

Prevailing Wage Opinion Letters 2002 04 - 10.02.02

Opinion Letter

PW-2002-04-10.02.02

October 2, 2002

Re: Health and Welfare Deductions Under the Massachusetts Prevailing Wage Law.

Your letter dated August 19, 2002 to Robert J. Prezioso, Deputy Director of the Division of Occupational Safety ("DOS"), has been forwarded to me for a response.

In your letter you inquire about the proper method for calculating health insurance deductions under the Massachusetts Prevailing Wage Law. Citing a DOS letter written on this matter in 1997 by Stewart Field which suggests that employers use "customary" work hours per month when figuring the hourly contribution to bona fide health plans, you now ask specifically whether it would be acceptable for employers to "take the total hours worked **annually** for **all** non-exempt field employees divided by the total number of non-exempt field employees and then divide that result by 12, to arrive at a *customary work hours* per month?" (emphasis in original).

Before responding to your direct question, it should be noted that the prevailing wage statute, Mass. G. L. ch. 149, §§ 26 - 27H, permits employers to deduct contributions to bona fide health and welfare plans from the hourly prevailing wage rate. Under no circumstances may an employer deduct more from employee's prevailing wage than is actually contributed to a bona fide plan on his or her behalf. See Mass. G. L. ch. 149, § 27 which reads, in relevant part:

Whoever shall pay less than said rate or rates of wages, including payments to health and welfare funds and pension funds, or the equivalent payment in wages, on said works to any person performing work within classifications as determined by the commissioner, and whoever, for himself, or as representative, agent or officer of another, shall take or receive for his own use or the use of any other person, as a rebate, refund or gratuity, or in any other guise, any part or portion of the wages, including payments to health and welfare funds and pension funds, or the equivalent payment in wages, paid to any such person for work done or service rendered on said public works, shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in section 27C.

Therefore, employer's actual contributions to bona fide plans must be reconciled in every payment period to ensure that each employee's total deductions does not exceed payments to his or her plan regardless of the method used to calculate the hourly deduction from the prevailing wage rate.

It is customary for employers to use a pre-specified hourly deduction for contributions to bona fide health and welfare plans based on two factors: the monthly cost of the health and welfare plan and the customary work hours per month (assuming payments to plans are made monthly). By dividing the customary work hours per month into the cost of the plan, employers arrive at their pre-specified hourly deduction to be subtracted from the employee's prevailing wage rate.

Mr. Field's letter suggested that an employer may use 160 hours per month (four weeks times 40 hours) as the customary work hours per month. Other methods, such as your suggestion to use the annual hours worked when calculating the customary work hours, are not necessarily incorrect, and may be used, as long as the hourly deduction for each employee accurately reflects the employer's contribution

to his or her bona fide plan. Employers must ensure that the sum total of all pre-specified hourly deductions in a payment period does not exceed the payment or premium paid to a bona fide plan on the employee's behalf.

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

If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,
Ronald E. Maranian
Program Manager