

# *10 Things You Should Know About Prevailing Wages*

Presented by:

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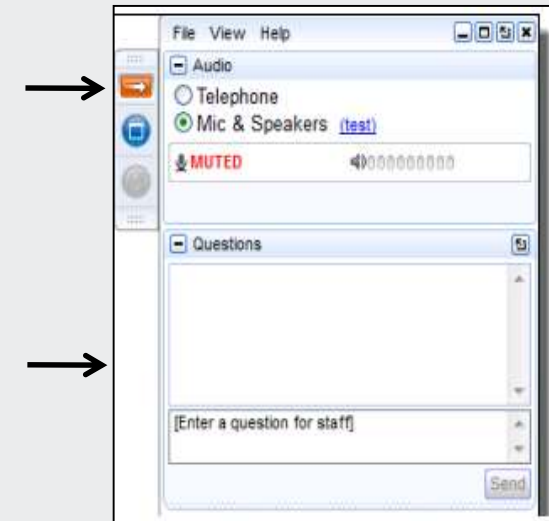


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# Where We're Going Today



- Webinar Operation - John Carpita  
5 minutes (+/-)
- Introductions - John Carpita  
3 minutes (+/-)
- Presentation by John, Reasa, and Laura  
50 minutes (+/-)
- Questions from Webinar Participants  
15 minutes (+/-)
- Wrap-up and Available Resources  
5 minutes (+/-)

# Introductions



**John Carpita**

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# Introductions



**Reasa Pearson**  
Industrial Relations Specialist  
Department of Labor and Industries  
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360-902-5331

# Introductions



**Laura Herman**

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# Agenda: The Top 10 Countdown



# 10

- **When do I include prevailing wage specifications in my bid specs and contract documents?**

# 9

- **Landscape Maintenance – Mowing the lawn – Spraying herbicides - Is it prevailing wage? If so, what scope of work is correct?**

# 8

- **What is a work week?**

# 7

- **What types of overtime can occur on public works?**

# 6

- **When we hire goats for vegetation management, are we required to pay the goats or the goat tender/shepherds prevailing wages?**

# Agenda: The Top 10 Countdown



# 5

- **How can a contractor amend an already approved Intent?**

# 4

- **Would the installation and organization of office furniture at City Hall be considered Public Works?**

# 3

- **How do we get Intents and Affidavits for janitors and other folks who are not contractors?**

# 2

- **How can we close out a project if a contractor or subcontractor has disappeared without filing their Affidavits?**

# 1

- **How can my agency track Intents and Affidavits for all of our projects?**

# # 10

## *When Do I Include Prevailing Wage Specifications In My Bid Specs & Contract Documents?*



- **Prevailing wages are required for work upon all public works and on building service maintenance contracts. RCW 39.12.020**
- **Contracts for construction, reconstruction, maintenance or repair of any public work must include prevailing wage specifications. RCW 39.12.030**
- **Contracts can be formed in many ways including phone calls and purchase orders.**

# # 10

## When Do I Include Prevailing Wage Specifications In My Bid Specs & Contract Documents?



- **The administrative rules provide a broad definition of “public work” for purposes of the prevailing wage law. WAC 296-127-010(7)(a)**
- **The prevailing wage definition of “public work” includes:**
  - **Work, construction, alteration, enlargement, improvement, repair, and/or demolition executed at a cost to the state or of any municipality**
  - **Work, construction, alteration, enlargement, improvement, repair, and/or demolition that is lien or charge on any property therein**
  - **The private projects covered by RCW 39.04.260 as a turn-key project caused by state or municipal agencies**
  - **Maintenance work performed by contract**
  - **Janitorial and building service maintenance work**
  - **The off-site manufacture of custom made items for the public work (the non-standard item made specifically for the public work)**

# # 10

## When Do I Include Prevailing Wage Specifications In My Bid Specs & Contract Documents?



- **The administrative rules require that the appropriate prevailing wage specifications be included in both the bid specifications and in the contract documents by the awarding agency and by any contractor hiring a subcontractor on the public work WAC 296-127-011(5)**
- **Include a schedule of the applicable prevailing wages in your bid and contract documents, or... *The bid and contract specifications may provide the required prevailing wage rate information in this alternate format:***
  - ❖ **Provide the URL to the Dept. of L & I's prevailing wage rates**
    - ❖ <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>
  - ❖ **Identify the exact wage publication date to use (the effective date)**
  - ❖ **State the county in which the public works project is located Note: off-site work will use the rates for the county where that off-site work is performed**
  - ❖ **Specify a copy is available for viewing in your office**
  - ❖ **Explain that your agency will mail a hard copy upon request**
  - ❖ **Retain a printed version of the rates as part of your records**

# # 10

## *When Do I Include Prevailing Wage Specifications In My Bid Specs & Contract Documents?*



**Q: Do these prevailing wage specifications apply to the work performed by the regular employees of our state or local government agency?**

**A: No. The regular employees of the state, county, municipality or political subdivision of the state are exempt from prevailing wage requirements. RCW 39.12.020(2)**

**Q: If I don't procure the work as a "public work" under chapter 39.04 RCW (such as a service contract) is it exempt from prevailing wages?**

**A: No. The method of procurement does not determine this coverage. If the contract is for construction, reconstruction, maintenance, repair, demolition, enlargement, improvement, or janitorial work prevailing wages and the prevailing wage specifications are likely required.**

# # 9 Landscape Maintenance



- **Landscaping Scope of Work – WAC 296-127-01346**
  - <http://apps.leg.wa.gov/wac/default.aspx?cite=296-127-01346>
- **Includes certain landscape construction and maintenance**
- **Does the specific work require prevailing wages?**
  - ❖ **Yes, if it's a contract for construction, reconstruction, maintenance or repair (such as mowing the lawn)**
  - ❖ **No, if the work is outside the prevailing wage universe of construction, reconstruction, maintenance or repair (such as silvaculture – agricultural forestry)**
- **This is a limited scope of work specific to certain instances of beautification of a plot of land by changing its natural features through the addition or modification of lawns, trees and bushes.**
  - ❖ **Section 1 of the scope contains limited inclusions**
  - ❖ **Section 2 of the scope has a broad list of exclusions**

# # 9 Landscape Maintenance



- Exclusions (and common errors) when applying landscaping wage rates
- **The tasks and activities listed below cannot use Landscape Construction rates:**
  - ❖ Activities / Task (including inclusions) – preparatory or prior to non-landscaping construction.
  - ❖ **Constructing roads, footpaths, or trails**
  - ❖ **Drainage systems for impervious surfaces**
  - ❖ **Installing pavers (such as a footpath or stepping stones)**
    - Pavers set in sand: Laborers (WAC 296-127-01344)
    - Pavers set in mortar: Brick Masons (WAC 296-127-01306)
  - ❖ **Tree falling or bucking**
  - ❖ **Erosion control activities**
  - ❖ **Utilities construction**

# # 8 What is a Work Week?



## Record Keeping / Workweek -- WAC 296-128-015



- **The employer must establish a workweek.**
- **A workweek is a fixed and regularly recurring period of 168 hours or 7 consecutive 24 hour periods.**
- **The workweek may begin any day of the week and any hour of the day.**
- **Example: Sunday through Saturday (a calendar week)**

# # 8 What is a Work Week?



- **Record Keeping / Workday -- WAC 296-128-015**
- **A workday is a fixed and regularly recurring period of 24 hours.**
- **The workday may begin at any hour of a calendar day and must begin at the same time each calendar day.**
- **For prevailing wage rate calculation purposes, a “calendar day” begins at 12:00 am and ends at 11:59 pm.**





➤ **The 40 hour workweek isn't the full story of overtime on public work**

➤ **Overtime on public works includes:**

## ❖ **Daily OT**

- **Over 8 hours in a calendar day on public work** RCW 49.28.010
- **Can be modified with a 4-10 agreement** RCW 49.28.065, WAC 296-127-022

## ❖ **Weekly OT**

- **Over 40 hours in a work week** RCW 49.46.130

## ❖ **Prevailing OT**

- **Overtime provisions may be published as part of the prevailing rate of pay for work in certain days or hours of work such as Saturdays, Sundays, or holidays** RCW 39.12.010(1)
- **When you look up wages, check the "Overtime" column to the right of the wage column**
- **If OT is required on holidays, also check the "Holiday" column for a list of the holidays**



- **Employers must keep pay records including overtime paid.**
  - RCW 49.12.050, RCW 49.46.070, WAC 296-126-050, WAC 296-126-214, & WAC 296-127-320
- **Payroll records on public works have additional provisions:**
  - ❖ **Certified payroll records on public works may be requested by an interested party**  
WAC 296-127-320
  - ❖ **Certified payroll records on public works must include copies of any 4-10 OT agreements** WAC 296-127-022(4), & WAC 296-127-320
- **If the employee is not paid hourly (salary, piece work, etc.), the hours of work still must be tracked (for purposes including OT) and the actual hourly rate paid on the public work must meet or exceed the hourly prevailing rate of pay** WAC 296-128-550
- **Pay statements required at time of the payment of the wages.** WAC 296-126-040



- The type of worker that must be paid prevailing wages on a public work is a **laborer, worker, or mechanic** RCW 39.12.010, RCW 39.12.020, & RCW 39.12.030
- The type of work that requires prevailing wage contract specifications under RCW 39.12.030 is “construction, reconstruction, maintenance or repair”
- Clearing vegetation often occurs preparatory to construction or it may be maintenance work – This vegetation clearing could be work within the scope of the state prevailing wage law
- However, L&I does not recognize goats as a **laborer, worker or mechanic**, therefore the goat will not need to be paid the prevailing rate of wage



- **What about the goat tender/shepherd? Do they get paid prevailing wages?**
- **L&I examines if this particular contracted work is work to perform any *construction, reconstruction maintenance or repair* (as those words are used in RCW 39.12.030) and if it is *the work of the laborer, worker, or mechanic***
- **For example, a security guard may not be a hands-on worker performing the work of a *laborer, worker or mechanic***
- **Similarly, the goat herder/tender/shepherd would not have to be paid prevailing wages so long as they are not performing the work of a laborer, worker, or mechanic that is directly related to a public work and necessary to perform that public works contract.**
- **The goat tender here is very close to, but not quite into the prevailing wage requirements under chapter 39.12 RCW**



- **What if the goat tender is erecting a temporary fence on the public work?**
- **The prevailing wage analysis is fact sensitive and a change in facts like this can change the answer.**
- **Erecting, moving or taking down a temporary fence is within the prevailing wage universe of construction, reconstruction, maintenance or repair – Such work requires prevailing wages**
- **The scope of work for Fence Erectors, WAC 296-127-01328, is correct for the temporary chain link fencing you see at many public works job sites.**

# # 5 *How Can a Contractor Amend an Already Approved Intent?*



## **Intent Filed Incorrectly**

- **What do I do if a contractor made a mistake on their Intent and it is already approved?**
  - ❖ **Leave the form alone,**
  - ❖ **Add a note, or**
  - ❖ **File a new form**
  
- **The decision will be tied to the mistake made and whether they are the prime or a sub on the project.**
  
- **The decision is also be tied to your internal agency policies.**

# # 5 How Can a Contractor Amend an Already Approved Intent?



Incorrect Information on Intent	Action to Take – Prime Contractor	Action to Take – Subcontractor
<b>Project Information:</b> <ul style="list-style-type: none"> <li>• Name of Project</li> <li>• Contract Number</li> </ul>	<b>New filing when this information is incorrect</b> <i>Remember, all the subcontractor forms link to the prime contractor's Intent – Any mistakes on the prime's form get repeated over and over</i>	<b>New filing when the sub linked to an incorrect Intent for the prime</b> Ask for a note to be added to the form, when only the contract number is incorrect
Awarding Agency Information	<b>New filing</b>	<b>New filing</b>
County (incorrect or a county is not listed)	<b>New filing</b>	<b>New filing</b>
Contract Amount	None – This amount can be changed on the Affidavit	None – This amount can be changed on the Affidavit
Bid Due Date	<b>New Filing</b>	<b>New Filing</b>
Award Date	<b>New Filing</b>	<b>New Filing</b>
Start Date	None – This date can be changed on the Affidavit	None – This date can be changed on the Affidavit
"Yes" or "No" to using Subcontractors – but then the answer changes	None – The answer can be changed on the Affidavit	None – The answer can be changed on the Affidavit
"No" to having employees (when employees are used)	<b>New filing</b>	<b>New filing</b>
"Yes" or "No" to Owner/Operator performing work	None – The answer can be changed on the Affidavit	None – The answer can be changed on the Affidavit
Incorrect Trade/Occupation or omitted a Trade/Occupation	None – The listing can be changed on the Affidavit	None – The listing can be changed on the Affidavit

# # 5 How Can a Contractor Amend an Already Approved Intent?



## Intent Filed Incorrectly

- A new filing will involve a new filing fee
- A note can be added to the form explaining a minor discrepancy.
- The contractor who filed the Intent or Affidavit requiring an explanatory needs to make the request by email to [PW1@Lni.wa.gov](mailto:PW1@Lni.wa.gov)
- The request should be brief and concise (the entire email will be added as the note) and state the Intent or Affidavit form number

# # 4 *Would the Installation & Organization of Furniture at City Hall be considered a Public Work?*



- **Furniture and office cubicles – Does this work require prevailing wages?**
- **Prevailing wage policies and determinations:**  
<http://www.lni.wa.gov/TradesLicensing/PrevWage/Policies/default.asp>
- **Office Cubicles and furniture policy:**  
<http://www.lni.wa.gov/TradesLicensing/PrevWage/files/Policies/CubiclePolicy.pdf>
- **For this analysis (is this public work that requires prevailing wages?), we will use the broader prevailing wage definition of “public work” (this does not affect which procurement process is proper)**

# # 4 *Would the Installation & Organization of Furniture at City Hall be considered a Public Work?*



- **Thought process: Is this work to perform any construction, reconstruction, maintenance or repair?**
- **Prevailing wages are required on contracts to perform construction, reconstruction, maintenance or repair**
- **If the moving, installation and organizing of furniture is part of a public works project (such as replacing the floor covering), the moving of furniture for that public work is work upon the public work that requires prevailing wages**
- **Does it make a difference if the furniture is attached to the structure? *Yes!* That attachment enters into the universe of construction, reconstruction, maintenance or repair that requires prevailing wages**

# # 4 *Would the Installation & Organization of Furniture at City Hall be considered a Public Work?*



<http://www.lni.wa.gov/TradesLicensing/PrevWage/files/Policies/CubiclePolicy.pdf>

This policy addresses prevailing wage requirements for the assembly, installation, disassembly and delivery of cubicles, furniture, modular furniture systems, partitions or a similar product.

The moving, transport, delivery, assembly and placement of furniture (chairs, tables, cabinets, modular work stations, etc.) does not require the payment of prevailing wages with the following three exceptions:

1. Attachment to a building or other structure requires the payment of prevailing wages. Electrical work (including connecting electricity between modular work station panels), plumbing work and attachment of furniture (work station panels, stadium seats, etc.) are examples of attaching furniture to a structure.
2. Disassembly, moving and reassembly necessitated by a public works contract. For example, furniture sometimes must be moved in order to accomplish work such as painting, floor covering, ceiling work, etc. This furniture-handling must be paid at prevailing wage rates.
3. The transport and delivery of nonstandard items to be installed as fixtures including custom-fabricated furniture made and installed to contract specifications must be paid at prevailing wage rates.

# # 3 *How Do We Get Intents & Affidavits for Janitors & Other Folks Who Are Not Contractors?*



- **The Intents and Affidavits are required from the contractors and subcontractors performing public work or public building service maintenance contracts** RCW 39.12.040
- **We have already discussed the much broader prevailing wage definition of “public work”** WAC 296-127-010(7)(a)
- **The prevailing wage definition of a “contractor” is a broader definition than that used for the contractor registration and licensing statutes** WAC 296-127-010(5)

# # 3 *How Do We Get Intents & Affidavits for Janitors & Other Folks Who Are Not Contractors?*



- **When work that requires prevailing wages under chapter 39.12 RCW is contracted, the contractors need to file Intents and Affidavits.**

RCW 39.12.040

- **Some contractors, are not required to be registered or licensed under chapters 18.27 or 19.28 RCW**
- **Such contractors will file their Intent and Affidavit forms without any contractor registration number**

# # 3 *How Do We Get Intents & Affidavits for Janitors & Other Folks Who Are Not Contractors?*



- **The public contract awarding agency needs to be careful to only make payments in compliance with RWC 39.12.040. Otherwise, RCW 39.12.042 makes the public agency liable for any unpaid worker wages**
- **Getting paid is a motivator for the contractor to file the Intent**
- **Asking the contractor to file the missing form, and explaining the limit on payment often gets them to file the Intent**

# # 3 How Do We Get Intents & Affidavits for Janitors & Other Folks Who Are Not Contractors?



- **Wanting to be paid for their work can be a powerful motivator for filing the Intent.**
- **Use that motivator to get the Intent!**
- **What about the Affidavit?**
- **Retainage held under RCW 60.28.011 cannot be released without the approved Affidavit - *but not all contracts are required to hold retainage***
- **There are fines and penalties for a failure to file or false filing of an Intent or an Affidavit** RCW 39.12.050

# # 3 *How Do We Get Intents & Affidavits for Janitors & Other Folks Who Are Not Contractors?*



- **To obtain the Affidavit, make the contractor aware of the \$500 fine for a failure to file and the potential for debarment for multiple violations (in a five year period of time) - often this motivates the contractor to file the Affidavit**
- **If there is still no Affidavit, notify L&I so we can take enforcement actions.**
- **The next question in the countdown discusses the filing on behalf of option for obtaining a missing Affidavit – Sometimes, this process can provide your solution for the missing Affidavit**

## # 2 *How Can We Close Out a Project if a Contractor or Subcontractor Disappeared Without Filing Their Affidavit?*



### **Failure to File the Affidavit?**

#### **Filing On Behalf Of (FOBO):**

By statute and policy, the hiring contractor can assume liability for any unpaid wages, *document an allowable basis for the FOBO*, and get a FOBO Affidavit.

The policy is on the L&I web site at:

<http://www.lni.wa.gov/TradesLicensing/PrevWage/files/Policies/FOBOPolicy.pdf>

Because FOBOs involve a compliance investigation (failure to file) , they take longer to process. Please do encourage the hiring contractor to request the FOBO ASAP.

# # 1 *How Can My Agency Track Intents & Affidavits for All Our Projects?*



## OVERVIEW – THE AWARDING AGENCY PORTAL TO PWIA

**On-line system: Prevailing Wage Intent and Affidavit (PWIA)**

**Secure portal allowing awarding agencies to easily:**

- **View their projects**
- **View the project structure**
- **See all intents and affidavits filed on the project**
- **View certified payroll reports entered in the new system**



# CREATING A PROJECT

Public Works **Combined Form Projects** [+ Create Project](#)

Public Works

Please choose if you would like to create a regular public works project, or a combined form project that will use the alternate filing process for smaller projects.

**Public Works Project**  
Public works projects can be for any amount and have a prime contractor with possibly one or many subcontractors.

[Create Public Works Project](#)

**Combined Form Project**  
Combined form projects can be up to \$35,000 and have only one contractor without any subcontractors.

[Create Combined Form Project](#)

[Cancel](#)

# # 1 How Can My Agency Track Intents & Affidavits for All Our Projects?



## SEARCH AND VIEW PROJECTS

Search Public Works Projects

Project Name

Contract Number

Contract Amount

Prime's Intent Status

Prime Contractor Name


Prime Contractor UBI

Bid Date From  To

Award Date From  To

Show  rows

Showing records 1 to 1 of 1

Contract	Project	Contract Amount	Bid Date	Award Date	Prime's Intent Status	Actions
1863	Judkins Park Skatespot Development GRINDLINE SKATEPARKS INC, UBI: 602196010	 \$347,760	7-18-2012	8-16-2012	Intent approved by L&I	<input type="button" value="View"/>

**View All Projects or Search for Specific Projects**

# # 1 How Can My Agency Track Intents & Affidavits for All Our Projects?



## PROJECT STRUCTURE

Project Structure + expand | - collapse

- GRINDLINE SKATEPARKS INC (prime contractor)
  - Intents (1)
    - 532430 \$347,759.96 - Approved 9-6-2012
  - Affidavits (1)
    - 443504 \$347,759.96 - Approved 4-5-2013
  - Subcontractors (5)
    - BENJAMIN ASPHALT INC
      - Intents (1)
        - 555363 \$6,315 - Approved 12-13-2012
      - Affidavits (2)
        - 438441 \$6,315 - Approved 12-13-2012
        - 455357 \$6,315 - Approved 12-13-2012
    - CADMAN INC.
      - Intents (1)
        - 543776 Time and Materials - Approved 11-13-2012
    - PARKWORX LLC
      - Intents (1)
        - 535724 \$23,025 - Approved 10-9-2012
      - Affidavits (1)
        - 444417 \$23,025 - Approved 4-4-2013

**Missing Affidavit**

# # 1 How Can My Agency Track Intents & Affidavits for All Our Projects?



## VIEW FORMS

Intent 555363

### Contractor Information

Name	BENJAMIN ASPHALT INC
Phone Number	(425) 333-5050
Address Line 1	PO BOX 1237
Address Line 2	
Email Address	Carolm@benjaminsphalt.com
CompanyUBINumber	601381803

Int...le



# # 1 How Can My Agency Track Intents & Affidavits for All Our Projects?



## INTENTS NOT FILED ALERTS

Project Contractor Alerts Intents Not Filed Affidavits Not Filed Notice of Completion

### Intents Not Filed

View contractors who haven't filed their Intent for the project. Contractors shown here were either listed on a hiring contractor's Affidavit or listed as the hiring contractor on a subcontractor's Affidavit and haven't filed their Intent.

Show 15 rows

Showing records 1 to 1 of 1

◀ Previous

Next ▶

Contractor	WA UBI No.	License ID	Description
GRASS MASTER	601517336	GRASSM*066DD	Based on the affidavit 446415 this contractor did not file an intent

# # 1 How Can My Agency Track Intents & Affidavits for All Our Projects?



## AFFIDAVITS NOT FILED ALERTS

Project Contractor Alerts Intents Not Filed Affidavits Not Filed Notice of Completion

### Affidavits Not Filed

Every contractor that files an intent is expected to file an affidavit for that intent. This is a list of contractors who haven't yet filed a matching affidavit.

Show 15 rows Showing records 1 to 1 of 1 Previous Next

Contractor	Intent ID	WA UBI No.	License ID	L&I Account ID
Cadman Inc.	543776	176000099		10051300

# # 1 How Can My Agency Track Intents & Affidavits for All Our Projects?



## NOTICE OF COMPLETION

- Populated with information on intents and affidavits.
- Creates list of contractors on the project with their UBI Number and Affidavit Id.

Subcontractor	UBI Number	Affidavit ID
PARKWORX LLC	603103561	444417
W S CONTRACTORS LLC	602682742	444411
TOTAL LANDSCAPE CORPORATION	600622827	446415
BENJAMIN ASPHALT INC	601381803	438441

# # 1 How Can My Agency Track Intents & Affidavits for All Our Projects?



## NOTICE OF COMPLETION

- Complete the form and submit to all three agencies
- Or, select the agency you want

**Notice of Completion Recipients**

Send the Notice of Completion to the following recipients:  Select all recipients

 <input checked="" type="checkbox"/> Department of Revenue Public Works Section pwc@dor.wa.gov	 <input checked="" type="checkbox"/> Labor & Industries Contract Release contractrelease@lni.wa.gov	 <input checked="" type="checkbox"/> Employment Security Department Registration, Inquiry, Standards & Coordination Unit publicworks@esa.wa.gov
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# 10 Things You Should Know About Prevailing Wages



*Thanks for Joining Us Today!!!*





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