

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, 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 **Commercial Construction, Residential Construction, and Heavy Construction projects**
4 **within the boundaries of the Tohono O'odham Nation) in 2001 to protect wages**
5 **generated from construction projects occurring within the Nation's boundaries; and**

6 **WHEREAS, 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, 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 **Nation's wages have remained the same; and**

13 **WHEREAS, the Tribal Employment Rights Commission (TERO Commission), advised by the 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, 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, 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, THEREFORE, 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.**

RESOLUTION NO. 08-186

(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.

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; 181.1 NOT 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).

RESOLUTION NO. 08-186

(Adopting a Wage Determination for Construction Projects within the boundaries of the Tohono O'odham Nation)

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TOHONO O'ODHAM LEGISLATIVE COUNCIL


Verlon M. Jose, Legislative Chairman

16 day of April, 2008

ATTEST:


Lucille Lopez, Acting Legislative Secretary

10 day of April, 2008.

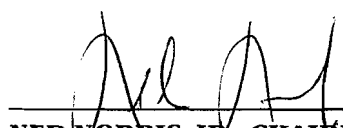
Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 16 day of April, 2008 at 5:18 o'clock, P..M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Verlon M. Jose, Legislative Chairman

APPROVED on the 18 day of April, 2008

DISAPPROVED at 3:40 o'clock, P..M.


NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 18th day of APRIL, 2008, at 4:00 o'clock, P..M.


Lucille Lopez, Acting Legislative Secretary

TOHONO O'ODHAM NATION
WAGE SCALE
SECOND EDITION

TRADE	RATE/FRINGE
BOILERMAKERS	\$26.21
Fringe	\$17.36
BRICKMASONS, BLOCKMASONS (bricklayers) , AND STONEMASONS	\$22.50
Fringe	\$3.91
CARPENTERS (includes cabinet installer, formwork, framework, metal stud framing, drywall installer, drywall tapers)	\$21.10
Fringe	\$5.17
CARPET, FLOOR, AND TILE INSTALLERS AND FINISHERS	\$22.59
Fringe	\$2.69
CEMENT MASONS, CONCRETE FINISHERS, SEGMENTAL PAVERS, AND TERRAZZO WORKERS	\$17.75
Fringe	\$6.01
CONSTRUCTION EQUIPMENT OPERATORS (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
ELECTRICIANS	\$22.50
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 & Classifications - GROUP 6)	\$18.89
Fringe	\$4.70
HEATING, AIR-CONDITIONING, AND REFRIGERATION MECHANICS AND INSTALLERS	\$16.80
INSULATION WORKERS	\$22.02
Fringe	\$9.12
PAINTERS AND PAPERHANGERS	\$16.95
Fringe	\$2.95
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
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****\$23.53****\$7.48**

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
<p>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</p>		
GROUP II	RATE	FRINGE
	\$15.51	\$4.70
<p>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)</p>		

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)
Guniting (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