



MONTANA
ADMINISTRATIVE
REGISTER



DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-395.1

Summary

Prevailing wage rate adoption for 2026

Hearing Date and Time

Tuesday, December 30, 2025, at 11:00 a.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/86071306749>

Meeting ID: 860 7130 6749; Password: 5677006503

Dial by Telephone: +1 646 558 8656

Meeting ID: 860 7130 6749; Password: 5677006503

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, January 2, 2026, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Tuesday, December 23, 2025, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

- (1) The commissioner's determination of minimum wage rates, including fringe benefits for health and welfare, pension contributions and travel allowance, by craft, classification or type of worker, and by character of project, are adopted in accordance with the Montana Administrative Procedure Act and rules implementing such act.
 - (a) A notice of proposed adoption of the commissioner's determination is published in the Montana Administrative Register approximately 45 to 60 days prior to adoption.
 - (b) Adopted wage rates are effective until superseded and replaced by a subsequent adoption.
 - (c) The wage rates applicable to a particular public works project are those in effect at the time the bid specifications are advertised.
 - (d) The wage rates proposed and the wage rates adopted are incorporated by reference in respective notices published in the Montana Administrative Register.
 - (e) The current building construction services rates are contained in the ~~2025~~ 2026 version of the "Montana Prevailing Wage Rates for Building Construction Services" publication.

- (f) The current nonconstruction services rates are contained in the ~~2025~~ 2026 version of the "Montana Prevailing Wage Rates for Nonconstruction Services" publication.
 - (g) The current heavy construction services rates are contained in the ~~2025~~ ~~(revised)~~ 2026 version of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication.
 - (h) The current highway construction services rates are contained in the ~~2025~~ ~~(revised)~~ 2026 version of the "Montana Prevailing Wage Rates for Highway Construction Services" publication.
- (2) The commissioner maintains a mailing list of interested persons and agencies. A copy of any notice, proposed rate of wages, adopted rates, wages or other information are distributed to each addressee. All others may obtain a copy or be included on the mailing list upon request to the address listed in (3). Copies of adopted wage rates are available at reproduction cost for a period of five years following their effective date.
 - (3) The standard prevailing rates of wages publications are adopted and incorporated by reference. Copies of the rates are available upon request from the Operations Bureau, Employment Standards Division, Department of Labor and Industry, 301 S. Park Avenue, P.O. Box 8011, Helena, MT 59604, (406) 444-6543, or ~~online at <https://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates/>~~ on the department's website.

Authorizing statute(s): 2-4-307, 18-2-409, 18-2-431, MCA

Implementing statute(s): 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

Reasonable Necessity Statement

There is reasonable necessity to update the prevailing wage rates for building construction services, heavy construction services, highway construction services, and nonconstruction services following the annual survey of wages that is provided for in 18-2-413, 18-2-414, and 18-2-415, MCA, respectively. The department surveys employers and applies the methodologies provided by ARM 24.17.119 through 24.17.122 to determine those prevailing wage rates.

24.17.316 WAGE AVERAGING PROHIBITED

- (1) A contractor, subcontractor or employer may not reduce an employee's regular rate of pay for work on projects not subject to the prevailing wage rate laws when the reduction in pay has the effect of the employee not receiving the prevailing rate of wage for work performed on the public works project.
- (2) As used in this rule, "regular rate" has the same meaning as that defined in ARM ~~24.16.2512~~ 24.16.3016, incorporating by reference 29 CFR 777.108, et seq.
- (3) When making a determination of whether a contractor, subcontractor or employer has reduced an employee's regular rate in violation of (1) of this rule, the department shall consider:
 - (a) the timing of the wage rate reduction;
 - (b) whether the wage rate reduction was made pursuant to an established plan;
 - (c) whether the wage rate reduction is applied equally to all employees in similar job classifications;
 - (d) whether the wage rate reductions are applied to employees employed on public works projects, but not to employees employed only on projects not subject to the prevailing wage rate laws; and
 - (e) other considerations as the facts and circumstances of a particular matter may reveal.

Authorizing statute(s): 18-2-431, MCA

Implementing statute(s): 18-2-412, MCA

Reasonable Necessity Statement

There is reasonable necessity to amend this rule because the stricken cross-reference was repealed. Instead, the definition of "regular rate" is adopted in ARM 24.16.3016(1)(d) through the adoption of corresponding CFR provisions.

24.17.901 CONTRACT INELIGIBILITY/DEBARMENT

- (1) After notice and an opportunity to be heard, the commissioner, acting by and through the department, may determine that a contractor, subcontractor or employer is debarred or ineligible to receive public works contracts for a period of up to three years. A contractor, subcontractor or employer, regardless of entity form, will be determined to be ineligible if the employer aggravatedly, willfully, or with gross negligence violates the provisions of Title 18, chapter 2, MCA, including but not limited to, actions such as:

- (a) failing or refusing to pay the prevailing rate of wages to employees employed on public works projects;
 - (b) failing to respond to inquiries from the department to supply necessary payroll information and generally failing to cooperate in the investigation of the prevailing wage investigation; or
 - (c) submitting falsified payroll information to the department.
- (2) Before placing a contractor, subcontractor or employer on the ineligible debarment list, the commissioner shall serve a notice of intended action upon the contractor, subcontractor or employer in the same manner as service of a summons or by certified mail, return receipt requested. The notice will include:
 - (a) a reference to 18-2-432, MCA;
 - (b) a short and concise statement of the matter(s) constituting a violation of Title 18, chapter 2, MCA;
 - (c) a statement of the party's right to request a contested case hearing and to be represented by counsel at such hearing, provided that any such request must be received by the commissioner in writing within 20 days of service of the notice;
 - (d) a statement that the party's name will be published on a list of persons ineligible to receive public works contracts or subcontracts, unless the party requests a contested case hearing; and
 - (e) a statement that failure to make written request to the commissioner for a contested case hearing within the time specified constitutes a waiver of the right to a hearing.
- (3) If a contractor, subcontractor or employer makes a timely request for a contested case hearing, a hearing will be held in accordance with the Montana Administrative Procedure Act.
- (4) Upon the failure of the contractor, subcontractor or employer to request a contested case hearing within the time specified, the commissioner or the commissioner's designee shall enter an order supporting the ineligibility action.
- (5) Debarment applies both to a firm and individuals. In the case of a firm, it may be applied against any or all businesses in which a firm has involvement (i.e., joint ventures), or over which it has ownership or control (i.e., subsidiaries). In the case of an individual, debarment may be applied to and enforced against any and all businesses in which the individual has any level of interest, ownership or control.
- (6) If debarred by the federal government or any Montana government agency, a person may not bid on or otherwise participate in any public works project or contract in any capacity (prime contractor, subcontractor, supplier, etc.), including

as a separate contractor, until after the completion of the entire debarment period, whether or not the department debar the individual. Debarment proceedings may continue even if the person ceases doing business during the proceedings.

- (7) If an individual is debarred by any agency of the federal government for any period, the department may debar the individual for a period up to that set by the federal government without need for further debarment proceedings. The only evidence required in a debarment hearing in a case based on an existing debarment will be a certified copy of an order, agency letter, or other final action declaring the debarment in the other jurisdiction. Presence of a certified order does not preclude the individual from presenting evidence to dispute the proposed debarment or its length. If the individual is debarred by a branch or agency other than of the Montana or federal governments (i.e., another state, a county, etc.), or if the department may wish a debarment period exceeding that set by the other Montana agency or federal government, the department must hold debarment proceedings before increasing the debarment period.
- (8) As used in this rule and ~~ARM 24.17.817~~, the following definitions apply:
 - (a) "Aggravatedly" means circumstances that, in conjunction with an act or omission in violation of Title 18, chapter 2, MCA, serve to increase the magnitude, enormity or reprehensibleness of the offense, violation, injury or damage.
 - (b) "Debarment" is an action taken or decision made by an agency, other than temporary determinations of nonresponsibility or suspension, that excludes a person from bidding on or participating in public works projects and contracts.
 - (c) "Substantial financial interest" means:
 - (i) an ownership interest, whether directly or indirectly, of at least 20% of the entity; or
 - (ii) control over the entity, whether directly or indirectly applied, that is greater than any other single person or entity with an ownership interest.
 - (d) "Willfully" means that the act is done or omitted with a purpose or willingness to commit the act or make the omission. It does not require any intent to violate the law or to gain an advantage. The term has the same meaning as provided by 1-1-204, MCA.
 - (e) "Gross negligence" means an action involving negligence in excess of ordinary negligence.

Authorizing statute(s): 18-2-431, MCA

Implementing statute(s): 18-2-432, MCA

Reasonable Necessity Statement

There is reasonable necessity to strike the cross reference to ARM 24.17.817 because that rule was repealed in 2022.

Small Business Impact

Construction companies engaged in public works contracts and government entities will be impacted by this rulemaking. There is not expected to be a significant or direct impact on small businesses based on these amendments. Prevailing wage rates are set based on statutorily required and specified survey processes to reflect the wages paid. As a result, the wages adopted are expected to align generally with wages previously paid. Documentation relating to the wage rates is available from the department on request.

Bill Sponsor Notification

The bill sponsor contact requirements do not apply.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner