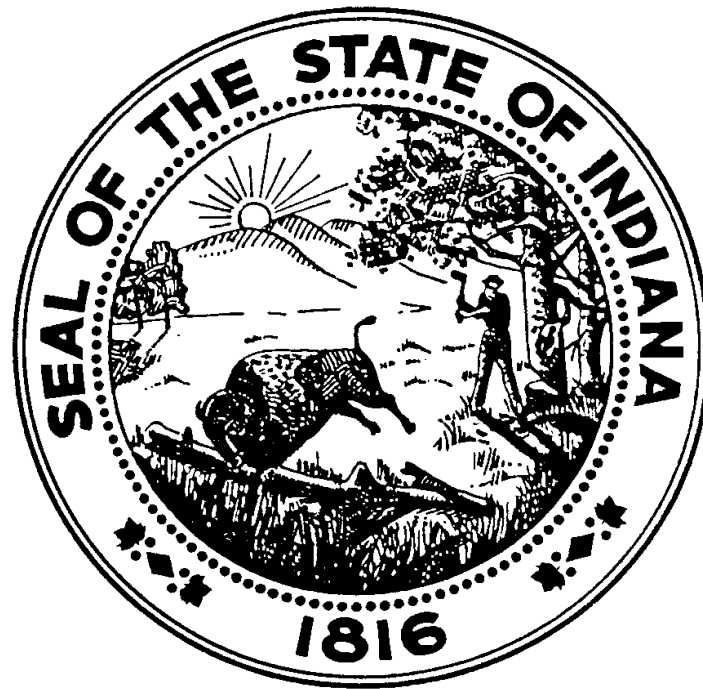


INDIANA DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION



COMMON CONSTRUCTION WAGE AUDIT PROCEDURES

MISSION STATEMENT

The Indiana Department of Labor (the department) is committed to ensuring all Hoosiers are paid for actual time worked. In accordance with that philosophy, the department works to see that all employees on Indiana's public works projects are paid the rates established under Indiana's Common Construction Wage Law, Ind. Code § 5-16-7. Upon receiving a complaint, the department will investigate and, if necessary, audit all contractors alleged to be in violation of the common construction wage law.

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General Information

All hours worked on the job site of a public works construction project costing at least \$150,000 are subject to Indiana's common construction wage law. If the project involves federal funds, it is subject to the U.S. Davis Bacon law.

On-site work and off-site work performed at a temporary location established for a project is considered subject to common wage. Off-site work at a permanent location is not subject to common wage.

All contractors are required to keep true and accurate payroll records.

The contractor may not pay less than the common wage rates established by the common wage committee for that project. Employees are free to bargain for a higher rate of pay and benefits and employers are free to pay a higher rate of pay and benefits.

Request of Records

The department will request all appropriate records pursuant to procedures and guidelines as set forth herein. These procedures will help ensure that all correspondence is sent in a timely and courteous manner allowing sufficient time for the production of documents and response to findings. All written communications from the department to employers will be sent via certified mail, return receipt requested. If necessary, the department may issue subpoenas to compel the production of documents.

Statement of Confidentiality

All records obtained throughout the audit process will be held in strict confidentiality, except for those which are not privileged under Indiana's open records law.

Rates and Applicability

Classification (Occupational Title)

The department will reference the *Indiana Department of Labor, Wage and Hour Division's Guide to Building Trades Classifications with Descriptions* and the U.S. Department of Labor's, *Dictionary of Occupational Titles* to determine the applicable classification for work performed.

Individuals may work in more than one classification. If they do, work performed in each classification is treated separately for the purposes of the audit. Excess pay in one classification cannot make up for deficiencies in another.

Apprentices

Employees who are enrolled in a skilled and registered training program are permitted to work at rates lower than the skilled rate as set forth by the wage scale. Only employees registered with the U. S. Department of Labor, Bureau of Apprenticeship Training (BAT) are recognized as apprentices. Apprentice programs entail: a progressive schedule of work processes, wages, and on-the-job-training supervised by a journey worker. Consult the BAT and the employer for the appropriate registration and percentage rate verification.

Note: employees who are not in an apprenticeship program but are doing the work of a skilled classification are assumed to have achieved journey status.

Foremen

Employees performing construction on public works projects are to receive the common wage rate of pay for the type of work performed regardless of their title or salary status. Employees who only perform supervisory tasks would not be covered by common wage.

Computation

Straight Time

An employer must pay at least the total wage rate listed on the common construction wage rate determination for the classification or trade that the employee is performing on the public works project. This can be done by:

1. Paying the employee the exact cash wage and fringe benefit as set forth by the wage scale;
2. Paying the total wage to the employee on his/her paycheck; or,
3. Paying the employee a combination of bona fide benefits plus cash to meet the total wage rate.

In a case where the wage scale does not specifically break out the base rate and fringe rate, it is at the employer's discretion to determine which portions of the wage are base wage and which are fringe. However, the base rate should not fall below the standard hourly rate the employee is paid on non-common construction wage projects. In addition, the wage payment policy must be in accordance with any applicable federal laws.

An employer may take credit for any bona fide fringe benefit that is accrued to the benefit of an employee (e. g. health insurance, paid vacation, paid holidays, pension, 401K plan, etc.). To convert any fringe benefit into an hourly fringe equivalent the following methodology should be used:

Total yearly value of benefit divided by 2080 (adjust for seasonal work)

Example:

$$\frac{\text{Vacation Days X 8 Hours Per Day X Normal Hourly Rate}}{2080 \text{ (Total Number of Hours Worked per Year)}} = \text{Hourly Fringe Benefit for Vacation}$$

After each fringe benefit is converted to an hourly cash equivalent, each is added together to get the total hourly fringe benefit package.

Overtime

Overtime is typically computed at time and a half for the base rate. All hours over forty hours a week are subject to overtime. Fringe benefits are always computed at straight time.

Multiple Worksites

In an instance where an employee works on more than one project in a given week, only the hours on the common construction wage project are used for audit purposes. However, overtime begins after the fortieth hour on all projects for the week in question.

Fringe Benefits

A fringe benefit is any form of payment other than cash that is accrued on the behalf of an employee and recompensed to the employee as a form of payment for services rendered.

The following are considered fringe benefits:

Uniforms: if the wearing of uniforms is optional and an employee exercises this option, the employer is credited the cost as evidenced by billing statements. No credit is given if uniforms are mandatory.

Insurance: if an employee is covered by an employer's insurance company, the amount the employer contributes on the employee's behalf is credited. This should be evidenced through monthly billing statements.

Expense Accounts, Lodging and Meals: if paid directly to a worker and not a third party, credit is granted. This should be evidenced through employer's records.

Transportation: if a mode of transportation is made available to an employee for personal use, the employer is credited. This should be evidenced through mileage log indicating personal miles. Credit will be given at the IRS per-mile allowance. If the vehicle is limited to only business use, no credit will be given.

Pensions: pensions will be credited to the employer if the contributions are made by the employer on the employee's behalf into a fund that may only be accessed by the employee. Provisions which allow for a reversion of contributions back to the "pool" should a worker leave

before being vested are acceptable. If the contributions can revert to the company, however, no credit is given. This should be evidenced through records from the independent fiduciary.

Holiday/Vacation/Sick Leave: Calculated at the employee's customary hourly rate, not the common construction wage. Credit is given for all vacation, holiday, and sick days given throughout the calendar year.

The following are **not** considered fringe benefits:

Not Covered: state and federal taxes, social security, unemployment insurance, worker's compensation insurance, cost of tools and safety equipment.

Completion of Audit

No Violation found

The department will inform the company of the results of the audit and thank them for their cooperation.

Violation(s) found

Restitution: upon discovery of a violation, the employer will be given the opportunity to make restitution to the affected employees. The department will verify these payments through canceled checks before closing the audit.

Prosecution: If the company refuses to make restitution, the audit results will be forwarded to the local county prosecutor for prosecution under Ind. Code § 5-16-7-3

The company will be always be afforded the opportunity to review an audit before the department makes its final determination.