

Wyoming Administrative Rules

# Workforce Services, Department of

## Labor Standards

### Chapter 12: Preference for Wyoming Resident Labor

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## CHAPTER 12

### PREFERENCE FOR WYOMING RESIDENT LABOR

**Section 1. Authority.** This Chapter is promulgated by the authority Wyoming Statute § 16-6-205(a) of the Wyoming Preference Act of 1971, as amended.

**Section 2. Purpose.** This Chapter prescribes procedures and practices to ensure the proper administration of, and to establish and implement measures to ensure compliance with, the Wyoming Preference Act.

**Section 3. Definitions.**

(a) “Business Consultant Unit” means a team within the Department primarily responsible for providing guidance and oversight of the Wyoming Preference Act.

(b) “Certification process” means the methods and procedures, established by the Workforce Center, implemented to validate a qualified Wyoming resident applicant laborer is provided with adequate opportunity to be employed on a public works project, and to ensure each Employer has exercised due diligence in hiring Wyoming resident labor prior to the issuance of a Certification Letter authorizing the Employer to hire nonresident labor.

(c) “Department” means the Wyoming Department of Workforce Services.

(d) “Employer” means a person or entity who hires or employs skilled or unskilled laborers for public works projects.

(e) “Independent contractor” means an individual who performs compensated services for another individual or entity, and who:

(i) Is free from control or direction over the details of the performance of services by contract and by fact;

(ii) Represents his/her services to the public as a self-employed individual or an independent contractor; and

(iii) May substitute another individual to perform his/her services.

(f) “Noncompliance indicator” means any action or inaction which tends to suggest an Employer’s noncompliance with the Wyoming Preference Act, and may include, but is not limited to, any of the following:

(i) Employer’s unwillingness to disclose a project name, location, or start date when opening a job order or upon request;

(ii) Employer's requiring of a certification, license, excessive experience, or other qualification criteria that is not related to the craft or project;

(iii) Employer's failure to respond to an applicant;

(iv) Employer's failure to hire a qualified resident applicant without acceptable cause;

(v) Employer's failure to respond to an inquiry from the Department;

(vi) Discovery of noncompliance found during a compliance check; or

(vii) A complaint or allegation of noncompliance.

(g) "Owner" means the State of Wyoming or any political subdivision, municipal corporation, special district, or other governmental unit, including any authorized agent thereof.

(h) "Skilled laborer" means any skilled laborer who performs work in a craft, trade, or specialty occupation requiring related experience, training, or specialized education.

(i) "Unskilled laborer" means any unskilled laborer who performs work which does not require any level of specialized training, experience, or education.

(j) "Willful or intentional noncompliance" means:

(i) A deliberate action used by an employer to negate or circumvent the provisions of the Wyoming Preference Act; or

(ii) A recurrence of, or failure to correct, an instance of noncompliance after an employer receives a pre-construction Notice or Advisory on the applicability of the Wyoming Preference Act.

(k) "Workforce Center" means any of the Department's Workforce Centers, statewide offices providing workforce programs and services.

(l) "Wyoming Preference Act" means the Wyoming Preference Act of 1971, as amended, Wyoming Statute §§ 16-6-201 through -206.

**Section 4. Business Consultant Unit.** The Business Consultant Unit shall perform consultation and monitoring services on behalf of the Department for the purposes of enforcing the Wyoming Preference Act. In carrying out its functions, the Business Consultant Unit may:

- (a) Examine identification to establish residency status and certification compliance at public works project sites;
- (b) Notify the appropriate Workforce Center when performing an evaluation of, or inquiry into, a problematic job order;
- (c) Issue a letter of inquiry, pre-construction Notice, Advisory, Citation, and Debarment, as necessary;
- (d) Revoke a Certification Letter when evidence demonstrates an Employer willfully or intentionally failed to hire qualified Wyoming resident labor;
- (e) Support and assist the Workforce Center in obtaining information on a public works project or a prospective Employer during the certification process;
- (f) Initiate a customer outreach program that will provide training to Owners and Employers on applicable statutes and rules related to their legal obligations;
- (g) Examine payroll records to ensure that an Employer pays overtime in accordance with Wyoming Statute § 16-6-110, as applicable; and
- (h) Investigate reports of suspected noncompliance reported by the Workforce Center or general public.

**Section 5. Employer Responsibilities.**

- (a) Every Employer shall cooperate with the Department, Workforce Center, and Business Consultant Unit in carrying out its obligations.
- (b) No Employer shall open a job order or act as an advocate for another Employer.
- (c) Every Employer shall ensure that any applicable contract or subcontract contains the required provisions and acknowledgments required by Wyoming Statute § 16-6-203(a) of the Wyoming Preference Act.

**Section 6. Resident Labor.**

- (a) Every Employer shall ensure that each laborer claiming Wyoming resident status, including those laborers from temporary labor agencies, satisfies the requirements of Wyoming Statute § 16-6-202(a)(ii), and shall provide documentary evidence to establish Wyoming resident status upon request by the Department, Workforce Center, or Business Consultant Unit. Wyoming resident status may be established by:

(i) A Wyoming driver's license showing an original issue date no less than one year prior;

(ii) A utility bill, rent receipt, insurance policy, mortgage document, vehicle registration, pay stub, tax document, voter registration, doctor's bill, or bank statement showing the resident's Wyoming address for a period of at least one year; or

(iii) Any other documentary evidence establishing one year of Wyoming residency acceptable to the Department, Workforce Center, or Business Consultant Unit.

(b) An Employer shall not require any Wyoming resident to apply through a labor organization or union, or at any location outside of the assigned Workforce Center's area of responsibility.

(c) An Employer shall not require any Wyoming resident to apply through an outside source without a means of verifying each application is received and acknowledged.

**Section 7. Nonresident Labor.**

(a) Prior to employing any nonresident laborer on a covered public works project, an Employer shall apply for and obtain a Certification Letter from the assigned Workforce Center.

(b) An Employer shall comply with the Workforce Center's certification process to ensure qualified Wyoming resident laborers are provided opportunity to be employed on public works projects.

**Section 8. Investigation and Notice of Determination.**

(a) The Business Consultant Unit shall investigate an Employer when one or more noncompliance indicators are reported or discovered to determine compliance with the Wyoming Preference Act.

(b) Upon completion of its investigation, the Business Consultant Unit shall make an assessment as to whether the subject Employer is or is not compliant with the Wyoming Preference Act, and shall notify the Employer of its determination as follows:

(i) A "No Violation" notification shall be issued when there is no evidence of noncompliance.

(ii) An "Advisory" notification shall be issued when the Employer is deemed to be noncompliant on the first offence, or when a recurrence of noncompliance occurs one year or more after the previous noncompliance occurrence.

(iii) A "Citation" notification shall be issued if the recurrence date occurs within one year from the date of the previous occurrence of noncompliance, or upon discovery of willful or intentional noncompliance.

(iv) A "Citation and Debarment" notification shall be issued upon a recurrence of noncompliance within one year from date of a Citation being issued.

(c) The Business Consultant Unit shall notify all parties of its determination by certified mail.

(d) Where the investigation was initiated by a complaint, the Business Consultant Unit shall notify the complainant of its findings when the complainant's identification and contact information is known.

**Section 9. Final Agency Decision.** If no hearing is requested pursuant to Wyoming Statute § 16-6-206(d), the Department shall issue its final agency decision within thirty (30) days from the end of the hearing request filing period. If a hearing is held, the Department shall issue its final agency decision within thirty (30) days after the hearing officer's recommended decision is issued. In its final agency decision, the Department may accept, reject, or modify the hearing officer's recommended decision.