
IRA Prevailing Wage and Registered Apprenticeship Guidelines

Legal Alert

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On August 29, 2023, the Department of the Treasury and the Internal Revenue Service (IRS) released proposed regulations implementing the Prevailing Wage and Registered Apprenticeship provisions of the Inflation Reduction Act of 2022 (IRA). In addition, the IRS also posted an FAQ on its website addressing the topic. A public hearing on the regulations is scheduled for November 21, 2023, and the public will also have an opportunity to submit comments on the proposed regulations prior to their being finalized. For **public institutions and instrumentalities such as commercial service airports**, these provisions are important as they can increase the tax benefits available for clean and alternative energy-related projects. Thanks to the Direct Payment Option, these benefits can be available to the not-for-profit **municipality and/or Sponsor** of the airport should it decide to own the project itself.

As you recall, the IRA involves a series of “add on” tax credits that can increase the tax benefit from a base credit amount of 6% to 30% if the prevailing wage and registered apprentice (PWA) provisions are met.

With regard to the prevailing wage regulations, the guidelines require that all laborers and mechanics employed by the taxpayer, along with contractors and subcontractors in the construction, alteration and repair of a facility or project must be paid wages that are at least equal to the prevailing rates for construction, alteration or repair work of similar type in the relevant locality as most recently published by the United States Department of Labor (DOL). Taxpayers must pay apprentices at least the rate specified by the registered apprentice program consistent with the apprentice’s level of progress and classification in the applicable wage determination. Apprentices must be paid fringe benefits in accordance with the registered apprentice program.

Regarding apprenticeship programs, in order to meet apprenticeship requirements, the DOL or the applicable state agency will publish “apprentice-to-journeyworker” ratios that must be met. In addition, a certain percentage of total hours of the construction, alteration or repair work must be performed by a qualified apprentice. Each taxpayer, contractor or subcontractor who employs four or more individuals must employ one or more qualified apprentices to perform such work.

In effect, the IRS guidelines and the IRA itself are a way to force the federal government’s determination of what wages should be on the taxpayer wishing to utilize the tax benefit provisions of the IRA. The government certainly has an argument by saying that if a taxpayer wishes to get the benefits of certain tax credits provided by the federal government, it will have to engage workers pursuant to a wage and benefit scale acceptable to that same government. Both the prevailing wage scale and the apprenticeship program might be complicated in rural and “right-to-work” settings, but the alternative remains not utilizing the program at all, which seems a foolish option.

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For information on how this impacts airports, please contact Daniel Markind. For information on how the tax credits impact other facilities, please contact any member of our firm's Tax Department.

ATTORNEYS MENTIONED

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