TITLE 13 - EMPLOYMENT

CHAPTER 2 - PREVAILING WAGES

Legislative History: Tohono O'odham Nation wage determination provisions, including Attachments A and B, were approved by Resolution 08-186 effective April 18, 2008. Resolution 08-186 updates the previous prevailing wage provisions approved by Resolution No. 01-028, as amended.

Related History: Tohono O'odham Nation wage determination provisions were approved by Resolution No. 01-028 effective January 17, 2001; amended by Resolution No. 01-030 (amending Section 2) on January 17, 2001; amended by Resolution No. 02-390 (amending Section 5: Exemptions) effective September 21, 2002 (exceeded 48-hour period for Chairperson's signature).

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL (Adopting a Wage Determination for Construction Projects within the boundaries of the Tohono O'odham Nation)

RESOLUTION NO. 08-186

1	WHEREAS, 1	the Tohono O'odham Nation (Nation) enacted a Wage Determination pursuant to
2]	Legislative Council Resolution No. 01-028 (Adopting a Wage Determination for
3		${f Commercial Construction, Residential Construction, and Heavy Construction projects}$
4	1	within the boundaries of the Tohono O'odham Nation) in 2001 to protect wages
5	1	generated from construction projects occurring within the Nation's boundaries; and
6	WHEREAS, 1	the 2001 Wage Determination requires that contractors and subcontractors pay their
7	,	workers, at a minimum, the wages and cash in lieu of benefits as specified by the Wage
8]	Determination; and
9	WHEREAS, 1	the Wage Determination was also enacted to pay workers, within the Nation, wages
10		equivalent to those paid to similar workers outside the Nation's lands and since 2001,
11	,	wages in the Nation's surrounding geographical area have increased while the
12	ľ	Nation's wages have remained the same; and
13	WHEREAS, 1	the ${f Tribal}$ ${f Employment}$ ${f Rights}$ ${f Commission}$ (${f TERO}$ ${f Commission}$), ${f advised}$ by the ${f Tribal}$
14]	Employment Rights Office (TERO Office) has researched and evaluated the prevailing
15	•	wages in the surrounding counties and has determined that the wages in the attached
16		wage determination are the prevailing wages for the Nation's geographical area; and
17	WHEREAS, 1	the federal Davis-Bacon Act (40 U.S.C. 276a et seq.) which protects the wages of
18		construction workers employed under federal contracts has limited applicability for
19]	projects within the Nation; and
20	WHEREAS, 1	the Domestic Affairs Committee of the Legislative Council has reviewed this wage
21		determination proposal and recommends its approval by the Legislative Council.
22	NOW, THER	EFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council adopts the
23	•	attached wage determination and Attachment "A" and Attachment "B" for
24		Construction projects within the exterior boundaries of the Tohono O'odham Nation
25	•	as follows:
26]	1. Wage Determination. The wage determination attached hereto is adopted.
27		Contractors and subcontractors in projects covered by this wage determination
28		are required to pay their workers, at a minimum, the wages and cash in lieu of
29		benefits specified herein.
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(Adopting a Wage Determination for Construction Projects within the boundaries of the Tohono O'odham Nation)
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- 2. All wages pursuant to the wage determination will be paid at the hourly wagedescribed herein. No other method of payment is permitted.
- 3. Effective Date. The effective date of this wage determination shall be the date of approval of the Chairperson of the Tohono O'odham Nation of the resolution adopting the wage determination. This wage determination will not apply to projects where the bid solicitation was distributed before the effective date.

4. Definitions.

- A. "Apprentice" means either: (1) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with an Apprenticeship Agency administered by a state or Indian Tribe and recognized by the Bureau: or (2) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State or Tribal Apprenticeship Agency to be eligible for probationary employment as an apprentice.
- B. "Construction" means all construction activity which relates to: the erection or building of new structures or improvements and the acquisition, replacement, expansion, remodeling, alteration, modernization or extension of existing structures and improvements; drilling, blasting, excavating, earth moving, clearing and landscaping, painting and decorating; the manufacturing or finishing of materials, articles, supplies or equipment at the construction site; and road construction and repair. All construction activity previously included with the terms "Commercial Construction," "Residential Construction," and "Heavy Construction" as defined in Resolution No. 01-028 is included in this definition of "Construction."
- C. "District" means any of the 11 districts of the Nation as described in Article IX of the Constitution of the Tohono O'odham Nation and any district hereafter added.

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- D. "Certified Journeyman" an individual who has served as an apprentice to learn his/her skill and certified by a bona fide apprenticeship program as a Journeyman.
- E. "Nation" means the Tohono O'odham Nation, a federally recognized Indian tribe organized under the Constitution of the Tohono O'odham Nation.
- F. "Person" means any individual, company, public or private corporation, trust, firm, association, partnership, Indian Nation or any subordinate entity or political subdivision thereof, any business chartered by any Indian Nation, any State or county or municipal government or any of their departments, commissions or political subdivisions, the United States or any department, agency or instrumentality of the United States, interstate body, industry, any legal entity or private enterprise, and includes members and non-members of the Tohono O'odham Nation.
- G. "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, certified as meeting its standards for on-the-job training programs; or employed and/or receiving on-the-job training under a public employment or work experience program which is approved and funded by the Nation.
- H. "Worker" means any employee on a construction project occurring within the Tohono O'odham Nation.
- I. "Natural Person" means a natural person is usually a human being as distinguished from an artificial person that most often is created by operation of law (as a corporation).

5. Scope of Coverage.

Except as otherwise exempted by Section 3 or Section 6 herein, this wage determination shall apply to all persons performing business within the boundaries of the Tohono O'odham Nation, including the Tohono O'odham Nation and all of its branches, departments, programs, districts, and subordinate enterprises and authorities.

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6. Exemptions.

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The following categories of projects shall be exempt from this wage determination:

- A. Projects in which one of the Districts of the Tohono O'odham Nation is a contracting party, unless that District adopts the wage determination of the Nation.
- B. Projects where the United States government or any of its departments, agencies or instrumentalities is a contracting party.
- C. Projects where the State of Arizona or any of its departments, agencies, or instrumentalities is a contracting party.
- D. Projects where wages are established by a collective bargaining agreement except that no collective bargaining agreement shall prevent employees referred by TERO from exercising the option to either: 1) accept cash in lieu of benefits; or 2) receive benefits in accordance with the provisions of a collective bargaining agreement as modified.
- E. Projects performed by a natural person for that person's personal, family or household purposes.
- F. Projects performed with the existing employees of an otherwise covered entity for that entity's own construction projects.
- G. Trainee registered with the TERO Office in which case the TERO Office will develop a trainee wage scale base on this wage determination. The trainee wage scale will be approved by the TERO Commission by Resolution.
- H. Projects where the total cost of construction is \$5,000.00 or less.
- 7. Procedure for Requesting a Wage Determination.

If a given occupation is not listed in this wage determination, the following procedure to obtain a project specific wage determination shall be followed.

The contracting company for the project requesting a wage determination shall submit a Wage Determination Request Form to the TERO Office.

In completing the form the requesting party must furnish:

A. The title of the occupation.

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B. A sufficiently detailed description of the project to indicate the type(s) of construction involved. Separate attachments, may be submitted, if necessary for identification of the type of project.

The TERO Office will provide a wage determination for the unlisted occupation within 20 calendar days, unless additional information is requested by the TERO Office, in which case, a determination will be issued within 20 calendar days from the time the additional information is received by the TERO Office.

Wage determinations issued pursuant to this section will become part of the Nation's wage determination scale.

8. Posting.

The wage determination (including any additional classifications and wage rates, decided by the TERO Office) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and easily accessible place where it can be easily seen. The wage determination may be obtained at no charge from the TERO Office. In the absence of such posted information, any person who wants to determine if the project is covered by this wage determination should contact the TERO Office.

9. Enforcement.

The TERO office shall have authority to enforce this wage determination under procedures specified in the TERO Ordinance, Ordinance No. 01-85. Failure by any employer, contractor or subcontractor to pay wage rates as set by this wage determination, or higher wages, shall render such employer liable for the difference between the amounts actually paid and the amounts required under this wage determination, together with simple interest thereon at 10 % per annum. Actions of the TERO Office or TERO Commission may be appealed under the terms of Section 15 of Ordinance No. 01-85.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 10TH. Day of APRIL, 2008 at a meeting at which a quorum was present with a vote of 2,353.4 FOR; -0- AGAINST; 181.1NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by Section 1(c)(2)(e)(1) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

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	TOHONO O'ODHAM LEGISLATIVE COUNCIL
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	Verlon M. Jose, Legislative Chairman
ATTEST:	(
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Sum Ing	
Lucille Lopez, Acting Legisl	
10 day of Agril	. 2008.
	 /=====
Said Resolution was submi	itted for approval to the office of the Chairman of the Tohono O'C ay of
-	of Section 5 of Article VII of the Constitution and will become eff
	n his failure to either approve or disapprove it within 48 ho
submittal.	
	TOHONO O'ODHAM LEGISLATIVE COUNCIL
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	- Volta Williams
	Verlon M. Jose, Legislative Chairman
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	$\Lambda \rightarrow \Lambda$
[VI APPROVED	on the 18 day of April 2008
[X] APPROVED	on the/8_ day of
[X] APPROVED	on the/8 day of
	at 3.40 o'clock, .M.
	at 3. 40 o'clock, .M. NED VORRIS, JR., CHAIKMAN
	at 3.40 o'clock, .M. NED VORRIS, JR., CHAIKMAN
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TOHONO O'ODHAM NATION WAGE SCALE SECOND EDITION

TRADE	RATE/FRINGE
BOILERMAKERS	\$26.21
Fringe	\$17.36
	700.50
BRICKMASONS, BLOCKMASONS (bricklayers), AND STONEMASONS	\$22.50
Fringe	\$3.91
CARPENTERS (includes cabinet installer, formwork, framework, metal stud	\$21.10
framing, drywall installer, drywall tapers)	421.10
Fringe	\$5.17
CARPET, FLOOR, AND TILE INSTALLERS AND FINISHERS	\$22.59
Fringe	\$2.69
Tringe	\$2.09
CEMENT MASONS, CONCRETE FINISHERS, SEGMENTAL PAVERS, AND	\$17.75
TERRAZZO WORKERS	
Fringe	\$6.01
CONSTRUCTION EQUIPMENT OPERATORS	<u> </u>
(See Attachment "A" for Group Listing)	
Group 1	\$18.15
Group 2	\$21.42
Group 3	\$22.50
Group 4	\$23.53
Fringe (for all groups)	\$7.48
CONSTRUCTION LABORERS	
(See Attachment "B" for Group Listing)	
Group 1	\$14.64
Group 2	\$15.51
Group 3	\$16.19
Group 4	\$17.11
Group 5	\$17.95
Group 6	\$18.89
Group 7	\$19.97
Fringe (for all groups)	\$4.70
DRYWALL INSTALLERS, CEILING TILE INSTALLERS, AND TAPERS	\$15.55
Fringe	\$4.86
EL ECTDICIANO	\$22.50
ELECTRICIANS Fringe	+3%
Fringe	+\$6.04
ELEVATOR INSTALLERS AND REPAIRERS	\$28.68
GLAZIERS	\$19.89
Fringe	\$3.70

TRADE	RATE/FRINGE
HAZARDOUS MATERIALS REMOVAL WORKERS (See Laborers' Wage Rates &	\$18.89
Classifications - GROUP 6)	
Fringe	\$4.70
HEATING, AIR-CONDITIONING, AND REFRIGERATION MECHANICS AND	\$16.80
INSTALLERS	
INSULATION WORKERS	\$22.02
Fringe	\$9.12
PAINTERS AND PAPERHANGERS	\$16.95
Fringe	\$2.95
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PIPELAYERS, PLUMBERS, PIPEFITTERS, AND STEAMFITTERS	\$26.50
Fringe	\$11.00
PLASTERERS AND STUCCO MASONS	\$15.00
ROOFERS, WATERPROOFERS	\$17.80
Fringe	\$3.37
SHEET METAL WORKERS	\$23.20
Fringe	+3%
Fringe	+\$9.30
STRUCTURAL AND REINFORCING IRON AND METAL WORKERS	\$20.66
Fringe	\$13.59
THIE	<u> </u>
WELDING, SOLDERING, AND BRAZING WORKERS	\$23.00
Fringe	\$15.25

PROPOSED TOHONO O'ODHAM NATION WAGE SCALE

SECOND EDITION

Operating Engineers Wage Rates & Classifications Attachment "A"

GROUP I	RATE	FRINGE
	\$18.15	\$7.48

A-Frame Boom Truck

Air Compressor Operator

Beltcrete Operator

Boring Bridge and Texture

Brakeman

Concrete Mixer Operator (skip type)

Conductor

Conveyor Operator

Cross Tineing and Pipe float

Curing Machine Operator

Dinky Operator (under 20 tons)

Elevator Hoist Operator (Husky & similar)

Fireman (all)

Forklift & Ross Carrier Operator

Generator Operator (all)

Handler

Highline Cableway Signalman

Hydrographic Mulcher

Hydrographic Seeder

Joint Inserter

Jumbo Finishing Machine

Kolman Belt Loader Operator

Machine Conveyor Operator

Multiple Power Concrete Saw Operator

Oiler

Pavement Breaker

Power Grizzly Operator

Power Sweeper

Pressure Grout Machine Operator (as used in heavy engineering construction)

Pump Operator

Roller Operator

Roller Operator (except as otherwise classified)

Self-Propelled Chip Spreading Machine

Skiploader (3 c.y. & less)

Slurry Seal Machine Operator (moto-paver driver)

Small Self-Propelled Compactor (with blade)-backfill, ditch operator

Straw Blower

Tripper Operator

Tugger Operator

Welding Machine Operator

Wheel-Type Tractor Operator (Ford-Ferguson type with attachments, etc.)

Winch Truck

Water Truck Driver (all sizes and types)

GROUP II RATE FRINGE

\$21.42

\$7.48

Aggregate Plant Operator (including crushing, screening and sand plants, etc.)

Asphalt Laydown Machine Operator

Asphalt Plant Mixer Operator

Backhoe Operator (Rubber Tire or Track less than 1 c.y.)

Bee Gee Operator

Boring Machine Operator

Concrete Pump Operator

Concrete Mechanical Tamping Spreading or Finishing Machine Operator (including Clary, Johnson or similar types)

Concrete Batch Plant Operator (all types and sizes)

Concrete Mixer Operator (paving type and mobile mixers)

Crane Operator (crawler and pneumatic less than 15 tons capacity MRC)

Drilling Machine Operator (including water wells)

Elevating Grader Operator (all types and sizes, except as otherwise classified)

Electrician Ground Man (assisting lineman electrician)

Field Equipment Serviceman

Locomotive Engineer (including Dinky 20 tons weight and over)

Moto-Paver (and similar type equipment) Operator

Motor Grader Operator (any type power blade-rough)

Oiler Driver

Operating Engineer Rigger

Pneumatic Tired Scraper Operator (all sizes and types)

Power Jumbo Form Setter Operator

Road Oil Mixing Machine Operator

Roller Operator (on all types asphalt pavement)

Screed Operator

Self-Propelled Compactor (with blade) (815, 825 or equivalent – grade operation)

Skip Loader Operator (all types with a rated capacity over 3 but less than 6 c.y.)

Slip Form Operator (power driven lifting device for concrete forms)

Soil Cement Road Mixing Machine Operator (single pass type)

Stationary Pipe-Wrapping & Cleaning machine Operator

Surface Heater and Planer Operator

Tractor Operator (dozer, pusher-all)

Traveling Pipe-Wrapping Machine Operator

Trenching Machine Operator

Tugger Operator (two or more drums)

GROUP III RATE FRINGE

\$22.50 \$7.48

Auto Grade Machine Operator (CMI and similar equipment)

Barge Operator

Boring Machine Operator (including Mole, Badger, Horizontal Boring or Directional Boring Operators – only one operating engineer shall be required for each horizontal or directional boring machine unless additional seated operating stations are incorporated on the machine by the original equipment manufacturer (OEM).)

Concrete Pump Operator (truck mounted with boom attached)

Crane Operator (crawler and pneumatic over 15 tons & less than 100 ton capacity MRC)

Crawler-Type Tractor Operator (with boom attachment and slope bar)

Derrick Operator

Gradall Operator

Grade Checker (excluding Civil Engineer)

Heavy Duty Mechanic/Welder

Helicopter Hoist Operator or Pilot

Highline Cableway Operator

Mass Excavator Operator (150 Bucyrus, Erie and similar type)

Mechanical Hoist Operator (two or more drums)

Motor Grader Operator (any type power blade-finish)

Mucking Machine Operator

Overhead Crane Operator

Pile driver Engineer (portable, stationary or skid)

Power Driven Ditch Lining or Ditch Trimming Machine Operator

Remote Control Earth Moving Machine Operator

Rotomill and Milling Machine Operator (asphalt or concrete planing)

Skip Loader Operator (all types with rate capacity 6 c.y. but less than 10 c.y.)

Slip Form Paving Machine Operator (including Gunnert, Zimmerman and similar types)

Tech (survey instrument man)

Tower Crane (or similar type)

Universal Equipment Operator (shovel, backhoe, dragline, clamshell, etc., up to 10 c.y.)

GROUP IV	RATE	FRINGE
	¢73 5 3	¢7 10

Crane Operator (pneumatic or crawler – 100 ton hoisting capacity and over MRC rating)

Operating Engineer Electrician (including lineman, tower erector, cable splicer, etc.)

Skip Loader Operator (all types with rated capacity of 10 c.y. or more)

Survey Party Chief

Universal Equipment Operator (shovel, backhoe, dragline, clamshell, etc. 10 c.y. and over)

Special:

Heavy Duty Repair Helper

Heavy Duty Welder Helper

PROPOSED TOHONO O'ODHAM NATION WAGE SCALE SECOND EDITION

Laborers' Wage Rates & Classifications Attachment "B"

GROUP I RATE FRINGE \$14.64 \$4.70

General Labor

All tenders not herein separately classified

Astro-Turf Layer

Cesspool Diggers and Installers

Chat Box Man

Chipper (clearing and grubbing)

Clean-Up, Bull Gang & Trackman - Railroad

Dump man and/or Spotter

Fence Builder, Guardrail Builder - Highway

Flagger

Floor Sanders (concrete)

Form Stripper

Kettleman-Tarman

Manually Controlled Signal Operator

Packing Rod Steel and Pans

Powderman Tender

Pre-Wet Labor

Rip Rap Stone Man

Rock Slinger

Scaffold Labor

Shop Helper

Spikers, Wrenchers-Cresote Tieman

Tool Dispatcher or Checker

Window Cleaner

GROUP II	RATE	FRINGE
	\$15.51	\$4.70

Pipe Helper
Asphalt Laborers
Bander
Cement Mason Tender
Concrete Mucker
Concrete Laborer (belt, pipe and/or hoseman)
Cutting Torch Operator
Fine Grader
Guinea Chaser
Power Type Concrete Buggy
Sandblaster (pot tender)

GROUP III RATE FRINGE \$16.19 \$4.70

Concrete Small Tools

(Hilti, Vibrator, Chipping Hammer)

Cement Finisher, Helper

Chain Saw (on clearing & grubbing)

Compaction Tool Operator

Concrete Vibrating Machines

Cribber and Shorer (except tunnel)

Electric tools

Hydraulic jacks and similar mechanical

Operator and tender of pneumatic and Pipe Caulker and/or Backup Man - Pipeline

Pipe Wrapper

Pneumatic Gopher

Pre-cast Manhole Erector

Riggers & Signal Man - Pipeline

GROUP IV	RATE	FRINGE
	\$17.11	\$4.70

Air and Water Washout Nozzleman

(low and high pressure)

Asphalt Raker I

Bio-Filter, Pressman, Installer, Operator

Certified Scaffold, Laborer

Concrete Cutting Torch

Concrete Saw (hand-guided)

Driller (jackhammer and/or pavement breaker)

Grade Setter (pipeline)

Gunite (funman, mixerman, rodman)

Hand-Guided Trencher and similarly non-metallic transite and plastic pipe, operated equipment

Pipe Layer including, but not limited to water pipe, sewer pipe, drain pipe, and underground tile pipe and conduit

Sandblaster (nozzleman)

Scaler (using bason's chair or safety belt

Tamper (mechanical – all types)

Chuck Tender (except tunnel)

GROUP V RATE FRINGE \$17.95 \$4.70

Lead Pipe Man AC Dumpman Asbestos Abatement Asphalt Raker II Driller Doctor and/or Air Tool Repairman Driller - core, diamond, wagon, air track, Form Setter and/or Builder Form Setter/Finisher I Hazardous Waste, Removal Hydrasonic, powder amn Joy Mustang, PR-143, 220 Gardner-Denver Lead Abatement Process Piping Scaler (driller) Water Blaster Operator Welder and/or Pipelayer installing

GROUP VI RATE FRINGE \$18.89 \$4.70

CONSTRUCTION SPECIALIST (I)

Forklift

Sky Lift/Scissor Lift

Trencher

Certified Hazardous Waste Worker

Certified Lead Remover

Licensed Pest Technician

Hydro Mobile Scaffold Builder

Radiation Worker

CONSTRUCTION SPECIALIST (II)

Finisher II

Finisher III Form setter/

Finisher, bridge finisher

 GROUP VII
 RATE
 FRINGE

 Non-CDL
 \$18.89
 \$4.70

 CDL
 \$19.97
 \$4.70