Timothy M. O'Brien, CPA
Auditor

City and County of Denver

Auditor's Office / Prevailing Wage
201 West Colfax Ave., Dept. 705 • Denver, Colorado 80202
Phones: 720-913-5000 • 720-913-5018
www.denvergov.org/auditor

Prevailing Wage/Certified Payroll Overview

What is the basis for Prevailing Wage?

It's the Law: Prevailing Wage is covered under Section 20-76 of the Denver Revised Municipal Code (DRMC).

The law declares that any contractor or subcontractor at any tier who performs construction, alteration, improvements, repairs, maintenance or demolition of any public building or work in the amount of $2,000 or more must pay their employees working on those City projects nothing less than the appropriate rate as determined by the Career Service Board for the various classifications of workers employed on those City projects by those contractors or subcontractors.

Work performed in these various classifications at Denver International Airport (DIA), Four Mile Park, South West YMCA, Denver Mountain Parks, and the Denver Zoo—to name a few locations—is also subject to Prevailing Wage payment and reporting requirements.

Who Determines Prevailing Wage Rates?

Office of Human Resources (OHR; formerly Career Service Authority-CSA): OHR issues four categories of wages: Building, Heavy, Highway and OHR (CSA) rates.

Building: covers everything inside the footprint (foundation) of the building.

Highway: covers the construction, alteration, or repair of roads, streets, highways, airport apron areas, runways, taxiways, alleys, parking areas, and other similar projects that are not incidental to building or heavy construction.

Heavy: covers everything outside the footprint of the building. It is used for structures that are not habitable. Toll booths, outhouses, kiosks and parking garages are not "buildings." It is the catchall rate for projects which are neither building nor highway.

Heavy rates are used for building demolition. Gutting a building for a remodel is done with the Building rates. A common laborer may do the demo in a building remodel. If fixtures are to be salvaged and reused in the remodel (retrofitting), the proper classification—for example, plumber—must be used to salvage the equipment.

OHR rates are determinations issued for special classifications not covered by the U.S. Dept. of Labor. For example, finishers, floor grinders and base grinders use OHR rates, along with specialized trades at DIA, such as transit mechanics or baggage system technicians. OHR publishes custodian rates which are applicable to those contractors cleaning on-site construction trailers.

What Types Of Work Are Covered By Prevailing Wage?

All work performed on site is covered by Prevailing Wage. Initial site delivery is not covered, nor is material fabricated offsite. However, **all materials trucked offsite are covered**. Truckers who haul breakout offsite and return back to the site are covered round-trip. Owner-operators must report hours. Trash roll-offs are covered.

All materials removed from the common delivery pile belong to the craft installing the product (i.e. "carpenters" for lumber and "plumbers" for pipe), NOT common laborers. The initial unloading of material from the truck to the job site does not fall under Prevailing Wage. Professional services, such as surveying, engineering, or clerical support staff are not covered by Prevailing Wage.

What are Certified Payrolls?

Certified Payrolls are the payroll reports submitted on a weekly basis online through the LCPtracker Client Log-In tab at www.lcptracker.com. The LCPtracker system is a paperless, online system for filing certified payrolls. Instead of submitting paper Prevailing Wage forms (Affidavits of Prime Contractor, Statements of Compliance, Weekly Payroll Spreadsheets, etc.), contractors now enter all payrolls and related information online.

All project-specific wage rates and classifications are assigned to projects in advance by Prevailing Wage investigators, allowing the contractor to choose specific rates and jobs from an online menu. The contractor needs a computer and an internet connection to access the menu. For those contractors currently lacking such access, each project's prime contractor should make available a computer and equipment necessary to submit the payrolls electronically. (Public computers are available at most public libraries.)

Paperless submission is not optional; all companies are required to use LCPtracker. Contractors submitting paper payrolls will have them returned. Training is available through a self-guided online tutorial available after a contractor has been set up in LCPtracker and can log into the system with a User ID and a chosen password. The tutorial is accessed through the orange "Training Materials" tab at the top of the page when signing into LCPtracker.

When a contractor has been awarded a City and County of Denver project, the Prevailing Wage investigator responsible for the project sets it up in LCPtracker and assigns the prime/general contractor to it. The prime/general contractor, in turn, assigns the various subcontractors to the project. If a prime/general contractor is a first-time user, the Prevailing Wage investigator sets up the company in system after which the contractor's designated payroll administrator receives an email from LCPtracker with instructions on choosing a permanent password. This password is then used to submit payroll reports.

The first two letters of the project name in LCPtracker are the initials of investigator assigned to it.

If a wage or an apprentice classification is missing from a project, please request the investigator to assign it.

If a project does not appear in LCPtracker for which payrolls were previously submitted, please request the assigned investigator to reopen the project in the system.

What about Fringe Benefits?

Fringe benefits must be paid for all hours worked on the project and must be approved by the Auditor's Office. Approval is valid for one year from the date of issue.

Prevailing Wage schedules include an amount for rates and fringes. The total of both amounts needs to be paid to employees for each straight time and/or overtime hour worked on a project. If a company offers fringe benefits, they should be submitted to the Auditor's Office for approval. If, for example, the stated fringe amount is $9.00 per hour and the approved value of the fringe is $3.00 per hour, the difference of $6.00 per hour has to be paid on the employee's check. The following documents may be needed to approve your fringes.

Basic guidelines:

Health and Welfare – a copy of the company policy regarding:

- **Medical Plan**
  - The portion paid by the company, not the employee
- **Dental** – same as above
- **Life Insurance** – same as above
- **Long or Short Term Disability** – same as above
- **Pension Plans**
  - IRS qualification letter
  - Copy of the plan, including name of third-party administrator
  - Portion of the contribution paid by the company
- **Vacation** – Copy of company policy
- **Holiday** – same as above
- **Sick Pay** – same as above

To compute fringes, the Auditor's Office provides companies with a Fringe Benefit Spreadsheet to be completed by their staff. On the spreadsheet, companies need to provide the following:

- Hire date of each employee
- Social Security number
- Number of paid vacation/holiday hours
- Employee's hourly, non-prevailing wage rate
- Health/other insurance premiums paid by the employer

The Auditor's Office uses 2080 hours for annualized benefits and 173 hours for monthly benefits to calculate the value of fringe benefits.

In order for sick, vacation and holiday time to count as a fringe, the company cannot have a "use it or lose it" policy.

If hours earned do not carry over to the next year, the company must pay employees for the hours not taken.

If an employee leaves the company for any reason, he/she must be paid the accrued time earned.

If an employee must work the day before or after a holiday in order to qualify for holiday pay, such work does not qualify as a fringe benefit.

Pensions, 401(k) plans, Simple IRAs, and other programs must be funded at least quarterly to count as a fringe benefit.

Apprentices are to be paid full benefits unless their benefits program specifically addresses the fringe contribution.

What about Apprentices?

Apprenticeship Certification Requirements: If an employee is listed as an apprentice, include his/her craft and the appropriate percentage on the LCPtracker payroll report; for example: Operating Engineer, Group 3, 80%.

Apprentices shall be permitted only if they are employed pursuant to, and individually enrolled in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprentice Training (BAT). The apprentices' current BAT Certificates should be uploaded in the LCPtracker eDocuments for the project on which they are working.

Contractors must maintain a 1 to 1 ratio of journeyman to apprentice at all times on a Prevailing Wage project. Any employer found to be in violation of this requirement shall be required to pay that apprentice the full journeyman scale.

If the apprentice classification is missing from a project in LCPtracker, please contact the assigned investigator to add the classification.

Apprentice classifications are assigned on an as-needed, per-project basis. The first-year apprentice classification is the only one assigned in LCPtracker.

How Do You Pay Employees?

Payment of Employees: By Ordinance, all employees working on a City and County of Denver project are required to be paid on a **weekly basis** for the hours worked. Only janitorial and window washing contracts with the City are exempt from this requirement. Janitors and window washers must be paid no less frequently than every 14 days.

Cash payments are not allowed. If employees receive cash payments, the contractor will be required to repay them with checks, which the Auditor's Office will then place with those employees.

An employee who normally receives an hourly rate higher than the published Prevailing Wage rate must be paid his/her regular rate of pay while working on a City project.

Salaried employees doing hands-on work, not just supervising or scheduling, must record their days and hours on the weekly certified payroll reports in LCPtracker. Their hourly salary is calculated by dividing their annual gross wage by 2,080 hours. If their salary does not equal the Prevailing Wage for their particular job classification, they must be paid an additional amount to make up the difference. Should

they accrue overtime on a City of Denver/DIA project by working more than 40 hours per week, they must be properly compensated for those hours. If their regular, hourly salary exceeds the Prevailing Wage rate, overtime is calculated on that salary and not the lower rate.

How Do We Determine Classification of Employees?

Workers are classified according to the work performed in each craft. In other words, like pay for like work. Employees may have their time split into different classifications and be paid accordingly.
Daily time cards are recommended, detailing the work performed. We recommend that the workers also sign them at the end of each day's shift. Employees found working out of their classification will have their pay rate adjusted accordingly.

Some Guidelines for Common Laborers:

- Common laborers may unload trucks to a common or central pile at the job site. Once the material is in the pile, it belongs to the particular craft. For example, laborers do not pack studs, sheetrock, pipe, tools or other materials to craftsmen. They do not move materials on the job site found to be in the way or in the wrong location.
- Common laborers have limited job duties on building projects. They are allowed to clean up an interior building site. This includes picking up trash, construction debris and sweeping. Common laborers can hand shovel and backfill with a shovel the trenches used by tradesman inside of a building foundation.
- **Common laborers are not helpers or apprentices**. They do not assist in laying out; fetching tools or materials; or holding, lifting, or muscling materials into place. They do not observe workers for safety reasons. They do not set scaffolding. They do not operate heavy equipment (e.g. bobcats, forklifts, man lifts, or loaders).

The Auditor's Office makes the final decision on craft classification jurisdiction, following local area practices. For questions about how to classify an employee, please contact the Prevailing Wage investigator assigned to the project.

E-verify

Effective October 1, 2010, the City of Denver passed an E-Verify Ordinance for all employees hired after Oct. 1, 2010 and working on a Prevailing Wage project.

New hires must be e-verified before they are employed on a City of Denver/DIA project.

When a newly hired employee is set up in LCPtracker, the e-verify box needs to be checked in the system, attesting to the contractor's e-verification of that employee.

The Auditor's Office has the right to check that an employee brought onto a City of Denver/DIA project has been e-verified.

What if a Contractor performs work personally?

Owner Operator Requirements: **Use the *Affidavit Contractor Performed Work Personally* (Form 73)**. The owner must operate his or her own equipment and provide documentation proving ownership of the sole

proprietorship, corporation, partnership, or Limited Liability Company. Firms may provide a Trade Name Registration, Articles of Incorporation, or Form 1040 Schedule C as proof of company ownership.

Trucking firms must provide a Vehicle Registration and Certificate of Insurance as proof of company ownership.

If owners meet the above requirements, they are exempt from paying themselves Prevailing Wages, but they must submit their hours worked on the project in LCPtracker. However, if they have employees on the project, those employees must be reported and paid Prevailing Wages.

The Owner Operator form, with appropriate documentation, must be submitted with the company's first weekly payroll and uploaded into the project's eDocuments in LCPtracker.

How Does Overtime work with Prevailing Wage?

Overtime Requirements: Employees have to be paid time and one-half for all hours worked over 40 hours in a seven-day period, whether worked on or off City/DIA projects.

If overtime is worked on a City/DIA project, the overtime rate is based on the published Prevailing Wage rate, or the employee's established hourly rate of pay, whichever is higher.

Cash in lieu of fringe is paid for each hour worked, but is not multiplied by the overtime rate of 1.5. However, if the hourly base rate and the cash in lieu of fringe are combined on the LCPtracker payroll report, overtime has to be calculated on this newly-established hourly rate of pay.

What if there is an issue with Prevailing Wage certified payrolls?

Notification Process: The prime/general contractor can view subcontractors' rejected payroll reports in LCPtracker. A prime/general contractor may ask to be set up as an administrator in LCPtracker in order to see the subcontractors' payrolls on any projects to which the prime/general contractor has been assigned. Phone calls are noted in the project's hard file, e-file, or in LCPtracker. Emails are saved and/or copied into the project file.

All work performed and billed to the City of Denver/DIA for a Prevailing Wage project must be reported in LCPtracker for the period billed on the prime/general contractor's pay application.

Failure to report work billed to the City of Denver/DIA will result in the withholding of a pay application until compliance is achieved, per Section 20-76 (DRMC).

Notices may be received when trying to certify payroll reports in LCPtracker, and some notices may prevent certification. Those notifications need to be addressed in order to complete the certification process in the system.

Owner-Operators may receive notifications when certifying their payrolls. To avoid them, the Owner-Operator box should be checked on the LCPtracker payroll report and an X entered in lieu of a check number in the check number box on the same report.

Penalties

Effective May 13, 2010, the City of Denver implemented an Ordinance allowing for penalties if employees are not paid the proper Prevailing Wage. These penalties also apply to the misclassification of workers and to the non-reporting of them on payrolls submitted in LCPtracker.

The fines range from:

- $20 per week per employee for the first offense, to
- $35 per employee per week for the second offense, and up to
- $50 per employee per week if a contractor has had three or more penalties in the previous three years.

The section of the Ordinance regarding fines is found in Section 20-76(e) (DRMC). Penalties will be paid to the City of Denver. In addition to these fines, workers will still receive their underpaid wages.

Continual violations of Denver's Prevailing Wage Ordinance may subject the contractor(s) to debarment from City contracting due to violations of the law, pursuant to Section 20-77 (DRMC).

How does a contractor correct payroll errors and underpayments?

When underpayments have occurred, contractors are required to amend payrolls and issue underpayment checks.

When the Prevailing Wage investigator and the contractor have agreed on the underpayment amount(s) due employees on a project, the contractor records those amounts on an LCPtracker Restitution Spreadsheet and includes the following information:

1. the employee(s) name(s), address(es), Social Security number(s), and phone contact,
2. their classifications,
3. their total hours worked each week,
4. the makeup amount – the difference between what they were paid and what they should have been paid for the classification(s) worked, and
5. the difference owed each employee should be broken down by straight time and overtime hours.

The completed Restitution Spreadsheet needs to be uploaded into the LCPtracker eDocuments for the project.

In accordance with Section 20-76 (DRMC), underpayment checks must be made payable to the individual employee **OR** the City and County of Denver: for example, "**Joe Smith" or "City and County of Denver**." Incorrectly written underpayment checks will be returned to the contractor to issue replacements. One check per employee may be written for multiple weeks of underpayments. If underpayment checks exceed $50.00, they should be mailed to the Auditor's Office for distribution to the employee.

Can Prevailing Wage rates change on a project?

Yes.
Increase or decrease in wages: The anniversary date of the contract occurs one year from the date the Mayor

of Denver signs the contract. On special projects, including DIA tenant finish ones, the anniversary date is one year from the date the contract is signed by the binding parties. Projects extending beyond one year require all contractors to pay the wages in effect on the anniversary date.

The subcontractor's anniversary date for wage changes is not his/her contract date, but the prime contractor's date.

The Prevailing Wage investigator provides the new wages to the prime contractor, who is responsible for notifying all subcontractors of the wages in effect on the anniversary date.

By Ordinance, any wage increase occurring on that date cannot be passed on to the City of Denver/DIA for a construction project.

However, for a service contract, an agency may, at its discretion, allow the contractor to invoice the City for the actual dollar amount of the wage increase. Other expenses, apart from the actual Prevailing Wage increase, cannot be passed along. Should an agency choose not to grant the Prevailing Wage increase, the contractor will still need to pay the increased wages to its employees.

Are there posters to display at the jobsite?

Yes.

Posting of wages and posters on job site: The prime/general contractor is responsible for displaying the Prevailing Wage posters in both Spanish and English and project's applicable Prevailing Wages. They should be posted in an area on the job site that is easily accessible to all employees. The posters can be downloaded from www.denvergov.org/auditor.

Can payments be withheld for the project?

Yes.

Withholding payment: By Ordinance, payment will be withheld if weekly payroll reports for the prime/general contractor or any subcontractors are not current in LCPtracker.

"Current" means no more than 2-3 weeks out from the current date, or current through the billing dates listed on the prime/general contractors' pay applications.

Payment can also be withheld for the following reasons:

- Underpayments or misclassification/non-reporting of employees
- Unapproved fringe benefits deduction
- Incomplete or missing certified payroll reports
- Failure to post Prevailing Wage posters and wage schedules on the job site

To avoid withholdings, prime/general contractors should regularly review the subcontractors' payroll submissions in LCPtracker for timeliness, notices, and warnings, helping the subcontractors in question with their resolution.

How does the Auditor's Office ensure Prevailing Wage?

On-Site Employee Interviews: Employees are observed working and interviewed by the Prevailing Wage investigators.

Employees are not interviewed during breaks or lunchtime.

Contractors need to inform employees that they may be interviewed by an investigator and that they must talk to that investigator.

The employees' supervisor should not be present during the interview.

What happens when the project is complete?

Closeout—Prime Contractor's Responsibility: The prime/general contractor must ensure that all payrolls submitted by the subcontractors at all levels are current and marked **"final."** There is a check box in LCPtracker in which to mark a payroll as final. The check box is part of the LCPtracker certification process.

When can a contractor submit invoices for payment?

Billing for Services: Per Section 20-78 (DRMC), a contractor may not bill for services before the weekly payroll reports are submitted in LCPtracker for the pay period being invoiced. Any pay applications or requests for payment on Prevailing Wage work that have not been reported will be withheld until the certified payrolls have been filed in LCPtracker.

What is the Prime/General Contractor's responsibility on a Prevailing Wage project?

- Submitting all certified payrolls timely and accurately
- Entering all subcontractors into LCPtracker
- Ensuring that all subcontractors are reporting weekly and correctly
- Auditing daily jobsite reports against payroll reports to verify all subcontractors' submissions.
- Promptly resolving any subcontractor payroll issues so the prime/general contractor's invoices are not withheld.
- Providing support to subcontractors in LCPtracker