

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
WWW.STATE.MA.US/DOS

MITT ROMNEY
GOVERNOR
KERRY HEALEY
LIEUTENANT GOVERNOR

JANE C. EDMONDS
DIRECTOR
ROBERT J. PREZIOSO
DEPUTY DIRECTOR

October 6, 2003

Kenneth Edwards, Esq.
Assistant General Counsel
Boston Public Health Commission
1010 Massachusetts Avenue, 6th Floor
Boston, MA 02118

Dear Attorney Edwards:

I am writing in response to your letter of October 1, 2003 in which you ask for clarification regarding the applicability of the Massachusetts Prevailing Wage Law, G.L. c. 149, §27H, to the Boston Public Health Commission (BPHC).

Section 27H of the Prevailing Wage Law states that no contract "for the cleaning and maintenance of public buildings or space rented *by the commonwealth*, shall be entered into or given *by the commonwealth*" unless such contract contains a stipulation requiring the payment of prevailing wages set by the Division of Occupational Safety. G.L. c. 149, §27H (emphasis added). As this section applies to only state entities, your office was informed that the BPHC would not need to seek prevailing wages prior to bidding office cleaning contracts. My letter of August 7, 2003 did not address cleaning contracts but the applicability of G.L. c. 149, §§26-27, those sections pertaining to construction contracts. As I stated in that correspondence, the BPHC is subject to these provisions.

I hope this letter clarifies your understanding of DOS's position. As your letter was copied to several others, assumedly within the City, I would appreciate it if you would similarly share my response. If you need any further information, please feel free to contact me.

Sincerely,

Lisa C. Price
Legal Counsel



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August 7, 2003

Kenneth E. Edwards, Esq.
Assistant General Counsel
Boston Public Health Commission
1010 Massachusetts Avenue, 6th Floor
Boston, MA 02118

Re: Applicability of Massachusetts Prevailing Wage Law to
Boston Public Health Commission

Dear Attorney Edwards:

I am writing in response to your request for this Office's written opinion regarding the applicability of the Massachusetts Prevailing Wage Law, G.L. c. 149, §§26-27, to the Boston Public Health Commission (BPHC).

The 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. Section 3(a) of the BPHC's enabling statute, Chapter 147 of the Acts of 1995, states that BPHC is a "political subdivision of the commonwealth." That section further states that "[t]he commission is hereby constituted a public instrumentality and the exercise by the commission of the powers conferred by this act shall be deemed and held to be the performance of an essential public function." *Id.* This section makes it clear that BPHC is a political subdivision of the commonwealth, and as such, is subject to the prevailing wage law.¹

¹ The absence of a specific reference to G.L. c. 149 within an enabling statute is not controlling – many public entities are subject to the prevailing wage law without such a reference.

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

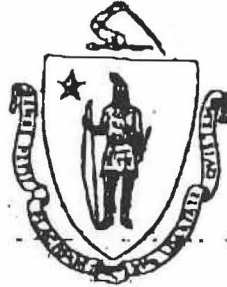
Sincerely,



Lisa C. Price
Legal Counsel

cc: Robert J. Prezioso, Deputy Director, DOS
Kathryn B. Palmer, General Counsel, DOS
Daniel S. Field, Division Chief, Office of the Attorney General, Fair Labor &
Business Practices Division

MASSACHUSETTS
PREVAILING WAGE
LAW
(MGL c149, §§26-27H)



§ 27H. Wages of employees of maintenance or cleaning contractors; contracts

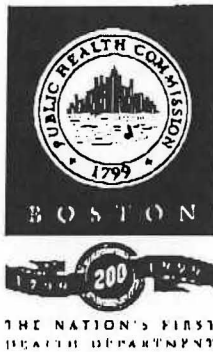
No agreement or contract providing for the cleaning and maintenance of ^Xpublic buildings or space rented by the commonwealth, shall be entered into or given by the commonwealth unless said contract or agreement contains a stipulation requiring prescribed rates of wages, as determined by the commissioners, to be paid to the employees of the maintenance or cleaning contractor. Any such contract which does not contain said stipulation shall be invalid, and no payment shall be made thereunder. Said rates of wages shall be requested of the commissioner, and shall be furnished by the commissioner in a schedule containing the classifications of jobs and rate of wages to be paid for each job. Said rates of wages shall include payments to health and welfare plans, or, if no such plan is in effect between employers and employees, the amount of such payments shall be paid directly to said employees. Whoever pays less than said rates of wages, including payments to health and welfare funds, or the equivalent in wages, on said works, and whoever accepts for his own use, or for the use of any other person as a rebate, gratuity or in any other guise, any part or portion of said wages or health and welfare funds, shall be punished by a ~~fine~~ of not less than one hundred nor more than five hundred dollars.

Added by St.1987, c. 762.

Historical and Statutory Notes

1987 Legislation

St.1987, c. 762, was approved Jan. 14, 1988.



**BOSTON PUBLIC HEALTH COMMISSION
OFFICE OF THE GENERAL COUNSEL
1010 MASSACHUSETTS AVENUE
BOSTON, MA 02118**

FAX COVER SHEET

DATE:	October 1, 2003	TIME:	4:07 PM
TO:	Division of Occupational Safety Lisa C. Price, Esq. Legal Counsel	PHONE:	617 727 3452
		FAX:	617-727-0726
FROM:	Kenneth E. Edwards, Esq. Assistant General Counsel	PHONE:	617-534-5669
		FAX:	617-534-4255

RE: PREVAILING WAGE DETERMINATION

NUMBER OF PAGES INCLUDING COVER SHEET: 5

MESSAGE: Your immediate attention to this matter is requested.

CONFIDENTIALITY NOTICE

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