

Before the
LABOR AND INDUSTRIAL RELATIONS COMMISSION
Jefferson City, Missouri

HAND CARRIED

FILED

JUL 31 2014

LABOR AND INDUSTRIAL
RELATIONS COMMISSION

GENERAL WAGE ORDER NO. 58

MOTION TO AMEND GENERAL WAGE ORDER NO. 58

The Missouri Department of Labor and Industrial Relations, Division of Labor Standards, ("Movant" and/or "Division of Labor Standards") moves to amend General Wage Order No. 58 to correct its typographical and clerical errors with respect to the fringe benefit amount payable to General and Skilled Laborers in Barry, Barton, Bates, Benton, Camden, Carroll, Cedar, Christian, Dade, Dallas, Douglas, Greene, Henry, Hickory, Jasper, Johnson, Laclede, Lawrence, McDonald, Morgan, Newton, Ozark, Pettis, Polk, St. Clair, Saline, Stone, Taney, Vernon, Webster, and Wright Counties ("Subject Counties"). Should the Commission conclude that granting the change requested herein is barred by §290.260.1, RSMo., Movant requests that the Commission's Order provide guidance regarding proper payment of General and Skilled Laborers in the Subject Counties. Movant would show the Commission as follows:

1. On May 28, 2014, the Division of Labor Standards filed General Wage Order No. 58 with the Secretary of State. General Wage Order No. 58 sets forth by county the initial wage rate determination for the occupational titles involved in the construction of public works projects for the Missouri Highways and Transportation Commission. On or about July 1, 2014, General Wage Order No. 58 became effective.

2. After the effective date of General Wage Order No. 58, the Division of Labor Standards discovered that it had mistakenly listed the fringe benefit amount payable to General Laborers and Skilled Laborers in the Subject Counties as \$12.36 per hour. (Exhibit A). A review of the records on file with the Division of Labor Standards confirms that the fringe benefit amount for General Laborers and Skilled Laborers in the Subject Counties should be \$12.01

per hour. (Exhibit B). The changes sought by this motion are intended to correct these errors, and are required in the interest of fairness and justice.

3. The corrections detailed in Exhibit B are necessary to accurately reflect the information that was on file at the Division of Labor Standards prior to July 1, 2014, and to identify the proper fringe benefit amount of \$12.01 per hour, for the occupational titles of General Laborer and Skilled Laborer in Barry, Barton, Bates, Benton, Camden, Carroll, Cedar, Christian, Dade, Dallas, Douglas, Greene, Henry, Hickory, Jasper, Johnson, Laclede, Lawrence, McDonald, Morgan, Newton, Ozark, Pettis, Polk, St. Clair, Saline, Stone, Taney, Vernon, Webster, and Wright Counties.

4. The Division of Labor Standards requests that the Labor and Industrial Relations Commission substitute the attached 27 pages (Exhibit B) for the comparable original pages in the General Wage Order. The corrections are identified by bold print.

5. Public policy is served by making the attached corrections to reflect the proper wage rates.

6. "A determination applicable to every locality to be contained in a general wage order shall be made annually on or before July first of each year for the Missouri state highways and transportation commission and shall remain in effect until superseded by a new general wage order." § 290.260.1, RSMo. However, because no explicit consequence is applied to non-compliance, § 290.260.1, RSMo., should be viewed as a "directory statute," rather than a "mandatory statute." There is no explicit statement within the statute that changes cannot occur to the General Wage Order beyond July 1 of each year. If the legislature had desired such a limitation, it would have provided one. The absence of such a limitation weighs strongly against concluding that the legislature intended for the Division to be stripped of its authority to determine applicable rates for each trade in each county beyond July 1 of each year, foreclosing amendment, particularly to remedy the Division's typographical and clerical error. *Frye v. Levy*, --- S.W.3d ----, 2014 WL 3107299, p. 6 (Mo.,2014). As Missouri's Supreme Court has stated,

“It is a rule of construction, that a statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others, is directory merely, unless the nature of the act to be performed, or the phraseology of the statute is such, that the designation of time must be considered as a limitation of the power of the officer.”

St. Louis Cnty. Court v. Sparks, 10 Mo. 117, 121-22 (1846). Consequently, Movant urges the Commission not to read a strict prohibition against remedial action where the legislature did not provide one, and to order the change requested herein.

7. In the event the Commission finds that granting the changes requested herein is barred by § 290.260.1, RSMo., Movant requests that the Commission state in its Order that, in keeping with the intent of the bold language at the bottom of the second page of General Wage Order No. 58 (Exhibit C), General Laborers and Skilled Laborers in the Subject Counties performing work under General Wage Order No. 58 should receive the total fringe benefit payable to General Laborers and Skilled Laborers, respectively, in the Subject Counties under the Heavy Construction Rates for Annual Wage Order No. 21 (Exhibit D).

WHEREFORE, the Missouri Department of Labor and Industrial Relations, Division of Labor Standards, requests that the Commission enter an order to substitute the attached 27 pages (Exhibit B) for the original comparable pages in General Wage Order No. 58 and grant any and all other relief to which it may be entitled.

CHRIS KOSTER
Attorney General

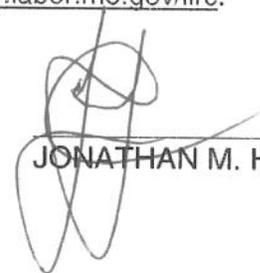


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CERTIFICATE OF SERVICE

Notice of this Motion to Amend General Wage Order No. 58 will be posted on the Labor and Industrial Relations Commission web site at www.labor.mo.gov/lirc.



JONATHAN M. HENSLEY

Date July 30, 2014