



# Oregon

Tina Kotek, Governor

Department of Transportation

Contract Administration

800 Airport Road SE

Salem, Oregon 97301

Phone: 503-986-3000

Fax: 503-986-3096

## Clarification of Prevailing Wage for Railroad Flaggers (July 2023)

To: ODOT Resident Engineers and ODOT Resident Engineers – Consultant Projects

**CA006**

From: Greg Stellmach, PE; Contract Administration Engineer

We have received clarification from the Bureau of Labor and Industries (BOLI) regarding prevailing wage rate coverage for Railroad Flaggers. This clarification is related specifically to railroad flagging performed as Contract Work (Pay Item included in the Schedule of Items) for UPRR facilities.

Responsibilities of Railroad Flaggers include monitoring safety aspects of the construction contractor's work on or near active railroad rights-of-way. Railroad Flaggers coordinate with train dispatchers, train engineers, and construction workers to facilitate safe passage of trains through an active construction zone and ensures work performed by the construction contractor does not violate railroad safety protocol or federal railroad regulations.

To be covered by BOLI prevailing wage rate laws, an individual performing work on a public works project must be considered a "worker". The OAR 839-025-0004(36) definition of "worker", for the purpose of determining prevailing wage coverage, is included below:

"Worker" means a person employed on a public works project and whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental, professional or managerial. The term "worker" includes apprentices, trainees and any person employed or working on a public works project in a trade or occupation for which the commissioner has determined a prevailing rate of wage. (See OAR 839-025-0035).

Railroad Flaggers may perform incidental manual labor, such as putting out temporary signage along the railroad, but duties are considered "mental" in nature which is not covered by BOLI prevailing wage rate laws.

Public works bonds are only required for companies performing work that is subject to prevailing wage rate laws on a public works construction project. A public works bond is not required for companies solely performing railroad flagging as the duties of Railroad Flaggers are not subject to prevailing wage rate laws.

In summary, for projects that include a Pay Item for Railroad Flagging on or near UPRR facilities:

- Railroad Flaggers are not subject to prevailing wage rate laws;
- Certified payrolls are not required for railroad flagging work; and
- Companies retained solely to perform railroad flagging are not required to have a public works bond.

If you have any questions related to this information, please contact Greg Stellmach.