

WHAT IS PREVAILING WAGE?

"Prevailing wage law" is the common term used for the Davis-Bacon Act. The Act is a federal law that requires contractors who are awarded bids for federal public works projects to pay their laborers a minimum wage "that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed" ([40 U.S.C. § 276a](#)).

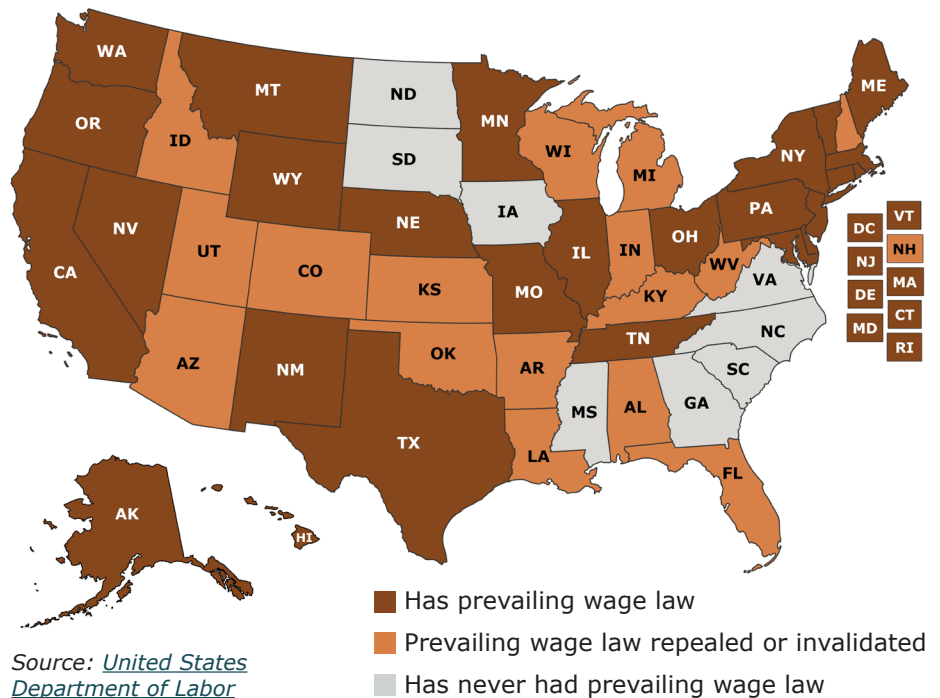
The Act was named after its sponsors, Senator James J. Davis (R-Pennsylvania, and former Secretary of Labor) and Representative Robert L. Bacon (R-New York). It was signed into law in 1931 by President Herbert Hoover in response to complaints about the award of federal construction contracts to itinerant contractors who were importing low-wage workers from outside the construction areas.

Public works construction projects must be safe and durable, lasting a long time with minimal maintenance and repairs. They must also be cost-effective and make judicious use of taxpayer money. Given these complexities, paying prevailing wage for public works projects can be a controversial issue. Advocates argue that prevailing wage attracts local, experienced construction workers who deliver high-quality work. The crux of the opposition is that wages fluctuate frequently without government intervention, and prevailing wage can increase construction costs.

WHICH STATES HAVE PREVAILING WAGE LAWS?

A little more than half of the states—26 plus Washington, D.C., as of January 1, 2020—have prevailing wage laws. An additional 16 states previously had prevailing wage laws, but they have been repealed or invalidated by a court. These laws are sometimes referred to as "little Davis-Bacon Acts."

Nevada's original prevailing wage law was enacted on March 24, 1937, with the passage of [Assembly Bill 36](#). The current provisions are found in [Nevada Revised Statutes \(NRS\) 338.020 through 338.090](#).



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HOW IS PREVAILING WAGE DEFINED IN NEVADA?

In Nevada, “wages”—with respect to “prevailing wages”—are defined as:

- (a) The basic hourly rate of pay; and
- (b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training, or other bona fide fringe benefits which are a benefit to the worker ([NRS 338.010](#)).

A bona fide fringe benefit is defined as a contribution made monthly or more frequently to an independent third party pursuant to a fund, plan, or program established for a worker and his or her family and dependents, and for which none of the assets will revert to any contributing employer or sponsor ([NRS 338.010](#)).

Zone rates and premium pay may apply in addition to prevailing wage on a weekend or holiday, or for work in excess of an 8- or 12-hour shift or other time increment set forth in a collective bargaining agreement ([NRS 338.030](#)).

HOW IS PREVAILING WAGE DETERMINED IN NEVADA?

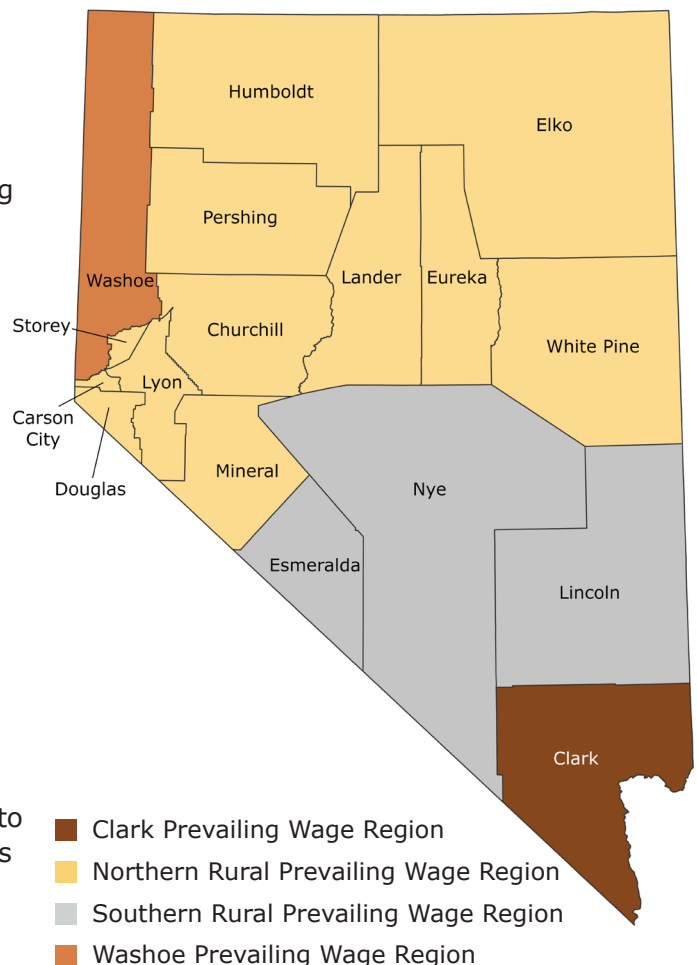
The [Office of the Labor Commissioner \(OLC\)](#) in the Department of Business and Industry has jurisdiction over prevailing wage issues in Nevada, as well as regulation of employment agencies and enforcement of private wage law (such as minimum wage, overtime compensation, and child labor).

CONTRACTOR SURVEYS AND GEOGRAPHIC REGIONS, SENATE BILL 243 (2019)

The 2019 Legislature modified the method of determining the prevailing wage rate with the enactment of [Senate Bill 243](#). Previously, the labor commissioner was required to conduct an annual survey of contractors who had performed work in a given region in order to establish rates for prevailing wage in that region. This bill instead requires the labor commissioner to perform such surveys in odd-numbered years only.

The surveys seek the voluntary input of data from all contractors, primarily related to two questions: Where was the work performed, and what rate was paid for a specific job classification in a given location? The labor commissioner then considers such information—along with filed collective bargaining agreements, federally-determined wage rates, and other information furnished by state and federal agencies—to determine prevailing wage rates in Nevada ([Nevada Administrative Code \[NAC\] 338.020](#)). The commissioner sets a rate for each of the current 42 job classifications in each applicable geographic region.

Previously, these geographic regions were analogous to Nevada counties. However, SB 243 instead establishes four regions for the purpose of determining prevailing wage: the Clark, Northern Rural, Southern Rural, and Washoe Prevailing Wage Regions.



HOW IS PREVAILING WAGE DETERMINED IN NEVADA? (CONT'D)

OTHER PROVISIONS OF SENATE BILL 243 (2019)

Senate Bill 243 further requires the labor commissioner to adjust the prevailing wage rate on October 1 of each even-numbered year if:

- (1) The commissioner determined in the previous odd-numbered year that the prevailing wage rate was collectively bargained and the collective bargaining agreement provides for such an adjustment; or
- (2) The commissioner determined in the previous odd-numbered year that the prevailing wage rate was not collectively bargained and there has been any change in the Consumer Price Index for All Urban Consumers, West Region (All Items) since October 1 of the previous odd-numbered year.

Finally, the bill removes from state law specific requirements for determining prevailing wage rates. Instead, it authorizes those requirements to be established by the labor commissioner through regulation.

EXAMPLE: PREVAILING (HOURLY) WAGE FOR THE JOB CLASSIFICATION OF "BRICKLAYER-JOURNEYMAN," 2019–2020

\$56.83

Clark Prevailing
Wage Region

\$42.73

Northern Rural
Prevailing Wage
Region

\$56.83

Southern Rural
Prevailing Wage
Region

\$38.23

Washoe Prevailing
Wage Region

Source: [Office of the Labor Commissioner, Department of Business and Industry](#)

WHICH PROJECTS ARE SUBJECT TO PREVAILING WAGES?

[Chapter 338 of NRS](#) provides much of the legal framework for which public projects are subject to prevailing wages. Specifically, [NRS 338.010](#) defines a public work as “any project for the new construction, repair or reconstruction of a project financed in whole or in part from public money,” including projects such as public buildings, public roads, public utilities, and others. Normal maintenance such as janitorial services and landscape upkeep is not considered a public work subject to prevailing wage. The exemptions from the provisions of the prevailing wage law are found in [NRS 338.080](#) and include work for a railroad company and work by certain apprentices.

In 2015, the Nevada Legislature made several changes regarding which projects are subject to prevailing wages, and at what rates. However, [AB 136](#) of the 2019 Session reverses many of those changes. For example, the bill:

- Lowers from \$250,000 to \$100,000 the threshold at which the prevailing wage law applies to a public work;
- Repeals a provision for school districts and the Nevada System of Higher Education to pay wages at 90 percent of the prevailing wage rate on construction projects, thereby requiring them to pay 100 percent; and
- Repeals an exemption for charter schools, thereby requiring them to pay prevailing wages on applicable construction projects.

WHAT HAPPENS WHEN PREVAILING WAGE LAWS ARE VIOLATED?

Failure to pay the prevailing wage in Nevada is a misdemeanor for which an offender may be required to pay the difference between the prevailing wage and the actual wage paid, as well as an administrative fine in an amount necessary to cover the cost of the investigation ([NRS 338.090](#)).

The process for initiating, investigating, and resolving prevailing wage complaints can be found in [NAC 338.105–338.116](#).

In Fiscal Year 2017–2018, the OLC:



*Received **148** claims or complaints;*



*Collected **\$321,506** in wages for complainants; and*



*Assessed **\$148,202** in penalties or forfeitures.*

Source: [Office of the Labor Commissioner, Department of Business and Industry](#)

WHERE CAN I FIND ADDITIONAL INFORMATION?

For a complete listing of current prevailing wage rates by occupation and region, visit the Nevada labor commissioner's [website](#). This site also provides helpful links regarding public works in Nevada, as well as advisory opinions of the OLC.