

Emergency Rules

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 30—Division of Labor Standards
Chapter 3—Prevailing Wage Law Rules

EMERGENCY AMENDMENT

8 CSR 30-3.030 Apprentices and [Trainees] Entry-Level Workers. The division proposes to amend sections (1) and (2); rescind section (3); and renumber the remaining section.

PURPOSE: This amendment implements statutory changes to the Missouri Prevailing Wage Law enacted by the passage of HB 1729 (2018).

EMERGENCY STATEMENT: This emergency amendment incorporates and implements changes to the Missouri Prevailing Wage Law effected by House Bill 1729 (2018), effective August 28, 2018. Emergency amendment of this rule is necessary to preserve the compelling governmental interest of successfully implementing the changes to sections 290.210–290.340, RSMo made by House Bill 1729 (2018) regarding the applicable wage rates for public works within the state of Missouri and ensuring consistent implementation of law. Provisions of the existing rule are inconsistent with the provisions of sections 290.210–290.340, RSMo, effective August 28, 2018, and must be amended early to avoid confusion on the part of contractors, workers, and public entities. Emergency amendment of the rule will also assist contractors in avoiding potential civil liabilities and assist officers, officials, members, agents, and representatives of contractors and public entities in avoiding potential criminal penalties. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Labor and Industrial Relations believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed November 21, 2018, becomes effective December 1, 2018, and expires May 29, 2019.

PURPOSE: This rule sets forth the requirements for the payment of apprentice and entry-level worker wages for [workers] those employed on public works subject to the Prevailing Wage Law.

(1) Journeymen’s rate of pay shall be paid to all workers employed on public works construction except **entry-level workers or apprentices [and trainees]** registered and participating in apprentice [or trainee] programs registered with the United States Department of Labor, [Bureau of Apprenticeship and Training] **Employment and Training Administration**; and apprentices [and trainees] registered and participating in [apprenticeship and skill training] programs certified by the Secretary of the United States Department of Transportation as promoting equal opportunity in connection with federal-aid highway construction programs. **Such workers shall be paid not less than fifty percent (50%) of the applicable wage rate for a journeyman worker under the appropriate occupational title for a specific locality. In calculating the applicable wage rate for a journeyman worker, fringe benefits shall be included.**

(2) [Apprentices shall be permitted to work at less than the predetermined rate for the class or type of work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the United States Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The allowable ratio of apprenticeship to journeymen on the site of the construction for any class or type of work-

ers shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on the payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this rule, shall be paid not less than the applicable wage rate on the wage determination for the class or type of work actually performed. In addition, those apprentices performing work on the site of the construction who are in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the class or type of work actually performed. Every apprentice shall be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeyman hourly rate for the class or type of worker specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices shall be paid the full amount of fringe benefits listed on the wage determination for the applicable class or type of work performed. In the event the Bureau of Apprenticeship and Training withdraws approval of an apprenticeship program, the contractor shall no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the class or type of work performed until an acceptable program is approved.] As set forth in section 290.235, RSMo, “on-the-job training workers” are defined as follows:

(A) “Federally-registered apprentices” – Workers participating in programs administered by the United States Department of Labor and subject to their specific requirements (See 29 U.S.C. section 50 and 29 C.F.R. 29) and workers participating in programs administered by the United States Department of Transportation and subject to their specific requirements. (See 23 U.S.C. section 113 and 23 C.F.R. 230); and

(B) “Entry-level workers” – Any worker who is not a journeyman and who is not otherwise enrolled in a federally-registered apprenticeship program.

[(3) Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the United States Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee’s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the annual wage order for the applicable class or type of work performed. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the annual wage order for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize

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trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.]

[(4)](3) Workers employed on federal-aid highway construction projects may be paid at an apprentice or trainee rate of pay if enrolled in an apprenticeship or skill training program which has been certified by the Secretary of the United States Department of Transportation pursuant to 23 U.S.C. 113. In the event the Secretary of Transportation withdraws approval of a program, the contractor will no longer be permitted to pay workers less than the applicable predetermined rate for the work performed until an acceptable program is approved.

AUTHORITY: section 290.240, RSMo [1994] Supp. 2018. Original rule filed Aug. 24, 1990, effective April 29, 1991. Amended: Filed July 17, 1995, effective Jan. 30, 1996. Emergency amendment filed Nov. 21, 2018, effective Dec. 1, 2018, expires May 29, 2019. An emergency amendment and a proposed amendment covering this same material will be published in the January 2, 2019, issue of the Missouri Register.