

Title 26: LABOR AND INDUSTRY

Chapter 15: PREFERENCE TO MAINE WORKS AND CONTRACTORS

Table of Contents

Section 1301. LOCAL RESIDENTS PREFERRED; EXCEPTION.....	3
Section 1302. PROPOSALS AND BIDS RECORDED.....	3
Section 1302-A. INSURANCE COVERAGE POSTED ON PUBLIC CONSTRUCTION PROJECTS (REPEALED).....	3
Section 1303. PUBLIC WORKS; MINIMUM WAGE AND BENEFITS.....	3
Section 1304. DEFINITIONS.....	4
Section 1305. POLICY DECLARED.....	5
Section 1306. FAIR MINIMUM RATE OF WAGES AND BENEFITS; DETERMINATION.....	5
Section 1307. MINIMUM WAGE RATE ON CONSTRUCTION PROJECTS BOARD; APPOINTMENTS; DUTIES (REPEALED).....	6
Section 1307-A. MINIMUM WAGE AND BENEFITS RATE ON CONSTRUCTION PROJECTS.....	6
Section 1308. PREVAILING WAGES AND BENEFITS ESTABLISHED AT REGULAR INTERVALS; HOW DETERMINED.....	6
Section 1309. CONTRACT TO CONTAIN PROVISIONS RELATIVE TO RATE OF WAGES AND BENEFITS TO BE PAID.....	7
Section 1310. WAGE AND BENEFITS RATES TO BE KEPT POSTED.....	7
Section 1311. WAGE AND BENEFIT RECORD OF CONTRACTOR.....	8
Section 1312. PENALTIES FOR VIOLATION.....	8
Section 1313. EXISTING CONTRACTS.....	9
Section 1314. EXCEPTIONS.....	9
Section 1315. COOPERATION WITH THE UNITED STATES DEPARTMENT OF LABOR.....	9
Section 1316. PUBLIC WORKS CONTRACT REQUIREMENTS.....	9

Maine Revised Statutes

Title 26: LABOR AND INDUSTRY

Chapter 15: PREFERENCE TO MAINE WORKS AND CONTRACTORS

§1301. LOCAL RESIDENTS PREFERRED; EXCEPTION

The State, counties, cities and towns, and every charitable or educational institution which is supported in whole or in part by aid granted by the State or by any municipality shall, in the awarding of contracts for constructing, altering, repairing, furnishing or equipping its buildings or public works, give preference to workmen and to bidders for such contracts who are residents of this State, provided the bids submitted by such resident bidders are equally favorable with bids submitted by contractors from without the State. This section shall not apply to construction or repairs amounting to less than \$1,000 or to emergency work or to state road work.

Any contract for public improvement that is awarded by the State or any department or agency of the State is subject to the competitive bidding process established under Title 5, chapter 155, subchapter I-A. [1995, c. 524, §2 (NEW).]

SECTION HISTORY

1995, c. 524, §2 (AMD).

§1302. PROPOSALS AND BIDS RECORDED

Every municipality calling for such bids shall enter proposals and bids upon its books, showing the name and residence of each bidder, and the amount and terms of each bid, and to whom the work or contract was awarded. The same shall be open to the inspection of the Governor. [1975, c. 771, §287 (AMD).]

SECTION HISTORY

1975, c. 771, §287 (AMD).

§1302-A. INSURANCE COVERAGE POSTED ON PUBLIC CONSTRUCTION PROJECTS

(REPEALED)

SECTION HISTORY

2009, c. 452, §1 (NEW). 2011, c. 403, §1 (RP).

§1303. PUBLIC WORKS; MINIMUM WAGE AND BENEFITS

In the employment of laborers in the construction of public works, including state highways, by the State or by persons contracting for the construction, preference must first be given to citizens of the State who are qualified to perform the work to which the employment relates and, if they can not be obtained in sufficient numbers, then to citizens of the United States. Every contract for public works construction must contain a provision for employing citizens of this State or the United States. The hourly wage and benefit rate paid to laborers employed in the construction of public works, including state highways, may not be less than the fair minimum rate as determined in accordance with section 1308. Any contractor who knowingly and willfully violates this section is subject to a fine of not less than \$250 per employee violation. Each day that any contractor employs a laborer at less than the wage and benefit minimum stipulated in this section constitutes a separate violation of this section. [1997, c. 757, §1 (AMD).]

SECTION HISTORY

1965, c. 406, §1 (AMD). 1997, c. 757, §1 (AMD).

§1304. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2011, c. 463, §1 (RPR) .]

1. Board. "Board" means the Minimum Wage Rate on Construction Projects Board as constituted in sections 1304 to 1313.

[1967, c. 403, (RPR) .]

2. Construction. "Construction" means any construction, reconstruction, demolition, improvement, enlargement, painting, decorating or repair of any public works let to contract. The term "construction" shall not be construed to include engineering or architectural services, temporary or emergency repairs or any contract of less than \$10,000.

[1967, c. 403, (RPR) .]

3. Construction industry. "Construction industry" means that industry which is composed of employees and employers engaged in construction, demolition, repair or moving of buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures or works whether private or public on which construction work, as defined in subsection 2, is performed.

[1967, c. 403, (RPR) .]

4. Employee. "Employee" shall not include such persons as are employed or hired by the public authority on a regular or temporary basis or engaged in making temporary or emergency repairs.

[1967, c. 403, (RPR) .]

5. Fair minimum wage and benefits. "Fair minimum wage and benefits" means the prevailing wage and benefits as determined by the Director of the Bureau of Labor Standards according to section 1306.

[1997, c. 757, §2 (AMD) .]

5-A. Interested party. "Interested party" means a bidder, contractor or subcontractor for a public works contract covered by this chapter.

[2011, c. 463, §2 (NEW) .]

6. Locality. "Locality" means where the construction is to be performed and the adjacent areas from which labor would be recruited for work on the project, and, in appropriate circumstances, it may be deemed to include the entire State.

[1967, c. 403, (RPR) .]

7. Public authority. "Public authority" means the Maine Turnpike Authority or any officer, board, commission or agency of the State that is authorized by law to enter into contracts for the construction of public works and is supported in whole or in part by public funds of the State . Sections 1304 to 1313 apply to expenditures made in whole or in part from public funds.

[1997, c. 743, §2 (AMD) .]

8. Public works. "Public works" includes public schools and all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, demolition, waterworks, airports and all other structures upon which construction may be let to contract by the State and which contract amounts to \$50,000 or more.

[2009, c. 453, §1 (AMD) .]

9. Prevailing wage and benefits. "Prevailing wage and benefits" means the hourly wage and benefits paid to the median number of workers employed in a trade or occupation on the 2nd and 3rd week in September.

[1997, c. 757, §3 (AMD) .]

SECTION HISTORY

1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1971, c. 620, §13 (AMD). 1975, c. 59, §3 (AMD). RR 1995, c. 2, §65 (COR). 1997, c. 743, §2 (AMD). 1997, c. 757, §§2,3 (AMD). 2003, c. 197, §1 (AMD). 2009, c. 453, §1 (AMD). 2011, c. 463, §§1, 2 (AMD).

§1305. POLICY DECLARED

It is declared to be the policy of the State that a wage of no less than the prevailing hourly rate of wages and benefits for work of a similar character in this State must be paid to all workers employed in the construction of public works. [1997, c. 757, §4 (AMD).]

SECTION HISTORY

1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1997, c. 757, §4 (AMD).

§1306. FAIR MINIMUM RATE OF WAGES AND BENEFITS; DETERMINATION

The public authority shall, before advertising for bids for a public contract, ascertain from the Director of the Bureau of Labor Standards the fair minimum rate of wages and benefits to be paid by the successful bidder to the laborers, workers or mechanics employed in the performance of the contract. A schedule of minimum wages and benefits must be attached to and made a part of the specifications for the construction and must be included in the bidding documents. The "fair minimum rate of wages and benefits," for the intent and purposes of sections 1304 to 1313, is the prevailing wage and benefits paid in the locality in like construction. The director or a delegated member of that bureau shall assemble the data as to wages paid by contractors employing 5 or more construction workers in the State during the 2nd and 3rd week of September of each year. From these data, the fair minimum wage and benefits for the following calendar year must be determined by the director. Minimum wages and benefits may not be established for any trade or occupation if fewer than 10 workers are employed in such a trade or occupation in the State in the 2nd and 3rd week of September. [1997, c. 757, §5 (AMD).]

The minimum wage and benefits must be established and filed as requested by the public authority within 30 days after such a request is received by the director. No minimum wage may be determined until January 1, 1968 and does not apply to the construction of public works then underway. When fair minimum wage and benefit rates are included and made a part of any contract, the rate must remain unchanged during the time the contract is in effect. [1997, c. 757, §5 (AMD).]

SECTION HISTORY

1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1971, c. 620, §13 (AMD). 1975, c. 59, §3 (AMD). RR 1995, c. 2, §66 (COR). 1997, c. 757, §5 (AMD).

§1307. MINIMUM WAGE RATE ON CONSTRUCTION PROJECTS BOARD; APPOINTMENTS; DUTIES

(REPEALED)

SECTION HISTORY

1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1971, c. 620, §13 (AMD). 1975, c. 59, §3 (AMD). 1975, c. 771, §288 (AMD). 1981, c. 168, §26 (AMD). 1983, c. 812, §165 (AMD). 1987, c. 786, §14 (RP).

§1307-A. MINIMUM WAGE AND BENEFITS RATE ON CONSTRUCTION PROJECTS

The Director of the Bureau of Labor Standards shall form an informal, ad hoc advisory board to advise the director with respect to issues relating to wage rates on construction projects. In forming this advisory board, the director shall select a person from labor engaged in the building trades, a person from labor engaged in the highway and heavy construction trades, a person from the highway and heavy contractors and a person from the building contractors. The board must consist equally of persons and contractors covered by collectively bargained labor agreements and those not covered by collectively bargained labor agreements. [1997, c. 757, §6 (AMD).]

SECTION HISTORY

1987, c. 786, §15 (NEW). 1997, c. 757, §6 (AMD).

§1308. PREVAILING WAGES AND BENEFITS ESTABLISHED AT REGULAR INTERVALS; HOW DETERMINED

1. Determination of wage and benefit rates. The Bureau of Labor Standards shall investigate and determine the prevailing hourly wage and benefits rate paid in the construction industry in this State during the 2nd and 3rd week of September of each year. Prevailing wages and benefits must be determined in September 1999 and become effective upon determination. In determining the prevailing rates, the bureau may ascertain and consider the applicable wage and benefits rates established by collective bargaining agreements, if any, and those rates that are paid generally in the locality where the construction of the public works is to be performed. For purposes of this subsection, "benefits" means health and welfare contributions, pension or individual retirement account contributions and vacation and annuity contributions, per diem in lieu of wages and any other form of payment, except for wages, made to or on behalf of the employee. If a defined contribution amount is not established, the most accurate estimated value of contributions must be included.

[1997, c. 757, §7 (AMD) .]

1-A. Surveys. The director may require any person to provide information on the wages and benefits provided to that person's employees and such other information as is needed to determine the prevailing wage and benefits. The director may assess a forfeiture of up to \$50 against any person who fails to provide the information as requested.

[1999, c. 181, §2 (NEW) .]

1-B. Additional trades. Any party affected by this chapter that believes that there are more than 10 workers employed in the State in a laborer, worker or mechanic trade or occupation for which no wage and benefit rates were set based on the previous survey may petition the director for inclusion of that trade or occupation in a supplemental survey. The director shall determine if the proposed trade or occupation is a definable trade or occupation, is one that has been or will be used in construction of public works covered by this chapter and is underrepresented in the survey process. If the director confirms these conditions,

notwithstanding any other provision of this chapter, the director may institute supplemental survey processes to establish wage and benefit rates for the trade or occupation. These supplemental survey processes must be conducted in coordination with the regular survey and designed to minimize the burden on any employer required to respond.

[2005, c. 232, §1 (NEW) .]

2. Certified copies. A copy of any determination made at the request of the public authority must be certified by the director and filed immediately with the public authority. Copies must be supplied by the bureau to all persons requesting same within 10 days after the filing.

[1999, c. 581, §1 (AMD) .]

3. Appeal. Any person affected by the determination of the director, whether or not that person participated in the proceedings resulting in the determination, may appeal to the commissioner from that determination by filing a written notice with the commissioner stating the specific grounds of that person's objection within 10 days from the filing of the copy of the determination with the public authority. The commissioner shall hold a hearing on the appeal, pursuant to Title 5, chapter 375, subchapter IV, within 20 days from the receipt of notice of appeal. The hearing by the commissioner must be held in Augusta. The commissioner has the authority to affirm, reverse or amend the determination of the director. The commissioner shall render a decision within 10 days after the conclusion of the hearing.

[1999, c. 581, §1 (AMD) .]

SECTION HISTORY

1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1971, c. 620, §13 (AMD). 1977, c. 694, §484 (AMD). 1987, c. 786, §16 (AMD). RR 1991, c. 2, §100 (COR). RR 1995, c. 2, §67 (COR). 1997, c. 757, §7 (AMD). 1999, c. 181, §2 (AMD). 1999, c. 581, §1 (AMD). 2005, c. 232, §1 (AMD).

§1309. CONTRACT TO CONTAIN PROVISIONS RELATIVE TO RATE OF WAGES AND BENEFITS TO BE PAID

In all cases when a fair minimum wage and benefits have been established, the contract between the public authority and the successful bidder must contain a provision requiring the successful bidder and all subcontractors of the successful bidder to pay a rate or rates of wages and benefits that are not less than the fair minimum wage and benefits. [1997, c. 757, §8 (AMD).]

SECTION HISTORY

1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1997, c. 757, §8 (AMD).

§1310. WAGE AND BENEFITS RATES TO BE KEPT POSTED

A clearly legible statement of all fair minimum wage and benefits rates to be paid the several classes of laborers, workers and mechanics employed on the construction on the public work must be kept posted in a prominent and easily accessible place at the site by each contractor and subcontractor subject to sections 1304 to 1313. [1997, c. 757, §8 (AMD).]

SECTION HISTORY

1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1997, c. 757, §8 (AMD).

§1311. WAGE AND BENEFIT RECORD OF CONTRACTOR

The contractor and each subcontractor in charge of the construction of a public work shall keep an accurate record showing the names and occupation of all laborers, workers and mechanics employed by them and all independent contractors working under contract with them in connection with the construction on the public works. The record must also show for all laborers, workers, mechanics and independent contractors the hours worked, the title of the job, the hourly rate or other method of remuneration and the actual wages or other compensation paid to each of the laborers, workers, mechanics and independent contractors. A copy of such a record must be kept at the job site and must be open at all reasonable hours to the inspection of the Bureau of Labor Standards and the public authority that let the contract and its officers and agents. It is not necessary to preserve those records for a period longer than 3 years after the termination of the contract. A copy of each such record must also be filed monthly with the public authority that let the contract. The filed record is a public record pursuant to Title 1, chapter 13, except that the public authority letting a contract shall adopt rules to protect the privacy of personal information contained in the records filed with the public authority under this section, such as Social Security numbers and taxpayer identification numbers. The rules may not prevent the disclosure of information regarding the classification of workers or independent contractors and the remuneration they receive. Such rules are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [2003, c. 432, §1 (AMD).]

SECTION HISTORY

1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1971, c. 620, §13 (AMD).
1975, c. 59, §3 (AMD). 1997, c. 757, §9 (AMD). 2003, c. 432, §1 (AMD).

§1312. PENALTIES FOR VIOLATION

1. Violation by contractor or subcontractor. Except as provided in section 1308, subsection 1-A, any contractor or subcontractor who willfully and knowingly violates sections 1304 to 1313 is subject to a forfeiture of not less than \$250.

[2011, c. 403, §2 (AMD) .]

2. Employees' remedies. Any laborer, worker or mechanic engaged in construction of public works let to contract, who is paid less than the posted fair minimum rate of wages and benefits applicable, may recover from such a contractor or subcontractor the difference between the same and the posted fair minimum rate of wages and benefits a penalty equal in amount to the difference and reasonable attorney's fees; however, the surety for the contractor or subcontractor is not liable for the penalty or attorney's fees.

[1997, c. 757, §10 (AMD) .]

3. Unfair agreement. A person may not request, demand or receive money or other thing of value from an employee whose rate is determined by sections 1304 to 1313 upon the statement, representation or understanding that failure to comply with such request or demand will prevent the employee from procuring or retaining employment. A person may not aid, directly or indirectly, assist or abet another to violate the prohibitions of this subsection. Any person violating the prohibitions of this subsection is subject to a forfeiture of not less than \$250.

[1997, c. 757, §10 (AMD) .]

This section may not be construed to make unlawful any provision in a collective bargaining agreement between an employer and a labor organization that relates, in any manner, to the conditioning of employment on union membership or on the payment of regular and periodic dues, or of initiation fees, to a labor organization. [1997, c. 757, §10 (AMD).]

SECTION HISTORY

1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1997, c. 757, §10 (AMD).
1999, c. 181, §3 (AMD). 2009, c. 452, §2 (AMD). 2011, c. 403, §2 (AMD).

§1313. EXISTING CONTRACTS

Sections 1304 to 1313 apply only to contracts for construction on public works let after January 1, 1968 and to construction on public works for which there has been determined the fair minimum wage and benefits rates as provided in sections 1304 to 1313 and that determination has not been appealed as provided by section 7. [1997, c. 757, §10 (AMD).]

SECTION HISTORY

1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1997, c. 757, §10 (AMD).

§1314. EXCEPTIONS

Whenever a public works construction is built in whole or in part by federal funds and is under the jurisdiction of the Davis-Bacon or other Federal Act that requires the Secretary of Labor to establish the minimum wage and benefits and those minimum wages and benefits are established by the Secretary of Labor, sections 1304 to 1313 do not apply. [1997, c. 757, §11 (AMD).]

SECTION HISTORY

1967, c. 403, (NEW). 1997, c. 757, §11 (AMD).

§1315. COOPERATION WITH THE UNITED STATES DEPARTMENT OF LABOR

The Bureau of Labor Standards may exchange wage and benefits finding information with the United States Department of Labor when the Secretary of Labor is required to establish the minimum wage and benefits rates as defined in section 1314. [1997, c. 757, §12 (AMD).]

SECTION HISTORY

1973, c. 233, (NEW). 1975, c. 59, §3 (AMD). RR 1995, c. 2, §68 (COR).
1997, c. 757, §12 (AMD).

§1316. PUBLIC WORKS CONTRACT REQUIREMENTS

This section applies to public works contracts entered into by the Department of Transportation, the Department of Administrative and Financial Services, Bureau of General Services and the Maine Turnpike Authority for the construction, repair or improvement of roads, highways, bridges, streets or alleys or entered into, awarded or renewed by a public authority from October 1, 2011 to October 1, 2015. [2011, c. 463, §3 (NEW).]

1. Contract documents. The Department of Transportation, the Department of Administrative and Financial Services, Bureau of General Services and the Maine Turnpike Authority, as a condition of awarding a bid under this chapter, may not:

- A. Require a bidder, contractor or subcontractor to enter into or comply with or prohibit a bidder, contractor or subcontractor from entering into or complying with an agreement with a labor organization on the same or a related public works project; [2011, c. 463, §3 (NEW).]
- B. Discriminate against a bidder, contractor or subcontractor that becomes, refuses to enter into or remains a signatory to or complies with an agreement with a labor organization on the same or a related public works project; [2011, c. 463, §3 (NEW).]

C. Require a bidder, contractor or subcontractor to enter into or comply with or prohibit a bidder, contractor or subcontractor from entering into or complying with an agreement that requires an employee of the bidder, contractor or subcontractor, as a condition of employment, to:

- (1) Become a member of or become affiliated with a labor organization; or
- (2) Over the objection of the employee, pay dues or fees to a labor organization that exceed the employee's share of the labor organization's costs relating to collective bargaining, contract administration or grievance adjustment. [2011, c. 463, §3 (NEW) .]

This section does not prohibit a contractor or subcontractor from voluntarily entering into an agreement described in paragraphs A and C.

The Commissioner of Transportation, the Director of the Bureau of General Services within the Department of Administrative and Financial Services and the Executive Director of the Maine Turnpike Authority may exempt a particular project, contract, subcontract, grant or cooperative agreement from the requirements of the provisions of paragraph A, B or C, if the agency head finds that special circumstances require an exemption and it is in the best economic interest of the project.

[2011, c. 463, §3 (NEW) .]

2. Cooperation with the federal National Labor Relations Act. This section does not prohibit an employer or any other person covered by the federal National Labor Relations Act, 29 United States Code, Chapter 7, Subchapter II from entering into agreements or engaging in any other activity protected by law. This section may not be interpreted to interfere with the labor relations of persons covered by the federal National Labor Relations Act.

[2011, c. 463, §3 (NEW) .]

3. Compliance. In the event that a public authority, bidder, contractor or subcontractor performs in a manner contrary to the provisions of subsection 1, the head of the public authority or the designee of the head of the public authority shall take such action consistent with law and rule as the agency determines appropriate.

[2011, c. 463, §3 (NEW) .]

SECTION HISTORY

2011, c. 463, §3 (NEW) .

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