

- i. A valid government ID.
- ii. A past utility bill with name or other mail demonstrating residency within the state for at least one year.
- iii. A past or current resident hunting or fishing license.
- iv. Residential mortgage or rental documents.
- v. Prior employment documents such as paystubs showing a valid residential address.

All contractors working on public works projects must comply with the Wyoming Labor Preference Act. Those contractors possessing Resident Contractor Certifications from the Wyoming Department of Workforce Services's Labor Standards Division, as well as non-resident contractors, must hire Wyoming labor for public works projects.

### The Investigation

If you are the subject of an investigation involving a violation of the Wyoming Preference Act, be prepared to produce the following information:

- i. A copy of your contract with the project sponsor (i.e. state agency, school district, county, etc.) if applicable.
- ii. A copy of your contract with the General Contractor for the project.
- iii. The exact date you began work on the project (and the last date you worked on it if the project is finished).
- iv. The full name, title or position of every individual employed on the project.
- v. The exact days each individual worked on the project.

### Penalties

Violation of the act can result in a fine up to \$1,000 per non-resident laborer employed per day - up to 10 percent of the amount of the person's contract for the first offense. A second offense can result in your banishment from bidding on future public works projects for one year after the violation is resolved. This means the contractor may be

barred from bidding on any future public works projects for a year starting on the date the contractor paid the fines in full, and became fully compliant with the law.

### Definition of "Independent Contractor"

"Independent contractor" means an individual who performs services for another individual or entity and:

- (a) Is free from control or direction over the details of the performance of services by contract and by fact;
- (b) Represents his services to the public as a self-employed individual or an independent contractor; and
- (c) May substitute another person to perform his services.

### Questions

For any questions concerning enforcement of the act call Labor Standards at 307-777-7261.

For questions concerning the procurement of a certification under the act, please contact your local Workforce Center.

### Additional Resources

You may view the Wyoming Preference Act online at <http://legisweb.state.wy.us/statutes/statutes.aspx?file=titles/Title16/T16CH6AR2.htm>.

You can view Wyoming Department of Workforce Services Rules regarding the Preference Act at <http://wyomingworkforce.org>.

Another great resource brought to you by the Wyoming Department of Workforce Services



**WE WORK FOR YOU!**

Labor Standards

# Wyoming Preference Act





## Background Information

The Wyoming Preference Act aims to retain public monies in the state by ensuring Wyoming contractors and residents receive employment on public works projects. In this way, residents benefit from public spending and public funds continue to circulate in the local economy.

Governor Matt Mead has made it one of his priorities to ensure Wyoming contractors and residents of the state obtain work on public works projects.

## What the Act Says

*Wyoming Statute 16-6-203 states, "Every person who is charged with the duty of construction, reconstructing, improving, enlarging, altering or repairing any public works project or improvement for the state or any political subdivision, municipal corporation, or other governmental unit, shall employ only Wyoming laborers on the project or improvement. Every contract let by any person shall contain a provision requiring that Wyoming labor be used except other laborers may be used when Wyoming laborers are not available for the employment from within the state or are not qualified to perform the work involved. A person required to employ Wyoming laborers may employ other than Wyoming laborers if that person informs the nearest state employment office of his employment needs and the state employment office certifies that the person's need for laborers cannot be filled from those listed as of the date the information is filed."*

*Wyoming Statute 16-6-202(a)(i) defines a laborer as "a person employed to perform unskilled or skilled manual labor for wages in any capacity and does not include independent contractors."*

## What the Act Means

Contractors must employ ONLY residents of the state of Wyoming on public works projects unless:

- The employer has gone to the nearest Workforce Center and received a written certification from the

Center stating the employer's labor needs cannot be met by the local labor pool.

The contractor can only hire a non-resident if he or she receives this certification.

A single certificate will not cover multiple projects in a given location, even if the projects occur at the same time and have the same labor requirements. Certification must be sought for every public works project the contractor is involved in.

The contractor must register and receive certification from the local Workforce Center before hiring non-resident labor.

Once issued, the certificate is valid for the duration of the project. During this time the employer may hire non-resident labor for the project, even if local labor becomes available prior to the project's completion.

*Section 16(d) - A contractor seeking to bring non-resident labor onto a public works project to fill openings from employee turnover, new openings or additional needs after receipt of the Letter of Certification must first post the opening with the local Workforce Center and make reasonable attempts to obtain qualified Wyoming resident labor.*

Laborers are those employees tasked with actually doing the work on the project, and do not include actual independent contractors, foremen, project managers, designers or owners.

*Simply classifying an employee as an independent contractor does not mean he or she is not subject to the law. In order to qualify as an independent contractor the individual must own and operate a separate business independent of the original contractor.*

## What to do to Remain Compliant

Generally, in order for a contractor to remain in compliance of the law when hiring non-resident labor, the contractor must seek out certification at least **11 business days prior to the commencement of work from the local Workforce Centers nearest the project location.** A list of Workforce centers can be found at <http://wyomingworkforce.org/contact/offices.aspx>

The eleven-day period is not an absolute timeline; the contractor must make reasonable efforts to employ Wyoming labor. In so doing, the contractor must seek labor in reasonable time periods in relation to the number of employees sought, and the date employees are required to start working. For example, a contractor that seeks certification within the two-week period, but is clearly seeking the impossible, (i.e. to fill 50 positions in two weeks), will not be considered in compliance.

Do not wait until the last minute to seek certification. If you think you may need to bring in employees from outside Wyoming, you need to present your labor needs to the local Workforce Center as soon as possible, ideally right after receiving the contract to perform the work.

The certification is not a "get out of jail" card. If evidence indicates you did not seek certification in a reasonable time frame, refused to hire qualified resident employees that applied for open positions, held unrealistic qualifications for the positions sought or did not apply at the local Workforce Center, you are in violation of the Preference Act and may be cited.

Contractors are responsible for verifying employees classified as Wyoming residents meet the statutory definition of the term. Doing so may include, but is not limited to, requiring the employee to produce: