



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF LABOR STANDARDS

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DRAFT PUBLISHED IN ACCORDANCE WITH DLS' PUBLIC REVIEW PROCESS FOR PREVAILING WAGE OPINION LETTERS. *DLS will accept comments and feedback on this published draft for an EXTENDED period, until 11:59 PM on September 2, 2025, after which it will issue a final classification determination.*

DRAFT opinion letter regarding the Applicability of Massachusetts' Prevailing Wage Laws to Clarendon Hill

PW-2025-XX-XX
August 20, 2025

In this letter, the Massachusetts Department of Labor Standards ("DLS") determines whether the Commonwealth's prevailing wage laws, G.L. c. 149, §§ 26-27H, inclusive, apply to the construction of custom-made, prefabricated, modular housing units constructed offsite for installation at a specific public project, namely the Clarendon Hill Project in Somerville, MA.

Background

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. Thus, the prevailing wage statute applies to a particular project if: (1) the project is "construction", as defined in G.L. c. 149, § 27D; (2) the project is a "public work"; and (3) the project is being undertaken by a public entity subject to the prevailing wage law. The Legislature has delegated decision-making authority to determine whether a particular project is subject to the prevailing wage laws to the Director of DLS. *See Teamsters Joint Council No. 10 v. Director of Dept. of Labor and Workforce Development*, 447 Mass. 100, 109-10 (2006) (citing G.L. c. 149, §§ 26-27F); *Niles v. Huntington Controls, Inc.*, 92 Mass. App. Ct. 15, 19 (2017).

On August 9, 2018, the Massachusetts Legislature enacted a home rule petition ("Somerville HRP") that authorized the Somerville Housing Authority ("SHA") to reconstruct and develop the state-funded Clarendon Hill public housing project at 34 North Street in Somerville. *See* Chapter 197 of the Acts of 2018. The Clarendon Hill Redevelopment Project ("Project") replaces 216 low-income apartments with 591 units of affordable and market rate housing. Phase I involved replacing 130 of the 216 public housing units and constructing another 38 "net-new" affordable units; that construction is now complete. Phase I also included the installation of modular housing units that were made by Lab 9 in Littleton, MA.

On April 15, 2025, the Office of the Attorney General ("AGO") asked DLS to confirm that the offsite fabrication of modular units in Littleton for the Project is subject to the Commonwealth's prevailing wage laws. Pursuant to its [Public Review Process for Prevailing Wage Opinion Letters](#),

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DLS held an informal public hearing on June 26, 2025 for interested parties to submit oral and written testimony regarding “whether the construction of custom-made, prefabricated, modular housing units constructed offsite for installation at a specific public project, i.e. the Clarendon Hill Project, is subject to the Massachusetts Prevailing Wage pursuant to G.L. c. 149, §§ 26, 27.” More than fifty individuals testified orally at the hearing, and approximately thirty submitted written testimony.

Analysis

There is no dispute that the Commonwealth’s prevailing wage laws apply to the installation of the modular housing units at the Somerville site of the Project. This installation is construction on a public work and is being undertaken by a public entity subject to the prevailing wage law, namely SHA. The open question is whether the off-site fabrication of the modular housing units developed exclusively for this Project is also subject to prevailing wage.

DLS defers to the AGO’s legal interpretation that the Somerville HRP’s exclusion of the Project from “any general or special law related to the procurement and award of contracts” (as enacted by Chapter 197 of the Acts of 2018) “nullifie[s] the provision of G.L. c. 149 s. 44E(4) that exempts the manufacture of modular buildings from the requirement to pay the prevailing wage for such work.”¹ The HRP’s exclusion, however, only means that it *may* be subject to the prevailing wage; DLS must still determine whether this particular off-site fabrication actually is public works construction subject to G.L. c. 149, §§ 26-27H, inclusive.

The first question is whether the off-site fabrication in Littleton is “construction” within the meaning of the prevailing wage statute. *See* G.L. c. 149, § 27D (defining “construction” as including “additions to and alterations of public works”). After a comprehensive review of all testimony and careful analysis, DLS finds that, in these specific circumstances, the off-site fabrication is construction. It is undisputed that these modular housing units are “additions to and alterations of” the public work at Clarendon Hill. Furthermore, unlike traditional manufacturing, the off-site fabrication of these units is an integral part of those additions and alterations. Lab 9’s Littleton location was not a pre-existing factory with a history of manufacturing units and selling them to other parties; its first production (and in fact its only production during Phase I of the Project) was exclusively developed for Clarendon Hill. Moreover, this production was coordinated, in both timing and specifications, to allow the units to be seamlessly installed on the public construction site in Somerville. Testimony showed that Lab 9’s employees worked on both the Littleton and Somerville sites, yet despite this interconnectedness, these employees’ wages varied between Prevailing Wage and non-Prevailing Wage based on which site they were at on a particular day. Finally, Lab 9’s own website suggests that it is part of the construction process, stating that the company uses “circular construction methods” and that its “workforce can build 75 percent of projects within the confines of a made-to-order construction method.” While none of these factors by themselves are dispositive, taken together, DLS determines that, in these specific circumstances, the off-site fabrication of these custom modular units is construction as defined by

¹ Letter from Moran to Flanagan, April 15, 2025.

G.L. c. 149, § 27D.² See [Letter to Eachus](#), August 30, 1994 (DLS determination holding that assembly of chemical storage tanks at off-site location is construction and subject to prevailing wage).

The second question is whether the application of prevailing wage to the Littleton off-site construction otherwise meets the requirements of G.L. c. 149, §§ 26-27H, inclusive. As the Supreme Judicial Court has stated, the Director of DLS “has fairly broad policy-making authority because the Legislature delegated the details of how the prevailing wage law should be applied, subject to certain limits.” *Teamsters Joint Council No. 10*, 447 Mass. at 108-09. Those limits include the requirement that the work must have a significant connection to the public works construction site. See, e.g., *id.* (the Director has the “authority to set wages for teamsters whose work had a significant connection with the work site”); *Construction Industries of Mass. v. Commissioner of Labor and Industries*, 406 Mass. 162 (1989) (“When the performance of a statutorily specified job has a significant connection with the construction project, then that job falls within the domain of the posted wage law statute.”). DLS determines that the work on the Project in Littleton has sufficient connection to the public works construction site in Somerville. The factors outlined above as to why the Littleton work constitutes construction demonstrate that there is a significant connection between the two sites. Lab 9 was only producing modular units for the Project during the period in question. These units were produced in Littleton with specifications and on a schedule that was dictated by the awarding authority’s development plan. The construction plan from the beginning of the Project was reliant on the two sites operating in tandem. As a result, there is sufficient nexus between the offsite construction in Littleton and the Somerville site for prevailing wage to apply.

Therefore, considering all the factors and limiting this decision to the specific facts of this Project, it is the determination of the Department of Labor Standards that prevailing wage law does apply to the Lab 9 off-site fabrication of custom-made, prefabricated, modular housing units in Littleton for installation at a specific public project, i.e. the Clarendon Hill Project. This determination is based on the evidence presented to DLS and on the unique characteristics of the Project; nothing in this determination changes the applicability of G.L. c. 149, § 44E to other modular housing projects nor does the decision subject either off-site manufacturing or all off-site fabrication to the prevailing wage laws.

Thank you for your cooperation regarding this matter. If you have any additional questions or concerns, please do not hesitate to contact me.

Regards,

[Pending final Classification Determination]
Michael Flanagan, Director
Department of Labor Standards

² This Opinion Letter is limited to the unique facts and circumstances surrounding this phase of the Project, including the fact that Lab 9’s production occurred exclusively for the Clarendon Hill project during Phase 1. This Opinion Letter takes no position concerning whether its determination should be retrospective.