

Illinois Prevailing Wage Act

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About Indiana, Illinois, Iowa Foundation for Fair Contracting (III FFC)

Nonprofit labor-management organization dedicated to raising standards in the construction industry.

FFC mission: to increase market share in public works construction for responsible contractors, work opportunities for Local 150 members, and value for taxpayers



Procurement oversight



Market share analysis



Jobsite monitoring



Legal & regulatory advocacy



Government affairs & public policy education

What is Prevailing Wage?

A predetermined wage for workers engaged in the construction of a public work

- Federal Davis-Bacon Act applies on certain federal projects (40 U.S.C. 3141 *et seq.* (1931))
- State prevailing wage laws, including the Illinois Prevailing Wage Act, (820 ILCS 130/1 *et seq.* (1941))

Illinois Prevailing Wage Act (PWA)

Policy: General prevailing hourly rate paid for work of a similar character in the locality the work is performed paid to all laborers, workers, and mechanics employed by or on behalf of a public body engaged in public works

820 ILCS 130/1

- Worker paid living wage in locality
 - Purpose: to ensure people working on public works receive a decent wage - *Hayen v. County of Ogle* (Ill. 1984)
- Prevents contractors from undercutting wages
 - Protect local workers & remove incentives to import less expensive labor from outside the locality - *Bernardi v. City of Highland Park* (Ill. 1988)

Purpose of prevailing wage laws

1. Level the playing field – ensuring taxpayer dollars reflect local standards for compensation and craftsmanship
2. Boost productivity and improve safety – attracts and retains skilled workers, boosts apprenticeship
3. Promotes ladders into the middle class – boosts worker earnings
4. Provides great value for taxpayers – helps ensure projects completed on time and on budget
5. Builds quality infrastructure and strong communities in Illinois

ILEPI - Illinois Economic Policy Institute

www.illinoisepi.org

Illinois Department of Labor

Authority:

- Ascertain Prevailing Wage
- To investigate violations of the Prevailing Wage Act, enforce the Act, and collect back pay for workers
- Prosecute PWA debarments
- Hold hearings initiated by private parties

No Authority:

- Issue regulations, except concerning debarments

What are Public Works?

Fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds

- “Construction” is all work on public works involving laborers, workers or mechanics.

820 ILCS 130/2

What is a Public Body?

Traditional Public Bodies: State or any political agency or any institution supported in whole or in part by public funds

- Airport authority, city, fire departments, library districts, police departments, water and sewer management, school boards, etc.

Non-Traditional Public Bodies: non-governmental entities receiving public funding, in whole or in part, directly or indirectly

- Public funding = tax monies, grants, bonds
- No bright line test, continuous vs. one-time

Non-Traditional Public Body Case Law

Private, nonprofit corporation providing rehab programs for disabled adults = COVERED

- Received ½ revenue from Dept. Health & Developmental Disabilities
- Publicly supported by tax money

Opp. Center of Southeastern Ill., Inc. v. Bernardi (5th Dist. 1990)

Private, nonprofit religious foundation = COVERED

- Construction financed in part from tax-free bonds issued by Illinois Finance Authority
- By opting to use bonds, brought itself under PWA
- Specifically noted non-traditional public bodies can be covered

McKinley Foundation v. Illinois Dept. of Labor (4th Dist. 2010)

Non-Traditional Public Body Case Law

Private, nonprofit hospital = COVERED

- Construction supported in part, by tax monies, despite small percentage
Bernardi v. Illini Community Hospital (4th Dist. 1987)

But see...

Private developers in TIF area = NOT COVERED

- Construction of private residences, developer receives TIF incentive
- No funds transferred, just reimbursement for financing project out of increased tax revenue from properties
- Legislative history considered
Town of Normal v. Hafner (4th Dist. 2009)

***TIFs are still not covered under IPWA**

Who is Covered?

Laborers, workers and mechanics directly employed by contractors and subcontractors and engaged in construction on the site of the building or construction job

Includes:

- Transportation of material and equipment to and from the site
- Maintenance, repair, assembly, or disassembly work on equipment owned, leased, or rented
- Landscaping in conjunction with construction (public buildings, landscape restoration, trenches and manholes, pipes, cables and conduits...) See FAQs.

Excludes:

- Transportation by sellers and suppliers of materials or equipment
- Landscaping including lawn mowing and trimming, weeding, mulch, trash, and leaf removal

What Projects are Covered?

- Direct contract between a public body and contractor
- Financing for the project comes from specified funding in statute (e.g. Illinois Bond Act for school construction)
- All projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through the State or any of its political subdivisions
- Non-governmental organization funded in whole or in part by public funds/financing
- 2021 amendment: public utilities when it contracts with 3rd party, in public right of way, and if applicable, 15+ aggregate miles of fiber optic cable

CONTRACT STIPULATIONS

Public Body Responsibilities

- Public bodies must insert a prevailing wage stipulation into the call for bids and bid specifications
- Public bodies must provide written notice to the contractor indicating prevailing wage applies
 - On contract, purchase order, or other separate document
- If proper notice not provided to contractor, public body must pay interest, penalties, or fines, but NOT back wages, otherwise owed by contractor
 - Note: prevailing wage applies “where applicable” insufficient notice
Valerio v. Moore Landscapes, LLC (2021)
 - IDOL determines violations

CONTRACT STIPULATIONS

Contractor Responsibilities

- Contractors must insert a prevailing wage stipulation into all subcontracts and into the project specifications for each subcontract
- Subcontractors must do the same
- If proper notice not provided to subcontractor, higher tier contractor must pay interest, penalties, or fines, but NOT back wages, otherwise owed by subcontractor
 - IDOL determines violations

820 ILCS 130/4

Ascertaining Rates

Not be less than the rate that prevails for:

- work of a similar character
- on public works
- in the locality in which the work is performed under collective bargaining agreement
- Provided that employers employ at least 30% of workers in same trade or occupation in locality work performed
 - Locality = county

820 ILCS 130/4(a)

Ascertaining Rates

- IDOL to investigate and ascertain rate for each craft and type of worker annually in June and publish no later than July 15.
- Any person affected by a wage determination may file objections with the IDOL within 30 days after the rates are posted on the web site.

820 ILCS 130/9

Revised Rates

- Revised rates apply entire term of contract
 - NOTE: CBA rates generally increase annually
- Public body responsible for notifying contractors
 - Duty met if public body if contract states that the prevailing wage rates are revised by IDOL and available on the Department's official website

820 ILCS 130/4(I)

Prevailing Wage Classification

PW rates are organized by classification (Operating Engineer, Electrician, Laborer, etc.)

What if existing classifications don't specifically cover the work in question?

- IDOL's prevailing wage schedules discuss "other classifications of work"
 - The Department "generally has on file ... definitions of classifications not otherwise set out."
 - Will look to neighboring counties
 - If no neighboring rate applies, it shall undertake a special determination
- Those affected by a missing classification may petition IDOL to investigate and establish a new classification.
- New classification must involve work that is substantially different from any existing classification.

Certified Payroll Records

Payroll records required to be filed on PW projects certified by contractor

- Name, address, last 4 digits of SSN, classification, gross and net wages, number of hours worked, start and end time, OT rate, gender, race, ethnicity, veteran status
- Including fringe benefit rates and fund information, if applicable

Public bodies required to retain 5 years from date of last payment or until IDOL activates database (database activated)

- Considered public records for FOIA except: address, number, SSN, race, ethnicity, gender

Contractors required to retain 5 years from date of last payment

- Submitted by the 15th day of each calendar month

Violations

- Willful failure to comply, willful violations, and willful failure in payroll record maintenance, retention, and production
 - Class A Misdemeanor
 - Contractors **AND** public bodies
 - Employees and agents can make the public body or contractor liable

820 ILCS 130/5, 6

Debarring Contractors

- Section 11a is the only section where the IDOL has rulemaking authority
- Contractors found to have violated the Act:
 - May be issued a notice of violation
 - May be debarred for up to 4 years from the date its name is placed in the Illinois Register
- Specific hearing procedures at 56 Ill. Adm. Code 100
- Contractors guilty of Section 5 or 6 violations are automatically subject to automatic and immediate debarment, no right to a hearing

Notice of Violation Factors

Factors IDOL considers on whether to issue a notice of violation:

- Severity - whether there has been more than one violation and whether the violation involves a non-technical substantive error (i.e. willful conduct)
- Frequency & duration - whether a general inspection of the contractor's history reveals other violations
- Amount in controversy - the difference between the amount actually paid and the prevailing wage rate, no set dollar amount triggers
- Accurate records - whether the contractor has caused accurate records to be kept
- Access - Whether the contractor has cooperated with IDOL

Miscellaneous Provisions

Bonds & Bid Specifications

- Contractor & sub bonds to include guarantee prevailing wage
- All bid specs must list specified rates needed to execute contract

820 ILCS 130/4(k)

Public Body Prerequisite

- Injunctive relief against if PW prerequisites not met
- If PW prerequisites not met, contract is void
- No recovery to contractor for damages if contract is void
- Contractor limited to amount actually paid for labor and materials

820 ILCS 130/11

IDOL FAQs

- General
- Landscaping
- Contractor
- Public Body
- Employee
- Material Tester
- Employee Classification Act (820 ILCS 185)

<https://www2.illinois.gov/idol/FAQs/Pages/prevaling-wage-faq.aspxAbout>

Thank you!

Questions?

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