



# The Commonwealth of Massachusetts

## DEPARTMENT OF LABOR AND INDUSTRIES

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COMMISSIONER

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June 26, 1993

TO: ALL DEPARTMENT PERSONNEL  
AWARDING AUTHORITIES

FM: THOMAS F. DENGENIS

RE: POLICY STATEMENT - APPLICABILITY OF PREDETERMINED WAGE RATES  
TO TEAMSTERS WHO PARTICIPATE IN THE ON-SITE INSTALLATION OF  
THE MATERIALS BEING DELIVERED

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1. **BACKGROUND:** The Department of Labor and Industries (DLI) enforces the Commonwealth's predetermined wage rate law, commonly known as the "prevailing wage" law. The prevailing wage law applies to all state and local public works construction in the Commonwealth. The Commissioner of the Department of Labor and Industries (the Commissioner) is required to set a wage rate for all mechanics and apprentices, teamsters, chauffeurs and laborers employed "in the construction of public works" and "on said works."

This policy statement will define when the predetermined wage must be paid to teamsters who participate in the on-site installation of the materials being delivered, including but not limited to, teamsters who are hauling and applying bituminous concrete or ~~ready-mix concrete~~ and teamsters who are hauling and installing jersey barriers, on highway, road and other construction projects in the Commonwealth, excluding teamsters who only haul to and from the site.

-2-

2. AUTHORITY: This policy is based on Massachusetts General Law, Chapter 149, Sections 26, 27 and 27A through F, the Department's historical enforcement of the statute, and on the Supreme Judicial Court's decision in Construction Industries of Massachusetts v. Commissioner of Labor and Industries, 546 N.E.2d 367, 406 Mass. 162 (1989).

3. SCOPE OF APPLICATION: This policy applies to all teamsters who participate in on-site installation of materials being delivered to state and local public works construction sites.

4. DEFINITIONS: "Bituminous concrete," is in general a mixture of fine sand and stone held together by a heavy crude oil which acts as glue. Bituminous concrete is generally referred to as asphalt. It ranges from coarse to fine depending on the size of the stone used in its manufacture. Several layers of bituminous concrete are used in the construction of roads and highways. These range from very coarse consistency in the lower levels to a fine layer on top. Sometimes an old road surface is ripped up, transported to the manufacturing plant and reprocessed, and then reapplied to the site. See C.I.M. v. Commissioner. Bituminous Concrete, for the purpose of enforcing this policy, "bituminous concrete" and "asphalt" are identical terms, and may be used interchangeably.

Ready-Mix Concrete, " is in general a mixture of sand, gravel, portland cement and water, and is delivered to the job site for immediate unloading and installation.

"Jersey Barrier," is a device, constructed of concrete and mortar, used to restrict traffic and access to highways, roads and other public ways and is often delivered, unloaded and installed by the driver involved.

-3-

5. POLICY: Any teamster who is engaged in the hauling of materials to a public works construction project located in the Commonwealth of Massachusetts must be paid the wage rate determined by the commissioner pursuant to M.G.L. c. 149, § 26, at all times when the teamster is engaged in activity that has a significant nexus or connection to the construction project.

#### A. SIGNIFICANT NEXUS OR CONNECTION

There is a significant nexus to the project beginning when the truck driver reports for the first duty of the day and commences work related to the project, whether the driver goes to the site first, or whether the driver picks up the first load of materials before the first appearance at the job site.

There is a significant nexus to the project when the truck driver is responsible for and all inclusive of the delivery, unloading, and installation of the materials carried at the project site.

If a truck breaks down while engaged on the project, the wage rate must be paid for the time the driver is required to spent waiting for repairs, and the repair itself, but not if the truck is reporting to the site for the first time or making its final return from the site.

The significant nexus to the project ends when the driver leaves the site for the last time on any given day, whether the driver returns home or to some other work-related location including non-public works projects.

#### B. WORK IN VARYING CLASSIFICATIONS

-4-

The wage rate for a teamster must be paid for all time the driver is driving the truck as defined above. If the driver leaves the truck to manually rake or otherwise spread the asphalt, or to engage in other labor that is not related to driving the truck, the worker is engaged in a different job classification for which the Commissioner has set a wage rate. In the event the teamster is engaged in a different classification for more than one hour during one given day, the employee must be paid the wage rate appropriate for that classification. All required recordkeeping is the requirement of the employer.

#### C. TRUE AND ACCURATE PAYROLL RECORDS

Pursuant to M.G.L. c.149, § 27B the employer is required to keep true and accurate records of all employees employed on the project, showing the name, address and occupational classification, the hours worked by, and the wages paid to each employee.

If the employer fails to differentiate the time spent driving from the time spent in other duties, the higher wage rate must be paid for all time worked.

It is the employer's responsibility to keep a true and accurate record of lunch and breaks and unrelated travel time.

#### D. APPLICABLE WAGE RATE

The wage rate that must be paid is listed on the minimum wage rate schedule furnished by the Commissioner and may vary from project to project, as the Commissioner determines. Applicable descriptions for teamsters include, but are not limited to: Oper 3 axle equip, Oper 4&5 axle equip, and Truck

-5-

Driver. The wage rate paid is determined by applying the appropriate description to the actual piece of equipment that is being driven.

E. TIME NOT CONSIDERED SIGNIFICANTLY CONNECTED TO THE PROJECT

Travelling to the project site for the first time each day, and travelling home after the work day is not considered time on the project for the purpose of this law. An employee may be paid his or her regular rate of pay for travel time, but not less than the law will allow.

Lunch time and break time is not considered time on the project.

F. EFFECTIVE DATE

This policy shall apply to all public works projects for which the awarding authority has advertised for bids beginning on or after Thursday, July 1, 1993.

G. ON-GOING INVESTIGATIONS

This policy does not apply to on-going investigations or projects out to bid or awarded before the effective date.