

The Commonwealth of Massachusetts
Department of Labor and Workforce Development
Division of Occupational Safety

ANGELO BUONOPANE
Director

ROBERT J. PREZIOSO
Deputy Director

December 19, 1997

John Higgins
Patterson Smith Associates
530 Fifth Ave., 14th Floor
New York, NY 10036

Dear Mr. Higgins:

Your letter dated July 17th to Robert Lamarre, Supervising Inspector at the Attorney General's Office of Fair Labor and Business Practices Division, has been forwarded to me for a response. Please note that future questions regarding the applicability of the Massachusetts Prevailing Wage Law (M.G.L. c. 149, ss. 26-27H) should be directed to the Division of Occupational Safety (DOS). In your correspondence, you request information concerning benefit plans and allowable deductions under the prevailing wage law. For the sake of clarity, the following is a reiteration of your questions:

1. How often must a contractor make contributions to a "bona-fide" benefit program (ie. monthly, quarterly, yearly)?

First, the Division of Occupational Safety neither certifies benefit plans nor specifies payment schedules under the same within the state of Massachusetts. For the purpose of compliance with the benefit component of the prevailing wage law, a "bone-fide" plan is one acceptable to the U.S. Internal Revenue Service and U.S. Department of Labor under the provisions of the Employee Retirement Income Security Act (ERISA). However, the prevailing wage law stipulates payment of a special minimum hourly wage rate which must be paid to employees engaged in public works construction and other types of public work.

An employer is limited to allowable deductions as enumerated in M.G.L. c. 149, s. 26.¹ Employers contributing to a "bone-fide" plan may deduct their hourly contribution from the total hourly rate as appearing on a prevailing wage rate sheet. This means an employer wishing to make

¹ M.G.L. c. 149, ss. 26-27 directs DOS to prescribe rates of wage to be paid to employees engaged in "public works construction." Other sections of the prevailing wage law prescribe rates of wages to be paid to employees engaged in non-construction public work and may differ concerning allowable credits and deductions.

deductions from the total rate must calculate the hourly contribution rate for each plan to qualify for an allowable credit. Other contributions, including vacation, sick time, training funds, unemployment and workers' compensation insurance are not considered allowable deductions under the prevailing wage law.

2. If a contractor currently provides benefits for its employees (ie. medical, holiday pay, sick pay, vacation pay, etc.), how does the Massachusetts Department of Labor calculate the hourly amount a contractor may take credit for?

As stated above, only contributions to bone-fide health and welfare, pension and supplemental unemployment benefit plans are considered allowable credits under the prevailing wage law. To calculate the allowable credit, an employer need only compute the employer's contribution to one of the enumerated plans, either on a monthly or weekly basis, divided by the customary number of hours worked by an employee for that period. For example, if an employer contributes \$475 per month to an employee's health plan and the customary work month consists of 160 hours, then the employer's credit equals \$2.97 per hour (\$475 per month divided by 160 hours worked per month equals a contribution of \$2.97/hr.). Similar computations can be made for all allowable plans. If an employer does not make contributions to one of the allowable benefit plans listed in the law, then the employee's hourly rate of pay will be the total rate as it appears on the prevailing wage rate sheet.

3. Must vacation, holiday and sick pay benefits be held in a separate fund?

There is no requirement in the prevailing wage law that non-allowable credits be held in a separate fund from those which are eligible for deduction. However, other federal and state laws regarding benefits may apply. To clarify the benefit component of the prevailing wage law, DOS distributes copies of certified weekly payroll report forms with prevailing wage rate sheets. These forms, forwarded to an awarding authority by contractors on a weekly basis, contain sections where an employer can list allowable credits.

4. If the prevailing wage increases during the life of the contract, must the contractor's wage schedules also increase to reflect the new labor rate...?

A contractor is only obligated to pay the rates of wages as appearing on the prevailing wage rate sheet, including any scheduled wage increases, if shown. Once a wage schedule has been issued for a project by DOS, it will remain in effect for the entire project. DOS does not issue amended rate sheets during the life of the contract.

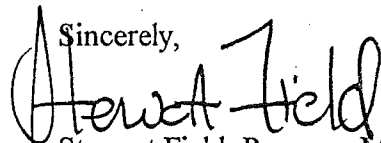
5. What is the practice of the State Department of Labor in Massachusetts regarding the payments of overtime if paid by way of contribution to a fund versus as part of W-2 income?

Overtime, which must be paid to all employees who work more than 40 hours per week, shall be calculated using an employee's base rate of pay, that is the total rate minus allowable deductions, if any.

6. If a contractor pays the total prevailing wage determination (base wage plus fringe benefit wage), can that contractor pay less in the base wage amount listed for the trade classification and more in the supplemental amount as long as the total...equals the value of the prevailing wage listed on the prevailing wage schedule?

Unlike the Davis-Bacon wage schedules issued by the U.S. Department of Labor where the base wage and allowable fringe contributions are listed separately, wage schedules issued by DOS only list a total hourly rate for each job classification. Under the provisions of M.G.L. c. 149, s. 26, an employer is entitled to deduct the employer's contributions to a bone-fide plan. As long as the combined total of an employee's base wage and allowable fringe benefit contributions equals or exceeds the prevailing wage for the proper occupational classification, an employer is in compliance with the prevailing wage law.

I hope this information satisfies your needs. If you require additional clarification please call me directly at (617) 727-3492.

Sincerely,

Stewart Field, Program Manager
Div. of Occupational Safety

cc: Robert J. Prezioso, Deputy Director
Mass. Div. of Occupational Safety

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