

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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March 7, 2002

Francis A. Shannon, III
Shannon Law Associates, Inc.
One Bowdoin Square
Boston, MA 02114

Re: MW-2002-007
Commuting time

Dear Mr. Shannon:

I am writing in response to your request for this Office's written opinion regarding the compensability of travel time to a work site under the Massachusetts Minimum Fair Wage Law, G.L. c. 151, §151, and the Prevailing Wage Law, G.L. c. 149, §§26-27D.

As I understand it, your client is a general contractor who has an upcoming construction project on Spectacle Island in Boston Harbor. The island is accessible by public transportation, but your client is considering chartering a boat to transport labor and materials from Marina Bay in Quincy to the island and back on a daily basis. You wish to confirm that if employees are offered rides on this boat that the time spent traveling to and from the island is not compensable time under either of the above-mentioned statutes.

Under the Massachusetts Minimum Fair Wage Law, G.L. c. 151, and regulations promulgated thereunder, 455 C.M.R. §2.01 et seq., travel to an employee's regular work site at the beginning of the workday and travel from the same at the end of the work day is not "working time," and therefore is not compensable time.¹ Therefore, assuming that transportation on the chartered boat is offered on an optional basis – i.e. the employee is not required to use it – and the transportation is offered at the beginning and end of the workday, your client need not


¹Working time is defined in 455 C.M.R. §2.01, in pertinent part as, "all time during which an employee is required to be on the employer's premises or to be on duty, or to be at the prescribed workplace, and any time before or beyond the end of the normal shift to complete the work."

pay for the travel time.²

The same is true of the requirements under the prevailing wage statute, G.L. c. 149, §§26-27D. Start time, for purposes of paying employees prevailing wage, is the point at which the employee arrives at the public works site. See a copy of the attached Letter from former DOS Program Manager Benjamin Tyman to William D. Montenegro, dated May 17, 2000.

I hope this information has been helpful. If I can be of any further assistance, please feel free to contact me.

Sincerely,



Lisa C. Price
Legal Counsel

cc: Robert J. Prezioso, Deputy Director, DOS
Kathryn B. Palmer, General Counsel, DOS
Ron Maranian, Program Manager, DOS ✓
Daniel S. Field, Asst. Attorney General, Fair Labor & Business Practices Division

²You should consult the recently enacted restriction on transportation fees charged temporary workers in G.L. c. 149, §159C, if your client will be using temporary workers through a staffing agency and those temporary workers will be charged for this transportation.