

Prevailing Wage Overview

What Is the Basis for Prevailing Wage?

It's the law. Denver Revised Municipal Code (D.R.M.C.) §20-76 prescribes the city's prevailing wage requirements.

Denver city ordinance requires any contractor or subcontractor at any tier who performs construction, alteration, improvements, repairs, maintenance, or demolition of any city-owned or leased building or on any city-owned land, pursuant to a contract by or on behalf of the city, or for any agency of the city, or financed in whole or in part by the city to pay its employees working on those city projects not less than the appropriate prevailing wage as determined by the Denver Office of Human Resources for the work performed.

Who Determines Prevailing Wage Rates?

The Office of Human Resources issues prevailing wage rates in the following five categories:

- **Building wage rates** include all work inside the footprint or foundation of the building.
- **Highway wage rates** include 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 wage rates** include all work outside the footprint of the building. These wages apply to all nonhabitable structures, including toll booths, outhouses, kiosks, and parking garages. Heavy rates apply to building demolition. Heavy rates are catchall rates for projects that are neither buildings nor highways.
- **OHR wage rates** are issued for special classifications not addressed by the U.S. Department of Labor. Examples include: finishers; floor grinders; base grinders; and specialized trades at Denver International Airport, such as transit mechanics or baggage system technicians. OHR wage rates also include rates for custodians.
- **Residential wage classifications** include those projects involving the construction, alteration, or repair of single-family houses or apartment buildings of no more than four floors in height (e.g., townhomes or rowhouses, detached single-family homes, mobile homes, multifamily houses, apartment buildings of four floors or fewer, and student housing of four floors or fewer).

What Types of Work Are Covered by Prevailing Wage?

All construction, alteration, improvements, repairs, maintenance, or demolition work performed on site is covered by prevailing wage.

Specific applicable prevailing wage classifications and rates are available on the Denver Auditor's website at:

<https://denverauditor.org/prevailingwage> .

OHR clarifications regarding the scope of specific classifications, including hauling and trucking are available at:

<https://denverauditor.org/wp-content/uploads/2018/05/Clarification-Letter-May-2018.pdf> .

What Are Certified Payrolls?

Certified Payrolls are payroll reports contractors and subcontractors must submit weekly online through the LCPtracker Client Log-In tab at www.LCPtracker.com.

The LCPtracker system is a paperless, online system for filing certified payrolls. All contractors performing work on city projects are required to use LCPtracker. All project-specific wage rates and classifications are assigned to projects by prevailing wage investigators before a contractor needs to file his or her first report, allowing the contractor to choose specific rates and jobs from an online menu.

When a contractor is awarded a city project, the prevailing wage investigator assigned to the project will perform the initial project setup in LCPtracker. The prime or general contractor is responsible for assuring all subcontractors performing work on the project are appropriately added on LCPtracker.

Video tutorials on how to use LCPtracker are available at:

https://www.youtube.com/watch?v=qkH_qt6G_HY&list=PLY3DvOXRi0ZNhiqH-mvFQI9IcVb80ArsB .

If a city contractor experiences problems using LCPtracker, please contact the Denver Auditor's Prevailing Wage Division at 720-913-5018.

How Do City Contractors Comply with Denver's Prevailing Wage Fringe Benefit Requirements?

Prevailing wage rates include both hourly base pay and fringe benefit amounts. City contractors must pay their employees the total of both the base pay and fringe benefit amounts for each hour worked on a city project, including any overtime hours worked.

The Denver Auditor's Office Prevailing Wage Division must approve all fringe benefits offered by any contractor working on a city project. If a city contractor offers fringe benefits, they must submit the following to the Prevailing Wage Division for approval:

- **Medical, dental, disability, life, or any other health and welfare insurance** – a copy of the policy including evidence of the portion of the benefit paid by the employer;

- **Pension plans** - IRS qualification letter, a copy of the plan, including name of any third-party administrator, and evidence of the portion of the contribution paid by the employer;
- **Vacation, holiday, or sick pay** – a copy of the employer’s policy.

To calculate fringe benefit values, the Prevailing Wage Division will provide city contractors a Fringe Benefit Spreadsheet to complete. The Prevailing Wage Division calculates the value of fringe benefits based on 2,080 hours per year or 173 hours per month.

Additional Fringe Benefit Requirements

- For sick, vacation, or holiday time to be approved as a fringe benefit, an employer cannot have a “use it or lose it” or forfeiture policy that reduces an employee’s earned benefit when the benefit is not used. If an earned benefit cannot be carried forward, the employer must pay his or her employees for the unused benefit.
- If an employer requires an employee to work the day before or after a holiday to qualify for holiday time or pay, then the accrued holiday time or pay does not qualify as a fringe benefit.
- If an employee’s employment ends for any reason, his or her employer must pay the employee for all accrued sick, vacation, or holiday time.
- Employers must fund pensions, 401(k) plans, simple IRAs, and other retirement programs quarterly for those programs to be approved as a fringe benefit.
- Employers must pay apprentices full fringe benefits unless the approved apprentice program specifically addresses fringe benefit contributions.

How Do City Contractors Comply with Apprentice Requirements?

Employers are required to identify all apprentices working on city projects, the apprentices’ craft, and the applicable wage percentage on the LCPtracker payroll report.

Example: John Smith, Operating Engineer, Group 3, 80%.

All apprentices must be enrolled in an apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprentice Training (BAT). Employers must provide the Prevailing Wage Division current BAT Certificates for all apprentices working on city projects. Employers should upload BAT Certificates onto LCPtracker as an eDocument.

Employers are required to employ apprentices at a 1:1 ratio with journeymen at all times on city projects. Any violation of this requirement will result in the violating employer being required to pay journeymen rates to all out-of-ratio apprentices.

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

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

How Should City Contractors Pay Their Employees?

Pursuant to Denver city ordinance, employers are required to pay all prevailing wage employees working on city projects on a **weekly basis** for all hours worked. Only janitorial, window-washing, and living wage employees 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 employers make cash payments, the employer will be required to repay his or her employees by check.

Employers are required to report the wages and hours of salaried employees performing any hands-on, nonadministrative work as part of his or her certified payroll reports. To evaluate prevailing wage compliance, salaried employees' hourly rates are calculated by dividing his or her annual gross salary by 2,080 hours. If the salaried employee's hourly rate does not equal the prevailing wage for the applicable job classification, they must be paid an additional amount to make up the difference. If a salaried employee is performing hands-on work and works more than 40 hours on a city project, they must be properly compensated for any overtime worked.

How Are Employee Classifications Determined?

Employees are classified according to the work they perform, not by an employee's job title. Employees often perform work under more than one wage classification during a single pay period. Employers are required to pay their employees the appropriate wage for any work performed under all applicable wage classifications. Daily time cards signed by the employee detailing the work performed are recommended.

Employers should familiarize themselves with the scopes of work and limitations adopted by OHR for all prevailing wage classifications, including limitations on the use of common laborers as depicted in the OHR Clarification Document available at:

<https://denverauditor.org/wp-content/uploads/2018/05/Clarification-Letter-May-2018.pdf>.

How Do City Contractors Comply with E-verify Requirements?

Denver law requires all city contractors to attest and electronically verify ("e-verify") their employees are lawfully employed in compliance with city, state, and federal law. Employers are required to e-verify all employees working on a city project through LCPtracker. Denver law grants the Auditor's Office authority to request evidence of lawful employment from any city contractor and his or her employees.

How Do City Contractors Report Work Performed by the Owner of a Company?

Owners of a company performing work (“Owner-Operators”) on a city project are exempt from paying themselves prevailing wages. However, owner-operators must submit his or her hours worked and all hours worked by any of his or her employees in LCPtracker.

To establish ownership, a city contractor must provide (1) *Affidavit Contractor Performed Work Personally* (“Owner-Operator Form”) and (2) documentation of sole proprietorship, corporation, partnership, or limited liability company; trade name registration; articles of incorporation; or IRS Form 1040 Schedule C; or vehicle registration and certificate of insurance (limited to trucking contractors).

The Owner-Operator Form and appropriate documentation must be submitted as eDocuments in LCPtracker with a contractor’s first certified payroll. Prevailing wage investigators may ask an Owner-Operator to provide additional supporting documentation. The Owner-Operator Form is available at:

https://denverauditor.org/wp-content/uploads/2018/04/OwnerOperator_Affidavit_050217.pdf.

When Is a City Contractor Required to Pay Overtime?

City contractors are required to pay their employees reported as working on a city project overtime for all hours worked over 40 hours in a seven-day period, whether or not those hours worked in excess of 40 hours were performed on a city project.

The overtime rate is the greater of 1.) the sum of one-and-a-half times the prevailing wage base pay rate and the required fringe benefit rate; or 2.) the sum of one-and-a-half times the established base pay rate and the required fringe benefit rate. Overtime compensation may be paid as monetary compensation or an approved fringe package. An established hourly pay rate includes cash in lieu of fringe reported as a part of an employee’s regular wages on LCPtracker.

How Should a City Contractor Address Noncompliance Identified in a Certified Payroll?

City contractors billing the city for work performed on a project subject to prevailing wage, including any subcontractors, must report all hours worked in LCPtracker for the period billed. Failure to report hours worked or to otherwise comply with any prevailing wage requirement may result in the Prevailing Wage Division withholding an application for payment until prevailing wage requirements are met. The prevailing wage investigator assigned to a project will inform any noncompliant contractor and the prime or general contractor of any unresolved prevailing wage issues.

Prime or general contractors may review any subcontractor’s rejected payroll reports in LCPtracker. A prime or general contractor may request administrator or prime approval access from the Prevailing Wage Division on LCPtracker to allow him or her to review or approve his or her subcontractors’ payrolls.

Do not hesitate to contact your project's prevailing wage investigator to discuss any prevailing wage issues on the project.

Are There Penalties for Failing to Comply with Prevailing Wage Requirements?

The city may impose penalties on employers who fail to comply with prevailing wage requirements. These penalties apply to the underpayment of employees and to the failure to report or false reporting of a certified payroll.

Underpayment Penalties

The Prevailing Wage Division may assess the following fines for underpayments not remedied within 30 days of notice of violation:

- Fifty dollars per week per employee for the first violation;
- Seventy-five dollars per employee per week and a \$2,500 fine for the second offense within the previous three years;
- One hundred dollars per employee per week and \$5,000 fine if a contractor has had three or more penalties in the previous three years.

Reporting Penalties

The Prevailing Wage Division may assess the following fines for underpayments not remedied within 30 days of notice of the violation:

- Five hundred dollars per week for each week during which a contractor or subcontractor fails to furnish any certified payrolls where any worker, laborer, or mechanic employed by the nonreporting contractor or subcontractor has performed any work;
- Fifty dollars per week for each incident of false reporting on a certified payroll, not corrected within 15 days of the date the false report was brought to the attention of the contractor or subcontractor.

This penalty shall be imposed in addition to the other fines. Penalties shall be paid to the City and County of Denver.

In addition to these fines, employers are still required to pay any underpaid wages.

Pursuant to D.R.M.C. §20-77, continual violations of Denver's prevailing wage laws may result in debarment of a contractor from working for the city.

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 Division assesses underpayments 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, address, Social Security number, and telephone number;
2. The employee's job classifications;
3. The total hours worked by the employee for each week, including any overtime;
4. The restitution amount—the difference between what the employee was paid and what the employee should have been paid; and
5. The difference owed each employee separated by straight time and overtime hours.

This required information must be provided for each underpaid employee. The employer is required to submit the completed Restitution Spreadsheet through the LCPtracker's eDocuments for the project.

Pursuant to D.R.M.C. 20-76, underpayment checks must be made payable to the individual employee **OR** the City and County of Denver.

Example - Joe Smith **or** City and County of Denver

Incorrectly written underpayment checks will be returned and the employer will be required to reissue the checks. Employers may issue an underpaid employee a single underpayment check for multiple weeks of underpayment. If an underpayment check exceeds \$50, the employer is required to provide the Auditor's Office the underpayment check for distribution.

Can Prevailing Wage Rates Change During a Project?

Prevailing wage rates may increase or decrease annually on projects with performance periods that exceed one year. The prevailing wage rates will change the anniversary of the invitation for bids on the project or the date of the written encumbrance if no bid or proposal issuance date is applicable.

Changes to subcontractor's prevailing wage rates are based on those contract dates applicable to the prime contractor.

Prevailing wage investigators may provide rate changes to the prime or general contractor, however all contractors and subcontractors performing work on a city project are responsible for knowing and paying the appropriate prevailing wages.

Are Employers Required to Post Prevailing Wage Information at the Job Site?

The prime or general contractor is responsible for displaying prevailing wage posters in both Spanish and English at the jobsite. The posters should be posted at the job site easily accessible to all employees. Contractors may request posters from the prevailing wage investigator assigned to the project. Prevailing wage posters are also available at:

<https://denverauditor.org/prevailingwage> .

Can the Prevailing Wage Division Withhold Payments to Noncompliant Contractors?

The Prevailing Wage Division may withhold payment to noncompliant contractors. Pursuant to D.R.M.C. 20-78, the city shall not pay a contractor's invoice where the contractor fails to comply with prevailing wage requirements.

Can Prevailing Wage Investigators Enter a Job Site or Interview Employees?

Denver law permits the Prevailing Wage Division to take reasonable steps necessary to ensure contractor compliance with contract terms, including prevailing wage compliance. Reasonable steps may include employee interviews where the work is being performed, worksite photos, and requests for bank records or paystubs.