



TOPICAL OUTLINE OF MASSACHUSETTS PREVAILING WAGE LAW

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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.

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).

Applicability of the prevailing wage law to certain painting, HVAC and repair and maintenance work on public building.

PW-2009-06, October 6, 2009.

See also, “Maintenance and Repair”, below.

Apprentices

The apprentice requirements of Section 33(b) of Chapter 30 of the Acts of 2009, “An Act Mobilizing Economic Recovery in the Commonwealth” requires, among other requirements, that public works projects funded by the American Recovery and Reinvestment Act of 2009, where the amount of the construction costs under any contract awarded is likely to exceed \$1 million, on a per project basis, require that 20% of the total hours of employees receiving an hourly wage shall be performed by apprentices in bona fide apprentice training programs as provided in sections 11H and 11I of c. 23 of the General Laws.

The 20% apprentice requirement of Section 33(b) will be interpreted as applying to those employees who are on the worksite, employed by a contractor or subcontractor and who work in job classifications that are covered by the prevailing wage, and would exclude those employees on the worksite whose jobs would not be covered by the prevailing wage.

PW-2010-08-06.30.2010

Prevailing wage schedules issued beginning March 18, 2010, will include the actual apprentice wage rates, including health and welfare, pension and supplemental unemployment benefits, as established by the applicable collective bargaining agreements. This change is consistent with the plain language of the prevailing wage statute which requires that prevailing wage rates (1) be no less than the wage rates established by the applicable collective bargaining agreements and (2) include contributions by employers to health, pension and supplemental unemployment

benefit plans.

PW-2010-04-3.18.2010 (Rescinding DOS Opinion Letter dated July 14, 200, to Kyle Meleski)

See also “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

See also, Notice of Prevailing Wage Classification: *Asbestos Worker (Pipes & Tanks)* and *Laborer: Hazardous Waster/Asbestos Remover*.

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).

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 (Rescinded by 27A Decision issued on August 21, 2001.)

Time spent by truck drivers in designated waiting or “holding” areas on a construction project is compensable at the applicable prevailing wage rate for the classification of work. PW-2012-01-2.22.2012

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.

Bridge Work

Workers who perform certain tasks related to the repair and replacement of existing reinforced concrete and steel bridge elements on highway projects are classified as follows:

- (1) The cutting of concrete with a hand held machine with a diamond blade is paid at no less than the rate for "*Demo: Concrete Cutter/Sawyer*".
- (2) The removal of deteriorated concrete with a hand held pneumatic chipping hammer is paid at no less than the rate for a "*Pneumatic Drill/Tool Operator*."
- (3) Drilling and Installing reinforcing dowels utilizing an electric hammer drill or pneumatic rock drill is paid at no less than the rate for a "*Pneumatic Drill/Tool Operator*."
- (4) Striking off concrete to proper grade with hand held shovel or screed is paid at no less than the rate for a "*Laborer*."
- (5) Placing concrete in work concrete formwork and vibrate with a hand held or form vibrator is paid at no less than the rate for a "*Laborer*."
- (6) Erecting and dismantling of exterior scaffolds for all trades for heavy highway and bridge work is paid at no less than the rate for a "*Laborer*."
- (7) Construct, and assist in constructing, concrete forms from 2 x 4s and plywood utilizing a handheld hammer, tape measure, level and skill saw.
- (8) Erect, and assist in erecting, wood concrete forms to proper line and grade.
- (9) Secure concrete forms with timber walers utilizing a handheld hammer and wrench.

The tasks designated in items 7 through 9, above, are paid at no less than the rate for a "*Carpenter*"

- (10) The task of stripping wood concrete forms and timber walers with hand held hammers, pry bars, and wrenches is paid at the rate of a "*Carpenter*" if the wood forms are to be reused. However, if such forms are to be demolished after the stripping, the task is paid at the rate for a "*Laborer*."
- (11) The removal of deteriorated reinforcing mat elements and the subsequent cutting, handling, placing the mats or wire mesh is paid at no less than the rate for an "*Ironworker*" as indicated on the rate sheet.
- (12) Cutting and removing rebar with an oxygen acetylene torch, bolt cutter or cutoff saw is also paid at the rate for an "*Ironworker*".

PW-2010-10-8.24.2010

Bridges/Tanks Painters

See Notice to Awarding Authorities: Painters (Bridges and Tanks), issued December 23, 2009.

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, 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).

Catch Basin Cleaning

Catch basin cleaning work performed using “Vac Haul” equipment is paid at the rate for “Vac Haul/Catch Basin Cleaning” as indicated on the wage schedule. Catch basin cleaning work performed using a “clam shell” truck is paid at the rate for “Clamshell/Slurry Bucket/Heading Machine” as indicated on the wage schedule.

PW 2010-5-3.31.2010 See also, **Manhole Rehabilitation**, below

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

In the case of construction of a leasehold space in private buildings by charter schools for the use of a school, DLS will consider the following criteria in determining the where the project is a “public work” being undertaken by a public entity:

1. That the property is owned by a private entity;

2. Whether public funds will be used to construct the build out of the leased premises, including consideration of whether the lease payments will cover the costs of construction;
3. Whether the build out will involve specialized construction, including child-equipped restrooms (in the case of elementary school age children); library facilities; cafeterias; classrooms for language school laboratories, audio visual facilities, a gymnasium etc.
4. Whether the premises will be used for a public purpose and be operated and staffed by the charter school for the short term of the lease;
5. Whether the lease hold will require some degree of renovation to render it suitable for a commercial purpose, at the end of the lease term;
6. The degree of control which the charter school board maintains over the design and construction process, including approval plans, oversight of construction, approval of requisitions for payment; and
7. Other relevant factors, including, in the case of lease of a private building, whether the charter school maintains and option to purchase the premises for a nominal sum at the end of the lease term. PW-2010-02-2.22.2012

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.

Clean-up of Construction Job

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

DLI Notice to Awarding Authorities.

CM at Risk

The appropriate time for an awarding authority to obtain a wage determination for a CM at Risk contract, is prior to the execution of the first trade subcontract.

PW-2009-04, August 6, 2009

Requirement to update prevailing wage schedule for CM at Risk contracts annually upon the anniversary date of the execution of the first trade subcontract for the work.

PW-2009-03, July 15, 2009

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

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 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.

Concrete Sidewalks:

1. Removal of the existing materials (old sidewalk) using a backhoe or front end loader.
2. Removal of existing materials with hand tools, primarily shovels, or jackhammer.
3. Gravel and sub-grade materials are put in place using hand shovels and rakes.

4. With respect to concrete sidewalks, the installation with hammers and stakes of wood edging of 1 inch by 4 inches. Thereafter, the area is filled with concrete from a pre-mix truck using shovels, rakes and wheelbarrows. The cement is leveled and swept with brooms.
5. In the asphalt installation, the process is similar to the concrete but the asphalt is leveled with rakes and shovels. It is then rolled with a hand roller.
6. Installation of curbing using a front end loader and guidance of the curbing into place.

With the exception of the operation of the backhoe, front end loader, and jackhammer, described in items 1, 2 and 6, each of the listed tasks is paid at the rate for "Laborer" as indicated on the rate sheet. The operation of a jackhammer, as described in item 2, is paid at the rate for "Jackhammer & Paving Breaker Operator" as indicated on the rate sheet.

The operation of a backhoe or loader, as described in items 1 and 6, is paid at the rate for a "Backhoe/Front End Loader" as indicated on the rate sheet.

See PW-2010-11-12.13.2010

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

An employer must annualize contributions to bonafide health and welfare, pension and supplemental unemployment benefit plans so that the amount of the plan contribution deducted from the hourly prevailing wage rate reflects the total number of hours an employee worked for an employer in a plan year.

PW-2010-7-6.28.2010

The value of vacation, holiday and sick pay may not be deducted from the prevailing

wage rate because they do not qualify as “health and welfare plans” within the meaning of §§ 26 and 27 and are therefore not included in the DOS’s wage rate determinations. Accordingly, employer deductions from prevailing wages, pursuant to c. 149, §§ 26 and 27, may not include holiday, vacation or sick pay.

Letter to Attorney Daniel Fields, November 25, 2009

Employer contributions to a 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.

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 amount of funding contributed by the employer to 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.

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 (demolition) 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

Drawbridge operator employed by a contractor on the site of a reconstruction/rehabilitation

project, to raise or lower a bridge to accommodate construction activities related to the project is 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

See Prevailing Wage Law Amendment 8/9/08 (requirement annual wage updates to multi-year public works projects) and PW-2009-03, July 15, 2009.

For duration of wage rates for trash hauling and school bus contracts, see "Notice to Awarding Authorities Regarding Trash Hauling Rates", dated December 2009 which provides that "[Any exercise of an option to renew or extend the contract term shall include updated prevailing wage rates." See also, PW-2011-01-01.6.2011.

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.

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.

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 apply to building work, “heavy” work and highway or road work as well as to “vertical” construction. PW-2011-05-08.15.11

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.

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

The collective bargaining agreement known as the Telecommunications Agreement between the IBEW, Local 103 and the Electrical Contractors Association of Greater Boston, Inc. National Electrical Contractors Association (NECA) and its counterpart in Western Massachusetts, IBEW, Local 7 and Western Massachusetts Chapter of NECA, include the testing and commissioning of the operation of the fire alarm system after initial installation as described.¹ Based on a review of these agreements and other

¹ Routine, annual testing of fire alarm systems not related to the initial installation of the system is not subject to the prevailing wage law unless such testing results in repair work – which is covered as an “alteration or improvement” of a public work. *Letter to Countermarche, Data Fire Systems, September 1, 1999 and Letter to Moschos, Mirick*

understandings among the unions and employers in the industry, DOS determines that such fire alarm commissioning work is paid at the rate for a “*Fire Alarm Repair/Maintenance/Commissioning*” as set forth on the rate sheets issued by DOS.

PW-2011-3-3.14.11

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.

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.

O’Connell, Massport, May 27, 1999.

FUNDING:

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 - 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 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.

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 necessarily 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 privately owned septic systems, where home owner is ultimately responsible for full payment of work, 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 in Chelsea, should be classified as “Glazier” workers.

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

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.

Letter to Schneider, August 18, 2009.

Post-commissioning task of writing of computer code to integrate HVAC systems with servers and computers not covered by prevailing wage law.

Letter to Schneider, December 8, 2009.

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. Camerlengo, E. Amanti & Sons, Inc., May 19, 2000.

Ice Skating Rinks

By letter dated December 22, 2010, you requested that the Division of Occupational Safety clarify the application of the prevailing wage law to an ice skating rink owned by the Commonwealth of Massachusetts acting by and through its Department of Conservation and Recreation and operated, managed and maintained through a management contract between the Town of Milton and the DCR. This letter provides written confirmation under the Massachusetts Prevailing Wage Law, c. 149, §§ 26 and 27, that, to the extent the management contract involves alterations of or additions to the ice skating rink, workers who perform such tasks must be paid the applicable prevailing wage rates.

PW-2011-02-02.4.11

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

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 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

Landscaping consisting of grading of soil and installation of trees, shrubs, grass and other plants on publicly owned grounds are considered construction of public works to which the prevailing

wage law applies.

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 that the improvements are (1) being performed as a condition of the occupancy; (2) wholly financed and executed by the Landlord; (3) with no public funds; (4) no involvement, approval rights or comments by the public agency are permitted and (5) the Landlord is in full control of the work and the outcome.

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. See also, PW-2009-06, October 6, 2009.

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

Manhole Rehabilitation and Repair/Relining of Sewer Pipes

1. Catch basin cleaning work, including the inspection thereof, using vacuum or “Vac-Haul” trucks is paid at the rate for “Vac-Haul/Catch Basin Cleaning” as indicated on the rate sheet. Catch basin cleaning or inspection workers using 2 axle, 3 axle or 4/5axle trucks are paid at the rate for “2 Axle”, “3 Axle” or “4/5 Axle” trucks as indicated on the rate sheet. The DOS established these classifications by reference to the state wide collective bargaining agreement known as the “Massachusetts Heavy Construction Agreement” between the International Brotherhood of Teamsters, Locals 42, 49, 59, 170, 251, 25, 404 and 653, and the Labor Relations Division of the Construction Industries of Massachusetts.

2. Inspection and Repair/Relining of Sewer Pipes. Inspection repair/relining of sewer pipes, as described, using 2 axle, 3 axle or 4/5 axle trucks is paid at the rate for “2Axle”, “3 Axle” or “4/5 Axle” trucks as indicated on the rate sheet. The DOS established these classifications by reference to the state wide collective bargaining agreement known as the Massachusetts Heavy Construction Agreement” between the International Brotherhood of Teamsters, Locals 42, 49, 59, 170, 251, 25, 404 and 653 and the Labor Relations Division of the Construction Industries of Massachusetts.

3. Manhole rehabilitation work, as described above, is paid at the rate for “Laborer” as indicated on the rate sheet. The DOS established this classification by reference to the collective bargaining agreements known as the “Building and Site Construction 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. and by the collective bargaining agreement known as the “Heavy and Highway Agreement between the Labor Relations Division of Construction Industries of Massachusetts, Inc. and Massachusetts Laborers’ District Council of the Laborers’ International Union of North America AFL-CIO.

4. Workers use Jet Vacs to clean storm drains and sewer lines. Please refer to the response to #1, above.

PW 2010-6 – 04.30.2010

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 on 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).

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.

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 contributed 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.

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.

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.

Chapter 149, § 27B requires the following information be contained on certified payroll records: For each employee, the name, address, occupational classification, hours worked and wages paid. For each apprentice, in addition to the aforementioned information, a photocopy of the apprentice's ID card.

PW-2009-07, October 9, 2009

Note: The Massachusetts Prevailing Wage law requirement to collect the information is not changed by an amendment to the Davis Bacon implementing regulation 29 C.F.R. § 5.5(a)(3)(ii)(A), which no longer requires the collection of home addresses on federally funded projects subject to the Davis Bacon Act.

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.

Pipelayer - 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.

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.

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.

Ready-Mix Concrete Drivers

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

Time spent by truck drivers in designated waiting or “holding” areas on a construction project is compensable at the applicable prevailing wage rate for the classification of work. PW-2012-01-2.22.2012

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.

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

27A Decision, Lakeville Readi-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, Metro West Tunnel, April 3, 1998.

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

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

Rebar Work

Appropriate job classification for performance of “handling and installation of steel or iron reinforcing rods for concrete reinforcement, including, as part of the rebar unloading, handling and process, ie., the unloading, stockpiling, sorting or other cutting, bending, handling . . . of rebar at the work site is *Ironworker*.

PW-2009-01, April 9, 2009

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

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 where the cost of the work is being paid by private homeowners, in their private residences, on their privately owned septic systems and the contractors are hired by the homeowners.

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.

Sidewalks

See Concrete Sidewalks, above.

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.

Solar Panels

Following are the DOS job classifications of the tasks listed in your request:

1. Construction of a Unirac ULA support structure for the photovoltaic modules: The Unirac ULA is an aluminum pipe support structure for photovoltaic modules that was constructed on the roof of the building in question.
2. Attaching the supporting structure to the roof with bolts.
3. Construction of a rail system with square tubing which is used to act as an angled base where the photovoltaic modules are installed.

As a preliminary matter, DOS takes this opportunity to clarify that the installation of photovoltaic modules or linking of the individual modules together to form photovoltaic arrays, including hardware is to be paid at the rate for an “*Electrician*” as provided on the wage sheet. This classification is established by reference to the following collective bargaining agreements: The Electrical Workers Union Local 103, IBEW Greater Boston and the Electrical Contractors Association of Greater Boston, Inc, dated September 1, 2006 to August 31, 2011; the International Brotherhood of Electrical Workers Local 7 and the National Electrical Contractors Association of Western Massachusetts Chapter, dated July 1, 2008 to June 30, 2011; and the Inside (Basic) Agreement between IBEW Local Union no. 96 and the Central Massachusetts Chapter NECA Inc., dated June 1, 2007 to May 31, 2010. As to your three specific inquiries, an examination of the applicable collective bargaining agreements and nature of the work confirms that the rate for “*Electrician*” applies to such work including the installation of mounting brackets and attachment of such brackets to the roof as these tasks are integral to the to the installation of the modules themselves.²

In addition, if portions of the roof structure are removed or re-roofed or flashing or other roofing material is required to be installed as part of the project, such work is to be paid at the rate for a “*Roofer*” as provided on the wage sheet. *See DOS Opinion Letter PW-2008-02-4.3.2008.*

Start Time

“Start time” (when payment of prevailing wage is required to begin for workers engaged in public works construction activities during their workday):³

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.

² This determination is also consistent with the January 5, 2009 letter of the Division of Professional Licensure Board of State Examiners of Electricians to Michael P. Monahan [requiring that installation of photovoltaic modules, including hardware and mounting brackets, is required to be performed by licensed Journeymen Electricians or a properly supervised apprentice.]

³ See also G.L. c. 151, the Massachusetts Minimum Fair Wage Law, for statutory minimum wage requirements.

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.

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).

Dengen 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.

Job classifications for the installation of underground cable alongside roadways, consisting of excavating, feeding and installing of conduit, and backfilling and tamp work in Hampden, Hampshire and Franklin Counties are as follows: the operation of machinery to perform excavation and trenching work for the installation of the conduit is classified and paid at either the *Bulldozer/Power Shovel* or *Crane/Backhoe* rate; backfilling, tamping and grading related work is classified and paid at the *Laborer* rate; connection of conduit and pulling of cable is classified and paid at the *Electrician* rate.

PW-2009-02, May 5, 2009.

Job classifications for the installation of underground cable alongside roadways in Hampden, Hampshire and Franklin County are as follows: (1) underground installation of empty fiber duct inside trenches along roadways (cable is pulled through at later time) is classified and paid at the *Teledata/Lineman/Equipment Operator* rate; (2) incidental truck driving, together with latter is classified and paid at the *Groundsman/Driver* rate; (3) installing cable between the top of a utility pole and the metering can is classified and paid at the *Journeyman/Linesman* rate and (4) installing cable on the “load side” of the metering can to, e.g., the control panel, substation or other equipment, is classified and paid at the *Journeyman/Electrician* rate.

PW-2009-0, December 15, 2009

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.

Tree Trimming Classifications:

Laborer: Tree Remover classification applies to the wholesale removal of standing trees including all associated trimming of branches and limbs, and applies to the removal of branches not on or around utility lines.

Tree Trimmer Groundman: This classification applies only to the trimming of tree branches on and around utility lines.

Truck Drivers

Time spent by truck drivers in designated waiting or “holding” areas on a construction project is compensable at the applicable prevailing wage rate for the classification of work. PW-2012-01-2.22.2012

Definitions under the Prevailing Wage Law of Gravel & Fill - PW-2012-01-2.22.2012

Gravel

A loose aggregation of small, rounded stones/ a mixture of such stones with coarse sand, used for paths and roads and as aggregate.

Fill

Uncontaminated, naturally occurring inorganic mineral soils imported to or exported from a site for the purposes of brining the site to rough grade. “Fill” specifically excludes and organic soil or any processes manufactured materials such a bituminous concrete or mix.

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.

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

Certain on-site work performed by water meter installers, including taking photographs and recording the latitude and longitude of the AMR module, which is incidental to the installation of the meter, is subject to the prevailing wage law.

Letter to Travis, October 16, 2009

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.

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.

Letter to Fields, November 25, 2009. See also, Commonwealth v. Waste Management, Inc., No. 96-1640F (Sup. Ct. 1999)*

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).

See also, Notice to Awarding Authorities Regarding Rate Sheets for Trash Hauling Rates, December 2009.

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

Chapter 149, Section 27H provides, in relevant part, that “no agreement or contract providing for the cleaning and maintenance of public buildings or space rented by the commonwealth, shall be entered into or given by the commonwealth unless said contract or agreement contains a stipulation requiring prescribed rates of wages . . . to be paid to the employees of the maintenance or cleaning contractor.” Accordingly, employees of contractors which provide cleaning and maintenance services for public buildings, either owned or rented *by the commonwealth*, are required to be paid prevailing wages. The plain language of the statute does not extend the applicability of this requirement to towns or cities. Accordingly, contractors for custodial services awarded by the Town of Cohasset to clean its public school buildings are not subject to the prevailing wage requirements of §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 – 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 so long as such authorities pay the prevailing wage.

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

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

School Bus Drivers

If the original term of a school bus contract is, for e.g., three years, then the wage rates contained on the wage schedule for the contract are applicable to that three year term. **Any extension of the original term or options to renew the contract trigger the requirement to obtain updated wage rates.**

PW-2011-01-01.6.2011

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.