

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

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May 17, 2005

Tom Nicalek, General Manager
Renaud Electric & Communications, Inc.
18 Providence Road
P.O. Box 36
Sutton, MA 01590

Dear Mr. Nicalek:

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. Specifically, you have posed several questions concerning electrical and HVAC services. I will address each question in turn, and I will assume that the awarding authority in each instance is a public entity subject to the state prevailing wage law.

1. Is changing light bulbs in a public building covered under the prevailing wage law? Is changing light bulbs in parking lot lights covered under prevailing wage law?

Changing light bulbs in a public building does not constitute "construction" within the meaning of G.L. c. 149, §27D ("additions to and alterations of public works"); therefore, the prevailing wage law does not apply to this work. Similarly, replacing light bulbs in parking lot lights is not a covered activity. However, please note that if a vehicle is used in connection with such work, such as a bucket truck, the operator of that vehicle must be paid prevailing wage pursuant to G.L. c. 149, §27F. See attached letters to Place and Shortsleeves, dated January 9, 2003 and August 22, 2000, respectively.

2. Your company is contacted because a section of the building is without power. An electrician is dispatched and finds that a breaker is tripped. The worker turns the breaker back on and power is restored. Is this work covered by the prevailing wage law?

Turning a breaker switch back on does not constitute "construction" within the meaning of G.L. c. 149, §27D; therefore, the prevailing wage law does not apply to this activity.

3. Your company is contacted because of non-functioning electrical equipment. As multiple lines of power are coming into the area, it may be necessary to remove multiple panel covers and hand test to determine the appropriate power source. The source is discovered and the appropriate breaker switch is turned back on and power is restored.

The above-described activities do not constitute "construction" within the meaning of G.L. c. 149, §27D, nor is it testing in connection with installation or repair works; therefore, the prevailing wage law does not apply to this work. Please note, however, that any testing done in conjunction with an installation or repair project is covered by the prevailing wage law. For example, if your company was contacted due to non-functioning electrical equipment, and as a result equipment needed to be replaced, this work would constitute "construction" within the meaning of G.L. c. 149, §27D. In this event, all testing associated with this project, including the initial testing, would be covered. See attached letter to Issac, dated May 2, 2003.

4. Is the changing of a filter and cleaning of the heating/evaporating coils on HVAC equipment covered under the prevailing wage law? The coil cleaning is done with a brush, or by applying a chemical solvent and removing with rags or a water hose.

Similar to the changing of light bulbs, this agency has taken the position that the removal of a filter that is routinely changed out on an HVAC system is not "construction" within the meaning of G.L. c. 149, §27D. Furthermore, the cleaning of the heating/evaporating coils in the manner described above would not be considered a covered activity for the same reason.

5. Your company sends in an HVAC technician as part of a regularly scheduled preventative maintenance program. The technician plugs in a laptop and may alter set points of thermostats, and also may download software updates or programs. No physical repair work is performed as a result of this activity. Does the prevailing wage law apply to this work?

The above-described activities do not constitute "construction" within the meaning of G.L. c. 149, §27D, nor is it testing in connection with installation or repair works. Therefore, the prevailing wage law does not apply to this activity.

6. Your company sends in an HVAC technician in response to a call that the system is malfunctioning. The technician plugs in a laptop and discovers that a sensor needs to be replaced. Does the prevailing wage law apply to this work?

The replacement of a defective sensor constitutes "construction" within the meaning of G.L. c. 149, §27D; therefore, the prevailing wage law applies to the repair work and all testing associated with that work.

7. Your company is contacted because the public entity has no air conditioning or no heat. You discover that the equipment needs only to be re-set. Does the prevailing wage law apply to this work?

The above-described activities do not constitute "construction" within the meaning of G.L. c. 149, §27D; therefore, the prevailing wage law does not apply to this work.

8. Your company is contacted because the public entity has no air conditioning or no heat. You discover, after testing to diagnose the problem, that a compressor must be replaced. Is the initial testing covered by the prevailing wage law?

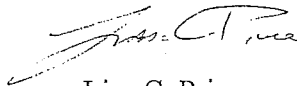
The replacement of a compressor constitutes "construction" within the meaning of G.L. c. 149, §27D; therefore, the prevailing wage law applies to the repair work and all testing associated with that work. See attached letter to Camerlango, dated November 12, 1999.

9. Is acquiring oil samples for acid testing and acquiring glycol (anti-freeze) from an HVAC system covered under the prevailing wage law? The samples are collected using either a small hand pump or by opening a drain valve.

The above-described activities do not constitute "construction" within the meaning of G.L. c. 149, §27D; therefore, the prevailing wage law does not apply to this work.

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

Sincerely,



Lisa C. Price
Deputy General Counsel

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