



TOPICAL OUTLINE OF MASSACHUSETTS PREVAILING WAGE LAW

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TABLE OF CONTENTS

	Page
PREVAILING WAGE, CONSTRUCTION, M.G.L. C. 149, §§26-27D.....	6
Applicability Determinations – In General.....	6
Apprentices.....	6
Archdiocese of Boston.....	6
Asbestos Abatement.....	6
Benefit Deductions.....	6
Bituminous Concrete.....	7
Blended Rate.....	7
Boilers.....	7
Brick, Stone and Pre-Cast Concrete Paving.....	7
Bridges/Tanks Painters.....	8
Cable Communication Line Installation.....	8
Cable Pulling.....	8
Carpenters – Classification.....	8
Carpenters’ Wood Frame Classification.....	9
Ceramic Tile Installation.....	9
Change Orders.....	9
Charter Schools.....	9
Clean-up of Construction Job.....	10
Collective Bargaining Agreements.....	10
Commissions.....	10
Concrete Forms and Concrete Installation.....	11
Concrete Testing.....	11
Crushed Stone.....	11
Day Rates.....	11
Deductions.....	11
Deleading.....	12
Derelict Vessels, Removal of.....	12
Dismantling Work.....	13
Districts.....	13
“Down-time”.....	13
Drawbridge Operators.....	13
Duration of Applicability of Wage Schedule.....	13
Electrical Equipment Testing.....	14
Electricians.....	14
Electrostatic Painting.....	14
Emergency Projects-Environmental Cleanup.....	14
Energy Retrofit Programs.....	14
Environmental Clean-up.....	15
“Established” Wage Rates.....	15
Field Engineers.....	16
Fire Alarms/Sprinklers.....	17
Fuel Delivery.....	17
Funding.....	18
Betterment Assessments - Private Development, Town Hires Contractor.....	18
Completion Bond Funding - Municipality Hires Contractor.....	18
Disaster Recovery Funds.....	18
Grant Funds.....	18
HOME Fund Project.....	19
HUD Funding - Private Project.....	20

HUD Funding - Public Project	20
Private Contractor, Private Land - Agreement to Redevelop Public Work	20
Private Contractor, Public land---Agreement to Redevelop Public Work	20
Private Funds - Landfill Closure.....	20
Private Funds-Land Leased from Public Agency	20
Private Funds-The Sturgis Library	21
Private Funds-Western Massachusetts Regional Library	21
Private Funds-Private Trust	21
Public Funds - Construction on Private Land	21
Public Funds---Construction on Public Land	21
Public Funding - Infrastructure of Private Development.....	21
Public Funding (Partial) - Erosion Control Project Performed by Private Utility	22
Public Funds - Private Residences.....	22
State and Private Funding - Publicly Owned Building.....	22
State Assistance - Title V Septic Systems	22
Warranty Work.....	22
Youth Center Construction	22
Gate Attendant Operator at Transfer Station	23
Generators.....	23
Geotechnical Work/Soil Boring Preliminary to Construction	23
Glass Window Pane Replacement	23
Glaziers v. Laborers – Classification.....	23
Grass Mowing.....	23
Gravel and Fill.....	24
Hazardous Waste Removal.....	24
Heating System Repairs.....	24
HVAC – Commissioning/Re-Commissioning.....	24
HVAC Duct Work – Classification	25
HVAC Electrical Controls – Classification	25
HVAC Testing and Balancing	25
HVAC Testing and Balancing - Classification.....	25
Infra-Red Bituminous Concrete Repair	25
Insulators	26
Insurance Work.....	26
Ironworkers v. Laborers – Classification.....	26
Laborers - Classification.....	26
Landscape Maintenance.....	26
Leased Office Space - Landlord’s Improvements.....	27
Line Painting.....	27
Locker Installation-Carpenter	27
Maintenance v. Repair	27
Materialmen.....	28
Mechanics.....	28
Modular Work Stations.....	28
Municipal Employees	29
Municipal Light Plants	29
Northampton Airport, Inc. - Runway Work.....	29
Off-Site Fabrication	29
Off-Site Preparatory Work	29
Off-Site Transportation of Equipment.....	30
Overlapping Craft Jurisdiction.....	30
Over-the-Road	30
Overtime Pay/ Blended Rate	30
Owner-Operator/Independent Contractor Exemption.....	31
Painting.....	31
Painting (New Construction)	31
Paving.....	32
Payroll Reports; Weekly; Certified.....	32

Pension Deductions	32
Pier and Dock Construction	32
Pile Drivers - Classification	32
Pipelayer - Classification	33
Playground Installation	33
Plumber/Pipefitters - Classification	33
Pneumatic Compactor Operators/Roller Operators - Classification	34
Private Development - Land Leased from a Public Agency	34
Public Address System (MBTA)	34
Public Bidding Law	34
Public Entities and Quasi-Public Entities	34
Ready-Mix Concrete Drivers	34
Repairs	35
Road Maintenance and Repair Work	35
Roof Repairs/Installation	35
Salaried Work	36
Septic Systems	36
Sewer Pipes - Relining	36
Site Support Services	37
Soil Testing/Test Borings	37
Sprayed-on Fireproofing	37
Start Time	37
Street Light Maintenance	38
Surety (Performance of Work)	38
Teamsters	38
Telecommunications Technician	38
Temporary Work	39
Tender	39
Territorial Jurisdiction	39
Testing and Inspection	39
Threshold Dollar Amount	39
Traffic Barriers	40
Traffic Markings	40
Transportation of Equipment, Off-Site	40
Tree Trimming	40
Truck Drivers	40
Utility Work-Road Work Performed in Connection with	40
Utility Work-Street Lights	41
Vocational Technical Education Programs – Chapter 74-Approved	41
Warranty Work	41
Waste Water Pump Operators - Classification	41
Water Meter Installation/Testing	41
Wastewater Treatment Plant	42
Waterproofing Masonry Work	42
Well Cleaning/Redevelopment	43
Western Massachusetts Regional Library System	43
PREVAILING WAGE, ENGAGING IN PUBLIC WORKS, M.G.L. C. 149, §27F	44
Barrier Transport Vehicle	44
Cherry Pickers	44
Deductions	44
Holiday Lights	44
Landfill Operation	44
Lease, Rental or Other Arrangement	45
Moving Lottery Machines	45
Municipal Employees	46
Service Contract	46
Sludge Hauling	46

Snow Removal.....	46
Street Sweeping.....	46
Territorial Jurisdiction.....	46
Towing Services.....	46
Transfer Station-Gate Attendant.....	47
Trash Hauling.....	47
Wastewater Treatment Plant.....	47
PREVAILING WAGE, MOVING OFFICE FURNITURE, M.G.L. C. 149, §27G.....	48
Moving Office Furniture - School Furniture.....	48
Moving Office Furniture - Modular Work Stations.....	48
Moving Office Furniture – Public Employees.....	48
Moving Office Furniture - New Purchases vs. Moving Services.....	48
PREVAILING WAGE, CLEANING AND MAINTENANCE OF OFFICE SPACE – M.G.L. C.	
149, §27H.....	49
MBTA.....	49
Cleaning and Maintenance - Applicability.....	49
Cleaning and Maintenance – Classifications.....	49
PREVAILING WAGE, HOUSING AUTHORITIES, M.G.L. C. 121B, §29.....	50
Federal Funds.....	50
Establishing Wage Rates.....	50
Health and Life Insurance Plans.....	50
PREVAILING WAGE, SCHOOL BUS DRIVERS, M.G.L. C. 71, §7A.....	51
School Bus Drivers.....	51

Note: Many of the letters included in this Topical Outline concern the appropriate occupational classification for various tasks performed on a work site. To make such determinations, the Division of Occupational Safety (DOS) consults the operative collective bargaining agreements for the municipality where the work will be performed. Other agreements covering different municipalities may result in a different determination of an occupational classification.

PREVAILING WAGE, Construction, M.G.L. c. 149, §§26-27D

Applicability Determinations – In General

Enforcement functions of the prevailing wage law are performed by the Office of the Attorney General; DOS retains sole authority to issue wage schedules and make applicability determinations.

Letter to Trager, Office of the Attorney General, May 4, 1994.

Deference to the Office of the Attorney General’s interpretation of prevailing wage law, as the enforcement agency, is also appropriate.

Felix A. Marino Co. v. Commissioner of Labor and Industries, 426 Mass. 458 (1998) (dicta).

Apprentices

See “**Deductions**,” below.

Archdiocese of Boston

The Archdiocese is not subject to the requirements of the prevailing wage law. Prevailing wage schedules will not be issued for Archdiocese projects, though example schedules may be provided.

Letter to Rev. Boyle, Labor Guild, February 9, 2001.

Asbestos Abatement

Prior to demolition of the building, workers will be removing asbestos from the heating system steam pipes, ceilings, floors (tile), walls, roof, doors, and windows. ... After a review of the relevant collective bargaining agreements, and a memorandum of understanding entered into by the respective unions regarding trade jurisdiction, it is this agency’s determination that all the work you have described would be the work of the *Laborer: Hazardous Waste/Asbestos Remover*. Please note, however, that this decision assumes a total demolition project, where the heating system and its components are to be disposed of. If the removal work on the heating system were being done to an intact system, the work would be that of the *Asbestos Worker (Pipes & Tanks)*.

Letter to Jones, Office of the Attorney General, October 26, 2007

Benefit Deductions

See “**Deductions**,” below.

Bituminous Concrete

For the natural gas main installation project in question, the appropriate job classification for operation of a walk-behind pneumatic to cut bituminous or concrete pavement is *Pneumatic Drill/Tool Operator (Heavy & Highway)*. The appropriate job classification for operation of a gasoline-powered saw to cut bituminous or concrete pavement is *Jackhammer/Paving Breaker Operator*.

Letter to Langone, Langone Pipeline Utility, September 2, 2004.

Off-site work is not covered for bituminous drivers on projects for which a prevailing wage schedule dated on or after August 22, 2001 has been issued. On-site work is covered.

27A Decision, MHD Contract for Resurfacing and Related Work, District 2, August 21, 2001.

Construction Industries of Mass. v. Commissioner of Labor and Industries, 406 Mass. 162 (1989).

Dengen Policy, June, 1993. (Rescinded by 27A Decision issued on August 21, 2001.)

Blended Rate

See “**Overtime Pay/ Blended Rate**,” below.

Boilers

See “**Temporary**,” below.

Brick, Stone and Pre-Cast Concrete Paving

The following work on a new school construction project is performed by the *Brick/Stone/Artificial Masonry (Incl. Masonry Waterproofing)* job classification: patching interior concrete block walls with a trowel and jointer; upon construction of the new wall, using a rubbing stone and/or grinder to rub the concrete block walls; cut concrete block joints on new interior concrete block walls by saw or grinder; installation of new exterior brick-face; use of water or acid to wash brick, and brush and stone to smooth surface; installing wall ties to secure brick face.

Letter to Trager, Office of the Attorney General, May 8, 2008.

For work performed in the City of Lowell, the Bricklayer and Allied Craftworkers’ collective bargaining agreement (between the Bricklayer and Allied Craftworkers on behalf of the Foxboro, Lowell, and Worcester Chapters and the Mason Contractors’ Association of Massachusetts, Inc.) establishes the craft jurisdiction for the *Brick/Stone/Artificial Masonry (Incl. Masonry Waterproofing)* occupational classification and wage rate. The Laborers’ collective bargaining agreement (between the Massachusetts Laborers’ District Council of the Laborers’ International Union of North America, AFL-CIO and the Labor Relations Division of the Associated General

Contractors of Massachusetts, Inc. and the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc.) establishes the craft jurisdiction for the *Laborer: Mason Tender* occupational classification and wage rate.

Letter to Souza, City of Lowell, September 8, 2004.

See “**Overlapping Craft Jurisdiction,**” below.

Bridges/Tanks Painters

The occupational classification of “Painter (Bridges/Tanks)” shall be used for the following tasks on covered public works construction projects:

- The erection and dismantling of scaffolding, rigging, and containment for bridge and tank painting operations;
- Surface preparation, including the removal of all types of paint, on bridges and tanks;
- The application of paint on bridges and tanks;
- The clean-up of debris resulting from paint removal operations on bridges and tanks.

See also: Notice to Awarding Authorities and Contractors Concerning the Removal and Application of Paint on Bridges and Tanks, issued January 8, 2004.

Cable Communication Line Installation

Road work such as underground installation of cable communication line for private use, similar to utility “cuts”, may not be subject to M.G.L. c. 149, §§26-27H.

Letter to Early, Early and Sons; and Marino, Felix A. Marino, Co., August 29, 1994.

See “**Utility Work-Road Work Performed in Connection with,**” below.

Cable Pulling

Prevailing wage rates are required to be paid to all workers who install voice, data, and video cables as components of permanent building systems on all public works construction and alteration projects for which a wage schedule is issued on or after February 4, 2002.

Letter to Lamarre, Office of the Attorney General, February 4, 2002.

Carpenters – Classification

Due to water leakage, a building needed temporary and new windows, and other work. Workers measured, cut and installed wood blockings, temporary windows/plywood, and metal/wood studs) The proper job classification for this work is *Carpenter*. Workers also loaded and unloaded stacks of wood blocking, and temporary windows/plywood. The proper job classification for this work is *Laborer: Carpenter Tender*. Workers cut, measured and installed

new sheathing. The proper job classification for this work is *Carpenter*. Workers measured, cut and installed batts; installed densglas with screwgun and rotozip; and measured, cut and installed scoreboard. The proper job classification for this work is *Carpenter*.

Letter to Balikian, Balikian Law, April 20, 2007.

Workers install and bolt freestanding wardrobe and athletic lockers onto concrete bases and also install and bolt heavy-duty corridor lockers to wood bases and wall fall squarely under the occupational classification of Carpenter.

Letter to Zarbo, Office of the Attorney General, September 24, 2002.

Carpenters' Wood Frame Classification

Alternate "wood frame" carpenter classification established for certain projects based on specific criteria.

Letter to Arevalo, Office of the Attorney General re: West Tisbury Elementary School, April 10, 1995 (pertains to outdated collective bargaining agreement no longer in effect).
Letter to Rodman, Stoneman, Chandler & Miller, March 26, 1999 (regarding amendment of agreement).
See footnote on prevailing wage schedules.

Ceramic Tile Installation

The job classification of *Marble Masons, Tilelayers & Terrazzo Mechanic* applies to installation of interior ceramic tile on the floors and walls of the school bathrooms.

Letter to Anderson, Office of the Attorney General, December 4, 2007

Change Orders

It is clear from the plain language of G.L c. 149, §27, that the prevailing wage schedule issued by the commissioner at the outset of the project is the schedule that remains in effect for the duration of that project. This same prevailing wage schedule also establishes the minimum wage rate for change order work, which constitutes an amendment to the original construction contract (as opposed to work that is not incidental to the original contract scope that would constitute a new contract and presumably require competitive procurement and a new prevailing wage request).

Letter to Breck, City of Springfield Law Department, February 8, 2005.

Charter Schools

Charter schools are public schools, pursuant to M.G.L. c. 71, §89, and are subject to the public construction prevailing wage law.

Letter to Oppenheimer, Pioneer Valley Building and Construction Trades Council, March 3, 1997.

Prevailing wage not applicable to construction of Sabis International Charter School, a Commonwealth charter school constructed with private money on private property.

Letter to Anthony Penski, Office of the Attorney General, January 5, 2000 (incorrectly dated as January 5, 1999).

Prevailing wage not applicable to the renovation of a private building to be occupied by the Holyoke Community Charter School under a lease arrangement with the building's owner, a private entity.

Letter to Goldman, Holyoke Community Charter School, May 31, 2002. (A subsequent transfer of ownership of the property to Holyoke Community Charter School resulted in prevailing wage rates being applicable to the project.)

Clean-up of Construction Job

Prevailing wage law applies to all aspects of final clean-up of construction job.

DLI Notice to Awarding Authorities.

Collective Bargaining Agreements

Despite little union employment and lower average wages rates in the area, wage rates set based on legitimate collective bargaining agreements shall prevail.

27A Decision, Dennis Yarmouth Regional School and Falmouth, February 15, 1994.

Commissions

Where enabling act for the Lynn Water and Sewer Commission declares it to be an agency of the Commonwealth, prevailing wage law applies to the same extent as it does to any other agency of the Commonwealth.

Letter to Lynn Water and Sewer Commission, October 22, 1996.

The Cambridge Public Health Commission's enabling legislation, Chapter 147 of the Acts of 1996, provides that the Commission is subject to M.G.L. c. 149, 26-27F.

Letter to McCarthy, McCarthy, Bouley & Barry, February 25, 2002.

Martha's Vineyard Commission a public body subject to the prevailing wage law.

Letter to Simmons, Martha's Vineyard Commission, July 17, 1995.

The Boston Public Health Commission is subject to the prevailing wage law.

Letter to Edwards, Boston Public Health Commission, October 6, 2003.

Concrete Forms and Concrete Installation

See “Overlapping Craft Jurisdiction,” below.

Concrete Testing

Soil compaction testing by means of a nuclear density gauge, and concrete slump and air testing as described in this letter opinion is not covered under the prevailing wage law. However, if laborers are used to fill concrete cylinders to be used for compressive strength testing, these workers must be paid the laborer’s prevailing wage rate. The compressive strength testing done in the laboratory is not covered. Additionally, this letter does not address test borings performed on site to test sub-soils; this work is specifically included within the definition of construction in G.L. c. 149, §27D, and is prevailing wage work.

Letter to Skorohod, Briggs Engineering & Testing, Inc., July 24, 2008.

Crushed Stone

See “Gravel and Fill,” below.

Day Rates

Day rate compensation in three scenarios submitted for consideration is permissible as employee receives the applicable prevailing wage for all hours worked and overtime in accordance with state overtime law. Employer is still obligated to track actual hours worked and maintain and submit payroll records in accordance with M.G.L. c. 149, §27B.

Letter to Sharp, Jackson Lewis LLP, September 8, 2003.

Deductions

Employer contributions to an ERISA-compliant, self-funded health and welfare plan, which has received US DOL approval pursuant to 29 C.F.R. §5.5(a)(1)(iv), may be similarly deducted from the total state prevailing wage rate set by DOS.

Letter to Attorney Chandler, Stoneman, Chandler & Miller, P.C., August 26, 2008.

Deductions from prevailing wage rate issued under sections 26 and 27 are limited to employer’s contributions to health/welfare, pension, annuity or supplemental unemployment insurance plans.

Letter to Kammerer, Ericsson, Inc., October 5, 1989.

DOS does not make a determination as to the validity of a particular plan.

Letter to Higgins, Patterson Smith Associates, December 19, 1997.

Employers may use any method they wish for calculating hourly contributions to health and welfare plans as long as those contributions do not exceed the cost of the plan.

Letter to Beeman, Associated Builders & Contractors, October 2, 2002.

Deductions from specified prevailing wage rate are limited to employers contributions to health/welfare, pension, annuity or supplemental unemployment insurance plans.

Hopwood, Heafitz & Hopwood, October 5, 1989.
Other letters on file.

Employees are limited to certain deductions from the prevailing wage rate; only health/welfare, pension, annuity or supplemental insurance plans.

Letter to J. Higgins, Patterson Smith Associates, December 19, 1997.

When calculating the appropriate gross wage for apprentices on a prevailing wage project, employers should first deduct any employer-paid health, welfare, pension, or supplemental unemployment benefits, and then apply the appropriate apprentice step.

Letter to Meleski, Associated Builders & Contractors, July 14, 2000.

Employer contributions to bona fide 401k plans are permissible “pension” deductions under the prevailing wage law. Employer’s administrative costs associated with pension plans may not be deducted from employees’ wages under the prevailing wage law. ERISA approved 401k plans are considered bona fide plans for purposes of the prevailing wage law.

Letter to Hopwood, August 28, 2001.

“Hour banks” administered by third parties, where amounts contributed on behalf of a specific employee for health insurance cannot be redistributed to any other individual (and if that employee terminates, that employee is entitled to all sums deposited), comply with the prevailing wage law. The timeliness of such payments is governed by M.G.L. c. 149, §148, a section interpreted and enforced by the Office of the Attorney General.

Letter to Baragona, Associated Prevailing Wage Contractors, Inc., September 8, 2003.

Deleading

See “Painting,” below.

Derelict Vessels, Removal of

The removal of derelict vessels, including demolition, site preparation, excavation, site restoration, and other related work in Gloucester Harbor is subject to the prevailing wage law.

Letter to Vine, Nucci-Vine Associates, January 29, 2001.

Dismantling Work

Dismantling of steel ventilation fans and doors which are coated in lead paint and the dismantling of steel reinforced walls which do not contain lead paint, falls squarely within the Laborers occupational classification and not the deleaders occupational classification.

Letter to Zarbo, Office of the Attorney General, June 21, 2002.

Districts

A “district”, as mentioned in M.G.L. c. 149, §26, may be subject to prevailing wage law if deemed to be a public authority by its enabling act.

Letter to Tallberg, Sherwood Forest Road District, March 26, 1996.

(Note: Text of Section 26 treats all districts like the Commonwealth for purposes of determining whether prevailing wage applies, and does not distinguish between those whose enabling legislation deems them a public authority and those whose enabling legislation does not.)

“Down-time”

Employees experiencing “down time” while present at public works construction projects must be paid no less than prevailing wage rate corresponding with activity in which they are engaged. If employees are idle but not released by employer from the work site, they must be paid no less than lowest prevailing wage rate among occupational classifications applicable to the project.

Letter to Montenegro, Independent Asphalt Corp., May 17, 2000.

Drawbridge Operators

Where regular drawbridge operators will be replaced by operators employed by a contractor during a reconstruction/rehabilitation project, contractor’s operators subject to the prevailing wage law.

Letter to O’Reilly, Construction Industries of Massachusetts, Fore River in Quincy, December 3, 1997.

Duration of Applicability of Wage Schedule

Once prevailing wage schedule, including accompanying apprentice ratio sheet, has been issued

for a particular project, it remains in effect for the duration of the project.

Letter to Richards, Griffin Electric, July 10, 1998.

Letter to Oakes, Town of Needham, November 1, 1999.

Electrical Equipment Testing

The testing of electrical distribution equipment during construction and alteration projects requires payment of prevailing wage rates.

Letter to Isaac, Electrical Engineering & Service Co., Inc., February 25, 2003.

Letter to Isaac, Electrical Engineering & Service Co., Inc., May 2, 2003

Testing in connection with non-functioning electrical equipment, see Letter to Nicalek, Renaud Electric & Communications, Inc., May 17, 2005.

Electricians

Repairs to electrical fixtures in public building subject to prevailing wage law because almost all work performed by electricians constitutes “additions to or alterations of” public works.

Letter to F.X. Flaherty, Office of the Attorney General, Barnstable County IFB, August 12, 1999.

Letter to Troy, Barnstable County Counsel, November 28, 2001.

Electrostatic Painting

Electrostatic painting of public buildings or any structural assembly subject to the prevailing wage law; electrostatic painting of movable furniture not subject because not a “public building” or a “public work.”

Letter to Crutchley, Brush Strokes, Etc., February 28, 1996.

Emergency Projects-Environmental Cleanup

See “**Environmental Clean-up**,” below.

Energy Retrofit Programs

Energy retrofitting programs may be subject to the prevailing wage law depending on facts of arrangement.

DLI Memo to Cities and Towns, September 29, 1995.

Where new, efficient electrical devices will be installed in a public building but where cost will ultimately be borne by a private utility and no other recouping of costs will be assessed against

public agency, prevailing wage law does not apply. However, facts of each particular arrangement are determinative.

Letter to Smola, Palmer Public Schools, October 10, 1995.

Energy retrofitting program where public entity will not expend any funds not subject to the prevailing wage law.

Letter to McClave, Norton Housing Authority, May 23, 1996.

Letter to Brennan, Boston Housing Authority, July 20, 2001.

Environmental Clean-up

Many, but not all, activities associated with environmental clean-up or hazardous waste clean-up covered by the prevailing wage law, including emergency oil spill cleanup and containment, hazardous materials emergency response, asbestos containment and removal, soil removal, tank removal, fence installation and repairs, installation and repair of groundwater recovery and treatment systems, soil vapor recovery systems, air sparge systems, and landfill cap systems, and work incidental to the installation of treatment systems, such as test borings or demolition of structures.

Environmental clean-up activities not covered by prevailing wage law include drum pick-up and disposal, sample collection, sample analysis, site security, operation and maintenance of groundwater recovery and treatment systems, soil vapor recovery systems, air sparge systems, and landfill cap systems.

As general rule, installation of pollution remediation equipment and excavation of contaminated soil subject to the prevailing wage law. However, operation and maintenance of same equipment, once installed, not subject to prevailing wage law.

Letter to Moreschi, Office of the Attorney General, DEP Emergency Response and Site Support Services, May 20, 1997.

“Established” Wage Rates

No specific frequency or volume of unionized work required to meet definition of term “established” wage rate or wage rates.

27A Decision, Town of Falmouth Department of Public Works on Behalf of Southeastern Massachusetts Consortium, Contract for Bituminous Concrete Repair of Utility Trenches, 1995.

Existence of collective bargaining agreements with certain municipality included in territorial jurisdiction, and evidence of work performed in area under terms of collective bargaining agreements, supported DLI’s determination that wage rates “established” in municipality.

27A Decision, Dennis-Yarmouth Regional School District, et al., 1994.

Field Engineers

Field engineer classifications perform many services common to typical building construction project, including establishing benchmarks for foundations, right of way clearances, grades and elevations.

Letter to Yodanis, Foundation for Fair Contracting, May 12, 1999.

Field engineers engaged in pre-construction surveys, as well as engineers hired to perform quality control work (i.e. work to generate measurements and data to be used by management consultant for quality control purposes and to ensure that work was being performed in compliance with construction contract) not subject to the prevailing wage law.

27A Decision, Central Artery/Tunnel Project, July 1995.

Field engineers' pre-construction activities not subject to the prevailing wage law. Construction layout activities, such as establishing grid lines, checking and measuring concrete forms to ensure that they are plumb, and determining proper elevation of roofing-type structures for concrete slabs, are subject to the prevailing wage law.

Letter to Lancome, ICF Kaiser, MWRA Deer Island, July 19, 1996.

Letter to Lancome, ICF Kaiser, MWRA, December 19, 1997.

Where DOS wage schedules follow classifications for Field Engineers: Instrument Person, Rod Person, and Chief of Party by qualifying statement "Bldgs. Only", applicability is limited to work performed on buildings alone, not on work performed adjacent to, or apart from, buildings. Where classification is followed by qualifying statement "Bldgs & Site", applicability extends beyond buildings to include other work on site such as parking lots, roads, walkways, landscaping, fencing, etc.

Letter to Wayne, Hinckley Allen & Snyder, October 22, 1999.

Up to May 12, 1999, DOS wage schedules contained erroneous qualifier for categories of Field Engineer of "Bldgs. Only". Since May 12, 1999, DOS has corrected this error and issued rate schedules for field engineers with proper qualifier, "Bldg, Site, Hvy Const."

Letter to Tufano, November 4, 1999.

Clarification and discussion of applicability to particular categories of work; clarification of occupational classifications listed on wage schedules.

Letters to Wayne, Hinckley Allen & Snyder, various letters

Letters to O'Reilly, Construction Industries of Massachusetts, various letters.

Other letters on file.

As of early 1999, DOS has modified field engineer classification to include heavy construction in addition to building and site work, to conform wage rate schedules to changes in collective

bargaining agreement of International Union of Operating Engineers, Local 4E.

Letter to O'Reilly, Construction Industries of Massachusetts, November 4, 1999.

Workers who use a transit, level, and total station to perform surveying duties during construction are classified as Field Engineers.

Letter to Goulet, December 5, 2002.

Fire Alarms/Sprinklers

Unlike most other building trade agreements, the Inside Electrical collective bargaining agreements provided to this Office do not include a detailed trade autonomy section that would assist us in making this determination. Nonetheless, field observations and past determinations that installation and wiring of the initiating devices (pull stations, heat detectors, and smoke detectors), the signaling devices (horns and strobes), and the fire alarm control panel is the work of the *Electrician*. Similarly, work to mount the CPU, and connect it into the power supply of the panel, and any work performed on the electrical system when problem areas are found during the commissioning process is *Electrician's* work. As for the commissioning work performed on the laptop and at the CPU, we have been provided with no information about contracts where union electricians performed this type of work. Therefore, it is this agency's determination that the prevailing wage law does not apply to this work.

Letter to Demetros, February 12, 2008

Telecommunications technician job classification may be used to cover repair, maintenance and operation of fire alarm systems. Electrician job classification is used for installation.

Letter to W.J. Griffin, appeal of M. Monahan, IBEW Local 103, April 18, 1997.

Repair of fire alarm systems is subject to the prevailing wage law. Testing and inspection of fire alarm systems not related to an addition or alteration to the public work is not subject to the prevailing wage law.

Letter to Countermarche, Data Fire Systems, September 1, 1999.

Letter to Moschos, Mirick O'Connell, MassPort, May 27, 1999.

Testing of fire sprinkler systems in connection with an installation or repair project requires the payment of prevailing wage rates. However, prevailing wages are not required for routine testing not associated with installation, alteration, or repair work.

Letter to Smith, H.F.P. Corporation, May 13, 2005.

Fuel Delivery

Contract for delivering fuel to construction site not covered by the prevailing wage law.

Letter to Truax, MWRA, Deer Island Project, April 17, 1996.

Funding

Betterment Assessments - Private Development, Town Hires Contractor

Residential construction work performed by contractor hired by a town and financed by betterment assessments not subject to the prevailing wage law.

Letter to Veara, Town of Brewster, August 25, 1998.

Completion Bond Funding - Municipality Hires Contractor

Work performed by contractor hired by town through funds collected from a privately-posted completion bond to complete work on private residential development where original contractor went bankrupt before completing the work but where no public money being expended not subject to prevailing wage law.

Letter to Farren, Michael's Lane Subdivision, Templeton, March 28, 1996.

Work performed by a contractor hired by a town to complete work on private residential development where the original contractor went bankrupt before completing work but where no public money being expended (funding provided by the previous contractor's surety) not subject to the prevailing wage law.

Letter to Bobrowski, Massapoag Estates, Foxborough, September 9, 1997.

Work performed by a contractor hired by a town to complete work of original contractor who defaulted on completion obligation, funded by funds set aside by original contractor in escrow account not subject to the prevailing wage law.

Letter to Niall, Templeton, September 7, 1999.

Letter to Bobrowski, Hamilton Estates, March 10, 2003.

Disaster Recovery Funds

Project funded by disaster recovery funds subject to the prevailing wage law.

Letter to Boulay, Civil Defense Agency, July 8, 1988.

Grant Funds

Grant funds provided to private, non-profit corporations pursuant to Chapter 236 of the Acts of 2000 not subject to the prevailing wage law; no public awarding authority involved, no public property involved.

Letter to Kelliher, Murphy, Hesse, Toomey & Lehane, LLP, Manet

Community Health Ctr., July 3, 2001.

Letter to Broad, Berkshire South Reg. Community Health Ctr., July 10, 2001.

Grant funds provided to New England Farm Workers' Council, a private, non-profit corporation not subject to the prevailing wage law; no public awarding authority involved, no public property involved.

Letter to Taylor, New England Farm Workers' Council, May 20, 2002.

Grant funds provided to City of Holyoke for the demolition of four buildings owned by the developer is subject to the prevailing wage law.

Letter to Sinclair, City of Holyoke Office for Community Development, April 25, 2002.

HOME Fund Project

City project was 100-percent federally funded through the Home Investment Partnerships Program (HOME) ...

The Massachusetts prevailing wage law applies to the construction of public works by the commonwealth, or by a county, town, authority or district. G.L. c. 149, §§26, 27.

Therefore, to determine whether the prevailing wage law applies to a particular project, this agency considers the following questions: 1) is the project "construction," as defined in G.L. c. 149, §27D; 2) is the project a "public work"; and 3) is the project being undertaken by a public entity subject to the statute? In this instance, the renovation/construction work is clearly "construction" within the meaning of the statute, and the city is also contracting for the work; therefore, the remaining question is whether these projects constitute "public work."

While the prevailing wage statute does not define "public work", this agency looks to relevant factors such as whether the property is publicly owned, and if public funds are being utilized. In this instance, the properties involved are all owned by the city at the time of construction. In fact, the City selects the designer, contracts for the work, and monitors the project as it would any other municipal construction contract. While state and local funds are not utilized for these projects, the HOME and HUD regulations clearly contemplate compliance with state procurement laws in the use of the federal funding. Given these facts, we do not see the use of federal funds as altering the status of what appears otherwise to be a "public work" Cf. Norfolk Electric, Inc. v. Fall River Housing Authority, 417 Mass. 207, 213-214 (1994) (receipt of federal funds, without more, does not suffice to convert a local governmental entity into an agent of the Federal government; the entity must still comply with the state competitive bidding laws).

Given that these municipal construction contracts are procured by the city, and performed on city-owned property, it is this agency's determination that the prevailing wage law applies to these projects.

Letter to Lucken, City of Lowell, July 9, 2007

HUD Funding - Private Project

Development of private project using public funds (HUD grants) not subject to prevailing wage law.

Letter to Young, Union Street Community Center, Lynn, July 26, 1996.
Letter to Conrad, Nauset Lighthouse Preservation Society, August 15, 1996.

HUD Funding - Public Project

Certain HUD-assisted housing authority construction projects may not be subject to the prevailing wage law.

Memo to Tempesta, EOCD, May 31, 1995.

Private Contractor, Private Land - Agreement to Redevelop Public Work

Where contractor will develop land purchased from a town, construction work not subject to the prevailing wage law. However, where, as condition of the sale, same developer required to redevelop a public parking lot, that portion of the work subject to prevailing wage law.

Letter to Wheeler, Town of Hamilton, May 22, 1998.
Letter to Pelosi, EOE, Allens Pond, South Dartmouth, January 10, 1997.

Private Contractor, Public land---Agreement to Redevelop Public Work

Town enters into licensing agreement with the donor in which the donor will be responsible for construction and upon completion, the finished building is gifted back to the town, is not a “public works” project subject to M.G.L. 149, §§26-27H.

Letter to Hale, Town of Shrewsbury, October 18, 2001

Private Funds - Landfill Closure

Accelerated closure of landfill, where non-municipal waste will be accepted, and no public money will be expended, not a “public work” for the purpose of section 26-27.

Letter to Myer, Needham Landfill, January 19, 1996.
Letter to Bean, Greenfield Landfill, January 19, 1996.
Letter to Briggs, Williamstown Landfill, April 8, 1996.

Private Funds-Land Leased from Public Agency

Private development project on land leased from public agency not subject to prevailing wage law.

Letter to Salomon, Eggleston Square Development, Roxbury, October 10, 1995.

Private Funds-The Sturgis Library

Prevailing wage law does not apply to the Sturgis Library, a private non-profit organization.

Letter to Lindquist, The Sturgis Library, June 21, 2002.

Private Funds-Western Massachusetts Regional Library

Private, not-for-profit corporation is neither an agency of the Commonwealth nor a county, town, authority, or district and not subject to the prevailing wage law.

Letter to Ramsay, Regional Administrator, WMRLS, Inc., March 14, 2002.

Private Funds-Private Trust

Prevailing wage law does not apply to a contract entered into by a private trust, established under the will of a private citizen, in which the trust contracted directly with a painting contractor to paint town hall, using only trust funds.

Letter to Murray, Decas, Murray & Decas, September 1, 2006.

Public Funds - Construction on Private Land

Publicly funded construction work on private land not “public works” construction project subject to the prevailing wage law.

Letter to Pelosi, EOE, Allens Pond, South Dartmouth, January 10, 1997 (Allen Pond)

Public Funds---Construction on Public Land

Publicly funded construction of a home on public land by the Plymouth Redevelopment Authority to later be sold, is a public works construction project subject to M.G.L. c. 149, §§26-27H.

Letter to Battista, Plymouth Redevelopment Authority, May 2, 2003.

Public Funding - Infrastructure of Private Development

Private industrial developments not subject to the prevailing wage law, even though public body will finance some infrastructure improvements for exclusively private benefit.

Letter to Powers, Toys “R” Us, Westfield, December 3, 1997.

Public Funding (Partial) - Erosion Control Project Performed by Private Utility

Erosion control project performed by private utility companies, where work partially funded by public money, not subject to the prevailing wage law.

Letter to Sullivan, Franklin County, Connecticut River, September 9, 1996.

Public Funds - Private Residences

Construction of private residences funded by public agency(ies), not subject to prevailing wage law.

Letter to Haddad, Town of Adams, April 5, 1999.

Letter to Perkins, Rural Development, Inc., April 6, 2000.

State and Private Funding - Publicly Owned Building

Rehabilitation of publicly owned building funded by the Mass. Historical Commission, an agency of the Commonwealth, and private donations, is public works construction project subject to prevailing wage law. Certain other items of work not part of primary contract for construction, voluntarily performed by local citizens using construction materials paid for exclusively using private funds, not subject to prevailing wage law.

Letter to Pacun, Capt. David T. Basset House, Chatham, January 25, 1996.

State Assistance - Title V Septic Systems

Work funded using revolving loan and financial assistance program funded by state for private homeowners to improve non-complying septic systems, even though in some cases a municipality may hire contractor directly to perform septic system improvements on private property, not subject to the prevailing wage law.

Letter to Tempesta, EOCD, Title V Septic Systems, September 29, 1995.

Warranty Work

Roofing contractor's replacement of membrane under provisions of manufacturer's warranty not subject to the prevailing wage law.

Letter to White, City of Lynn, July 21, 1994.

Youth Center Construction

The prevailing wage law applies to the construction of a youth center that will be turned over to the town upon completion of the project. The ultimate goal of the project is to build a youth center that can be operated and staffed by the town for years to come. A review of the development agreement provisions indicates that the agreement is, in essence, is a call for construction of a public work by a public entity.

Letter to Stapczynski, Town of Andover, July 23, 2007.

Gate Attendant Operator at Transfer Station

Gate attendant who checks incoming vehicles for current permits and directs customers to appropriate container for waste and recyclable disposal not subject to the prevailing wage law.

Letter to Kennedy, October 2, 2002.

Generators

Work to emergency electrical generators that are part of a public building, and not portable, is subject to the prevailing wage law if it involves alteration of the public work. Testing is also covered when conducted as part of an alteration project.

Letter to Bosco, Office of the Attorney General, September 17, 2001.

Geotechnical Work/Soil Boring Preliminary to Construction

Certain geotechnical work done “preliminary to a construction project” subject to prevailing wage law.

Letter to Noble, Hill & Barlow, March 21, 1995.

Glass Window Pane Replacement

Contract for the replacement of glass windows in county prison subject to prevailing wage law.

Letter to Flaherty, Office of the Attorney General, Suffolk County Jail, September 10, 1999.

Glaziers v. Laborers – Classification

All persons performing installation work associated with pre-glazed windows, curtain walls and aluminum framing on public works, should be classified as “Glazier” workers. Work involving the unloading, handling, and distribution of all materials associated with pre-glazed windows, curtain walls, and aluminum framing appear to fall within an area of overlap between the glazier and laborers’ unions.

Letter to Zarbo, Office of the Attorney General, August 15, 2002.

See “**Overlapping Craft Jurisdiction,**” below.

Grass Mowing

See “Landscape Maintenance,” below.

Gravel and Fill

In absence of strong evidence that crushed stone is not gravel, DOS will consider hauling crushed stone as gravel for purpose of prevailing wage law.

Letter to Wayne, Hinckley, Allen & Snyder, February 3, 1998.

Truck drivers who move excavated material at a public works construction site and truck drivers who deliver stone and gravel to a public works construction site, are covered by the prevailing wage law.

Letter to Rafferty, Fay, Spofford, & Thorndike, February 24, 2003.

Hazardous Waste Removal

See “Environmental Clean-up,” above.

Heating System Repairs

The prevailing wage law applies to the work on an HVAC system that includes “connecting copper and black iron pipes by threading and soldering, installing and calibrating electrical controls using electrical meters and pressure gauges, [and] testing and balancing for air and water.”

Letter to Young, Pipefitters Association, Local 537, September 26, 2007

The repair of heating systems is covered by the plumber and pipefitter job classifications.

Letter to Adams, Scituate Schools, August 30, 1996.

Installing parts, fixing pipe, and conducting other activities that alter existing heating systems whether covered by a maintenance contract or not, are subject to M.G.L. c. 149, §§26-27H.

Letter to Holloway, George T. Wilkinson, Inc., November 15, 2002

Letter to Holloway, George T. Wilkinson, Inc., February 27, 2003

HVAC – Commissioning/Re-Commissioning

Installation/replacement, TAB (testing and balancing), and re-commissioning and commissioning of an HVAC system is “construction” work within the meaning of the statute. Union pipefitters perform HVAC commissioning on job sites in Massachusetts, and are trained in commissioning processes through their apprentice training program. The proper job classification for commissioning work is *Pipefitter* or *HVAC Mechanic*,

which are the same pay rate.

Letter to Attorney Guryan, Epstein, Becker & Green, P.C., June 11, 2008.

HVAC Duct Work – Classification

The handling and assembly of duct work installed as part of a permanent building system is within the jurisdiction of the “Sheetmetal Worker” occupational classification (also the “HVAC (Ductwork)” occupational classification).

Letter to Trager, Office of the Attorney General, May 24, 2001.

HVAC Electrical Controls – Classification

“Electrician” proper classification for installation of heating, ventilation, and air conditioning (HVAC) controls at public works construction projects.

Letter to Griffin, Wayne J. Griffin Electric, Inc., May 17, 2000.

Letter to Trager, Office of the Attorney General, January 2, 2002

HVAC Testing and Balancing

Testing and balancing of HVAC systems, when performed as part of a construction or installation project, covered by the prevailing wage law.

Letter to Higgins, Attleboro Schools, October 29, 1997.

Letter to Camerlango, E. Amanti & Sons, November 12, 1999.

Letter to Corlin, Tekon-Technical Consultants, Inc., April 5, 2000.

Letter to Gillespie, Trane Company, August 24, 2005.

Cleaning and testing of HVAC equipment, see Letter to Nicalek, Renaud Electric & Communications, Inc., May 17, 2005.

HVAC Testing and Balancing - Classification

Testing and balancing of air handling and duct work, when conducted as part of public works construction or alteration project, classified as “Sheet Metal Worker” work. Testing and balancing of hot water-based heating systems, when conducted as part of public works construction or alteration project classified as “Pipefitter” work.

Letter to M. Camerlango, E. Amanti & Sons, Inc., May 19, 2000.

Infra-Red Bituminous Concrete Repair

DOS need not create a separate job classification for workers who use an infra-red heater in the process of patching roads with bituminous concrete; that activity is covered by the existing laborer classification.

27A Decision, Town of Falmouth, 1995.
Letters to Marino, Felix A. Marino, Co., September 21, 1994.

Insulators

The “insulator” classification on prevailing wage schedules applies to persons applying insulating materials on mechanical systems (pipes, tanks, etc.).

Letter to Petrucelli, Associated General Contractors, April 16, 1996.

Insurance Work

Work funded by insurance proceeds covered, in some cases, by the prevailing wage law.

Letter to Sacchetti, Duxbury, May 13, 1994.

Ironworkers v. Laborers – Classification

Ironwork and associated activities such as erection, construction of iron and other metals, loading and unloading of iron and other metals at ironwork site, as well as grinding, burning, welding, and bolting of iron and other metals properly classified as “Ironworker” work.

Letter to Long, Buonopane, April 26, 2000.

See “Overlapping Craft Jurisdiction,” below.

Laborers - Classification

Dismantling of steel ventilation fans and doors which are coated in lead paint and the dismantling of steel reinforced walls which do not contain lead paint, falls squarely within the Laborers occupational classification and not the deleaders occupational classification.

Letter to Zarbo, Office of the Attorney General, June 21, 2002.

See “Overlapping Craft Jurisdiction,” below.

See also Memorandum of Understanding Between The Laborers’ International Union of N.A. and The United Union of Roofers, Waterproofers and Allied Workers, dated September 8, 2003.

Landscape Maintenance

Certain landscaping activities not associated with construction or alteration, specifically mowing

and trimming grass and removing fallen leaves, not “construction of public works” and therefore not covered under section 26 of the prevailing wage law. (Note: Decision did not address section 27F.)

Landscaping consisting of grading of soil and installation of trees, shrubs, grass and other plants on publicly owned grounds may be considered construction of public works.

27A Decision, Town of Framingham, July 25, 1995.

Leased Office Space - Landlord’s Improvements

Landlord’s improvements to office space leased by a public agency not subject to the prevailing wage law given certain circumstances.

Letter to McGrane, Office of the Attorney General, August 7, 2001.

Line Painting

Clarification of proper occupational classification to be paid to persons who mark lines and apply paint to roads, highways, parking lots, playgrounds, etc.

Letter to Wayne, Hinckley, Allen & Snyder, November 12, 1999.

Line painting and application of traffic markings properly classified as Laborers’ work.

Letter to O’Reilly, Construction Industries of Massachusetts, June 13, 2000.

Locker Installation-Carpenter

Workers install and bolt freestanding wardrobe and athletic lockers onto concrete bases and also install and bolt heavy-duty corridor lockers to wood bases and wall, fall squarely under the occupational classification of Carpenter.

Letter to Zarbo, Office of the Attorney General, September 24, 2002.

Maintenance v. Repair

DLI has authority to construe term “alteration” in the definition of “construction” set forth at M.G.L. c. 149, §27D to include repairs to public buildings.

27A Decision, Appeal of Local 3 of wage rates and classifications for Maintenance/Repair Contract for Boston Public Library, 1988.

“Parts replacement” is tantamount to a repair and is therefore subject to prevailing wage law.

Letter to Moschos, Mirick O'Connell, May 27, 1999.
Letter to Holloway, George T. Wilkinson, Inc., November 15, 2002.
Letter to Isaac, Electrical Engineering & Service Co., Inc., February 25, 2003.
Letter to Isaac, Electrical Engineering & Service Co., Inc., May 2, 2003

Maintenance activities that result in additions to or alterations of public works constitute construction of public works for purposes of M.G.L. c. 149, §§26-27.

Letter to Courtemarche, Data Fire Systems, Inc. September 1, 1999.
Letter to Holloway, George T. Wilkinson, Inc., November 15, 2002.
Letter to Isaac, Electrical Engineering & Service Co., February 25, 2003.
Letter to Isaac, Electrical Engineering & Service Co., May 2, 2003

Materialmen

Laborers working at a contractor's yard loading and unloading materials and/or equipment for use in the construction of a public construction project and Laborers working in a contractor's yard processing and manufacturing materials and/or equipment to be used at a public construction project are not subject to prevailing wages.

Letter to Shannon, January 22, 2002.

Materialmen are not covered by the prevailing wage law unless they participate in the installation of materials at the worksite.

Letter to Maloney, Office of the Attorney General, November 1, 1999.

Mechanics

"Mechanic" classification applies to persons who work on equipment at public works site in order to assemble, adjust, disassemble, or maintain proper functioning of equipment, such as oilers. If equipment is not functioning, regardless of whether it is located at a public works site, prevailing wage rates need not be paid to the mechanic who performs repairs to return equipment to service.

Letter to Maloney, Office of the Attorney General, November 1, 1999.

Modular Work Stations

Installation, repair or disassembly of modular work stations cannot be considered a construction project and are not subject to sections 26 -27D. Any alteration to public buildings in connection with the installation, repair, or disassembly of modular work stations would, however, require the payment of prevailing wage.

Letter to Tempesta, DHCD, October 4, 1999.

Municipal Employees

Generally speaking, the prevailing wage law does not apply to public employees unless (1) they are involved in the “construction, addition to or alteration of public buildings” and (2) the project has been funded by a “special appropriation of more than one thousand dollars.” (letter does not address work of public employees under section 27F)

Letter to Canavan, City of Everett, May 18, 1999.

Letter to D’Astous, Chester Municipal Light Department, September 5, 2001.

Municipal employees engaged in horizontal (sewer) construction where there is no “building” (vertical) construction to be performed are not subject to the prevailing wage law. (Letter does not address section 27F).

Letter to Hannon, Pepperell and Groton, February 11, 1997.

Municipal Light Plants

Municipal light plants subject to prevailing wage law.

Peabody Municipal Light Plant v. Attorney General et al., No. 92-3125 (Sup. Ct. 1995).

Northampton Airport, Inc. - Runway Work

Runway project at Northampton Airport, Inc., a privately-owned airport, the runway of which is available for public use, where work is funded through state appropriation but privately managed, not subject to M.G.L. c. 149, §§26-27D.

Letter to Kerchner, Massachusetts Aeronautics Commission, April 26, 2000.

Off-Site Fabrication

Off-site fabrication of tanks normally constructed at construction site, but, due to space constraints, constructed off-site and transported to construction site, covered by prevailing wage.

Letter to Eachus, Pittsburgh Tank and Tower, August 30, 1994

Other letters on file.

Off-Site Preparatory Work

Preparation work performed off-site, such as cutting manhole cover protectors, refueling equipment, or cleaning equipment, is not covered by the prevailing wage law.

Letter to Field, Office of the Attorney General, June 27, 2001.

Soil testing performed at an off-site laboratory is not covered by the prevailing wage law.

Letter to Zarbo, Office of the Attorney General, June 4, 2002.

Off-Site Transportation of Equipment

The transportation of equipment and machinery to or from a public works construction site is not covered by the prevailing wage law.

Letter to Field, Office of the Attorney General, June 27, 2001.

Overlapping Craft Jurisdiction

DOS has no authority under the prevailing wage law to choose between the higher or lower wage rate in classifying workers engaged in activities that fall under the jurisdiction of two different unions.

Letter to Field, Office of the Attorney General, February 21, 2001. (See also Memorandum of Understanding Between The Laborers' International Union of N.A. and The United Union of Roofers, Waterproofers and Allied Workers, dated September 8, 2003.)

Letter to Paiva, Office of the Attorney General, April 30, 2002.

Letter to Trager, Office of the Attorney General, June 4, 2002.

Letter to Zarbo, Office of the Attorney General, June 4, 2002.

Letter to Zarbo, Office of the Attorney General, June 21, 2002.

Letter to Zarbo, Office of the Attorney General, August 15, 2002.

Letter to Zarbo, Office of the Attorney General, August 8, 2003.

See also Commonwealth v. Diversified Contracting, Inc., 53 Mass. App. Ct. 1111 (2002).

Over-the-Road

See "Bituminous Concrete," above.

Overtime Pay/ Blended Rate

The Massachusetts Overtime Law, M.G.L. c. 151, §1A, governs overtime requirements; there is no separate provision for such under the state prevailing wage law. State overtime law requires time and one-half pay for all covered, non-exempt workers when their hours exceed 40 hours in a given workweek. M.G.L. c. 151, §1A. An employee's workweek must be a fixed and regularly recurring period of 168 hours - seven consecutive days.

Letter to Castle, National Metering Services, Inc., November 7, 2005.

Letter to Ellis, June 12, 2006.

Employees who work overtime during a work week that includes both prevailing and non-prevailing wage hours shall be paid an overtime rate based on the weighted average of the straight-time rates of pay. Where an employee works at two or more different types of work in a single work week, for a single employer, for which different straight-time rates of pay (not less than minimum wage) have been established, his/her regular hourly rate of pay for that week is the weighted average of such rates. The regular hourly rate for that employee is determined by adding together all earnings for the week and dividing this total by the number of hours worked at all jobs.

Letter to Chandler, Boston, MA, November 27, 2001.

When calculating overtime for public works projects, the regular hourly rate on which to base overtime pay is the “base” rate of pay, i.e. the total prevailing wage rate minus any allowable deductions actually taken by the employer.

Charles, et al., v. Roads Corp., No. 98-1380 (Sup. Ct. 1999).

Letter to J. Higgins, Patterson Smith Associates, December 19, 1997.

Under state law, employers are only required to pay overtime for hours worked in excess of forty hours in a given workweek. M.G.L. c. 151, §1A.

Letter to Chandler, Boston, MA, April 2, 2002.

Owner-Operator/Independent Contractor Exemption

Unless hauling gravel or fill, legitimate owner-operators and independent contractors not subject to M.G.L. c. 149, §§26-27H, in that, only employees must be paid prevailing wage.

Letter to Collins, Town of Franklin, March 10, 2000.

Painting

The proper occupational classification for the removal of lead paint and clean-up related to these deleading operations is *Painter/Taper(Brush/Repaint)*. The Painters and Allied Trades’ collective bargaining agreement (between the Painters and Allied Trades District Council #35 and the Painters & Finishing Employers Association of New England, Inc.) covers deleading work and any cleanup resulting from such paint removal operations. The proper occupational classification for the removal of silica and any lead-contaminated dust that was not a result of the deleading work performed is *Laborer: Hazardous Waste/Asbestos Remover*.

Letter to Clark, Office of the Attorney General, March 2, 2005.

See “**Overlapping Craft Jurisdiction**,” above.

Painting (New Construction)

On a public work construction project, if 30 percent or more of surfaces to be painted are new

construction, the appropriate wage category to be used is the new applicable paint rate.

Letter to Morrissey, August 24, 2000.

Paving

Paving and other road repairs subject to the prevailing wage law.

27A Decision, Town of Falmouth, 1995.

See “Overlapping Craft Jurisdiction,” above.

Payroll Reports; Weekly; Certified

For public records request, the town is not permitted to withhold home addresses and salaries contained in certified payrolls. The Town may withhold all material referencing family or marital status and all social security numbers.

Letter to Palmer, Deutsch, Williams, Brooks from Francis Gould, Public Records Division of the Commonwealth of Massachusetts, Secretary of States Office, October 6, 2000.

Certified weekly payroll reports are not required when all tasks performed are not covered by the prevailing wage law, e.g. only bulb and photo cell replacement work on street lights. However, an awarding authority may, as a matter of contract, impose a similar reporting requirement for its own monitoring or auditing purposes.

Letter to O’Donnell, International Brotherhood of Electrical Workers, November 18, 2003.

Pension Deductions

See “Deductions,” above.

Pier and Dock Construction

See “Pile Drivers - Classification,” below.

Pile Drivers - Classification

The pile drivers occupational classification covers pier and dock construction including the underpinning (such as piles) and all components up to and including the deck. Work above the deck falls within the various occupational classifications utilized on construction projects, generally.

Informal agency opinion given to Pires, MassPort, November 13, 2000.

Pipelaye - Classification

Installers of underground natural gas pipes are classified as Pipelayers. Workers who perform pipe work in streets and across sites to buildings and other structures are classified as pipelayers.

Letter to Langone, Langone Pipeline Utility, October 21, 2002.

Letter to Mathews, Westfield Gas & Electric, November 15, 2002.

Playground Installation

Prevailing wage schedules do not include a classification for “playground contractor” or “playground installer.” The appropriate wage would be determined by the activity performed, e.g. a contractor performing carpentry work must be paid the carpenter wage rate.

Letter to Salazar, International Playground Contractors Association, May 20, 2005.

Plumber/Pipefitters - Classification

Prevailing wage schedules issued by DOS do not distinguish between residential and commercial plumber job classifications because no operative collective bargaining agreements in Massachusetts contain separate classifications for such work.

Letter to Castle, National Metering Services, Inc., November 7, 2005.

Work involving installing hangers to hang pipe, making pipe connections on the ground, and handing pipe to the fitters fall within the craft jurisdiction of plumber/pipefitter.

Letter to Trager, Office of the Attorney General, June 4, 2002.

Letter to Mathews, Westfield Gas & Electric, November 15, 2002.

Pipefitter is the correct occupational classification for workers who perform pipe work inside buildings and other structures.

Letter to Langone, Langone Pipeline Utility, October 21, 2002.

Plumber/Pipefitter is the correct occupational classification for workers who install pipe to ground-mounted, outdoor condensing units on exterior mounting pads, install new evaporators, and drain lines and controls in connection with replacement of water-cooled refrigeration equipment for walk-in coolers and freezers. Removal of old refrigeration equipment appears to fall within an area of overlap between the plumber/pipefitter and laborers’ unions.

Letter to Zarbo, Office of the Attorney General, August 8, 2003.

See “**Overlapping Craft Jurisdiction**,” above.

Pneumatic Compactor Operators/Roller Operators - Classification

Despite argument of a contractor that operators of pneumatic compactors are substantially different than operators of other compactors, tasks are substantially akin to several duties covered by the International Union of Operating Engineers.

Letter to Moschos, Mirick O'Connell, April 6, 1995.

Private Development - Land Leased from a Public Agency

Private development project on land leased from public agency not subject to prevailing wage law.

Letter to Salomon, Egleston Square Development, Roxbury, October 10, 1995.

Public Address System (MBTA)

A contract entered into by the MBTA which constitutes an addition or alteration to a public work, in this instance the subway public address system, is subject to the prevailing wage law.

Letter to Balikian, Balikian Law, July 31, 2007

Public Bidding Law

Contract exempt from public bidding statutes not necessarily exempt from the prevailing wage law.

Letter to Turchinetz, April 22, 1999.

Contract subject to public bidding law not necessarily covered by prevailing wage law.

27A Decision, Central Artery/Tunnel Engineering Field Surveying Service Contract, 1995.

Public Entities and Quasi-Public Entities

The South Shore Tri-Town Development Corporation, created by Chapter 301 of the Acts of 1998, is subject to the requirements of the prevailing wage law.

Letter to Milanoski, South Shore Tri-Town Development Corporation, March 22, 2001.

See "Commissions," above.

Ready-Mix Concrete Drivers

See **Notice to Drivers of Bituminous Concrete** on DOS Website.

Off-site work not covered for ready-mix drivers on projects for which a prevailing wage schedule dated on or after August 22, 2001 has been issued. On-site work is covered.

27A Decision, MHD Contract for Resurfacing and Related Work, District 2, August 21, 2001.

Dengenis Policy, June, 1993. (Rescinded by 27A Decision issued on August 21, 2001.

27A Decision, Lakeville Read-Mix, Inc. and A. Graziano, 1995.

See Construction Industries of Mass. v. Commissioner of Labor and Industries, 406 Mass. 162 (1989).

Letter to Kelley, Segal, Roitman & Coleman, MetroWest Tunnel, April 3, 1998.

Ready-Mix Concrete Driver is the correct occupational classification for drivers who deliver ready-mix concrete.

Letter to Langone, Langone Pipeline Utility, October 21, 2002.

Repairs

DLI has authority to construe term “alteration” in the definition of “construction” in section 27D to include repairs to public buildings.

27A Decision, Appeal of Local 3 of the wage rates and classifications for maintenance/repair contract for the Boston Public Library, 1988.

Road Maintenance and Repair Work

Road maintenance and repair work pursuant to municipal public works contracts constituted construction of public works.

Felix A. Marino Co. v. Commissioner of Labor and Industries, 426 Mass. 458 (1998).

Roof Repairs/Installation

The roofer’s rate shall apply to roofing work, including removal of old roof(s), where a new or replacement roof(s) will be laid or re-laid; and to the handling of the materials related to removal of an old roof or roofs where the roof(s) will be replaced. The laborers’ rate shall apply to the removal of old roofing and building materials of a building that is to be demolished where no roof will be re-laid.

Letter to Jones, Office of the Attorney General, April 3, 2008

See also Memorandum of Understanding Between The Laborers’ International Union of N.A. and The United Union of Roofers, Waterproofers and Allied Workers, dated September 8, 2003.

In setting rates for work on metal roofs, DOS looks to the collective bargaining agreements from the United Roofers union and the Sheet Metal Workers union.

Letter to Orrell, City of Worcester, March 26, 1999.

See “**Warranty Work,**” below; and “**Overlapping Craft Jurisdiction,**” above.

Salaried Work

When a salaried supervisor for a construction company performing public works projects in Massachusetts also performs carpentry work on these jobs, s/he must be paid the applicable prevailing wage for this work. However, an employer may meet this obligation if the weekly salary is sufficient to ensure full payment of the prevailing wage for all such hours worked.

Letter to Verissimo, December 10, 2003

Septic Systems

Improvements made to septic systems under the Title V Program not subject to the prevailing wage law.

Letter to Tempesta, EOCD, September 29, 1995.

Work that entails metering the appropriate quantity of methanol into a septic system and extracting a sample for testing does not constitute an addition to or alteration of a public work; therefore, the state prevailing wage law does not apply to this type of work.

Letter to Zannelli, Seekonk Public Schools, October 21, 2003.

Sewer Pipes - Relining

The occupational classification of “**Pump Operator (Dewatering, Other)**” shall be used for the following task on a covered sewer pipe relining project:

- Operation of a pump with an attached six-inch intake and discharge hose. The pump is used in the catch basin to keep the pipe dry while the pipe is being relined.

The occupational classification of “**Steam Boiler Operator**” shall be used for the work of tending to a boiler that is mounted on a truck and used to heat hot water, which is required in the relining process.

Letter to Klubock, Office of the Attorney General, October 14, 2003.

Site Support Services

See “**Environmental Clean-up**” above.

Soil Testing/Test Borings

Soil compaction testing by means of a nuclear density gauge, and concrete slump and air testing as described in this letter opinion is not covered under the prevailing wage law. However, if laborers are used to fill concrete cylinders to be used for compressive strength testing, these workers must be paid the laborer’s prevailing wage rate. The compressive strength testing done in the laboratory is not covered. Additionally, this letter does not address test borings performed on site to test sub-soils; this work is specifically included within the definition of construction in G.L. c. 149, §27D, and is prevailing wage work.

Letter to Skorohod, Briggs Engineering & Testing, Inc., July 24, 2008.

Test drilling done to identify potential sites for construction of municipal wells is covered under the prevailing wage law.

Letter to Kaczmarek, Littler, Mendelson, August 31, 2006.

Sprayed-on Fireproofing

See “**Overlapping Craft Jurisdiction**,” above.

Start Time

“Start time” (when payment of prevailing wage is required to begin for workers engaged in public works construction activities during their workday):¹

General rule: Payment of prevailing wage begins when the worker begins his/her workday at the public works site.

Special case: Truck Drivers

Delivery/Materialmen not engaged in work on the public work site are not “engaged” in a public works project; therefore, are not entitled to prevailing wage.

Drivers hauling “gravel and fill” must be paid prevailing wage from the point at which they arrive at the work site, or arrive at a location where gravel or fill is picked up for delivery to the public work site, whichever occurs earlier, provided site delivery directly follows pick-up.

¹ See also G.L. c. 151, the Massachusetts Minimum Fair Wage Law, for statutory minimum wage requirements.

Drivers of bituminous and ready-mix concrete must be paid prevailing wage from the point at which the driver arrives on the public work site.

Letter to Montenegro, Independent Asphalt Corp., May 17, 2000.

Letter to Shannon, Shannon Law Associates, Inc., March 7, 2002.

See also 27A Decision, MHD Contract for Resurfacing and Related Work, District 2, August 21, 2001.

Construction Industries of Mass. v. Commissioner of Labor and Industries, 406 Mass. 162 (1989).

Dengenis Policy, June, 1993. (Rescinded by 27A Decision issued on August 21, 2001.)

Street Light Maintenance

In a scope of work encompassing various street light repair and maintenance activities, photo cell and light bulb replacement is not construction of public works.

Letter to Shortsleeves, August 22, 2000.

Letter to Place, International Brotherhood of Electrical Workers, January 29, 2002.

Letter to Place, International Brotherhood of Electrical Workers, December 6, 2002.

Letter to Place, International Brotherhood of Electrical Workers, January 9, 2003.

Letter to O'Donnell, International Brotherhood of Electrical Workers, November 18, 2003.

Workers who repair street lights must be paid in accordance with the occupational classifications issued for the project on the prevailing wage schedule.

Letter to O'Donnell and Place, International Brotherhood of Electrical Workers, April 19, 2002.

Surety (Performance of Work)

The surety, and its contractor, were obligated to perform the principal's original contractual obligations. One of those contractual obligations is the requirement to pay wage rates as prescribed in the prevailing wage schedule. Therefore, that wage schedule is still in effect for the project.

Letter to Winters, Consigli Construction Co., Inc., April 6, 2004.

Teamsters

See "Truck Drivers," below.

Telecommunications Technician

Telecommunications agreements establish the craft jurisdiction for the *Telecommunication*

Technician occupational classification and wage rate. Electrical work not included within the scope of work covered by these telecommunications agreements is performed by journeymen electricians and the appropriate rate on the prevailing wage schedules is *Electrician*.

Letter to Demetros, October 16, 2006.

Letter to Levangie, Levangie Electric Co., Inc., October 16, 2006.

The correct occupational classification for workers who install conduit for telecommunications system wiring is telecommunication technician. **Note:** This letter references an expired collective bargaining agreement. The subsequent agreement made changes to the work covered by telecommunications technicians.

Letter to Giurleo, August 8, 2003.

See “**Fire Alarms**,” above.

Temporary Work

Installation of temporary boilers to provide alternative source of heat resulting from loss of main boiler is an “alteration of a public work” subject to the prevailing wage law.

Letter to Robinson, ACME Boiler Rental, February 4, 1998.

Tender

As described by the relevant (Laborers’) collective bargaining agreement, a “tender” classification tends to the needs of journey persons.

Letter to Gagliastro, Worcester, December 24, 1998.

See “**Waterproofing Masonry Work**,” below.

Territorial Jurisdiction

DOS follows territorial jurisdictions of collective bargaining agreements when setting rates.

Letter to Fengler, Asplundh, Inc., April 25, 1994.

Testing and Inspection

See “**Fire Alarms**,” above.

See “**Electrical Equipment Testing**,” above.

Threshold Dollar Amount

There is no dollar threshold for applicability of prevailing wage law.

Letter to Fengler, Asplundh Tree Expert Co., November 1, 1999.

Traffic Barriers

See “Barrier Transport Vehicle” under M.G.L. c. 27F, below.

Traffic Markings

See “Line Painting,” above.

Transportation of Equipment, Off-Site

See “Off-Site Transportation of Equipment,” above.

Tree Trimming

Tree trimming and tree removal projects are covered by the prevailing wage law.

Letters to Fengler, Asplundh, January 25, 1995, February 28, 1996, November 1, 1999, February 2, 2005.

Letter to Ferriter, Taunton, May 16, 1990.

Truck Drivers

Truck drivers who move excavated material at a public works construction site and truck drivers who deliver stone and gravel to a public works construction site, are covered by the prevailing wage law.

Letter to Rafferty, P.E., February 24, 2003.

See “Bituminous Concrete” and “Ready-Mix Concrete Drivers,” above.

Utility Work-Road Work Performed in Connection with

Repair of roadways following installation of cable underneath them for private utility or cable television companies, performed solely for the benefit of, at the direction of, and using funding provided by private utility or cable television company, not covered by the prevailing wage law.

Letter to Early and Marino, Felix A. Marino, Co., August 29, 1994.

Excavation work on public property to install conduit that will accommodate utility lines is subject to the prevailing wage law in some cases. Private utility companies are not exempt from

the prevailing wage law when performing public works construction.

Letter to Burger, Foundation For Fair Contracting, July 6, 2001.

Utility Work-Street Lights

See “Street Light Maintenance,” above.

Vocational Technical Education Programs – Chapter 74-Approved

Students participating in Chapter 74-Approved Vocational Technical Education Programs should be paid the first step apprentice wage rate for the appropriate trade during the course of their participation in the Program when they are working on public construction projects subject to the state prevailing wage law.

Letter to Beaudry, Plumbers & Pipefitters Union, Local 4, November 16, 2006.

Warranty Work

Original installation of lighting fixtures, performed pursuant to a contract with the City, and paid for by the City, was construction of a “public work” and covered by the prevailing wage law. However, subsequent replacement of these fixtures found to be defective under warranty, where the manufacturer contracts for the work directly, at no cost to the public entity, and the scope of the work is limited to returning the public work to its original condition, would not constitute construction of a public work within the meaning of the law.

Letter to Haczyk, Universal Lighting Technologies, May 1, 2006.

Roofing contractor’s replacement of membrane under provisions of manufacturer’s warranty not subject to the prevailing wage law.

Letter to White, City of Lynn, July 21, 1994.

Waste Water Pump Operators - Classification

Waste water pump operators working at construction sites are subject to rates set from the Operating Engineers collective bargaining agreement (Local 4 or Local 98).

Letter to Mard, Office of the Attorney General, April 9, 1997.

Water Meter Installation/Testing

Disconnection of existing water meter-reading pads from low voltage wires, removal of pads, and connection of new transmitters to the wires and attachment to the buildings is the work of the *Water Meter Installer*.

Letter to Lawton, Town of Yarmouth, August 13, 2008.

Testing of water meters in connection with an installation or repair project requires the payment of prevailing wage rates. However, prevailing wages are not required for routine testing not associated with installation, alteration, or repair work.

Letter to Travis, Mass Installation, Inc., June 22, 2006.

When water meter installers drive from site to site during the day, attend trainings or meetings, or drop off door knob notices, such work does not constitute an addition to or alteration of a public work; therefore, prevailing wage is not required. However, state minimum wage law would require the payment of at least the statutory minimum wage for such work required by an employer. See 455 C.M.R. §§2.01, 2.03(4).

Letter to Travis, Mass Installation, Inc., January 21, 2004.

Installation of water meters, even in private residences, is subject to the prevailing wage law.

DLI Policy Statement, July 9, 1993.

Wastewater Treatment Plant

The prevailing wage law applies to painting work performed by outside contactors at a wastewater treatment facility.

Letter to McMahon, Angoff, Goldman, Manning, Wanger & Hynes, October 16, 2006.

Waterproofing Masonry Work

Due to water leakage, a building needed waterproofing, and other work. Workers waterproofed two walls of the building. Workers installed membrane waterproofing; sprayed on glue, and cut, measured and installed Carlyle membrane on the walls. The proper job classification for this work is *Brick/Stone/Artificial Masonry (inc. Masonry Waterproofing)*. Workers also laid brick, mixed mortar and installed brick ties. The proper job classification for this work is *Brick/Stone/Artificial Masonry (inc. Masonry Waterproofing)*.

Letter to Balikian, Balikian Law, April 20, 2007.

Workers who install waterproofing materials must be classified as either “Bricklayers” or “Roofers” but not as “Laborers.”

To help inform your decision for enforcement purposes, I would suggest that the following tasks are included under the definition of installation: the application of waterproofing materials to other building components; the measuring, cutting, mixing, and preparing of all waterproofing materials; and the connecting, positioning, sealing, and finishing, of all waterproofing materials. (See copies of the collective bargaining agreements already provided to your Office.)

The question about whether to use the “Bricklayer/Mason” rate or the “Roofer” rate is, in my opinion, more difficult on unique structures such as ventilation buildings where the masonry and roofing components may not be clearly distinguished from one another. In the event that such a structure has a roof, installation of waterproofing materials on the roof should be paid the “Roofer” rate. Waterproofing work performed on other building components, such as walls, should be paid at the “Bricklayer/Mason” rate. When waterproofing work is performed in areas located between the walls and a roof, either rate could reasonably apply. In that event, DOS reiterates its position that we will not choose between the higher and lower rate in classifying workers engaged in activities that fall under the jurisdictional ambit of two different unions.

Letter to Zarbo, Office of the Attorney General, August 18, 2004.

As described by relevant Bricklayers collective bargaining agreement, waterproofing, damproofing, and caulking all brick, masonry, stone and artificial masonry is work of the “bricklayer/mason/waterproofer/plasterer.”

Letter to Gagliastro, Worcester, December 24, 1998.

Waterproofer is the correct occupational classification for workers who install membrane waterproofing, gas barrier/waterproofing membrane, bituminous damproofing, elastomeric membrane flashing, and sealants in association with Masonry construction.

Letter to Zarbo, Office of the Attorney General, January 9, 2003.

Well Cleaning/Redevelopment

Work on larger diameter wells that requires use of a truck-mounted cable tool rig will require payment of prevailing wages. Smaller diameter wells (2.5 inch) that are cleaned using hand-held scrapers and wash-rods, as described in the letter request, would not require the payment of prevailing wage.

Letter to Maher, Boart Longyear Co., June 5, 2007.

Western Massachusetts Regional Library System

Construction of a new building by the Western Massachusetts Regional Library System, Inc., a non-profit corporation, is not subject to M.G.L. c. 149, §§26-27H.

Letter to Ramsay, WMRLS, Inc., March 14, 2002.

PREVAILING WAGE, Engaging in Public Works, M.G.L. c. 149, §27F

Barrier Transport Vehicle

Movement of traffic barriers several times a day with a BTV is subject to section 27F of the prevailing wage law.

27A Decision, MHD H.O.V. Lane Operation, 1995.

BTV operators should be paid the “Two Axle Equipment” occupational classification.

Letter to McGrath, MHD, November 10, 1999.

Cherry Pickers

See “Holiday Lights,” below.

Deductions

Employer deductions from prevailing wages paid under M.G.L. c. 149, §27F may include those for medical, dental, life and disability benefits, but not those for the employer portion of FICA or other social security payments, holidays, personal days, vacation days, uniforms, safety boots, or pension benefits.

Commonwealth v. Waste Management, Inc., No. 96-1640F (Sup. Ct. 1999)*
[Compare Hicks, et al., v. Roads Corp, et al., No. 98-01380 (Sup. Ct. 1999)*, holding that holiday pay may be deducted from prevailing wages. DOS follows rule set forth in Waste Management rather than in Roads].

Holiday Lights

The installation and removal of holiday lights using a bucket truck or cherry picker falls within the activities covered by Section 27F.

Letter to Place, IBEW Local 104, January 9, 2003.

Grinding Services (Yard Waste and Brush)

Contract for grinding services (yard waste and brush) is subject to the prevailing wage law, section 27F.

Letter to Swete, South Shore Reg. Refuse Disposal Board, April 12, 1996.

Landfill Operation

Public landfill is “public work” for purposes of public bidding law (M.G.L. c. 30, §39M).

DLI v. Town of Pepperell, 26 Mass. App. Ct. 1103 (1988) (Rule 1-28 opinion).

Operation of a municipal landfill and residential recycling drop-off center B functions commonly performed by city or town employees B would generally fall under the ambit of Section 27F, based on the reasoning offered in the Perlera v. Vining Disposal Service, Inc., 47 Mass. App. Ct. 491, 495 (1999) and Commonwealth v. W. Barrington Company, Inc., 5 Mass. App. Ct. 416 (1977).

Letter to Sheridan, Sheridan & Sheridan, LLP, May 12, 2004.

See “Private Funds - Landfill Closure,” above.

A municipally run landfill operating under consent order requiring it to accept private construction debris in order to facilitate closure, where no public funds are expended, not Apublic works@ for purposes of section 27F.

Letter to Joyce, Topsfield Landfill, October 17, 1997.

The accelerated closure of a landfill, where non-municipal waste will be accepted, and no public money will be accepted, not Apublic works@ for purposes of section 27F.

Letter to Briggs, Williamstown Landfill/Metal Disposal, April 8, 1996.

See “Trash Hauling,” below.

Lease, Rental or Other Arrangement

Lease or rental agreement not required for section 27F applicability where bid specifications require contractor to provide vehicle.

27A Decision, Waste Stream Environmental Inc., and N-Viro International Corp., 1995.

Contract for services of an independent contractor does not fall outside the purview of section 27 simply because it is a service contract rather than a lease, rental, order or requisition; service contract is one of the “other arrangements” referred to in the statute.

Perlera v. Vining Disposal Service, Inc., 47 Mass. App. Ct. 491 (1999).

Moving Lottery Machines

The moving of instant ticket vending machines from a central warehouse storage facility to various retail locations did not constitute “public work” within the meaning of G.L. c. 149, §27F.

Letter to Harney, Massachusetts Lottery Commission, August 25, 2006.

Municipal Employees

Municipal employees who operate rented equipment not subject to section 27F.

Letter to Purcell, Mass. Building Trades Council, October 11, 1989.

Service Contract

See “Lease, Rental or Other Arrangement,” above.

Sludge Hauling

Transportation and disposal of sludge from wastewater treatment facility owned by DPW does not constitute being “engaged in public works” because practices regarding disposal are recent in origin and largely carried out by specialized private contractors.

27A Decision, Waste Stream Environmental and N-Viro International, 1995.

Snow Removal

M.G.L. c. 149, §27F does not categorically apply to snow plowing, sanding, salting, ice removal, and related activities and DOS will not issue prevailing wage rate schedules for these activities.

Letter to Beckwith, October 15, 1999.

Street Sweeping

Street sweeping constitutes “engaging in public works” for purposes of section 27F.

Commonwealth v. W. Barrington Co., Inc., 5 Mass. App. Ct. 416 (1977).

Territorial Jurisdiction

Rate schedules issued under section 27F are subject to the territorial jurisdiction of the appropriate collective bargaining agreement.

Letter to McCourt, June 20, 1995.

Towing Services

Tow truck operators are not “engaged in public works” and, therefore, are not covered by section 27F.

Letter to Mullen, MHD, October 16, 1995.

Transfer Station-Gate Attendant

Gate attendant who checks incoming vehicles for current permits and directs customers to appropriate container for waste and recyclable disposal not subject to the prevailing wage law.

Letter to Kennedy, October 2, 2002.

Trash Hauling

Truck drivers who transport solid waste or recycling materials from a municipal landfill or recycling center to a market site for disposal must be paid the prevailing wage.

Letter to Sheridan, Sheridan & Sheridan, LLP, May 12, 2004.

(Former agency position: See Letter to Oakes, Needham, November 1, 1999.)

“Shakers”, workers who operate equipment from back of trash hauling truck, are “operators” of “other vehicles and equipment” for purposes of section 27F, and are therefore covered by the prevailing wage law.

Perlera v. Vining Disposal Service, Inc., 47 Mass. App. 491 (1999).

Wastewater Treatment Plant

Section 27F does not cover operators of the Lynn Water & Sewer Commission’s wastewater treatment plant who perform non-construction activities, with the exception of refuse collection.

Letter to McMahon, Angoff, Goldman, Manning, Wanger & Hynes, September 1, 1006.

PREVAILING WAGE, Moving Office Furniture, M.G.L. c. 149, §27G

Moving Office Furniture - School Furniture

Moving school room furniture is not moving “office furniture” as contemplated by section 27G, and is therefore not subject to the same.

Letter to Turner, Brookline, October 11, 1996.

Moving Office Furniture - Modular Work Stations

Moving modular work stations is subject to section 27G, because such workstations are akin to office furniture.

Letter to Tempesta, DHCD, October 4, 1999.

Moving Office Furniture – Public Employees

Division of Employment and Training employees who move and load office furniture to be transported to a scrap/recycling facility not subject to the prevailing wage law.

Letter to Rousseau, DET, March 13, 2003.

Moving Office Furniture - New Purchases vs. Moving Services

When new office systems furniture is purchased and installed by the vendor, prevailing wage would apply only to building alterations done in connection with the installation of the office furniture, e.g. electrical work that may need to be done to the building in order for the various workstations to make electrical or data network connections. Such work would constitute “construction” within the meaning of the prevailing wage statute, G.L. c. 149, §§27, 27D. The mere delivery, assembly, and placement of new office furniture, not affixed to the building, is not covered by the prevailing wage law.

Contracts to disassemble existing workstations, move, and reconfigure them in a different location would constitute the moving of office furniture and would require the payment of prevailing wage pursuant to G.L. c. 149, §27G (moving office furniture).

Letter to Bostick, DCAM, December 4, 2005.

PREVAILING WAGE, Cleaning and Maintenance of Office Space – M.G.L. c. 149, §27H

MBTA

MBTA not “commonwealth” for purposes of section 27H, and is therefore not subject to this provision of prevailing wage law.

SEIU v. MBTA, No. 88-7299 (Sup. Ct. 1990).

Cleaning and Maintenance - Applicability

Lynn Water and Sewer Commission deemed to be an instrumentality of the Commonwealth and subject to the prevailing wage law for cleaning and maintenance, section 27H.

Letter to Vitali, Lynn Water and Sewer Commission, October 22, 1996.

Cleaning and Maintenance – Classifications

When determining occupational classifications that appear on prevailing wage schedules for janitorial services, DOS obligated to use “certain trades and occupations” appearing in “collective agreements”, in this case the collective agreements representing the Service Employees International Union (SEIU).

Letter to Sullivan, SEIU, June 13, 1998.

PREVAILING WAGE, Housing Authorities, M.G.L. c. 121B, §29

Federal Funds

Rates established by DOS under M.G.L. c. 121B, §29 are inapplicable to federally-aided projects.

Letter to Bukowski, Auburn Housing Authority, April 12, 1995.

Commissioner of Labor & Industries v. Lawrence Housing Authority, 358 Mass. 202 (1970).
Commissioner of Labor & Industries v. Boston Housing Authority, 345 Mass. 406 (1963).

Establishing Wage Rates

Receiver of the Boston Housing Authority v. Commissioner of Labor & Industries, 396 Mass. 50 (1985).

Commissioner of Labor & Industries v. Worcester Housing Authority, 8 Mass. App. Ct. 303 (1979).

Commissioner of Labor & Industries v. Boston Housing Authority, 345 Mass. 406 (1963).

Health and Life Insurance Plans

Housing authorities do have to offer to make contributions to health and life insurance plans when the housing authorities do not offer health and life insurance through the Group Insurance Commission.

Letter to Zenkus, Worcester, MA, October 29, 2001

PREVAILING WAGE, School Bus Drivers, M.G.L. c. 71, §7A

School Bus Drivers

The term “school bus” is not defined within Section 7A; however, DOS has long utilized the definition of “school bus” under G.L. c. 90, §1. Section 1 defines “school bus,” in pertinent part, as “any motor vehicle used for the transportation of school pupils...to and from school...but not including...a motor vehicle having permanent seating accommodations for and carrying not more than eight persons in addition to the operator.”

You asked whether a vehicle, which is manufactured and sold with more than eight passenger seats, but is modified by the removal of some seats so that the vehicle has eight or fewer seats, would still be considered a “school bus” under G.L. c. 90, and thus subject to the prevailing wage requirement included within G.L. c. 71, §7A. Any questions concerning the interpretation of G.L. c. 90, §1, should be addressed to the Registry of Motor Vehicles (RMV). If the RMV would still consider such a modified vehicle to be a “school bus” for purposes of G.L. c. 90, DOS would consider drivers of such vehicles to be covered by the prevailing wage law.

Letter to Attorney Foster, Sheehan, Phinney & Bass, P.C., May 28, 2008.

Chapter 71, § 7A covers the transportation of students to and from school, special education transportation, school-related athletic events, field trips, all other school-related activities, time spent performing vehicle safety checks, fueling, and travel between routes and garages, parking lots, and other places where buses are stored.

Letter to Jones, Office of the Attorney General, April 10, 2001.

Letter to Blair, June 9, 2001.

Letter to Jones, Office of the Attorney General, February 20, 2002.

School bus drivers are not required to be paid prevailing wage rates on chartered trips that are not part of a school bus transportation contract issued pursuant to M.G.L. c. 71, §7A. The appropriate minimum wage would be the statutory minimum wage established by the MA Minimum Fair Wage Law, G.L. c.151, §1. Letter to Rooke, April 23, 2002.

Letter to Rooke, April 23, 2002.

Shawsheen Valley Regional Vocational Technical School District school bus drivers are required to be paid prevailing wage rates based on wage rates established for cities and towns located inside the M.B.T.A. jurisdictional area.

Letter to Mandel, Ropes & Gray, March 13, 2003.