

SKOKOMISH TRIBE PREVAILING WAGE ORDINANCE

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2.11.001 Title of Chapter

This Chapter shall be known and may be cited as the Skokomish Tribe Prevailing Wage Ordinance.

2.11.002 Purpose and Authority of Chapter

The purpose of this Chapter is to codify the Skokomish Indian Tribe's authority to determine area prevailing wages to the extent permitted under federal law so that the federal Davis-Bacon Act (40 U.S.C. § 3141 et seq.) area prevailing wage determinations will not apply to a Covered Agreement, as defined below.

2.11.003 Scope

This Chapter shall cover Skokomish construction projects funded under programs of the Federal Government that would normally be covered by the federal Davis-Bacon Act.

2.11.004 Definitions

- (a) "Covered Agreement" means any contract or agreement using federal funds obtained by the Skokomish Indian Tribe for construction that would normally be covered under the Davis-Bacon Act.
- (b) "Construction" is defined as set forth in the terms and conditions of the individual federal funding source which may be received.
- (c) "Contractor" means anyone who is awarded a contract or agreement using federal funds subject to the Davis-Bacon Act, or is otherwise subject to the Davis-Bacon Act.
- (d) "Davis-Bacon Act" means 40 U.S.C. § 3141 et seq., as amended from time-to-time;
- (e) "Employee" includes laborers, mechanics, and like-kind workers entitled by this Chapter to receive the Prevailing Wage(s). The Prevailing Wage does not does not

apply to any unpaid volunteer, intern or any volunteer who receives a nominal fee, expenses, or reasonable benefits and who is not otherwise employed at any time in the construction, including construction of affordable housing projects.

- (f) "Prevailing Wage(s)" shall mean the wages, as determined by the Skokomish Tribal Council, or its designee, prevailing on the Skokomish Reservation or within the Skokomish Indian Tribe's service area for each existing and future categories of Employees.
- (g) "Subcontractor" means anyone who is awarded a portion of a contract using federal funds by a general or prime contractor, or is otherwise subject to the Davis-Bacon Act.

2.11.005 Payment of Prevailing Wage Required

Any agreement for Skokomish construction projects, funded by programs of the federal government, to which the Davis-Bacon Act would normally apply, shall contain a provision requiring not less than Prevailing Wages, as determined by the Skokomish Indian Tribe, to be paid to the Contractor, Subcontractor, and/or other covered Employees.

2.11.006 Determination of Tribal Prevailing Wage

- (a) The Skokomish Indian Tribe may periodically undertake or commission a wage survey to determine the Prevailing Wage as follows:
 - (1) The Skokomish Indian Tribe shall obtain wage rates from available sources of each class of laborer or mechanic and shall establish the Prevailing Wages that are comparable to survey data;
 - (2) The Skokomish Indian Tribe shall retain, for not less than three years, the survey report and the wage rates reported by each source (including the names and addresses of all sources);
 - (3) Wage rates shall include the base hourly rate and may include the value of benefits paid to or on behalf of Employees based upon eligibility; and
 - (4) Any survey commissioned by the Skokomish Tribal Council, or its designee, of Prevailing Wages shall contain a list of each covered class of laborer and mechanic and the hourly rate for each and the dates the data was collected for the schedule of Prevailing Wages.
- (b) The Skokomish Tribal Council may delegate the conducting and establishment of the schedule of Prevailing Wages under this Chapter to any outside agency, or agency of the Skokomish Indian Tribe, provided the Skokomish Tribal Council shall approve the schedule of Prevailing Wages by consent or resolution before they become effective. Furthermore, if the Wage Surveys have not accounted for a class of Employee called for in the Covered Agreement, the Skokomish Tribal Council may use the Prevailing Wage established by the United States or the State of Washington for that class and/or conduct a survey to determine the wage for that class.

2.11.007 Employer Requirements

- (a) Any Covered Agreement for construction using federal funds shall contain a provision requiring not less than Prevailing Wages, as determined by the Skokomish Indian Tribe. Each employer, including the Skokomish Indian Tribe, its departments and programs, Contractors, and Subcontractors, shall pay Prevailing Wages and shall maintain certified payroll records reporting the hourly rates paid to each Employee. Any Employee falling under a Covered Agreement shall be entitled to inspect and obtain a copy of their certified payroll record during regular office hours. The Contractor or Subcontractor shall pay all Employees, unconditionally, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the Contractor or Subcontractor and the Employees.
- (b) Piecemeal project flat rate payments shall be approximately equivalent to the Prevailing Wage.
- (c) The Skokomish Indian Tribe shall provide every potential employer to be subject to a Covered Agreement, at the time bids or proposals are solicited, with a copy of the most current schedule of Prevailing Wages.
- (d) At all times each employer under a Covered Agreement shall post at the job site and its principal office, in prominent and easily accessible places, a copy of the schedule of Prevailing Wages furnished by the Skokomish Indian Tribe.
- (e) The Contractors and Subcontractors shall provide a copy of their certified payroll to the Skokomish Indian Tribe on a no less than monthly basis. There may be withheld from the Contractor so much of accrued payments as the Skokomish Indian Tribe considers necessary to pay to Employees of the Contractor or any Subcontractor on the work the difference between the rates of wages required by the contract to be paid Employees on the work and the rates of wages received by the Employees.
- (f) Every contract within the scope of this Chapter shall contain a provision that if the Skokomish Indian Tribe finds that any Employee of the Contractor or any Subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Skokomish Indian Tribe by written notice to the Contractor may demand the difference be remedied and/or terminate the Contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Skokomish Indian Tribe may have the work completed, by contract or otherwise, and the Contractor and the Contractor's sureties shall be liable to the Tribe for any excess costs the Tribe incurs.

2.11.008 Skokomish Administrative and Tribal Court Remedies for Affected Employees

- (a) Any adversely affected Employee covered under this Chapter, may submit a claim to the Skokomish Indian Tribe's Chief Financial Officer ("CFO") alleging that a covered employer failed to pay Prevailing Wage(s) to the affected Employee.
- (b) Upon receipt of the adversely affected Employee's claim, the CFO shall require the employer to produce copies of their certified payrolls within five (5) business days of the

request. The employer shall have the burden of proving, by a preponderance of evidence, that the wages were properly paid. The CFO may award payment for the difference between the wages actually paid and the Prevailing Wage(s) or determine that the Prevailing Wage(s) were appropriately paid. This decision must be made within 30 days of the filing of the claim.

- (c) An administrative decision rendered by the CFO may be appealed to the Skokomish Tribal Court. This appeal to the Tribal Court must be filed within 30 days of the CFO's decision or within 60 days of the filing of the claim if the CFO does not make a decision within 30 days of the filing of the claim. The CFO shall provide all documents used in the making of its decision. The Court will review the documents provided by the CFO and will only change the CFO's ruling if the ruling was clearly erroneous. The Tribal Court shall make a decision within 30 days of the filing of the appeal. The Skokomish Tribal Court's decision is final and may not be challenged. There shall not be a right of appeal to any other court nor is a cause of action created hereby for a proceeding in any other court, proceeding or tribunal;
- (d) If an underpayment of the Prevailing Wage is due, the Skokomish Indian Tribe shall pay the affected Employee within thirty (30) days of entry of the administrative decision by the CFO. Nothing in this provision shall limit the Skokomish Indian Tribe from pursuing remedies against the employer.
- (e) No claim under this Chapter shall be allowed more than one (1) year after the date such wages became due and payable under a Covered Agreement.
- (f) Any adversely affected Employee covered under this Chapter shall first be required to exhaust all administrative remedies prior to bringing an action in the Skokomish Tribal Courts under this Chapter.

2.11.009 Sovereign Immunity

- (a) This Chapter provides only those remedies and damages identified above and none other.
- (b) The Skokomish Indian Tribe expressly reserves all of its inherent sovereign rights as a federally recognized Indian tribe, including sovereign immunity from suit in any state, federal or tribal court without the Tribe's express consent. The Skokomish Indian Tribe does not waive its sovereign immunity from suit and nothing in this Chapter shall be construed to imply such a waiver.