

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY

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November 1, 1999

M. Toni Maloney
Assistant Attorney General
Office of the Attorney General
200 Portland Street
Boston, MA 02114

Re: Prevailing Wage Rates; Various Issues

Dear Ms. Maloney:

This letter responds to your request dated October 7, 1999 for clarification on the applicability of prevailing wage rates to the following issues:

1. Q. "If an employee reports to a garage, picks up a truck, goes to a material storage site, waits while material is loaded onto the truck or loads the materials himself for transportation, then continues to the site, at what point does the prevailing wage rate apply? Does it apply to transportation of materials from the end of one job to the beginning of another at a different public works site?"
 - A. "Materialmen" are not covered by the prevailing wage law unless they participate in the installation of materials at the work site. See Construction Industries of Massachusetts v. Commissioner of Department of Labor and Industries, 406 Mass. 162, 168 (1989). As for the transportation of materials "over-the-road," the prevailing wage law, M.G.L. ch. 149, § 27, requires that "all persons engaged in transporting gravel or fill to the site of [a] public works [project] or removing gravel or fill from such site, regardless of whether such persons are employed by a contractor or subcontractor or are independent contractors or owner-operators" receive prevailing wage rates. Additionally, there exists a policy statement dated June 26, 1993 (copy attached) that requires prevailing wage rates to be paid for the "over-the-road" portion of the work performed by persons who transport bituminous concrete, ready-mix concrete, jersey barriers, and other material to public works sites and participate in the installation of those materials.

2. Q. "When an employer is engaging its employees in public works construction and there is 'down time' or 'wait time' on the job site because of equipment breakdowns or waiting for materials, etc., does the prevailing wage apply during the time the employees are not actually working but are still required to remain on the job in anticipation of resumption of work? For example, does it apply when they wait while materials are unloaded, applied or repairs are made to equipment? Does it apply to the time the employee spends on site waiting to unload and apply the materials?"

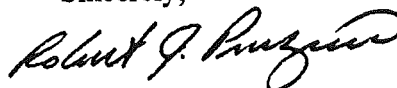
A. The attached policy statement addresses "down time" on page 3 for workers who are engaged in the installation of bituminous concrete, ready-mix concrete, and jersey barriers. The issue of "down time" for workers engaged in other activities will be reviewed by the Division of Occupational Safety ("DOS").

3. Q. If a rate sheet on a public works construction project contains a prevailing wage rate for a 'mechanic', does that rate apply to the mechanic who travels from job to job repairing down equipment so work can resume? If it does apply, does it apply to travel to, between, and from the job or just to actual hours worked on equipment so the job can resume?

A. It has been DOS's position that the "mechanic" classification applies to persons who work on equipment at a public works site in order to assemble, adjust, disassemble, or maintain proper functioning of the equipment, such as oilers. If the equipment is not functioning, regardless of whether it is located at a public works site, prevailing wage rates need not be paid to the mechanic(s) who perform repairs to return the equipment to service.

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

Sincerely,



Robert J. Prezioso
Deputy Director

cc: Linda Hamel, General Counsel, DOS
Benjamin B. Tymann, DOS
Francis X. Flaherty, Jr., Office of the Attorney General