

This is an amendment to 11.1.2 NMAC, Sections 12, 13, 14 and 17 effective 06/21/2022

11.1.2.12 PREDETERMINATION OF WAGE RATES:

A. Not later than ~~[July 31]~~ May 31 of each year, labor organizations and their signatory employers shall submit to the director signed copies of their current collective bargaining agreements that will be in effect during any portion of the following calendar year. Each labor organization or signatory employer submitting a collective bargaining agreement shall include a separate list that sets forth the wage and fringe rates as well as the apprenticeship contributions for all trades covered by the collective bargaining agreement, listed by type A, B, C, and H construction project, as identified in Section 11.1.2.10 NMAC above. In addition, interested parties may submit to the director for consideration, no later than ~~[July 31]~~ May 31 of each year, collective bargaining agreements, interested party wage and fringe rate survey data, other written data collected during the preceding 12 month period, personal opinions and arguments supporting changes to the prevailing wage rates and prevailing fringe benefit rate determination. Submissions must be made as provided in the following subparagraphs:

(1) Collective bargaining agreements submitted to the director must be accompanied by a signed statement which is certified as true and correct to the best of the knowledge and belief of the person preparing the statement, under penalty of perjury, and which:

(a) certifies that the agreement filed is fully executed and in effect, unless it is a signed original agreement or photocopy thereof, or a printed copy of a fully executed agreement showing the names of the signatory parties or associations except in the case of a printed agreement the director may require certification; and

(b) names or otherwise identifies all New Mexico counties within the jurisdiction of the local union or unions signatory to the agreement;

(2) Interested parties wishing submit information for employees not covered by a collective bargaining agreement must provide the following information to the director: name and address of the employer or interested party, the number of hours worked by workers in each classification, the classification of each worker, the hourly rate actually paid each worker, the project type, the fringe benefit rate actually paid each worker, and, if practical, the counties in which work was performed. The information filed with the division must be accompanied by a signed statement which is certified as true and correct to the best of the knowledge and belief of the person preparing the statement, under penalty of perjury. The director shall consider any information provided during the 12 month period preceding ~~[July 31]~~ May 31 of each year. Information from sources other than applicable collective bargaining agreements shall only be considered consistent with the provisions of the PWMWA.

B. In setting the general prevailing wage rate, the director shall give due regard to information obtained during the director's determination of the prevailing wage rates and the prevailing fringe benefit rates and may consider the written data, personal opinions, and arguments of interested parties where no applicable collective bargaining agreement is submitted.

C. If there are no collective bargaining agreements that exist in the locality on which the director can rely in setting the prevailing wages and fringe benefits, the director shall determine the prevailing wage rates and prevailing fringe benefit rates in the nearest and most similar neighboring locality and use the rates from the adjoining locality where a collective bargaining agreement exists and is in effect.

D. In order to protect the privacy of employees with respect to whom any wage information pertains, except pursuant to lawful process or to the exercise of the director's enforcement obligation under the PWMWA, neither the labor and industrial commission nor the director or any member of the director's staff, shall disclose to any person, an employee's social security number or date of birth with respect to whom wage information is received, submitted, or otherwise in the possession of the director, without having received prior written consent of the employee.

E. In order to protect the privacy of employees with respect to whom any wage information pertains, except pursuant to lawful process or to the exercise of the director's enforcement obligations under the Public Works Minimum Wage Act, neither the labor and industrial commission nor the director or any member of the director's staff, shall disclose to any person the employee's social security number or date of birth with respect to whom wage information is received, submitted, or otherwise in the possession of the director without having received the prior written consent of the employee.

[11.1.2.12 NMAC- Rp, 11.1.2.12 NMAC, 12/30/2016; A, 11/10/2020; A, 06/21/2022]

11.1.2.13 PROCEDURE FOR ADOPTION OF WAGE RATES:

A. When the director has determined the proposed prevailing wage and fringe benefit rates applicable in the state for public works projects in accordance with 11.1.2.12 NMAC, the proposed prevailing wage and fringe benefit rates shall be subject to a public hearing before the secretary or a hearing officer designated by the secretary.

B. The time, date and place of said public hearing will be established at the discretion of the secretary. Notice of the subject matter, the action proposed to be taken, the time, date and place of the public hearing, the manner in which interested persons may present their views, and the method by which copies of the proposed rates may be obtained, shall be published once at least 30 days prior to the hearing date in a newspaper of general circulation. Such notice shall also be mailed or emailed by the director to all known interested parties at least 30 days prior to the hearing date along with a copy of the proposed rates. ~~[Interested parties shall include without limitation the state highway department, incorporated cities and counties and their respective school boards or authorities, state institutions of higher learning and other contracting agencies which with regular frequency undertake public works projects subject to the Act, and all other persons (including labor organizations, contractors and contractor associations) who make written request to the director to receive notice as provided in this section.]~~ Any objections to the proposed prevailing wage rates may be communicated to the director by an interested party either orally at such public hearing or in writing delivered to the director or the director's designee on or before the date of such public hearing.

C. The director shall consider fully all data, views, or arguments submitted in support of or in opposition to the proposed prevailing wage and fringe benefit rates before deciding to approve, modify or reject the prevailing wage and fringe benefit rates proposed by the director for public works projects.

D. The adoption of wage and fringe benefit rates by the director shall constitute an "action" which shall be appealable to the labor and industrial commission, sitting as the appeals board, pursuant to Subsection A of Section 13-4-15 NMSA 1978, and as described in 11.1.2.17 NMAC.

(1) Consistent with the right of appeal granted to any interested person by Section 13-4-15, NMSA 1978, the director shall not adopt the issued wage rates for 15 days following their issuance, while an appeal, if any, to the labor and industrial commission, sitting as the appeals board, is pending, or before the effective date of the decision by the labor and industrial commission pursuant to Subsection D of 11.1.2.17 NMAC.

(2) The labor and industrial commission is designated, pursuant to Section 9-26-6, NMSA 1978, to hear appeals of the adoption of wage rates and shall conduct such appeals and render its decision pursuant to the procedures described in 11.1.2.17 NMAC.

E. The adopted prevailing wage rates shall not be effective until they have been filed in accordance with the State Rules Act.

[11.1.2.13 NMAC- Rp, 11.1.2.13 NMAC, 12/30/2016; A, 11/10/2020; A, 06/21/2022]

11.1.2.14 EFFECTIVE DATE OF WAGE RATES:

A. The wage and fringe benefit rates ~~[become effective once they are adopted and published, in accordance with 11.1.2.13 NMAC.]~~ are effective as of January 1 following adoption and publication.

B. If an appeal is filed pursuant to Subsection D of 11.1.2.13 NMAC, then the director shall adopt the wage rates, as modified by the labor and industrial commission, following expiration of the stays provided by Paragraph (2) of Subsection D of 11.1.2.13 NMAC.

C. Except as provided in Subsection D of 11.1.2.14 NMAC, each discrete public works project shall be governed by one wage and fringe rate decision, which shall remain effective for the duration of the project.

D. New wage rate decisions shall be issued for all contracts on which bids have not been submitted before the date on which a new wage determination becomes effective provided that any such new decision shall not supersede any previously issued decision unless such new decision is received by the contracting agency at least 10 days prior to the date on which bids are to be submitted. Wage and fringe rate corrections or changes to decisions rendered shall not be issued without allowing the requesting agency at least 10 days' notice before the date bids are to be submitted.

E. All decisions will remain in effect until their expiration date or until modified, corrected, rescinded or superseded by the director.

F. The procurement of services pursuant to state price agreements or other methods that serve to establish long-term pre-determination of the price of services shall alter the obligations of contracting agencies and contractors to adhere to the requirements of the PWMWA and these regulations.

[11.1.2.14 NMAC - Rp, 11.1.2.14 NMAC, 12/30/2016; A, 11/10/2020; A, 06/21/2022]

11.1.2.17 PROCEDURE FOR DISPOSITION OF APPEALS:

A. Purpose and scope: The regulations contained in this part set out the procedures by which appeals may be filed, and by which the labor and industrial commission, sitting as the appeals board, hears and decides appeals pursuant to Section 13-4-15 NMSA 1978. The intent of this part is to clarify and implement the responsibilities and rights of all interested parties as set out in the Public Works Minimum Wage Act, Sections 13-4-11 through 13-4-17 NMSA 1978

B. Filing the appeal:

(1) The notice of appeal shall, consistent with Subsection A of Section 13-4-15 NMSA 1978, be filed with the director within 15 days after a determination, finding, rule, or regulation has been issued or any other action taken, and notice of the action has been given pursuant to Section 16 of 11.1.2 NMAC of these rules and regulations or otherwise. ~~[The filing of the notice of appeal shall immediately stay the effectiveness of the determination, finding or action appealed from which the appeal was taken until the appeal is resolved and a written decision is prepared and served by the labor and industrial commission.]~~

(2) The appellant shall, within 10 days after filing the appeal, file with the labor and industrial commission, in care of the office of the director, a concise statement of all determinations, findings or actions of the director with which the appellant disagrees and from which the appeal is taken, and a brief setting forth the reasons and authorities on which the appeal is based

(3) Within 10 days after the filing of the statement and brief, the director shall file a response setting forth the director's justification and authorities relied upon for the determination, findings, or action being appealed from which the appeal is being taken.

(4) Any interested person other than the appellant, directly affected by the determination, finding or action of the director, such as, contractors, contracting agencies, labor organizations and contractors' associations, may intervene and file a statement and brief, and may participate in the hearing conducted by the labor and industrial commission.

(5) The commission shall furnish copies of the statements, briefs, and answers filed in the appeal to the attorney general, and may request the attorney general to appoint independent counsel to represent it at the hearing.

C. Conducting the hearing:

(1) The hearing shall be conducted by the commission within 40 days after the filing of the appeal.

(2) The commission shall decide all matters brought before it by a quorum which shall consist of two members. Prior to a hearing, the commission shall designate a chairman who shall conduct the meetings and rule on the admissibility of all evidence submitted by and objections of any participant.

(3) The commission shall not be required to follow strict rules of evidence and shall have authority to admit any evidence which it concludes has probative value, but irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(4) The commission shall make its decision as to the validity or invalidity of the determination, finding, or action of the director based on substantial evidence on the whole record made before it. The appellant shall present his case first, subject to opportunity to present evidence in rebuttal.

(5) The appellant shall present evidence first, any interested party shall present its evidence next and after the director has presented evidence in support of the determination, findings or action that is the subject of the appeal, the appellant shall have the opportunity to present evidence in rebuttal of any evidence presented by the director or any interested person.

(6) Each party shall be given an opportunity by the commission to make a closing statement in support of the position of the party regarding the determination, findings, or action that is the subject of the appeal.

(7) The commission may adjourn, continue, or reschedule the hearing on the appeal as deemed necessary to afford all parties a fair and reasonable opportunity to be heard.

D. Decision by the labor and industrial commission:

(1) The commission shall, pursuant to Subsection C of Section 13-4-15 NMSA 1978, enter and file its decision, containing a concise statement of the principal reasons upon which the decision is based including findings of fact and conclusions of law within 10 days after the close of the hearing and promptly mail copies of the decision and statement to the participants of the hearing.

(2) The effective date of ~~the~~ a decision by the commission concerning violations of the Public Works Minimum Wage Act shall be stayed for 30 days from the date of the filing of the decision to allow any party the opportunity to file an appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

~~[E.——In the event of an appeal to the district court, the decision of the commission shall be further stayed pending a review and determination by the court.]~~
[11.1.2.17 NMAC - Rp, 11.1.2.16 NMAC, 12/30/2016; A, 11/10/2020; A, 06/21/2022]