

**RINCON BAND OF LUISEÑO MISSION INDIANS
RINCON INDIAN RESERVATION, CALIFORNIA**



**RINCON PREVAILING WAGE ORDINANCE
RINCON TRIBAL CODE § 5.400**

Adopted on April 9, 2013

RINCON PREVAILING WAGE ORDINANCE

Rincon Tribal Code § 5.400

Table of Contents

§ 5.400 Purpose..... 3

§ 5.401 Definitions..... 3

§ 5.402 Payment of Prevailing Wage Required..... 4

§ 5.403 Determination of Tribal Prevailing Wage..... 4

§ 5.404 Employer Requirements..... 5

§ 5.405 Tribal Court Action/Jurisdiction..... 5

§ 5.406 Sovereign Immunity..... 7

§ 5.407 Severability 7

§ 5.408 Effective Date 7

RINCON PREVAILING WAGE ORDINANCE

Rincon Tribal Code § 5.400

§ 5.400 PURPOSE

The purpose of this Ordinance is to determine and apply the Rincon Prevailing Wage Rate in tribal Construction contracts and agreements that shall supersede federally determined prevailing wage rates, pursuant to the Davis-Bacon Act, that would otherwise apply to certain federally-funded or assisted agreements.

§ 5.401 DEFINITIONS

The following terms as used in this Ordinance shall have the following meanings:

(a) **“Agreement”** shall mean any contract or agreement for assistance, sale or lease funded by any State statute or program or any federal statute applicable to Indian tribes and specifically including the Native American Housing Assistance and Self-Determination Act of 1996, as amended, 25 U.S.C. 4101, et. seq, which permits the payment of a tribal prevailing wage rate in lieu of a State or federal prevailing wage rate.

(b) **“Construction”** shall mean alteration, maintenance or repair, including, but not limited to, site preparation, painting and decorating, of public buildings, public housing or public works.

(c) **“Davis-Bacon Act”** means the Davis-Bacon Act of 1931, 40 U.S.C. § 276, that requires payment of local prevailing wage rates on federally-funded or assisted projects.

(d) **“Ordinance”** means this Rincon Prevailing Wage Ordinance, as amended from time to time.

(e) **“Prevailing Wage”** means the wage paid to the majority (more than 50 percent) of laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the Prevailing Wage shall be the average of the wages paid, weighted by the total employed in the classification.

(f) **“Record Penalty”** means a violation of the record maintenance requirements set forth in Section 5.405 of this Ordinance.

(g) **“Reservation”** means all lands within the boundaries of the Rincon Reservation.

RINCON PREVAILING WAGE ORDINANCE

Rincon Tribal Code § 5.400

(h) **"Rincon Band"** means the Rincon Band of Luiseño Indians, a sovereign Indian tribal government recognized as such by the federal government of the United States of America. Reference to "Tribe" or "Band" in this Ordinance, or any existing or future ordinance shall mean the "Rincon Band".

(i) **"State"** means the State of California.

(j) **"Tribal Council"** is the five-member Business Committee established under Section 3 (a) of the Articles of Association. "Tribal Council" shall be synonymous with "Business Committee" or "Rincon Business Committee" as used in this Ordinance or any existing or future Tribal ordinance.

(k) **"Tribal Court"** means the Rincon Civil Trial Court or other tribal forum designated by the Tribal Council.

(l) **"Wage Penalty"** means the difference in pay between the Prevailing Wage and the wage paid to a covered employee.

§ 5.402 PAYMENT OF PREVAILING WAGE REQUIRED

Any agreement for Construction that is State- or federally-funded or assisted shall contain a provision requiring not less than Prevailing Wages, as determined by the Tribe to be paid to the contractor, subcontractor, or other covered employees.

§ 5.403 DETERMINATION OF TRIBAL PREVAILING WAGE

(a) The Tribe may periodically commission a wage survey from time-to-time to determine the Prevailing Wage.

(1) The Tribe shall obtain wage rates from available sources of each class of profession or trade and shall establish the Prevailing Wage comparable to survey data.

(2) The Tribe shall retain for not less than three (3) years the survey report and the wage rates reported by each source.

(3) Wage rates shall include base hourly rate and may include the value of benefits paid to or on behalf of employees based upon eligibility.

RINCON PREVAILING WAGE ORDINANCE

Rincon Tribal Code § 5.400

(4) Any Prevailing Wage survey commissioned by the Tribe shall contain a list of employment classifications and the hourly rate for each.

(b) The Tribal Council may delegate its authority to conduct the wage survey to any outside agency or department of the Tribe, provided that the Tribal Council shall approve any changes to the Prevailing Wage by resolution.

§ 5.404 EMPLOYER REQUIREMENTS

(a) **Payment of Prevailing Wage.** Each contractor or employer, including the Tribe, when performing under an Agreement subject to Section 5.402, shall pay the established Prevailing Wage established pursuant to this Ordinance, and shall maintain payroll records reporting the hourly wages paid to each covered employee for up to one year.

(b) **Prevailing Wage to be Provided.** Upon request by bidders, contractors or employers, the Tribe shall provide the Prevailing Wage in effect at the time of request.

(c) **Posting of Prevailing Wage.** Each contractor or employer, while performing under an Agreement shall:

(1) Post in a conspicuous location site the current established Prevailing Wage;

(2) Allow the Tribe's auditors, project managers, or other authorized staff to inspect and copy payroll records and/or interview employees in order to verify compliance with this Ordinance.

(d) **Payments Withheld.** In addition to the remedies available in Section 5.405, the Tribe, based on a good faith belief of non-compliance with the provisions of this Ordinance, has the authority to withhold payment to contractors or employers.

§ 5.405 TRIBAL COURT ACTION/JURISDICTION

(a) The Rincon Civil Trial Court shall have jurisdiction to hear actions to enforce the provisions of this Ordinance.

(b) A petition filed in Tribal Court under this Ordinance must include at least the following:

RINCON PREVAILING WAGE ORDINANCE

Rincon Tribal Code § 5.400

- (1)** The name and address of the petitioner.
- (2)** A statement identifying which of the provisions of this Ordinance has been violated.
- (3)** A brief description of the facts and events that gave rise to the alleged violation.
- (4)** The remedy sought.

(c) In addition to the requirements in Section 5.405(b), petitioners must comply with the filing requirements of the Rincon Civil Trial Court.

(d) Upon the Tribal Court finding, by a preponderance of the evidence, that a violation of this Ordinance has occurred, the Tribal Court may order any of the following remedies:

- (1)** If the employee has been underpaid, the employer may be ordered to pay a Wage Penalty.
 - (A)** The Tribal Court may also order punitive damages not to exceed three (3) times the amount of Section 5.405(d)(1).
 - (B)** The Tribal Court may also award reasonable attorney fees to the prevailing party.
 - (C)** The Tribal Court may also issue an order barring the contractor or employer and/or its principal employees from performing work or services on the Reservation, not to exceed five (5) years.
 - (D)** The Tribal Court may also order any other remedy that is narrowly tailored to remedy the violation.
- (2)** For any other violations, including a records penalty, the Tribal Court may order any of the remedies from Section 5.405(d)(1)(B-D) or impose fines and interest not to exceed \$500.00 per day.

(e) Actions brought under this Ordinance must be brought within one year of the event that gave rise to the petitioner's claim.

RINCON PREVAILING WAGE ORDINANCE

Rincon Tribal Code § 5.400

§ 5.406 SOVEREIGN IMMUNITY

All inherent sovereign rights of the Rincon Band as a federally recognized Indian tribe with respect to provisions authorized in this Ordinance are hereby expressly reserved, including sovereign immunity from unconsented suit. Nothing in this Ordinance shall be deemed or construed to be a waiver of the Rincon Band's sovereign immunity from unconsented suit.

§ 5.407 SEVERABILITY

If any provision of this Ordinance, or the application thereof to any person or circumstances, shall be determined invalid, such determination shall not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision or application thereof, and, to this end, the provisions of this Ordinance are severable.

§5.408 EFFECTIVE DATE

The provisions of this Ordinance, and any amendments thereto, shall become effective upon the date this Ordinance is enacted and adopted by the Tribal Council.