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DOL Releases New Prevailing Wage FAQs

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Submitted by Editor on Jun 22nd 2012

ISSUANCE AND RECEIPT OF A PWD

1. **How can I request that the National Prevailing Wage Center issue me an hourly wage instead of an annual wage?**

The employer may request an hourly wage by entering "**Request Hourly Wage**" in the Job Duties block (D.a.6) of the ETA Form 9141.

Please note: Due to the nature of some occupations where the norm for the occupation is not the standard 2080 hour work year, the Occupational Employment Statistics (OES) survey does not provide an hourly wage. In such instances, the NPWC will not be able to issue the requested hourly wage, as will be indicated in a note on the prevailing wage determination.

Revised June 21, 2012

AFFILIATED OR RELATED ENTITY

1. **In order to issue a Prevailing Wage Determination (PWD), how does the NPWC decide between Research & Development (R&D) and non-R&D occupations under the American Competitiveness and Workforce Improvement Act (ACWIA)?**

R&D positions directly conduct or support a research effort. Non-R&D positions support administrative functions such as finance and technical facilities support. Employers should provide clear job duties that explain if the position supports R&D or non-R&D.

When the position combines elements from both R&D and non-R&D occupations, the NPWC will select the occupation with the highest wage in the same manner as other combinations of occupations. The PWD will only show the occupation with the highest wage.

There are nine standard occupations with wage data reported into the categories of R&D and non-R&D:

1. SOC Code	Soc Title	ACWIA Code	ACWIA Title Non R&D	ACWIA Code	ACWIA Title R&D
17-2141	Mechanical Engineers	17-2143	Mechanical Engineers, Non R&D	17-2144	Mechanical Engineers, R&D
17-2072	Electronics Engineers, Except Computer	17-2075	Electronics Engineers, Except Computer, Non R&D	17-2076	Electronics Engineers, Except Computer, R&D
17-2071	Electrical Engineers	17-2073	Electrical Engineers, Non R&D	17-2074	Electrical Engineers, R&D
17-2061	Computer Hardware Engineers	17-2062	Computer Hardware Engineers, Non R&D	17-2063	Computer Hardware Engineers, R&D
17-2051	Civil Engineers	17-2052	Civil Engineers, Non R&D	17-2053	Civil Engineers, R&D
15-1121	Computer Systems Analysts	15-1052	Computer Systems Analysts, Non R&D	15-1053	Computer Systems Analysts, R&D
15-1133	Software Developers, Systems Software	15-1036	Software Developers, Systems Software, Non R&D	15-1037	Software Developers, Systems Software, R&D
15-1132	Software Developers, Applications	15-1034	Software Developers, Applications, Non R&D	15-1035	Software Developers, Applications, R&D
15-1131	Computer Programmers	15-1022	Computer Programmers, Non R&D	15-1023	Computer Programmers, R&D

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1. For Ski Instructors and Snowboard Instructors, does the adoption of the 2010 SOC change the occupation the NPWC will use to determine the wage?

In the 2000 iteration of the Standard Occupational Classification (SOC) codes used by the Bureau of Labor Statistics in the Occupational Employment Statistics wage surveys, the job opportunity of "Ski Instructors and Snowboard Instructors" was categorized under SOC classification 39-9031, Fitness Trainers and Aerobics Instructors. However, the SOC reclassification that was finalized in 2010 updated this occupation. The new SOC for this position is 25-3021, Self-Enrichment Education Teachers, which now encompasses most sports instructors.

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1. For Oyster Shuckers, does the adoption of the 2010 SOC change the occupation the NPWC will use to determine the wage?

In the 2000 iteration of the Standard Occupational Classification (SOC) codes used by the Bureau of Labor Statistics in the Occupational Employment Statistics wage surveys, the job opportunity of "Oyster Shuckers" was categorized under SOC classification 51-9198 - Helpers - Production workers. However, the SOC reclassification that was finalized in 2010 clarifies the occupation to be used by listing Oyster Shucker as a sample title under the revised SOC of 51-3022, Meat, Poultry, and Fish Cutters and Trimmers. The O*Net crosswalk has not been updated to incorporate changes from the 2010 SOC and continues to provide the old code.

June 21, 2012

1. What documentation does the NPWC require in order to show an employer meets the definition of an affiliated or related nonprofit entity under the Department's regulations at 20 CFR §656.40(e)(1)(ii)?

The NPWC researches entities that may be covered by the wage provisions of ACWIA. When a definitive decision cannot be reached, the NPWC will send a Request for Information (RFI) for documentation demonstrating how the employer meets the definition of an affiliated or related nonprofit entity.

The first element is the non-profit status of the employer. A letter issued from the Internal Revenue Service stating the employer, under the FEIN on the application, has an appropriate non-profit status, will typically be sufficient for this purpose.

The second element is affiliation with the institution of higher education, which may be demonstrated through any of the following:

- 1) Shared ownership of the nonprofit entity and the institution of higher education either directly or by a parent entity. This includes branch, subsidiary and cooperative relationships.
- 2) An oversight group (board, committee, et al) with the authority to direct the members of both the nonprofit entity and the institution of higher education.
- 3) An agreement requiring a position to have decision making authority in both entities. For example, the position of Chief of Radiology at the Hospital will also be the Chair of the Radiology Department at the Medical School.

4) Shared responsibility for conducting the qualifying activity. For example, the Medical School and the Hospital jointly establish the curricula for medical resident and fellowship programs. This includes situations involving several entities, such as a residency program where specific portions take place at separate hospitals and/or medical schools. In such a situation, all of the non-profit entities involved in the residency program would be considered affiliated or related nonprofit entities and covered by the ACWIA wage provisions.

Examples where an institution does not meet ACWIA wage coverage include:

- 1) Agreements where the institution of higher education is in essence 'renting space' from the requesting entity. Example statement: The Hospital will allow access to its facilities at the reimbursement rate negotiated each year and will remit appropriate charges for medical services provided to the Medical School.
- 2) Conferring of unpaid faculty status upon a person in the employ of the requesting nonprofit entity by an institution of higher education.

Additionally, the number of cross-designated employees in relation to the total number of employees in the particular program is a relevant factor in establishing affiliation. When a requesting employer has a notable number of employees cross-designated with an institution of higher education, especially when combined with a notable number of participants, then ACWIA wage coverage is indicated. For example, a large hospital employs 80 physicians and 200 nurses. 40 of those physicians and 100 of those nurses participate in the clinical training of 120 medical residents and 200 nursing students from a particular institution of higher education; the ratio is notable and ACWIA wage coverage is appropriate. Conversely, when the numbers of cross-designated employees are low, then coverage may not be indicated. For example, a mid-sized hospital has a single surgeon with part time faculty status at a particular medical school and a single fellow in training. The number of cross-designated employees and the number of participants are so small that ACWIA wage coverage is not appropriate.

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PERM PREVAILING WAGES

Must I list alternative job requirements on the ETA Form 9141? Is there a section on the ETA Form 9141 where I can list the alternative requirements?

If an employer intends to accept alternative job requirements and to list such requirements on the ETA Form 9089, the employer must list its alternative job requirements on the ETA Form 9141. Specifically, the employer should list its alternative job requirements in either the Special Requirements block (D.b.5) or the Job Duties block (D.a.6) of the ETA Form 9141. This is to reflect a line of BALCA decisions affirming our ability to require the same information on the job opportunity on both forms.

It should be noted, as will be indicated in a note on the prevailing wage determination, that the NPWC will not consider the alternative job requirements when making the wage determination; prevailing wage determinations will be based ONLY on the job requirements listed by the employer in the Minimum Requirements block (D.b) of the ETA Form 9141. Nor does the NPWC make any evaluation of the substantial equivalence of the alternative job

requirements to the primary minimum job requirements listed. That evaluation will continue to be made in the adjudication of the Application for Permanent Employment Certification.

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Agency:

DOL ^[3]

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