foundations, aprons, stoops; framing walls; installing windows, doors, tiling, plumbing, electrical, HVAC systems; roofing; installing utilities into the building from an exterior meter.
- C. **Pay According to Wage Decision(s).**
1. **Contract with One Wage Decision.** If the Contract contains one Wage Decision, the Contractor must examine the Wage Decision and compensate the Worker at a minimum the Total Prevailing Wage Rate for the appropriate labor classification(s).
  2. **Contract with Multiple Highway/Heavy Wage Decisions.** If the Contract contains multiple Highway/Heavy Wage Decisions, the Contractor must examine each Wage Decision and compensate the Worker, at a minimum, the Total Prevailing Wage Rate that is the greatest<sup>35</sup> for the appropriate labor classification(s).
  3. **Contract with Highway/Heavy and Commercial Wage Decision(s).** If the Contract contains a Highway/Heavy and Commercial Wage Decision(s), the Contractor must first determine which Wage Decision is applicable to the Worker. The Contractor must then compensate the Worker, at a minimum, the Total Prevailing Wage Rate for the appropriate labor classification(s).
- D. **Must Pay Total Prevailing Wage Rate.** A Contractor must compensate each Worker, at a minimum, the Total Prevailing Wage Rate(s) for all hours worked on the project for the appropriate labor classification(s).<sup>36</sup>
- E. **Missing Wage Rate.** If a Wage Decision fails to include a wage rate for a labor classification(s) that will be utilized on a project, the Contractor must obtain a wage rate prior to furnishing an estimate, quote or bid.<sup>37</sup>
1. **Wage Rate Request.** A Contractor must complete a Request for Rate Assignment form<sup>38</sup> and submit it to the MnDOT LCU<sup>39</sup> for processing.
  2. **No Contract Price Adjustment for Missing Wage Rate.** If MnDLI determines that a higher wage rate applies, the Department will not reimburse the Contractor.
- F. **Salaried Worker.** A salaried Worker is not exempt from these Provisions. A Contractor must convert the Worker's salary to an average hourly rate of pay by dividing the Worker's salary by the total number of hours Worked (government and non-government) during the pay period.<sup>40</sup> A salaried Worker must be included on a CPR.
- G. **Reduction in Standard (Private) Contractual Regular Rate of Pay Prohibited.** A Contractor must not reduce a Worker's standard, contractual regular rate of pay when the prevailing wage rate(s) certified by the MnDLI is less.<sup>41</sup>

<sup>33</sup> Minn. R. 5200.1010, Subdivision 3

<sup>34</sup> United States Department of Labor All Agency Memorandum #130

<sup>35</sup> Minn. Stat. 177.44, Subdivision 4

<sup>36</sup> Minn. Stat. 177.44, Subdivision 1

<sup>37</sup> Minn. R. 5200.1030, Subpart 2a(C)

<sup>38</sup> <http://www.dot.state.mn.us/const/labor/documents/forms/request-for-rate-assignment.doc>

<sup>39</sup> [lcusupport.dot@state.mn.us](mailto:lcusupport.dot@state.mn.us)

<sup>40</sup> Refer to Appendix A

<sup>41</sup> Minn. Stat. 181.03, Subdivision 1(2)

- H. **Prohibited Payment Practices.** A Contractor is prohibited from taking (accepting) a rebate for the purpose of reducing or otherwise decreasing the value of the compensation paid.
- I. **Prohibited Deductions.** No deductions, direct or indirect, may be made for the items listed below which when subtracted from wages would reduce the wages below Minnesota's minimum wage rate as established in section 177.24<sup>42</sup>
1. **Uniforms.** Purchased or rented uniforms or specifically designed clothing that is required by the Employer, by the nature of employment, or by statute, or as a condition of employment, which is not generally appropriate for use except in that employment.
  2. **Equipment.** Purchased or rented equipment used in employment, except tools of a trade, a motor vehicle, or any other equipment which may be used outside the employment. The cost of the Worker's use of equipment used outside of employment, such as tools, a motor vehicle, cell phone, may be deducted only if an agreement between the Employer and employee existed prior to the deduction.
  3. **Supplies.** Consumable supplies required in the course of employment.
  4. **Travel Expenses.** Travel expenses in the course of employment except those incurred in traveling to and from the employee's residence and place of employment.

## VII. HOURS OF WORK

- A. **Work Performed Under the Contract.** A Worker performing Work is subject to prevailing wage for all hours associated with the Contract<sup>43</sup>, unless the Worker is exempt under state law.<sup>44</sup>
- B. **Wait Time Subject to Prevailing Wage.** A Worker who is required to remain on the project and is waiting to Work because of the fault of the Contractor is considered "engaged to wait" and subject to prevailing wage for the time spent, unless the Worker is completely relieved of duty and free to leave the project for a defined period of time.

## VIII. FRINGE BENEFITS

- A. **Funded Fringe Benefit Plan Criteria.** In order for a funded Fringe Benefit (e.g., health/medical insurance, disability insurance, life insurance, pension, etc.) to be considered and creditable towards the Total Prevailing Wage Rate it must be:<sup>45</sup>
1. a contribution irrevocably made by a Contractor on behalf of an Worker to a financially responsible trustee, third person, fund, plan, or program;
  2. carried out under a financially responsible plan or program;
  3. legally enforceable;
  4. communicated in writing to the Worker; and
  5. made available to the Worker once he/she has met all eligibility requirements.
- B. **Unfunded Fringe Benefit Plan Criteria.** In order for a unfunded Fringe Benefit (e.g., vacation, holiday, sick leave, etc.) to be considered and creditable towards the Total Prevailing Wage Rate it must be:<sup>46</sup>
1. reasonably anticipated to provide a benefit;
  2. a commitment that can be legally enforced;

<sup>42</sup> Minn. Stat. 177.24, Subdivision 4(1-4)

<sup>43</sup> Minn. Stat. 177.44, Subdivision 1

<sup>44</sup> Minn. Stat. 177.44, Subdivision 2 or Minn. R. 5200.1106, Subpart 4

<sup>45</sup> Minn. Stat. 177.42, Subdivision 6

<sup>46</sup> Minn. Stat. 177.42, Subdivision 6

3. carried out under a financially responsible plan or program;
  4. communicated in writing to the Worker; and
  5. made available to the Worker once he/she has met all eligibility requirements.
- C. **Fringe Benefit Contributions for Hours Worked.** A Contractor that provides Fringe Benefits to a Worker must make contributions, not less than quarterly<sup>47</sup>, for all hours worked,<sup>48</sup> including overtime hours, unless it's a defined benefit or contribution plan that provides for immediate participation and immediate or essentially immediate vesting (**see subpart D2 of this section**).
- D. **Hourly Fringe Benefit Credit.** An hourly Fringe Benefit credit toward the Total Prevailing Wage Rate must be determined separately for each Worker based on one or more of the following methods:
1. **Monthly, Quarterly or Annual Computation Methods.** A Contractor must compute its monthly, quarterly or annual cost of a particular Fringe Benefit and divide that amount by the estimated total number of hours worked (government and non-government) during the time frame used.<sup>49</sup> Typical plans that require monthly, quarterly or annual computations include but are not limited to: health/medical insurance, disability insurance, life insurance, vacation, holiday, sick leave and defined benefit or contribution pension plans that do not provide for immediate participation and immediate or essentially immediate vesting.
  2. **Fringe Benefit Credit not Requiring Monthly, Quarterly or Annual Computation Methods.** A defined benefit or contribution pension plan that allows for a higher hourly rate of contribution for government work (prevailing wage) than non-government (non-prevailing wage) will be fully credited only if the plan provides for immediate participation and immediate or essentially immediate vesting.
- E. **Wages In Lieu of Fringe Benefits.** A Contractor that does not provide full Fringe Benefits must compensate a Worker the difference between the Total Prevailing Wage Rate and the rate actually paid for the appropriate labor classification(s). The compensation paid is considered wages and subject to tax liabilities.
1. **Overtime.** The cash equivalent (wages paid) made in lieu of Fringe Benefits is excluded from the overtime calculation requirement, unless the cash equivalent (wages paid) is part of the Worker's standard straight time wage.
- F. **Administrative Costs Not Creditable.** Administrative expenses incurred by a Contractor in connection with the administration of a Bona Fide Fringe Benefit plan are not creditable towards the Total Prevailing Wage Rate.
- G. **Federal, State & Local Fringe Benefit Credit Prohibited.** No credit is allowed for benefits required by federal, state or local law, such as: worker's compensation, unemployment compensation, and social security contributions.<sup>50</sup>

## IX. OVERTIME

- A. **Overtime after 8 Hours per Day or 40 Hours per Week.** A Contractor must not permit or require a Worker to work longer than the prevailing hours of labor unless the Worker is paid for all hours in excess of the prevailing hours at a rate of at least 1.5 times the hourly basic rate of pay.<sup>51</sup> The prevailing hours of labor is defined as not more than 8 hours per day and more than 40 hours per week.<sup>52</sup>

<sup>47</sup> 29 CRF, Part 5.5(a)(1)(i)

<sup>48</sup> Government and non-government Work

<sup>49</sup> Refer to Appendix B

<sup>50</sup> Minn. Stat. 177.42, Subdivision 6

<sup>51</sup> Minn. Stat. 177.44, Subdivision 1 and Refer to Appendix D

<sup>52</sup> Minn. Stat. 177.42, Subdivision 4

- B. **Wages in Lieu of Fringe Benefits Overtime.** Wages paid in Lieu of Fringe Benefits must be paid for all hours worked under the contract.
- C. **Multiple Labor Classifications and Overtime.** A Worker employed in multiple labor classifications throughout a workweek must be compensated at the applicable labor classification overtime rate in effect during the hours worked in excess of 8 hours per day or 40 hours per week.
- D. **Federal Fair Labor Standards Act (FLSA) and Overtime.** A Contractor subject to the FLSA may be subject to additional overtime compensation requirements.

## X. PAYROLLS AND STATEMENTS

- A. **Reporting.** Each Contractor that is performing Work must submit a CPR(s) to the Department.
  - 1. **Payroll Report (Paper).** Each Contractor performing Work must submit a paper (written) payroll report to the Department. The payroll report is available on the MnDOT LCU website.<sup>53</sup>
  - 2. **Statement of Compliance (Paper).** Each Contractor's paper (written) payroll report must include a paper (written) "Statement of Compliance Form". The "Statement of Compliance Form" must: (1) state whether or not Fringe Benefits are provided to a Worker; (2) provide a description of each benefit, the hourly contribution made on behalf of each Worker, along with fund/plan information; and (3) a signature attesting that the payroll and Fringe Benefit information provided is truthful and accurate.<sup>54</sup>
  - 3. **Electronic Reporting.** If the Contract is subject to electronic reporting, each Contractor performing Work must submit a CPR(s) using the AASHTOWare, Civil Rights Labor (CRL) system. Refer to the **Special Provisions Division S – "Electronic Submission of Payrolls and Statements"** which is incorporated into and found elsewhere in the Contract for detailed requirements.
- B. **Biweekly Payroll Reporting and Payment of Wages.** A CPR(s) must be submitted no later than 14 calendar days after the end of each Contractor's pay period<sup>55</sup> to the Department. A Contractor must pay its employees at least once every 14 calendar days.<sup>56</sup>
- C. **Payroll Report Data.** Each payroll report must include all Workers that performed Work and provide at a minimum the following information:<sup>57</sup>
  - 1. Contractor's name, address, and telephone number.
  - 2. State project number.
  - 3. Contract number (if applicable).
  - 4. Project number.
  - 5. Payroll report number.
  - 6. Project location.
  - 7. Workweek end date.
  - 8. Each Worker's name, home address, and social security number.<sup>58</sup>
  - 9. Labor classification(s) title(s) and optional three-digit code for each Worker.

<sup>53</sup> [www.dot.state.mn.us/const/labor/certifiedpayroll.html](http://www.dot.state.mn.us/const/labor/certifiedpayroll.html)

<sup>54</sup> Minn. R. 5200.1106, Subpart 10

<sup>55</sup> Minn. Stat. 177.43, Subdivision 3

<sup>56</sup> Minn. Stat. 177.30 (a)(4)

<sup>57</sup> Minn. Stat. 177.30 (a)(1-4) and Minn. R. 5200.1106, Subpart 10

<sup>58</sup> Minn. R. 5200.1106, Subpart 10A & Minn. Stat. 13.355, Subdivision 1

10. Hours worked daily and weekly in each labor classification, including overtime hours, for each Worker.
11. Wage rate paid to each Worker for straight time and overtime.
12. Authorized legal deductions for each Worker.
13. Project gross amount, weekly gross amount, and net wages paid to each Worker.

- D. **Prime Contractor to Ensure Compliance.** The Prime Contractor must review the CPR(s) submitted by each lower tier Contractor and sign the “Statement of Compliance Form”.<sup>59</sup> The Prime Contractor must ensure that each lower tier Contractor’s CPR(s) include all Workers that performed Work and accurately reflect labor classifications, hours worked, regular and overtime rates of pay, gross earnings for the project and Fringe Benefits.<sup>60</sup>
- E. **Retention of CPR(s).** The Prime Contractor must keep its written CPR(s), including those of all lower tier Contractors, for three (3) years after the final payment is issued.<sup>61</sup>
- F. **Retention of Employment-Related Records.** Each Contractor must keep employee records, including, but not limited to: Fringe Benefit statements, time cards, payroll ledgers, check registers and canceled checks<sup>62</sup> for at least three (3) years after the final payment is issued.<sup>63</sup> Other laws may have longer retention requirements.
- G. **Detailed Earning Statement.** At the end of each pay period, each Contractor must provide every Worker, in writing or by electronic means, an accurate, detailed earnings statement.<sup>64</sup>
- H. **Reports and Records Request.** Upon a request from the Department, the Prime Contractor must promptly furnish copies of CPR(s) for its Workers and those of all lower tier Contractors, along with employment-related records, documents, and agreements that the Department considers necessary to determine compliance.<sup>65</sup>

## XI. APPRENTICES, TRAINEES AND HELPERS

- A. **Apprentice.** An Apprentice will be permitted to Work at less than the prevailing basic hourly rate only if the Apprentice is:
1. Registered with the U.S. Department of Labor (DOL), Bureau of Apprenticeship and Training or MnDLI Division of Voluntary Apprenticeship.<sup>66</sup>
  2. Performing Work of the trade, as described in the apprenticeship agreement.
  3. Compensated according to the rate specified in the program for the level of progress.<sup>67</sup>
  4. Supervised by a Journeyworker from the same company, in accordance with the program ratio requirements.<sup>68</sup>
- B. **Ratio Requirement.** If an approved apprenticeship program fails to define a ratio allowance, the first Apprentice must be supervised by a Journeyworker within the same trade or occupation. Any subsequent Apprentice must be supervised by an additional three Journeyworkers.<sup>69</sup>

<sup>59</sup> MnDOT Standard Specifications for Construction, Section 1701

<sup>60</sup> MnDOT Standard Specifications for Construction, Section 1801

<sup>61</sup> Minn. Stat. 177.30 (a)(5)

<sup>62</sup> Minn. R. 5200.1106, Subpart 10

<sup>63</sup> Minn. Stat. 177.30 (a)(5)

<sup>64</sup> Minn. Stat. 181.032

<sup>65</sup> Minn. Stat. 177.44, Subdivision 7; Minn. Stat. 177.33(a)(5)

<sup>66</sup> Minn. R. 5200.1070, Subpart 1

<sup>67</sup> Minn. R. 5200.1070, Subpart 1 and Refer to Appendix C

<sup>68</sup> Minn. Stat. 178.036, Subdivision 5

<sup>69</sup> Minn. Stat. 178.036, Subdivision 5

- C. **Failure to Comply with Apprenticeship Requirements.** If a Contractor fails to demonstrate compliance with the terms established in this section, the Contractor must compensate the Apprentice not less than the applicable Total Prevailing Wage Rate for the actual classification of labor performed.<sup>70</sup>
- D. **Trainee and Helper.** A trainee or helper is not exempt from prevailing wage under state law. The Contractor must assign the trainee or helper a labor classification that is the "same or most similar"<sup>71</sup> and compensate the trainee or helper for the actual Work performed regardless of the trainee's or helper's skill level.

## XII. INDEPENDENT CONTRACTORS, OWNERS, SUPERVISORS, AND FOREMAN

- A. **Independent Contractor.** An independent contractor (IC) that is not an Independent Truck Owner/Operator (ITO), who is performing Work must be properly classified and compensated.<sup>72</sup> The IC must submit a CPR(s) to the Department. If the IC does not receive an hourly wage, but instead a weekly, biweekly, monthly or quarterly distribution for performance, the IC must calculate its hourly rate of pay by dividing the weekly, biweekly, monthly, or quarterly company distribution by all hours worked during that time frame and report the information on a CPR. If necessary, the Department may request documentation from the IC to determine how the hourly wage rate was calculated.<sup>73</sup>
- B. **Owners, Supervisors and Foreman.** An owner, supervisor, or foreman performing Work is subject to prevailing wage and must be properly classified, compensated and reported.<sup>74</sup>

## XIII. TRUCKING

- A. **Covered Hauling Activities.** A Contractor must ensure that all Workers, including hired Trucking Brokers, MTOs and ITOs are paid the applicable Total Prevailing Wage Rate or truck rental rate for the following Work:
1. The hauling of any or all stockpiled or excavated materials on the project work site to other locations on the same project even if the truck leaves the work site at some point.<sup>75</sup>
  2. The delivery of materials from a non-commercial establishment to the project and the return haul to the starting location either empty or loaded.<sup>76</sup>
  3. The delivery of materials from another construction project site to the public works project and the return haul, either empty or loaded. Construction projects are not considered commercial establishments.<sup>77</sup>
  4. The hauling required to remove any materials from the project to a location off the project site and the return haul, either empty or loaded from other than a commercial establishment.<sup>78</sup>
  5. The delivery of materials or products by trucks hired by a Contractor, subcontractor, or agent thereof, from a commercial establishment.<sup>79</sup>
  6. The delivery of sand, gravel, or rock, by or for a commercial establishment, which is deposited "substantially in place," either directly or through spreaders from the transporting vehicles is work under the contract. In addition, the return haul to the off-site facility empty or loaded is also considered work under the contract.<sup>80</sup>

<sup>70</sup> Minn. R. 5200.1070, Subpart 3

<sup>71</sup> Minn. Stat. 177.44, Subdivision 1

<sup>72</sup> Minn. Stat. 177.44, Subdivision 1

<sup>73</sup> Minn. Stat. 177.30(a)(5); Minn. Stat. 181.723

<sup>74</sup> Minn. Stat. 177.44, Subdivision 1

<sup>75</sup> Minn. R. 5200.1106, Subpart 3B(1)

<sup>76</sup> Minn. R. 5200.1106, Subpart 3B(2)

<sup>77</sup> Minn. R. 5200.1106, Subpart 3B(3)

<sup>78</sup> Minn. R. 5200.1106, Subpart 3B(4)

<sup>79</sup> Minn. R. 5200.1106, Subpart 3B(5)

<sup>80</sup> Minn. R. 5200.1106, Subpart 3B(6)

- B. **Hauling Activities Not Subject to Prevailing Wage or Truck Rental Rates.** A Contractor may exclude a Worker, including hired Trucking Brokers, MTOs and ITOs from prevailing wage or truck rental rates for the Work described in (1-2) of this section. However, this Work may be considered hours worked and subject to standard compensation pursuant to the Minnesota Fair Labor Standards Act.
1. The delivery of processed or manufactured goods to a public works project by the employees of a commercial establishment including truck owner-operators hired by and paid by the commercial establishment, unless it is the delivery of mineral aggregate that is incorporated into the work under the contract by depositing the material substantially in place.<sup>81</sup>
  2. The delivery of oil offsite, as an example, to a Prime Contractor's permanent (commercial) asphalt mixing facility that is not to, from, or on the project Work site.<sup>82</sup>
- C. **Repair, Maintenance & Waiting to Load Time.** An ITO and MTO must be paid the truck rental rate for time spent repairing or maintaining the truck owner-operator's equipment, and for waiting to load or unload if the repair, maintenance, or wait time is the fault of the Trucking Broker, Contractor, its agent or employees.<sup>83</sup>
- D. **Month End Trucking Report.** A Contractor that acquires the services of an ITO or MTO must submit a "MnDOT – MTO and/or ITO Month-End Trucking Report", and a "MnDOT – Month-End Trucking Statement of Compliance Form" to the Department for each month hauling activities are performed under the Contract.<sup>84</sup> The forms are available on the MnDOT LCU website.<sup>85</sup>
- E. **Broker Fee.** A truck broker contracting to provide trucking services directly to a prime contractor or subcontractor is allowed to assess a broker fee.

#### XIV. OFF-SITE FACILITIES

- A. **Off-Site Facility Activities Subject to Prevailing Wage.** A Contractor must ensure that all Workers performing Work at a covered off-site facility are paid the applicable Total Prevailing Wage Rate for the following Work:
1. The processing or manufacturing of material at a Prime Contractor's off-site facility that is not a separately held commercial establishment.<sup>86</sup>
  2. The processing or manufacturing of material at an off-site facility that is not considered a commercial establishment.<sup>87</sup>
- B. **Off-Site Facility Activities Not Subject to Prevailing Wage.** A Contractor may exclude a Worker from prevailing wage for the following work:
1. The processing or manufacturing of material or products by or for a commercial establishment.<sup>88</sup>
  2. The work performed by Workers employed by the owner or lessee of a gravel or borrow pit that is a commercial establishment, even if the screening, washing or crushing machines are portable.<sup>89</sup>

#### XV. SUBCONTRACTING PART OF THE CONTRACT

<sup>81</sup> Minn. R. 5200.1106, Subpart 4(C)

<sup>82</sup> J.D. Donovan, Inc. vs. Minnesota Department of Transportation, 878 N.W.2d 1 (2016)

<sup>83</sup> Minn. R. 5200.1106, Subpart 8(A)(1)

<sup>84</sup> Minn. R. 5200.1106, Subpart 10

<sup>85</sup> <http://www.dot.state.mn.us/const/labor/forms.html>

<sup>86</sup> ALJ Findings of Fact, Conclusions of Law, and Recommendation, Conclusions (7), Case #12-3000-11993-2

<sup>87</sup> Minn. R. 5200.1106, Subpart 3(A)

<sup>88</sup> Minn. R. 5200.1106, Subpart 4(A)

<sup>89</sup> Minn. R. 5200.1106, Subpart 4(B)

The Prime Contractor must include the Contract Special Provisions, Wage Decision(s) and Truck Rental Rate Schedule in all Subcontracts, agreements and purchase orders with lower tier Contractors.<sup>90</sup> This requirement also applies to all lower tier subcontractors.

## XVI. SITE OF WORK REQUIREMENTS

- A. **Poster Board.** The Prime Contractor must construct and display a poster board containing all required posters. The poster board must be accurate, legible, and accessible to all project Workers from the first day of Work until the project is one hundred percent (100%) complete.<sup>91</sup> A poster board at an off-site location, or inside a construction trailer, does not meet this requirement.
- B. **How to Obtain a Poster Board.** The Prime Contractor may obtain the required posters and the necessary contact information that is required to be inserted on each poster by visiting the MnDOT LCU website.<sup>92</sup>
- C. **Employee Interviews.** The Contractor must permit representatives from the Department or other governmental entities<sup>93</sup> to interview Workers at any time during working hours on the project.<sup>94</sup>

## XVII. CHILD LABOR

- A. **No Worker under the Age of 18.** No Worker under the age of 18 is allowed to perform Work on a Project Site, except pursuant to Section XVII B below.<sup>95</sup>
- B. **Parental Supervision.** A Worker under the age of 18 may perform Work on a Project Site if all of the following criteria are met:
1. The Contractor (Employer) is not subject to FLSA.
  2. The Worker is employed in a corporation owned solely by one or both parents.
  3. The Worker is supervised by the parent(s).
  4. The Worker is not working in a hazardous occupation.<sup>96</sup>
- C. **Removal of Minor from Project.** The Engineer or inspector may remove a Worker that appears to be under the age of 18 from the Project Site until the Contractor or Worker can demonstrate proof of age and compliance with all applicable federal and state regulations.<sup>97</sup>

## XVIII. NON-COMPLIANCE AND ENFORCEMENT

- A. **Case-by-Case Enforcement.** The Department has the authority to enforce the prevailing wage law on a case-by-case.<sup>98</sup>
- B. **Prime Contractor Responsible for Unpaid Wages.** The Prime Contractor will be held liable for any unpaid wages to its Workers or those of any lower tier Contractor.<sup>99</sup>
- C. **Enforcement Options.** If evidence shows that a Contractor has violated prevailing wage requirements, or these Special Provisions, the Department may, after written notice, implement one or more of the following:

<sup>90</sup> MnDOT Standard Specifications for Construction, Section 1801

<sup>91</sup> Minn. Stat. 177.44, Subdivision 5

<sup>92</sup> [www.dot.state.mn.us/const/labor/posterboards](http://www.dot.state.mn.us/const/labor/posterboards)

<sup>93</sup> MnDLI, U.S. DOL., U.S. Department of Transportation, Federal Highways Administration

<sup>94</sup> MnDOT Standard Specifications for Construction, Section 1511

<sup>95</sup> Minn. R. 5200.0910, Subpart F; 29 CFR Part 570.2(a)(ii)

<sup>96</sup> Minn. R. 5200.0930, Subpart 4

<sup>97</sup> Minn. Stat. 181A.06, Subdivision 4; MnDOT Standard Specifications for Construction, Section 1701

<sup>98</sup> See International Union of Operating Engineers, Local 49 v. MnDOT, No. C6-97-1582, 1998 WL 74281, at \*2 (Minn. App. Feb. 24, 1998)

<sup>99</sup> MnDOT Standard Specifications for Construction, Section 1801

1. **Withholding Payment.** The Department may withhold from the Prime Contractor payments relating to prevailing wage underpayments.<sup>100</sup>
2. **Non-Responsible Contractor.** The Department may reject a bid from a Prime Contractor that has received two (2) or more Determination Letters within a three (3) year period from the Department finding an underpayment by the Contractor to its own employees.<sup>101</sup>
3. **Default.** The Department may take the prosecution of the Work out of the hands of the Prime Contractor, place the Contractor in default, and terminate the Contract for failure to comply.<sup>102</sup>
4. **Suspension or Debarment.** The Department may refer violations and matters of non-compliance by a Contractor to the Minnesota Department of Administration for suspension or debarment proceedings.<sup>103</sup>
5. **County Attorney.** The Department may refer suspected criminal violations by Contractor to the appropriate local county attorney for prosecution.<sup>104</sup>
6. **Financial Penalties.** Any Contractor who violates the state prevailing wage law is guilty of a misdemeanor and may be fined not more than \$300 or imprisoned not more than 90 days or both. Each day that the violation continues is a separate offense.<sup>105</sup> A Contractor may be fined up to \$1,000 for each failure to maintain records.<sup>106</sup>
7. **False Claims Act Violation.** All required payroll and certification reports are legal documents; knowing falsification of the documents by a Contractor may result in civil action and/or criminal prosecution<sup>107</sup> and may be grounds for debarment proceedings.<sup>108</sup>
8. **Compliance Order.** The Department may request that MnDLI issue a compliance order to a Contractor for violations of the state prevailing wage law. If the Contractor is found to have committed a violation, liquidated damages and other costs may be assessed against the Employer.<sup>109</sup>
9. **Private Right of Action.** The Department may direct an employee to pursue a civil action in district court against its Employer for failure to comply with the proper payment of wages.<sup>110</sup> If the Employer is found to have committed a violation, liquidated damages and other costs may be assessed against the Employer.<sup>111</sup>
10. **Fringe Benefits; Misdemeanor.** A Contractor that is obligated to deposit Fringe Benefit contributions on behalf of a Worker into a financially responsible trustee, third person, fund, plan, or program and fails to make timely contributions is guilty of a gross misdemeanor or other violations under federal law.<sup>112</sup>

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<sup>100</sup> MnDOT Standard Specifications for Construction, Section 1906

<sup>101</sup> Minn. Stat. 16C.285

<sup>102</sup> MnDOT Standard Specifications for Construction, Section 1808

<sup>103</sup> Minn. R. 1230.1150, Subpart 2(A)(4)

<sup>104</sup> Minn. Stat. 177.44, Subdivision 7

<sup>105</sup> Minn. Stat. 177.44, Subdivision 6

<sup>106</sup> Minn. Stat. 177.30(b)

<sup>107</sup> Minn. Stat. 15C.02; , Minn. Stat. 161.315; Minn. Stat. 177.32; Minn. Stat. 177.43, Subdivision 5, Minn. Stat. 609.63

<sup>108</sup> Minn. Stat. 161.315 and Minn. Stat. 609.63

<sup>109</sup> Minn. Stat. 177.43, Subdivision 6a

<sup>110</sup> Minn. Stat. 177.27, Subdivision 8

<sup>111</sup> Minn. Stat. 177.27, Subdivision 10

<sup>112</sup> Minn. Stat. 181.74, Subdivision 1

**THE FOLLOWING APPENDICES ARE FOR  
EXPLANATORY PURPOSES ONLY.  
FOR SPECIFIC QUESTIONS, PLEASE CONTACT LCU.<sup>113</sup>**

**APPENDIX A****SALARIED WORKER WAGE COMPUTATION**

**Salaried Workers.** In order to convert the Worker's salary into an hourly rate of pay, divide the employee's weekly, bi-weekly or monthly earnings by the total number of hours Worked (government and non-government), including overtime hours for the time period used.<sup>114</sup>

$$\text{\$800.00 (weekly salary) / 40 (total weekly hours) = \$20.00}$$

$$\text{\$1,600.00 (bi-weekly salary) / 80 (total bi-weekly hours) = \$20.00}$$

$$\text{\$3,200.00 (monthly salary) / 160 (total monthly hours) = \$20.00}$$

**APPENDIX B****FRINGE BENEFIT CREDIT**

**Fringe Benefit Credit Calculation.** The Employer contributes monthly (\$600.00) for medical insurance on behalf of a Worker. In order to calculate the projected hourly credit that the Employer can take, the Employer should: (1) add the monthly contributions for each Worker, (2) multiply by twelve (12) months, and (3) divide the total cost of the benefit by the total hours worked (government and non-government)<sup>115</sup> (see annual example below). Quarterly and monthly examples are also provided.

**Annual:**         $(\$600.00) \times (12 \text{ months}) = \$7,200.00$   
                    $(\$7,200.00) / (2080 \text{ hours}) = \underline{\text{\$3.46 per hour credit}}$

**Quarterly:**    $(\$600.00) \times (3 \text{ months}) = \$1,800.00$   
                    $(\$1,800.00) / (520 \text{ hours}) = \underline{\text{\$3.46 per hour credit}}$

**Monthly:**      $(\$600.00) \times (1 \text{ month}) = \$600.00$   
                    $(\$600.00) / (173 \text{ hours}) = \underline{\text{\$3.47 per hour credit}}$

**End of Year Self-Audit.** At the end of the calendar year, the Contractor must conduct an audit to determine if the hourly fringe benefit credit taken for each Worker was accurate. The Contractor must calculate the total annual fringe benefits paid on behalf of each Worker and divide that amount by the total number of hours worked (government and non-government) by that Worker. If the hourly fringe benefit credit was less than what was reported on a CPR, the contractor must compensate the Worker the hourly difference, multiplied by the total hours worked under the Contract.

**APPENDIX C****APPRENTICE RATE OF PAY**

**State Requirements.** The Apprentice must be compensated according his/her level of progress, which is expressed as a percentage of the Journeyworker wage that is established in the program.

$$\text{Journeyworker Wage Established in Program} = \text{\$25.00}$$

$$\text{Apprentice Level of Progress} = \underline{\text{60\%}}$$

$$\text{\$25.00} * (.60) = \text{\$15.00}$$

<sup>113</sup> lcu-support.dot@state.mn.us or (651) 366-4238

<sup>114</sup> United States Department of Labor Field Operation Handbook, Section 15f08

<sup>115</sup> United States Department of Labor Field Operation Handbook, Section 15f12

**APPENDIX D****PREVAILING WAGE OVERTIME CALCULATION**

**Overtime Hourly Rate of Pay.** Here is the formula to calculate the required minimum overtime.<sup>116</sup>

$$OT = (PW * .5) + (HW) + (RF) + (F)$$

**Definition of OT Acronyms**

**OT:** overtime.

**PW:** the basic hourly prevailing wage rate established in a federal and/or state prevailing Wage Decision.

**HW:** hourly wage rate paid to a Worker.

**RF:** remaining fringe, which means the difference between the Contract hourly Fringe Benefit rate and the actual hourly Fringe Benefit rate paid by the Contractor to a third party on behalf of a Worker.

**F:** Fringe Benefit contributions that are bona-fide and contributed by an Employer to a third party on behalf of a Worker.

The Total Prevailing Wage Rate for a Worker is \$30.00, which is comprised of an hourly basic rate of \$20.00 and an hourly fringe rate of \$10.00. The table below includes various hourly basic and Fringe Benefit payments that a Contractor could potentially make to a Worker.

<b>OT CALCULATION FORMULA AND EXAMPLES</b>				
<b><math>OT = (PW * .5) + (HW) + (RF) + (F)</math></b>				
<b>Hourly Wage Paid</b>	<b>Fringe Benefits Paid</b>	<b>Payment To Employee</b>	<b>Fringe Payment</b>	<b>Total Payment</b>
		<b><math>(PW * .5) + (HW) + (RF)</math></b>	<b>+ (F)</b>	<b>= OT</b>
\$ 20.00	\$ 10.00	$(\$ 20.00 * .5) + (\$ 20.00) + (\$ 0.00) = \$ 30.00$	+ \$ 10.00	= \$ 40.00
\$ 18.00	\$ 12.00	$(\$ 20.00 * .5) + (\$ 18.00) + (\$ 0.00) = \$ 28.00$	+ \$ 12.00	= \$ 40.00
\$ 22.00	\$ 8.00	$(\$ 20.00 * .5) + (\$ 22.00) + (\$ 0.00) = \$ 32.00$	+ \$ 8.00	= \$ 40.00
\$ 30.00	\$ 0.00	$(\$ 20.00 * .5) + (\$ 30.00) + (\$ 0.00) = \$ 40.00$	+ \$ 0.00	= \$ 40.00
\$ 24.00	\$ 4.00	$(\$ 20.00 * .5) + (\$ 24.00) + (\$ 2.00) = \$ 36.00$	+ \$ 4.00	= \$ 40.00

Regarding the last example the Contractor would be required to pay an additional \$2.00 to the Worker, which is wages in lieu of fringe for a straight time hourly rate of \$26.00 not \$24.00.

A Contractor subject to the Fair Labor Standards Act (FLSA) may be subject to additional overtime compensation requirements.

<sup>116</sup> United States Department of Labor Field Operation Handbook, Section 15k