

**An Advisory from the Massachusetts Attorney General’s Fair Labor Division on  
Chapter 306 of the Acts of 2004,  
An Act Relative to the Health and Safety on Public Construction Projects  
2008/2**

The Massachusetts Attorney General’s Office (AGO) issues the following Advisory regarding [Chapter 306 of the Acts of 2004](#), An Act Relative to the Health and Safety on Public Construction Projects (the “Act”). This Advisory provides guidance with respect to the AGO’s understanding of and enforcement of the Act. This Advisory is not a formal opinion. Opinions of the Attorney General are formal documents rendered pursuant to specific statutory authority. [M.G.L. c. 12, s. 3, 6, and 9](#). The Advisory is intended to provide guidance only and does not create any rights or remedies.

## **I. Introduction**

The Act, which was signed into law on July 30, 2004, and became effective July 1, 2006, requires “any person submitting a bid for, or signing a contract to work on” any public works or public building, estimated to be worth more than \$10,000, to certify that “all employees to be employed at the worksite” have successfully completed a 10-hour course in construction safety approved by the United States Occupational Safety and Health Administration (OSHA), referred to as the OSHA 10 course. In order to demonstrate compliance, the Act requires persons to submit documentation of successful completion of the OSHA 10 course with the submission of the first prevailing wage certified payroll report (CPR) for each employee. The AGO is responsible for enforcement of the Act and is authorized to undertake two actions to remedy violations of the Act. First, the AGO can institute proceedings in Superior Court to restrain the awarding of and performance of contracts, and second, it may remove employees who do not have OSHA 10 training from the worksite.

Since 1971, OSHA has promoted workplace safety and health by authorizing trainers to teach construction and general industry occupational safety and health standards and policy. Construction industry outreach trainers are authorized to conduct 10- and 30-hour<sup>1</sup> construction industry outreach courses. According to the OSHA Outreach Training Program Guidelines, the 10-hour course is intended to provide training on construction safety and health to entry-level workers.<sup>2</sup> Mandatory topics to be addressed include an introduction to OSHA, electrical training, and fall protection. During the course, the trainers must also discuss at least three of the following topics:

- (i) personal protective and lifesaving equipment;
- (ii) materials handling, storage, use and disposal;
- (iii) tools – hand and power;
- (iv) scaffolds;
- (v) cranes, derricks, hoists, elevators and conveyers;
- (vi) excavations; and
- (vii) stairways and ladders.

The 30-hour course is more detailed. Trainers provide individuals who have completed an OSHA course a card issued by OSHA (the “OSHA Completion Card”).

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<sup>1</sup> The 30-hour course is also sufficient for OSHA 10 compliance.

<sup>2</sup> Questions regarding whether time spent at OSHA 10 training courses are compensable, as well as questions regarding who pays for the course, should be directed to the Commonwealth’s Division of Occupational Safety.

## **II. Covered Individuals**

The Act requires “all employees to be employed at the worksite” to have the appropriate OSHA 10 training. In enforcing the Act, the AGO will require two categories of employees to have OSHA 10 training. The first category includes any employee who is entitled to receive the prevailing wage while on the worksite as determined by the Division of Occupational Safety. See [M.G.L. c. 149, s. 26-27D and 27F](#). The second category includes any other employee of any entity that is required to pay the prevailing wage at the worksite. Generally, supervisors (with the exception of so-called “working foremen”) are not entitled to receive the prevailing wage and therefore serve as an example of employees who fall into this second category. Employees who fall into one of these two categories and work on a public works or public building worksite shall be required to have the OSHA 10 training (the “Covered Employees”). Examples of individuals who are not Covered Employees are truck drivers and individuals delivering materials provided they are not entitled to the prevailing wage while on the worksite.

## **III. Responsibilities of Employers**

### **A. Certification**

The Act requires “any person submitting a bid for, or signing a contract to work on” any public works or public building project to certify OSHA 10 compliance. [M.G.L. c. 30, s. 39M\(c\)](#) and [39S\(a\)\(2\)](#); [M.G.L. c. 149, s. 44E-44F](#). In order to comply with this certification requirement, public awarding authorities should include language in their public works and public buildings contracts requiring the contracting entities to certify that “all employees to be employed at the worksite shall have successfully completed a course in construction safety approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time that the employee begins work.” Likewise, all contracts between general contractors and subcontractors and between subcontractors and sub-subcontractors for public works and public building contracts must contain the certification language.

### **B. Submission of Documentation**

All employers of “Covered Employees” shall be required to submit documentation of OSHA 10 training. The Act requires employers to submit documentation of “successful completion of said courses with the submission of the first [CPR] for each employee.” [M.G.L. c. 30, s. 39M\(c\)](#); [M.G.L. c. 149, s. 44E\(2\)\(E\) and 44F\(2\)\(I\)](#). In order to comply with this provision, any entity that files CPRs for a public works or public building contract should include with their CPRs documentation that every individual listed thereon has completed a course in construction safety approved by OSHA that is at least 10 hours in duration at the time that the individual begins work at the site. The entity must only provide the documentation the first time the individual is listed on the CPR. In addition, the CPR will include a column for the entity to “check off” that each individual listed therein has received the OSHA 10 training. Likewise, in order to capture the Covered Employees who are not entitled to the prevailing wage, any entity that is required to pay the prevailing wage at the worksite is required to provide a list of its employees not listed on the CPRs who work at the worksite and documentation of their OSHA 10 training within three days of the Attorney General’s request.

### **C. Remedies**

In the event that there is a failure to meet the requirements described in Sections A or B, the Act authorizes the AGO to proceed to Superior Court to enjoin the award of contracts and the performance of contracts. [M.G.L. c.30, s. 39S\(c\)](#).

### **IV. Removal of Individuals**

The Act provides “[a]ny employee found on the worksite without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration shall be subject to immediate removal.” [M.G.L. c.30, s. 39S\(b\)](#). All Covered Employees must carry documentation of OSHA 10 training on their person when they are on the worksite or be able to immediately direct a representative of the AGO to where documentation is kept on the worksite.<sup>3</sup> In the event that a Covered Employee cannot provide documentation for representative of the AGO while the representative is on site, the Employee will be required to leave the worksite until the documentation is provided to the AGO.

### **V. Documentation**

An OSHA Completion Card or a copy thereof will be accepted as documentation that a Covered Employee has completed an OSHA 10 course. The AGO will use its discretion to accept other forms of documentation only in rare situations where circumstances warrant.<sup>4</sup>

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<sup>3</sup> Accordingly, the AGO recommends that employers maintain copies of their employees’ OSHA Completion Cards on the worksite.

<sup>4</sup> The OSHA Outreach Training Program Guidelines note that it can take up to five weeks after a student has taken an OSHA course for an instructor to receive the OSHA Completion Card from OSHA. The AGO will use its discretion to initially accept other forms of valid documentation that show a Covered Employee has taken the OSHA 10 course in the preceding five weeks followed by the submission of the OSHA Completion Card or a copy thereof to the AGO upon receipt by the Covered Employee.