

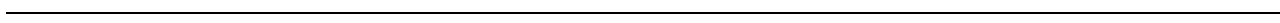


INDIANA DEPARTMENT OF LABOR

Common Construction Wage Implementation Manual

Guide to Establishing the Common Construction Wage

INDIANA DEPARTMENT OF LABOR

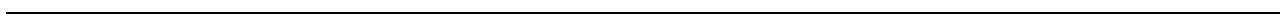


Common Construction Wage Implementation Manual

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INDIANA DEPARTMENT OF LABOR





How to Establish the Common Construction Wage for a Public Works Project

The Role of the Indiana Department of Labor

The Indiana Department of Labor is the executive agency charged with administering Indiana's labor laws, including Indiana's common construction wage law. In this capacity, the Indiana Department of Labor (IDOL) takes an active role in both the facilitation of common construction wage committee meetings and the enforcement of wage determinations established by these committees.

In an effort to facilitate these meetings, the IDOL has reserved meeting times and public locations in all of Indiana's ninety-two counties. Upon request, the IDOL will arrange a common construction wage committee meeting for any awarding agency requesting such. The department will also provide publications and supplemental materials necessary to facilitate these meetings.

As the IDOL is also vested with the authority to enforce each committee's wage determination, the department conducts numerous audits of contractor payroll records each year to verify wage compliance with the applicable common construction wage determinations. These audits are initiated by employee complaint, agency referral, and random selection.

The department maintains a web site devoted to this subject, which can be found at: <http://www.in.gov/labor/wagehour/constructionwage.html>.

Background

Since the Indiana General Assembly's passage of Chapter 319, Acts of 1935, Indiana's then prevailing wage law, and now common construction wage law, have succeeded in

establishing the wage rates to be paid to construction workers on Indiana's public works projects.

As the overseers of this process, common construction wage committees are responsible for seeing that the wages adopted for use on the projects are indeed the most commonly paid construction wages as defined by Indiana common construction wage law, Indiana Code 5-16-7-1 et seq. and the applicable case law.

The Committee and Its Members

Indiana's common construction wage committees are established at the request of an awarding governmental agency. However, the committees themselves are autonomous in nature, with four of the five committee members being appointed by separate appointing authorities as specified in Indiana Code 5-16-7-1 (b).

Each Committee Consists of:

1. A **labor representative**, appointed by the president of the state federation of labor;
2. An **industry representative**, appointed by the awarding agency;
3. A member to be **named by the governor** (traditionally from the Indiana Department of Labor);
4. A **taxpayer** who pays the tax that will be the funding source for the project and who lives in the county, **appointed by the awarding agency**; and
5. A **taxpayer** who pays the tax that will be the funding source for the project and who lives in the county, **appointed by the county legislative body**.

The Committee's Objective

After the committee, having been duly appointed, assembles in accordance with the Indiana's Open Door Law, the committee is charged to determine in writing the most common wage (mathematical mode), including fringe benefits, for each classification and level of skill. The committee must review county-specific data presented by the Indiana Department of Workforce Development, collective bargaining agreements, if applicable, and other data submitted by interested parties to determine wage rates appropriate to the county where the project is located. Upon discharging this statutory duty, the committee's obligations are concluded.

Meeting Requirements

Open Door Law

The committee must meet in accordance with the provisions of Indiana's Open Door Law. IC 5-14-1.5. Public notice of the date, time, and place of the meeting must be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. Public notice must be given by the awarding agency by: (1) posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held; (2) and delivering notice to all news media which have requested such notices.

Date of the Meeting

Indiana Code 5-16-7-1(f) requires that the committee meet and make a determination at least two weeks prior to the date fixed for the letting of the contract.

Meeting Location

The committee has a statutory obligation to meet in the county where the project is located. IC 5-16-7-1(c).

Duties of the Committee

Upon convening, the committee is charged with reviewing county-specific data presented by the Indiana Department of Workforce Development and other interested parties to determine wage rates appropriate to the area where the project is located. IC 5-16-7-4. Indiana Administrative Code 50 IAC 11-4-3(b)(1) stipulates that if other data is presented to the committee, including, but not limited to, reports of the U.S. Department of Labor and collective bargaining agreements between bona fide organizations of labor and employees, that these data be considered. However, the law specifically states that the committee does not have to consider information not presented at the meeting. IC 5-16-7-1(c).

After weighing the data, the committee must then determine in writing the classifications of the trades or crafts to be employed. These classifications are divided into the three classes of: skilled, semiskilled and unskilled tradespeople. IC 5-16-7-1(c)(1). The committee must then determine, "a scale of wages for each." IC 5-16-7-4(1).

The law provides that, "[t]he rate of wages determined . . . shall not be less than the common construction wage . . . currently being paid in the county where the project is located." IC 5-16-7-1(d). The Indiana Court of Appeals has defined the common construction wage to be the mathematical mode.

Classifications and Classes

Since the adoption of the original prevailing wage law in 1935, “wage scales” have contained a scale of (classifications and) wages for each of the three skill classes. In 1998, in *Union Township*, the Court of Appeals affirmed this structure, writing: “the common construction wage statute prescribes a two-step process. First the committee must classify the labor to be employed, that is, determine the trades or crafts to be utilized on the project. Then the committee must set wages for skilled, semiskilled, and unskilled workers within each classified trade or craft.” *Union Township School Corporation v. State ex. rel. Joyce*, 706 N.E.2d 183, 187 (Ind. Ct. App. 1998).

Below is an example of this wage scale structure:

Level of Skill Classification	Skilled		Semiskilled		Unskilled	
	Base Wage	Fringe Benefits	Base Wage	Fringe Benefits	Base Wage	Fringe Benefits
Carpenter	\$ Rate	\$ Rate	\$ Rate	\$ Rate	\$ Rate	\$ Rate
Electrician	\$ Rate	\$ Rate	\$ Rate	\$ Rate	\$ Rate	\$ Rate
Laborer	\$ Rate	\$ Rate	\$ Rate	\$ Rate	\$ Rate	\$ Rate
Operating Engineer	\$ Rate	\$ Rate	\$ Rate	\$ Rate	\$ Rate	\$ Rate

Computation of “Common”

The Indiana Court of Appeals in *Union Township* has defined “common” as “that which is customary, takes place daily, is widely used, or is generally known.” *Union Township School Corporation v. State ex. rel. Joyce*, 706 N.E.2d 183, 187 (Ind. Ct. App. 1998). The court noted, “[i]n mathematical terms, this constitutes the ‘mode.’” *Id.*

Example:

Given the following set of ten numbers:

17, 19, 20, 20, 22, 23, 23, 23, 30, 35

The following are various possible mathematical computations:

Average (Mean)	Median (Midpoint)	Mode	Number occurring most often	Common Wage
23.2	22.5	23	23 -- 3 Times	\$23.00

Fringe Benefits

Although not specifically mentioned in the statute, the Indiana Court of Appeals in *Union Township* found that the term “wages” includes fringe benefits. Moreover, the court, citing a previous decision in *Johnson v. Wiley*, 613 N.E. 2d, 459 n.3 (Ind. Ct. App. 1993), found that Indiana’s broad common-law definition of wages comports with the definition of “wages” found in Black’s Law Dictionary (6th ed.). That definition provides that a wage is:

Every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual’s employer or directly with respect to work for him.

[The] term should be broadly defined and includes not only periodic monetary earnings but all compensation for services rendered without regard to the manner in which such compensation is computed.

BLACK’S LAW DICTIONARY 1579 (6th ed. 1990).

Thus, for the purpose of determining the common construction wage, any fringe benefits paid to construction tradespeople in the county must be included in the computation of the common construction wage. For the purposes of the common construction wage, wages and/or fringe benefits do not include those benefits and/or taxes that are legally mandated by state or federal law.

Exemptions

Project Cost

Indiana Code 5-16-7-1(f) exempts all projects with an actual construction cost of less than \$150,000.

Federally Funded Projects

The common construction wage law is not applicable to public projects in this state that are to be paid for in whole or in part with funds granted by the federal government. This is true unless the department of the federal government making the grant shall consent in writing that the provisions of this chapter are applicable to the project. (e.g. Environmental Protection Agency (EPA) grants that passes through the Indiana Department of Environmental Management (IDEM) are sometimes subject the common construction wage.)

Indiana Department of Transportation (INDOT) Projects

The common construction wage law does not apply to contracts let by the Indiana Department of Transportation for the construction of highways, streets, and bridges. Indiana Code 8-23-9 applies to state highway projects.

Service Contracts

Except as provided in Indiana Code 5-23, the common construction wage law does not apply to a person that has entered into an operating agreement with the state, a municipal corporation, or another political subdivision for the management or operation of a public facility under Indiana Code 5-23.

State Tax Rule

Indiana Administrative Code 50 IAC 11 requires that local property tax control boards verify compliance with the common construction wage before approving capital project expenditures. Specific questions regarding this rule should be addressed to the State Board of Tax Commissioners.

Additional Responsibilities of the Awarding Agency

Advertising for the Contract

Before advertising or accepting bids for the contract, the awarding agency must establish the common construction wage committee for purpose of establishing the wage scale for the project. IC 5-16-7-1(b).

Two-Week Wait Before Letting the Contract

After the common construction wage scale has been established for a project and filed with the awarding agency, the awarding agency must wait at least two (2) weeks before letting the contract. A copy of the wage scale must be furnished upon request to any person desiring to bid on the contract. The wage scale should also be open to the inspection of the public. IC 5-16-7-1(f).

Common Construction Wage as a Condition of the Contract

In accordance with Indiana Code 5-16-7-1(h), subsequent to establishing the common construction wage scale for a project, the awarding agency must include as a condition of a contract awarded that the successful bidder and all subcontractors comply strictly with the established wage determination.

Verification of the Contractor's Schedule of Wages

Additionally, Indiana Code 5-16-7-2 requires that the awarding agency verify compliance with the common construction wage prior to the start of work by any contractor and/or subcontractor. Before any contractor or subcontractor performs work on a public works project, the awarding agency must require each contractor and/or subcontractor performing work to file a schedule of the wages that are to be paid to workers on the project.

Sample Agenda

Notice to the Public: This meeting is conducted in accordance with Indiana's Open Door Law. IC 5-14-1.5. All citizens are encouraged to participate in the discussion. After being recognized by the chair, please stand and state your name for the record.

COMMON CONSTRUCTION WAGE COMMITTEE AGENDA

CALL TO ORDER

INTRODUCTIONS

STATEMENT OF PURPOSE

OVERVIEW OF THE LAW

PROJECT OVERVIEW

PRESENTATION OF DATA AND PROPOSALS (Open to public input)

- Indiana Workforce Development
- Awarding Agency
- Others

DISCUSSION

DETERMINATION AND ADOPTION OF WAGE SCALE (Close to public input)

- Evaluation of Data
- Adoption and Signing of Wage Scale

CLOSING BUSINESS

ADJOURNMENT

Definitions

While some definitions are explicitly defined within IC 5-16-7-1 et seq., others have been established through case law, or have evolved from the plain language.

Apprentice: A worker who learns, according to written or oral contractual agreement, a recognized skilled craft or trade requiring one or more years of on-the-job training through job experience supplemented by related instruction, prior to becoming a qualified skilled worker. Apprenticeship is best evidenced by registration with the U.S. Department of Labor, Bureau of Apprenticeship and Training.

Class: One of three divisions of skill level (i.e., skilled, semiskilled, and unskilled).

Classification: A categorization of the specific trades to be employed in the performance of a contract.

Common: “[T]hat which is customary, takes place daily, is widely used, or is generally known.” The court noted, “In mathematical terms, this constitutes the ‘mode.’” *Union Township School Corporation v. State ex. rel. Joyce*, 706 N.E.2d 183, 187 (Ind. Ct. App. 1998).

Labor: Specific task.

Mode: The value, in a set of numbers, which occurs with the greatest frequency (i.e., the most common). The mode is cited in *Union Township* as being synonymous with the common.

Public Work: “[A]ny public building, highway, street, alley, bridge, sewer, drain, improvement, or any other work of any nature or character whatsoever which is paid for out of public funds, excepting as otherwise provided in this chapter.” IC 5-16-7-4 (4).

Public Work: “[T]he construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by a political subdivision under a lease containing an option to purchase.” IC 36-1-12-2.

Semiskilled: A person who is involved in a formal training program to become a journeyman. Provisions of formal training include a progressive scale of wages, work processes and on-the-job training supervised by journeymen.

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Skilled: A person who has performs the work of a skilled craftsperson. Generally, a person who has completed a formal training program or who has written proof of a specified number of years experience to be considered a journeyperson.

Unskilled: A person generally in their first year of a formal training program to become a journeyperson. Provisions of formal training include a progressive scale of wages, work processes and on-the-job training supervised by journeypersons. These persons generally assist other workers of higher competence by furnishing materials, tools, and supplies, and performing other support duties.

Wages: “means all amounts at which the labor or service rendered is recompensed . . .” IC 22-2-9-1(b).

Questions Concerning Wage Surveys

Questions regarding specific wage rates should be addressed directly to the agency or organization responsible for commissioning or compiling the survey.

Indiana Department of Workforce Development Wage Surveys

For questions regarding these surveys, please contact:

Deputy Commissioner for External Affairs
Indiana Workforce Development
10 N. Senate Avenue
Indianapolis, IN 46204
(317) 233-1463

Federal Davis-Bacon Wage Rates

For questions concerning these surveys, please contact:

Office of Wage Determinations
Wage and Hour Division
U. S. Department of Labor
200 Constitution Ave. N. W.
Washington, DC 20210
(202) 693-0062

Questions About Conducting Your Own Survey May Be Addressed By Contacting:

Indiana Department of Labor
Wage and Hour Division
402 West Washington, Rm. W195
Indianapolis, IN 46204
(317) 232-2674

Useful Web Sites

<http://www.in.gov/labor>

<http://www.in.gov/labor/wagehour/constructionwage.html>

<http://www.access.gpo.gov/davisbacon/>