
**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

ROGER C. MILLER
TIMOTHY J. KUNTZ
DANIEL J. BEESON
*KENNETH J. ROHLF
◊STEPHEN H. FOCHLER
◊JAY P. KARLOVICH
ANGELA M. LUTZ AMANN
*KORINE L. LAND
ANN C. O'REILLY
◻*DONALD L. HOEFT
DARCY M. ERICKSON
DAVID S. KENDALL
JEROME M. PORTER
BRIDGET McCAULEY NASON

HAROLD LEVANDER
1910-1992

ARTHUR GILLEN
1919-2005

*ALSO ADMITTED IN WISCONSIN
◊ALSO ADMITTED IN NORTH DAKOTA
◊ALSO ADMITTED IN MASSACHUSETTS
◻ALSO ADMITTED IN OKLAHOMA

MEMO

TO: Kori Land
FROM: Darcy Erickson
DATE: January 30, 2007
RE: Prevailing Wage Law

INTRODUCTION

The City Council is considering enacting a prevailing wage ordinance requiring the inclusion of a prevailing wage clause in City construction projects. You requested basic information regarding the prevailing wage law.

ISSUES

1. What prevailing wage legislation exists on the federal and state level?
2. What do the federal and state prevailing wage laws require?
3. What issues could be associated with the City's consideration of implementing a prevailing wage ordinance that would govern its contracts?

SHORT ANSWER

1. The Davis-Bacon Act governs the construction of public buildings or public works when federal funding is received for their construction and the Minnesota Prevailing Wage Law governs construction projects receiving state funding and state funded highway projects.
2. In a nutshell, the Davis-Bacon Act and Minnesota Prevailing Wage Law require that workers employed on projects subject to these laws are paid the prevailing wage for workers in the geographic area in which the project occurs.
3. The City's implementation of a prevailing wage ordinance for City contracts poses

several practical considerations, such as determining the scope of the proposed ordinance and its enforcement.

DISCUSSION

The federal government and Minnesota state government have adopted prevailing wage laws. These laws are intended to prevent local wage standards from being undercut by low bidding contractors using cheap imported (i.e. non-local) labor. A summary of both the federal law (Davis-Bacon Act) and the state law (Minnesota Prevailing Wage Law) follow.

The Davis-Bacon Act

The Davis-Bacon Act, 40 U.S.C. § 3141 *et seq.* requires that all contracts in excess of \$2,000 to which the federal government or the District of Columbia is a party for construction, alteration or repair of public buildings or public works and which require or involve the employment of mechanics or laborers contain a provision stating the minimum wages to be paid to the different classes of mechanics and laborers. 40 U.S.C. § 3142(a). The minimum wage is determined by the U.S. Secretary of the Department of Labor and is the prevailing wage for various classes of mechanics and laborers in the civil subdivision in which the work is being performed. 40 U.S.C. § 3141(b). The Davis-Bacon Act also requires construction contracts for public buildings that involve public funding to contain certain other clauses, such as those concerning the time for payment of wages, computation of wages, and posting of wage scales in conspicuous places at the work site. 40 U.S.C. § 3141(c)(1)-(3). I have attached a copy of the Davis-Bacon Act for your reference.

The Minnesota Prevailing Wage Law

Contracts for State Projects – Non-Highway Projects

Minnesota has a law analogous to the Davis-Bacon Act. Minnesota's law is the Minnesota Prevailing Wage Law (the "MPWL"), Minn. Stat. §§ 177.41 to 177.44, applies to construction, remodeling, or repairing of public buildings or other public work that is financed with state funds. Below is a bullet point list of the requirements of the MPWL as it relates to non-highway construction projects:

- Laborers or mechanics may not and may not be required to work in excess of the prevailing hours of labor unless they are compensated at 1½ times the hourly basic rate of pay.
- A laborer or mechanic may not be paid less than the prevailing wage rate in the same or most similar trade or occupation in the area
- The contract must state the "prevailing wage rate," "prevailing hours of labor" and "hourly basic rates of pay."¹

¹ "Prevailing wage rate," "prevailing hours of labor" and "hourly basic rates of pay" are defined terms. The "prevailing wage rate is defined as the hourly basic rate of pay plus the contribution for other benefits, such as health vacation, and pension benefits paid to the largest number of

- Before the State asks for bids, it determines the prevailing wage rates, prevailing hours of labor and hourly basic rates of pay for all trades and occupations required for the project.
- The Commissioner of the Department of Labor and Industry (DOLI) determines the prevailing wage rates, prevailing hours of labor and hourly basic rates of pay, which must be posted in a conspicuous place for the persons working on the project.
- There is a grievance process for persons aggrieved by the Commissioner's final determinations and may pursue administrative review of the determinations.
- It is a crime (a misdemeanor) for a state officer or employee to fail to execute a contract for a project without complying with the MPWL (maximum fine of \$700 and/or 90 days jail).
- DOLI enforces the MPWL and can demand document inspection to ensure compliance.
- There are exceptions to the MPWL. These exceptions are:
 - Projects for which the estimated total cost is less than \$2,500 and only one trade or occupation is required to complete it;
 - Projects for which the estimated total cost is less than \$25,000 and more than one trade or occupation is required to complete it.
 - The wage rates and hours of employment of laborers and mechanics who process or manufacture materials and products by or for commercial establishments that have a fixed place of business from which they regularly supply processed or manufactured materials or products. However, the MPWL applies to laborers or mechanics who deliver aggregate which is incorporated into the project by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

I have attached a copy of DOLI's prevailing wages for State funded construction projects (non-highway projects).

State Funded Highway Projects

Minn. Stat. § 177.44 deals exclusively with state funded highway projects. The content of this statute is nearly identical to Minn. Stat. § 177.43. However, there are several differences, which are contained in the bullet point list below:

workers engaged in the same class of labor within the area and it may not be less than a reasonable and living wage. "Prevailing hours of labor" is defined as the hours of labor per day and per week worked within the area by a larger number of workers of the same class than are employed within the area for any other number of hours per day and per week and it may not exceed 40 hours per week. "Hourly basic rate" is defined as the hourly wage paid to any employee. See Minn. Stat. § 177.42, Subds. 4-6.

- The DOLI Commissioner conducts an investigation and holds public hearings to define the classes of mechanics and laborers and to determine the hours of labor and wage rates prevailing in all areas of the state for all classes of labor and mechanics commonly employed in highway construction work to determine prevailing hours of labor, prevailing wage rates and hourly basic rates of pay.
- The DOLI Commissioner determines the nature of equipment furnished by truck drivers who own and operate trucks on contract to determine the minimum rates for equipment and establishes by rule minimum rates to be computed into the prevailing wage rate.
- The DOLI Commissioner certifies the prevailing wage rate, prevailing hours of labor and hourly basic rates of pay once a year for all classes of laborers and mechanics commonly employed in highway construction work. The certification must include future rates and hours if they can be determined and the effective dates for those future rates.
- A violation of the law is a misdemeanor, but the maximum penalty is \$300 and/or 90 days jail. There are also penalties for those who try to induce job applicants or employees on projects to forego any of their wages (maximum penalty of \$1,000 and/or 365 days jail) and for employees who knowingly permits contractors to pay them less than prevailing wage or who gives up any part of their wages (maximum penalty of \$40 and/or 30 days jail).
- There “exceptions” to the statute based on the size of the project. However, there is the identical exception for the employment of laborers or mechanics engaged in the process or manufacture of materials or products or the delivery of them by or for commercial establishments with a fixed place of business as recited above and contained in Minn. Stat. § 177.43.
- MnDOT enforces the law. There is a provision requiring county attorney investigation and prosecution upon the request of MnDOT or other complaint.

I have attached a copy of DOLI’s prevailing wages for State funded highway construction projects.

Prevailing Wage Calculation

Apparently, state law requires the wage rate to be based on the actual wage rates paid to the largest number of workers within each labor classification. Calculation is apparently done by looking at the mode or most frequently occurring wage rate. The DOLI brochure that I have attached explains the calculation for prevailing wages. I have also attached a copy of the MPWL for your reference.

Considerations for City Implementation of a Prevailing Wage Ordinance

There are numerous issues that the City will have to consider if it chooses to implement a prevailing wage ordinance. Outlined below are several issues that the City should consider in determining whether to adopt a prevailing wage ordinance:

- Will all City projects be subject to this ordinance or will there be a minimum financial threshold that must be met before the prevailing wage ordinance is applicable? It may be too overwhelming from an administrative perspective to require that all contracts comply with a prevailing wage ordinance.
- Presumably, the ordinance, if enacted, will adopt the MPWL. However, questions exist as to who will administer and enforce the ordinance? The City will want to ensure the contracts it executes contain prevailing wage clauses. If the prevailing wage ordinance is to have any “teeth”, there must be enforcement of the ordinance. There will be costs with the administration and enforcement of the ordinance.

CONCLUSION

Any federally funded City building construction project will be governed by the Davis-Bacon Act and construction projects that the State of Minnesota funds will be subject to the MPWL. The City could pass an ordinance requiring compliance with the MPWL but there are several large issues that must be resolved in deciding to do so.