

ARTICLE I  
**Prevailing Wage Requirements**  
**[Adopted 12-3-2008 by Bill No. 2008-20<sup>1</sup>]**  
**Revised 9-27-2023**

**§ 228-1. Definitions.**

In this article, the following words have the meanings indicated:

APPRENTICE — An individual who:

- A. Is at least 18 years old;
- B. Has signed an agreement with an employer or employer's agent, an association of employers, an organization of employees, or a joint committee, that includes a statement of:
  - (1) The trade, craft, or occupation that the individual is learning; and
  - (2) The beginning and ending dates of the apprenticeship; and
- C. Is registered in a program of a Council or Bureau of Apprenticeship and Training of the United States Department of Labor.

CONSTRUCTION —

- A. The process of building, altering, repairing, improving, rehabbing or demolishing any structure or building, or other structural improvements of any kind to any real property, including routine operation, repair, and mechanical systems service contract for maintenance of existing structures, buildings, or real property.

COUNTY FINANCED CONSTRUCTION CONTRACT — A contract for construction work that is awarded by the County or where County funds are used to finance all or part of the cost of the contract.

COUNTY FUNDS — Any funds directly appropriated by the County.

EMPLOYEE — An apprentice or worker employed by a contractor or subcontractor on a County financed construction contract.

MECHANICAL SYSTEMS SERVICE CONTRACT - a contract for service of the following systems:

- A. HVAC systems, including heating, ventilation, and cooling/air conditioning equipment;
- B. Refrigeration systems;
- C. Plumbing systems, including pipes, tanks, fittings, and other elements that control the water and gas supply, heating, and sanitation of a building;
- D. Electrical systems, including any electrical power and overhead and underground lines, poles, transformers, and other related equipment; or
- E. Elevator systems, including escalators, moving walkways, and other related conveyances.

PREVAILING WAGE — The hourly wage rate set by the State Commissioner of Labor and Industry for state-funded construction contracts in the County.

PUBLIC ENTITY —

- A. The federal government;

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- B. A state government and any of its agencies;
- C. Any political subdivision of a state government and any of its agencies;
- D. Any Board, Commission, or Committee established by federal, state, or local law;
- E. Any organization or association of the federal government, state governments, or political subdivisions of state governments; and
- F. Any other entity that is:

1. **Editor's Note:** This bill was adopted as Ch. 299 but was redesignated in order to maintain the organizational structure of the Code.

- (1) Qualified as a nontaxable corporation under the United States Internal Revenue Code, as amended; and
- (2) Incorporated by an entity under Subsections A through E for the exclusive purpose of supporting or benefitting an entity under Subsections A through E.

WORKER — Laborer or mechanic.

**§ 228-2. Exclusions.**

This article does not apply to a County-financed construction contract:

- A. Of less than \$500,000;
- B. That is subject to a federal or state prevailing wage law;
- C. With a public entity;
- D. To the extent that the contractor is expressly precluded from complying with this article by the terms of any federal or state law, contract, or grant.
- E. This article applies to a mechanical systems service contract with a contract value in excess of the threshold amount codified at 41 U.S.C. 6702(A)(2), The McNamara-O’Hara Service Contract Act Of 1965, as amended. notwithstanding the foregoing, this subsection does not apply to the renewal or extension of a mechanical systems service contract with an original contract date prior to the effective date of subsection E.

**§ 228-3. Payment of prevailing wage.**

Any contractor and subcontractor that performs direct and measurable construction work on a County-financed construction contract must pay each employee at a rate equal to or more than the prevailing wage currently in effect for the type of work performed.

**§ 228-4. Prevailing wage.**

- A. **Basic rate.** The prevailing wage rate is the prevailing wage rate established annually by the Commissioner of Labor and Industry for state financed construction work performed in the County by an employee who performs direct and measurable work.
- B. **Overtime rate.** A contractor or subcontractor must pay an employee at a rate equal to or more than the prevailing wage rate for overtime for the type of work performed for each hour that the employee

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performs direct and measurable work:

- (1) More than 10 hours in any single calendar day;
- (2) More than 40 hours in a workweek; or
- (3) On a Sunday or a legal holiday.

C. Deductions. A contractor or subcontractor may only make fair and reasonable deductions that are:

- (1) Required by law;
- (2) Authorized in a written agreement between an employee and an employer signed at the beginning of employment that:
  - (a) Concern food, sleeping quarters, or similar items; and
  - (b) Is submitted by the employer to the Chief Administrative Officer or a designee; or
- (3) Required or allowed by a collective bargaining agreement between a bona fide labor organization and a contractor or subcontractor.

D. Apprentices. Each apprentice must be paid at least the rate that the state's Apprenticeship and Training Council sets for an apprentice in the trade involved, based on a percentage of the prevailing wage rate in that trade.

**§ 228-5. Contract requirements.**

Each contract covered by this article must:

- A. State the requirement that contractor and subcontractor to comply with this article;
- B. Specify that an aggrieved employee, as a third-party beneficiary, may by civil action recover the difference between the prevailing wage for the type of work performed and the amount actually received, with interest and a reasonable attorney's fee; and
- C. Comply with the requirements concerning minority business enterprises as set forth in Resolution Number 2005-53.

**§ 228-6. Misclassification of employees.**

A contractor or subcontractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid any requirement of this article.

**§ 228-7. Helper and trainee restrictions.**

A contractor or subcontractor must not employ any individual classified as a helper or trainee to perform direct and measurable work on a contract covered by this article.

**§ 228-8. Posting requirements.**

Each contractor and subcontractor must post a clearly legible statement of each prevailing wage rate in a prominent and easily accessible place at the work site during the entire time work is being performed in

English and any other language that is primarily spoken by the employees at the work site.

**§ 228-9. Payroll records.**

- A. Each contractor and subcontractor must submit a complete copy of its payroll records for construction work performed on a contract covered by this article to the Director of Fiscal and Administrative Services or designee quarterly on January 15, April 15, July 15, and October 15.
- B. The payroll records must contain a statement signed by the contractor or subcontractor certifying that:
  - (1) The payroll records are correct;
  - (2) The wage rates paid are not less than those required by this article; and
  - (3) The rate of pay and classification for each employee accurately reflects the work the employee performed.
- C. Each payroll record must include:
  - (1) The name, address, and telephone number of the contractor or subcontractor;
  - (2) The name and location of the job; and
  - (3) Each employee's:
    - (a) Name;
    - (b) Current address, unless previously reported;
    - (c) Specific work classification;
    - (d) Daily straight time and overtime hours;
    - (e) Total straight time and overtime hours for the payroll period;
    - (f) Rate of pay;
    - (g) Fringe benefits by type and amount; and
    - (h) Gross wages.
- D. Each contractor or subcontractor must:
  - (1) Keep payroll records covering construction work performed on a contract covered by this article for not less than five years after the work is completed; and
  - (2) Subject to reasonable notice, permit the Director of Fiscal and Administrative Services or a designee to inspect the payroll records at any reasonable time and as often as necessary.
- E. The Director of Fiscal and Administrative Services or a designee must make payroll records obtained from contractors or subcontractors under this article available for public inspection during regular business hours for five years after the Director of Fiscal and Administrative Services receives the records.

**§ 228-10. Enforcement.**

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- A. The Director of Fiscal and Administrative Services or a designee may perform random or regular audits and investigate any complaint of a violation of this article.
- B. A contractor or subcontractor must not discharge or otherwise retaliate against an employee for asserting any right under this article or for filing a complaint of a violation.
- C. Each contract subject to this article may specify the payment of liquidated damages to the County by the contractor for any noncompliance with this article.
- D. Each contractor is jointly and severally liable for noncompliance with this article by a subcontractor.
- E. If a contractor or subcontractor is late in submitting copies of any payroll record required to be submitted under this article, the County may deem invoices unacceptable until the contractor or subcontractor provides the required records, and may postpone processing payments due under the contract or under an agreement to finance the contract.

**§ 228-11. Report.**

The Director of Fiscal and Administrative Services must report annually to the County Commissioners on the operation of and compliance with this article.