
SUBSTITUTE HOUSE BILL 2136

State of Washington

68th Legislature

2024 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Ormsby, Schmidt, Doglio, Farivar, Berry, Simmons, Reed, Ramel, Mena, Goodman, Berg, Fosse, Reeves, Pollet, and Kloba; by request of Attorney General)

READ FIRST TIME 01/30/24.

1 AN ACT Relating to prevailing wage sanctions, penalties, and
2 debarment; amending RCW 39.12.010; adding a new section to chapter
3 39.12 RCW; creating a new section; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that government
6 contracts should not be awarded to those that knowingly and
7 intentionally violate Washington state's prevailing wage laws. The
8 legislature also finds that businesses that follow the law and pay
9 workers appropriately are placed at a competitive disadvantage to
10 those that reduce costs by failing to pay prevailing wages or failing
11 to file or falsely file with the Washington state department of labor
12 and industries or sanctioned under RCW 39.12.055. In order to create
13 a consistent, fair playing field for businesses and avoid taxpayer
14 contracts going to those that repeatedly violate the law and
15 illegally withhold money from workers, the state should amend the
16 state prevailing wage laws to extend those businesses' sanctions to
17 their substantially identical companies. These sanctions include
18 penalties issued under chapter 39.12 RCW; findings of violations that
19 the department of labor and industries count toward a bar on bidding
20 on public works; and debarment, prohibiting bidding on public works.

1 **Sec. 2.** RCW 39.12.010 and 2019 c 242 s 2 are each amended to
2 read as follows:

3 (1) The "prevailing rate of wage" is the rate of hourly wage,
4 usual benefits, and overtime paid in the locality, as hereinafter
5 defined, to the majority of workers, laborers, or mechanics, in the
6 same trade or occupation. In the event that there is not a majority
7 in the same trade or occupation paid at the same rate, then the
8 average rate of hourly wage and overtime paid to such laborers,
9 workers, or mechanics in the same trade or occupation is the
10 prevailing rate. If the wage paid by any contractor or subcontractor
11 to laborers, workers, or mechanics on any public work is based on
12 some period of time other than an hour, the hourly wage is
13 mathematically determined by the number of hours worked in such
14 period of time.

15 (2) The "locality" is the largest city in the county wherein the
16 physical work is being performed.

17 (3) The "usual benefits" includes the amount of:

18 (a) The rate of contribution irrevocably made by a contractor or
19 subcontractor to a trustee or to a third person pursuant to a fund,
20 plan, or program; and

21 (b) The rate of costs to the contractor or subcontractor, which
22 may be reasonably anticipated in providing benefits to workers,
23 laborers, and mechanics pursuant to an enforceable commitment to
24 carry out a financially responsible plan or program which was
25 communicated in writing to the workers, laborers, and mechanics
26 affected, for medical or hospital care, pensions on retirement or
27 death, compensation for injuries or illness resulting from
28 occupational activity, or insurance to provide any of the foregoing,
29 for unemployment benefits, life insurance, disability and sickness
30 insurance, or accident insurance, for vacation and holiday pay, for
31 defraying costs of apprenticeship or other similar programs, or for
32 other bona fide fringe benefits, but only where the contractor or
33 subcontractor is not required by other federal, state, or local law
34 to provide any of such benefits.

35 (4) An "interested party" includes a contractor, subcontractor,
36 an employee of a contractor or subcontractor, an organization whose
37 members' wages, benefits, and conditions of employment are affected
38 by this chapter, and the director of labor and industries or the
39 director's designee.

1 (5) An "inadvertent filing or reporting error" is a mistake and
2 is made notwithstanding the use of due care by the contractor,
3 subcontractor, or employer. An inadvertent filing or reporting error
4 includes a contractor who, in good faith, relies on a written
5 determination provided by the department of labor and industries and
6 pays its workers, laborers, and mechanics accordingly, but is later
7 found to have not paid the proper prevailing wage rate.

8 (6) "Unpaid prevailing wages" or "unpaid wages" means the
9 employer fails to pay all of the prevailing rate of wages owed for
10 any workweek by the regularly established payday for the period in
11 which the workweek ends. Every employer must pay all wages, other
12 than usual benefits, owing to its employees not less than once a
13 month. Every employer must pay all usual benefits owing to its
14 employees by the regularly established deadline for those benefits.

15 (7) "Rate of contribution" means the effective annual rate of
16 usual benefit contributions for all hours, public and private, worked
17 during the year by an employee (commonly referred to as
18 "annualization" of benefits). The only exemption to the annualization
19 requirements is for defined contribution pension plans that have
20 immediate participation and vesting.

21 (8) "Contractor" means any prime contractor, subcontractor, or
22 other employer as defined by rules adopted by the department of labor
23 and industries. "Contractor" includes an entity, however organized,
24 with substantially identical operations, corporate, or management
25 structure to an entity that has been found in violation under RCW
26 39.12.050, 39.12.055, or 39.12.065, or any associated rules. The
27 nonexclusive factors used to determine substantial identity include
28 an assessment of whether there is: Substantial continuity of the same
29 business operation; use of the same machinery, equipment, or both
30 tangible and intangible real or personal property; similarity of jobs
31 and types of working conditions; continuity of supervisors; and
32 similarity of product or services. An entity with operational,
33 corporate, and management structures distinct from an entity that has
34 been found in violation under RCW 39.12.050, 39.12.055, or 39.12.065,
35 or any associated rules, shall not be deemed a substantially
36 identical entity.

37 NEW SECTION. Sec. 3. A new section is added to chapter 39.12
38 RCW to read as follows:

1 (1) For the purposes of enforcing this chapter, if a contractor
2 has substantially identical operations, corporate, or management
3 structure to another entity that has been debarred or otherwise
4 sanctioned under RCW 39.12.050, 39.12.055, 39.12.065, or any
5 associated rule, then the contractor is subject to the same debarment
6 or sanction as that other entity. These sanctions include: Penalties
7 issued under this chapter; findings of violations that the department
8 of labor and industries count toward a bar on bidding on public
9 works; and debarment, prohibiting bidding on public works. The
10 department of labor and industries may enforce this section under the
11 enforcement provisions of this chapter and associated rules.

12 (2) The director may issue a notice of violation under this
13 section to a contractor described in subsection (1) of this section
14 to extend the sanctions of a debarred or sanctioned entity imposed
15 through a final and binding order or agreement to the contractor. A
16 hearing must be held following a timely appeal of the notice of
17 violation in accordance with chapter 34.05 RCW. The director shall
18 issue a written determination including his or her findings after the
19 hearing unless a notice of violation is not timely appealed. A notice
20 of violation not timely appealed is final and binding, and is not
21 subject to further appeal.

22 NEW SECTION. **Sec. 4.** This act takes effect January 1, 2026.

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