

## Prevailing Wage Program Opinion Letter January 11, 2010

1-11-10

Re: Request for Clarification Opinion Regarding M.G.L. c. 149 § 27F

Your letter to Commissioner Marlin, dated December 29, 2009, has been referred to me for response. In the letter, you request that the Division of Occupational Safety ("DOS") "clarif[y] treatment of health and welfare payments on projects which are subject to 27F." Specifically, your inquiry concerns the fact that prevailing wage determinations issued by DOS for solid waste hauling and disposal no longer include a separate line item for contributions to health and welfare plans.

Please be advised that, as of July 2009, the DOS issues wage sheets through a web-based system and the system is not programmed to separate out contributions to health and welfare plans. [\[1\]](#) As required by § 27F, these contributions continue to be included in the wage rates - although they are no longer separated out in the wage determinations.

DOS has issued a number of opinion letters outlining permissible deductions from the prevailing wage rate. ( *See e.g.*, *DOS PW-2008-07-8.26.08* [contributions to an ERISA compliant, U.S. DOL approved self-funded health and welfare plans permissible deductions from prevailing wage rate]; *DOS Letter to Baragona, 9/8/03* [contributions to hours bank plan for purchase of health benefits permissible deduction under the prevailing wage law]; *Letter to Beeman, 10/2/02* [employers may calculate an hourly health plan deduction by dividing a monthly health insurance premium by an employee's customary hours of work]; *Letter to Higgins, 12/19/97*[characterizing vacation, holiday and sick pay as non-allowable credits ]; *Letter to Hopwood, 10/5/89* [deductions may not be taken for any benefit which is not expressly mentioned in the law, including for vacation and holiday pay.] )

These letters uniformly advise that employers are permitted to deduct contributions made to health and welfare plans from the hourly prevailing wage. Under no circumstances may an employer deduct more from the employee's prevailing wage than is actually contributed to health and welfare plan on his or her behalf. See M.G.L. c. 149, § 27. Therefore, an employer's actual contributions to such plans must be reconciled every pay period to ensure that each employee's total deductions do not exceed payments to the plan.

I hope this information has been helpful to you. Please call me if you have further questions.

Sincerely,  
Patricia A. DeAngelis  
Legal Counsel

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[\[1\]](#) Wage determinations for public works projects issued pursuant to c. 149, §§ 26 and 27 include contributions to pension plans and supplementary unemployment benefit plans as well as health and welfare plan contributions.