

Prevailing Wage Law - Update!

In July, Governor Mike Parson signed into law HB 1729, which had the effect of changing the Missouri Prevailing Wage Law. Previously, the Missouri Prevailing Wage Law required that any laborer doing work on public works projects (like construction for public school districts) was to be paid the prevailing wage rate for their occupation. The new changes to the law now provide more limited circumstances for when workers will be required to be paid the prevailing wage rate on public works projects (§ 290.230, RSMo.). The sponsor of HB 1729 explained that the intent in changing the law was to help smaller, rural school districts, cities and counties, by lowering the cost of construction projects. In particular, proponents of the new law believe it will help school districts avoid having to pay prevailing wage rates for small construction projects, although the true effects in savings to school districts may not be known for a few years. The new changes in the Prevailing Wage Law took effect on August 28, 2018.

Even before the Prevailing Wage Law was changed, it was challenging for school districts to determine whether they were complying with the law's requirements. These changes passed earlier this year initially added even more uncertainty for school districts who wonder how the new law will impact both current and future construction projects. Thankfully, the Department of Labor & Industrial Relations (DOLIR) recently provided guidance on the new law. That guidance is found here: <https://labor.mo.gov/prevailing-wage>.

What Does the Law Require for Public School Districts?

The new law requires that either the prevailing wage rates or “the public works contracting minimum wage” be paid when the estimated cost of a construction project will be greater than \$75,000. For construction projects in which the estimated costs will be \$75,000 or less, the law will not apply.



How Can the District Determine the Project's Estimated Cost?

The new law provides two methods by which a school district can determine whether the estimated costs will exceed \$75,000 and, therefore, the requirement of the Prevailing Wage Law will apply. First, a design professional (engineer, architect), can provide that estimate, or, second, the determination can be made using the actual bid selected by the school district for the project.

In estimating the project's cost, **all** parts of the project must be included in that estimate – materials, supplies and labor. The project cannot be divided into smaller parts in order for the total cost to fall below the \$75,000 threshold. The DOLIR interprets such an action as evading the law's requirements.

What Happens if the Cost of the Project Exceeds \$75,000?

The revised law requires that any laborer performing work on a public works project be paid either the prevailing wage rates or “the public works contracting minimum wage”. The DOLIR will calculate the prevailing wage rates by using the wage rate from 1000+ reportable hours for that particular occupation in the county where the construction project is occurring. If there were not 1,000 hours of reportable work in a county and job category reported to the state for the previous year, then the law provides that the “public works contracting minimum wage” will be used instead.

The “public works contracting minimum wage” is equal to 120% of the average hourly wage in the county in which the project is located. That rate will be calculated by the Missouri Economic Research and Information Center (MERIC).

What Happens if the Project Was Estimated to Cost Less Than \$75,000 but the Actual Project Cost Ends Up Greater Than \$75,000?

So long as the increase in the project's cost is due to a change order, then the law will apply, but only to the amount that is in excess of \$75,000. The DOLIR cautions that public entities (i.e. school districts) and contractors are both under a duty to seek a wage order from the DOLIR if cost overruns push the project's cost over \$75,000. In the DOLIR's opinion, not doing so might demonstrate intent by the parties to avoid the law.



Does the New Law Affect a Project That Began Before August 28, 2018?

The DOLIR did not provide firm guidance on this point, simply that the terms of the contract would control whether the prevailing wage must be paid. The DOLIR did add that current regulations require that wage rates attached to an initial bid remain in effect for the duration of the contract, which would appear to indicate that the new changes to the Prevailing Wage Law are not applicable to any bids submitted and accepted before August 28, 2018.

A final, notable change in the law is that public works estimated to cost \$10,000 or less, or with an accepted bid in this amount, are exempt from competitive bidding requirements. Because school districts are already exempt from the statutory competitive bidding requirements for construction projects that are \$15,000 or less, this change in the law does not impact school districts.

Conclusion

It is hoped that with the change in the Prevailing Wage Law school districts could receive the benefit of decreased labor costs for certain construction projects. Going forward, school districts should continue to keep Prevailing Wage Law language in their bid documents and ensure that their resulting contracts reflect the requirements found in the new law, even if the estimated cost of the project is less than \$75,000, in case the project costs ultimately exceed this amount. School district contracts resulting from an awarded bid should also shift the burden of compliance with the Prevailing Wage Law from the school district to the contractor.

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