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WASHINGTON SUPREME COURT UPHOLDS PREVAILING WAGE STATUTE TO ENSURE HIGH RATES ACROSS THE STATE

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The Washington Supreme Court recently upheld amendments to the state's prevailing wage statute that pins the wage rate to the highest collective bargaining statute in each separate county, a decision that is sure to have employers bracing for increased labor costs. While the industrial statistician for the Department of Labor and Industries twice yearly sets the prevailing wage rate that public works contractors must pay, recent legislative amendments to the state Prevailing Wage Act upends how the statistician sets that rate. And on October 13, the Washington Supreme Court handed down its opinion in *Associated General Contractors of America et al. v. State of Washington et. al.*, upholding this new model where state contractors must follow a prevailing wage requirement based on the highest collectively bargained wage rate for the relevant trade in the county where they operate. What do Washington State employers need to know about this development?

New Structure Challenged in Court

Prior to these amendments, the industrial statistician set prevailing wages in each county for each trade based on the majority or average wage rate in that county. Citing an effort to increase the statistician's efficiency, the legislature's amendments now require

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the statistician to adopt the highest wage set by a collective bargaining agreement in the relevant county.

Certain contractor associations challenged the new amendments – and the Washington Court of Appeals sided with these associations. The court struck them down as an unconstitutional delegation of legislative authority. It ruled that the legislature had not provided the statistician clear standards in exercising their authority, thereby mandating the statistician to rely on CBA wage rates that did not yet exist.

In the most recent ruling, however, the Supreme Court disagreed. It flipped the Court of Appeals' decision and held that the legislature provided the requisite standard by requiring the statistician to adopt the highest wage set by CBA in a county.

What Now?

As a result of the Supreme Court decision, public works contractors must now pay the wage rate set by the more generous CBA in each county where they perform work. This rate may no longer reflect the actual wage rate prevailing through a county, but rather a rate that applies to a minority of workers who have successfully bargained with other employers for a more generous wage through threats of labor action or by relying on powerful union backing.

Likewise, if a CBA mostly covers workers in a higher wage market like Seattle and mandates wage rates reflective of that market, but also covers some smaller number of workers in a county with lower average wages, the higher rate in the CBA may become the prevailing wage in both localities. Indeed, the Court of Appeals cited one such CBA already in effect in its decision.

As the Washington Supreme Court reached its decision based on state law, and because numerous federal courts have upheld similar prevailing wage standards under federal labor law, it is unlikely that the contractor associations will be able to obtain review before the

U.S. Supreme Court. As such, public works contractors will have to consider the wage rates set by CBAs in each county where they perform or bid for state projects.

Conclusion

The Washington Supreme Court left open, however, whether public works contractors can challenge whether those CBAs are valid under governing law. Stay tuned for possible refinement from state courts on this point. We'll monitor the situation and provide updates where warranted, so make sure you are subscribed to the [Fisher Phillips' Insight System](#) to get the most up-to-date information.

In in the meantime, if you have any questions about how these changes may impact your business, please contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Seattle office](#).