

## How to File Prevailing Wage Requests



### *Prevailing Wage Requests*

The first step in filing a prevailing wage request is to visit the website of the State Workforce Agency (“SWA”) where the employer and job opportunity are located. The contact information for the SWAs, including website addresses, are available on the Department of Labor’s website at <http://workforcesecurity.doleta.gov/foreign/contacts.asp#statecont>. Practitioners should visit the website of the applicable SWA and research the individual SWA’s particular requirements, and most importantly, determine if the prevailing wage request is available for download. Indeed, some SWAs, such as Michigan and Florida, allow you to conduct the prevailing wage request entirely online, through a web browser based format. If either option is not available, the practitioner should contact the SWA by phone, e-mail or fax and request that they be given a copy of the form.

There is much variety from state to state in the substance of the forms (Adobe, Microsoft Word format, or a hardcopy form), the means of transmitting requests (fax, mail or internet), and, notably, the average response times of receiving a prevailing wage once a request has been submitted. For example, in Pennsylvania, it usually takes only one to two days in order to receive a prevailing wage determination once the request has been sent. However, in other states, such as Maryland, the SWA may take up to one to two months after the practitioner has sent in the request before receiving a prevailing wage determination.

Most prevailing wage request forms ask for the name and address of the employer, including the county in which the employer is located, the name and contact information of the requestor, the title of the position, the amount of education, training and experience required for the position, and other special requirements (license, certificates, language, etc.). Rather than just provide a completed Prevailing Wage Request form, it is highly recommended that practitioners advocate for the desired wage by including, in an addendum page, a detailed job description and the justification for the chosen O\*NET title, code and, most important of all, wage level. Attached with this article is an example of an Addendum for the Position of HVAC Engineer, as well as the *Worksheet for Use in Determining OES Wage Level* filled out for this position.

When preparing a prevailing wage request, practitioners should follow the seven steps outlined below.

1. Identify the O\*NET position and code that most closely matches the position description. The O\*NET positions and codes are available on the web at <http://online.onetcenter.org/>. This is especially important when the employer’s job title is not reflected in the O\*NET occupation classification, nor is included as one of the “reported job titles.”

For the HVAC Engineer example, the closest O\*Net occupation title and code is Mechanical Engineer, 17-2141.00.

2. Research the wage levels of the relevant O\*NET position and code, according to the location of employment (state and county). This can be done by referencing the Department of Labor’s website, which includes an Online Wage Library, which is available at <http://workforcesecurity.doleta.gov/foreign/>.

3. Describe the job duties and draft a detailed position description. Practitioners should refer to the O\*NET Summary Report of the relevant O\*NET position.

For the HVAC Engineer example, please note the job description closely mirrors the language found in the O\*NET Summary Report for Mechanical Engineer, 17-2141.00.

4. Refer to the Job Zone in the O\*NET Summary Report, to be apprised of DOL's parameters. These include the designated Job Zone (e.g. Job Zone 1, 2, 3, 4 or 5), required experience, SVP range and applicable education.

Note that most bachelor degree positions (which fall in the EB-3 preference category) fall under Job Zone 4. Most advanced degree positions (which fall in the EB-2 preference category) fall under Job Zone 5.

For the HVAC Engineer example, the corresponding O\*NET position of Mechanical Engineer, 17-2141.00, is in Job Zone 4.

5. Identify the appropriate Wage Level using the *Prevailing Wage Determination Policy Guidance for Nonagricultural Immigration Programs* which defines all four Levels, and the *Worksheet for Use in Determining OES Wage Level*. Before completing the *Worksheet*, practitioners should also refer to the *Department of Labor's August 1, 2005 FAQ* on prevailing wage determinations.

These documents are available on the Department of Labor's website at <http://workforcesecurity.doleta.gov/foreign/wages.asp>. Our firm generally completes the *Worksheet* for conducting internal prevailing wage calculations, but does not submit the same to the SWA.

For our HVAC Engineer example, the *Worksheet* is filled out as follows.

- Under Step 1, Requirements, a "1" is automatically placed under the Wage Level Result.
- For Step 2, Experience, as can be seen on the Addendum for the Position of HVAC Engineer, the employer requires one year experience for the position. Thus, following the *Worksheet* example provided for this position, because the experience level is SVP 7<8, which is the equivalent of over 2 years to 4 years of experience, a "0" is placed in the box under "Wage Level Result" corresponding with Step 2, Education, since it falls below the SVP range.
- Under Step 3, Education, the employer has set forth a Bachelor's degree requirement for this position. Under *Appendix D: Professional Occupations Education and Training Categories* to the *Prevailing Wage Determination Policy Guidance*, the Education & Training Category Code for Mechanical Engineers, 17-2141.00 is Code 5, which is a bachelor's degree. Therefore, since the employer's bachelor's degree requirement corresponds with the Education & Training Category Code, a "0" is placed in the box under "Wage Level Result."

- For Steps 4, 5, and 6, since there are no special skills, licensure/certification, or supervisory requirements, a “0” may be placed in the corresponding “Wage Level Result” box.
- Thus, in adding up the Wage Level Results for all 6 steps on the *Worksheet*, the Wage Level for the HVAC Engineer example is a Level 1.

6. Complete the SWA’s prevailing wage request form.
7. Complete an addendum page, if possible, providing a Job Description and a justification of the requested Wage Level. By way of example, see the attached Addendum for the Position of HVAC Engineer.

Practitioners should be aware that, under the PERM regulations set forth in 20 CFR § 656.40(h), if the employer disagrees with the skill level assigned to its job opportunity, or if the SWA informs the employer its survey is not acceptable, or if there are other legitimate bases for such a review, the employer may submit supplemental information to the SWA. The SWA must consider at least one supplemental submission about the employer’s survey or the skill level the SWA assigned to the job opportunity or any other legitimate basis for the employer to request such a review. If the SWA does not accept the employer’s survey after considering the supplemental information, or affirms its determination concerning the skill level, it must inform the employer of the reasons for its decision. The employer may then apply for a new wage determination or appeal the SWA’s decision.

In practice, SWAs have for the most part been very accommodating with regards to amendments or changes to the prevailing wage determination after it has been adjudicated. Practitioners are encouraged to coordinate any amendments or changes with the SWA’s staff before submitting supplemental information or applying for a new wage determination in order to make the SWA’s job easier, and thus cut down on the turnaround time for a obtaining a new prevailing wage determination.