

ORDER OF COMMISSION

In Re: Motion to Revise Annual Wage Order No. 27 filed by the Division of Labor Standards, Department of Labor and Industrial Relations

On April 1, 2020, the Division of Labor Standards (Division) filed a Motion to Amend Annual Wage Order No. 27 (Motion to Amend) with the Labor and Industrial Relations Commission (Commission). The Division alleged that it discovered typographical, grammatical, or clerical errors subsequent to its filing of the preliminary annual wage order with the Missouri Secretary of State's Office.

The Division's Motion to Amend failed to comply with Commission Rule 8 CSR 20-5.010(6) in that it did not contain an identification of every locality and occupational title affected by the changes requested, and did not explain how the asserted typographical or clerical errors were discovered. However, because the Commission seeks, where possible, to elevate substance over procedure, we accepted the Motion to Amend as filed, and on April 2, 2020, published the Motion to Amend to the Commission's prevailing wage web portal to allow interested parties to object or otherwise respond to the changes sought by the Division.

No objections or responses to the Division's Motion to Amend were received by the Commission. So, on May 20, 2020, the Commission issued an order granting the Motion to Amend. That same day, the Commission filed copies of all final orders issued in connection with Annual Wage Order 27 with the Missouri Secretary of State's Office, in order to carry out the mandate under § 290.257.3 RSMo that "[a] final determination of the prevailing hourly rate of wages and the public works contracting minimum wage applicable to every locality to be contained in an annual wage order shall be made annually on or before July 1, 2019, and July first of each year thereafter. The wage order shall remain in effect until superseded by a new annual wage order."

The Commission also published the following notice to its prevailing wage web portal: "As of May 20, 2020, the Labor and Industrial Relations Commission has disposed of all pending motions and objections in connection with Annual Wage Order No. 27."

On June 1, 2020, the Division filed with the Commission a Motion to Revise Annual Wage Order No. 27 to Correct a Scrivener's Error with Suggestions in Support (Motion to Revise). Therein, the Division alleges that it provided an incorrect page when filing its April 1, 2020, Motion to Amend. Specifically, the Division alleges that the Motion to Amend was filed with two building rate sheets for Jefferson County, where the second building rate sheet should have instead been replaced with a heavy construction rate sheet for Jefferson County. To correct this alleged clerical error, the Motion to Revise requests the Commission publish its Motion to Revise to the Commission's prevailing wage web portal, hear and resolve any objection, and thereafter file a revised Annual Wage Order with the Secretary of State's Office including a substitution page setting forth heavy construction rates for Jefferson County.

At this late date, the ability of the Commission to comply with the statutory time limits for issuing the requisite notices, setting a hearing in connection with any objections to the Motion to Revise, and issuing orders resolving any such objections before the July 1 deadline under § 290.257.3 RSMo will be significantly constrained, if not impossible. The Division's Motion to Revise thus implicates significant logistical and due process concerns for the Commission, and underscores the importance of the Division taking better care, going forward, to comply with the requirements for motions to amend set forth under 8 CSR 20-5.010(6).

Nevertheless, in the interest of once again elevating, where possible, substance over procedure, and in order to give the Division an opportunity to correct the alleged clerical error on the part of the Division, it appears to us that the best course is to publish the Division's Motion to Revise to the Commission's prevailing wage web portal, and invite any objections to same.

Accordingly, all interested parties are hereby directed to show cause within ten (10) days of the date of this order why the Commission should not enter an order granting the Division's Motion to Revise. If no objections are received, the Commission will take up and consider whether to grant the Motion to Revise at that time.

IT IS SO ORDERED

Given at Jefferson City, Missouri, this 4th day of June 2020.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



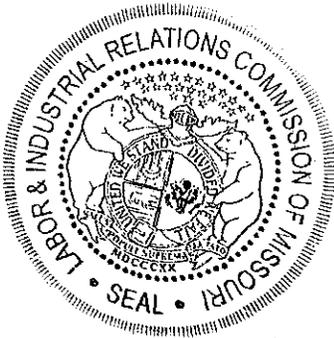
Robert W. Cornejo, Chairman



Reid K. Forrester, Member



Shalonn K. Curls, Member



Attest:


Secretary