



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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May 17, 2000

ROBERT J. PREZIOSO
DEPUTY DIRECTOR

William D. Montenegro, President
Independent Asphalt Corporation
105 Crockett Road
Milford, MA 01757

Re: Policy for "start time" and "down time" on public works construction projects

Dear Mr. Montenegro:

Thank you for inquiring about the position of the Division of Occupational ("DOS") regarding "start time" and "down time" on public works construction projects in Massachusetts.

DOS administers Mass. Gen. L. ch. 149, §§ 26-27H and other statutory provisions ("the prevailing wage law") and makes applicability determinations regarding the public works activities ("covered activities") that fall within the scope of the prevailing wage law. The following policy regarding start time and down time is based upon, in addition to the Massachusetts prevailing wage law, the Commonwealth's minimum wage law (M.G.L. ch. 151 and 455 CMR 2.00), as well as the federal Fair Labor Standards Act.

This policy pertains to the public works construction provisions of the prevailing wage law, activities governed by M.G.L. ch. 149, §§ 26-27E.¹

Start Time

Start time, for purposes of this determination, is defined as the point at which an employee engaged in covered activities must begin to be paid the prevailing wage for his work.

Delivery or pick-up of gravel or fill

For workers hauling gravel or fill to or from a public works construction site, the start time is the point at which they arrive at the work site or arrive at the

¹ This policy encompasses neither the provision of the prevailing wage law governing the rental of equipment for public works activities (M.G.L. ch. 149 §27F) nor other non-construction activities for which payment of the prevailing wage under regular conditions is required.

location where they pick-up the gravel or fill that is to be delivered to the work site, whichever occurs earlier, providing the site delivery directly follows the pick-up of the gravel or fill.

Delivery and application or installation of bituminous concrete, redi-mix concrete, jersey barriers, or other materials.

In accordance with the policy issued by DOS's predecessor agency, the Department of Labor and Industries, on June 26, 1993, for teamsters who both deliver and participate in the on-site application or installation of bituminous or redi-mix concrete, jersey barriers, or other materials at a public works construction site, the start time is the point at which they arrive at the work site or arrive at the location at which they pick-up the materials to be delivered and installed at the site, whichever occurs earlier, providing the site delivery directly follows the pick-up of the materials.

All other covered activities

For workers engaged in covered activities other than the delivery of gravel or fill or the delivery and installation of the aforementioned materials, the start time is the point at which they begin their scheduled work day at the public works construction site.

Down Time

Down time is defined as unscheduled breaks, or other periods during which employees are physically present at a prevailing wage work site but not necessarily actively engaged in a covered activity.

Down time occurs when a work crew awaits delivery or installation of material, or the arrival of personnel, equipment, or tools needed to continue its planned work at the site. During this period, employees remaining on the work site are often engaged in miscellaneous work activities but not their primary job duties associated with the project. For example, an equipment operator awaiting a mechanic to arrive at the site to repair his equipment, might, during the down time, be engaged in clean-up activities that would be covered by a laborer rate of pay.

Employers are required to pay an employee present at the prevailing wage work site for down time at the prevailing wage rate that corresponds with the type of covered activity that he is performing. If, however, an employee has not been released from the work site and is idle during the down time, the employer must pay the employee no less than the lowest prevailing wage rate among the occupational classifications applicable to the project or phase of the project.²

² This determination, in accordance with the aforementioned June 1993 DLI policy, also applies to operators of vehicles who experience down time due to vehicle or equipment failure while present at the prevailing wage work site for the purpose of hauling gravel or fill, or delivering and installing bituminous or redi-mix concrete, jersey barriers, or other materials.

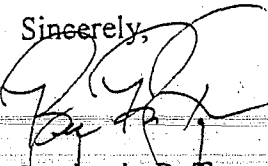
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Furthermore, employees who report to the work site at a time set by the employer but are dismissed from the site prior to engaging in covered activities are entitled to payment of at least three hours at no less than the basic minimum wage rate (currently \$6.00 per hour, increasing to \$6.75 per hour on January 1, 2001), pursuant to 455 CMR 2.03(1)(a) of the state's minimum wage regulations.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,



Benjamin B. Tymann
Program Manager

cc: Robert Prezioso, DOS Deputy Director
Linda Hamel, DOS General Counsel
Francis X. Flaherty, Chief, Fair Labor and Business Practices Division, AGO