

## **Prevailing Wage Opinion Letter 07-24-08**

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 asked for a determination as to whether certain testing services performed by your company on a public works project are subject to the prevailing wage law. The testing services at issue are soil compaction testing, and concrete slump, air, and compressive strength testing.

Soil compaction testing is performed by a technician operating a nuclear density gauge that electronically determines the density and moisture content of the soil. You have stated that these tests are primarily performed on soils which have been placed and compacted under building foundations, roadways, or other structural elements to insure against settlement under the load of that structure or element. Concrete slump testing is performed to indicate the plasticity or quantity of water in the mix, and concrete air testing determines the amount of air-entrainment in the mix. These tests are performed at the worksite. Random samples are also gathered at the worksite, put in cylinders, and taken back to the laboratory to determine compressive strength of the hardened concrete at various time intervals.

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. The term "construction" is defined, in pertinent part, as "additions to and alterations of public works," as well as "certain work done preliminary to the construction of public works, namely, soil explorations, [and] test borings..." G.L. c. 149, §27D. When public awarding authorities contract for construction work, within the meaning of the statute, the Division of Occupational Safety (DOS) sets prevailing wage rates for these projects based on "collective agreements or understandings in the private construction industry between organized labor and employers." G.L. c. 149, §26. DOS also looks to these agreements to establish craft jurisdictions.

As I know you are aware, in June 2002, DOS addressed the applicability of the prevailing wage law to these services, as well as other work which extends beyond the services for which you seek a determination. See DOS Letter to Attorney Zarbo, AGO, June 4, 2002. After further investigation, this agency is rescinding the specific determinations made in that letter regarding soil compaction testing by means of a nuclear density gauge, and concrete slump and air testing as described above. We have been provided with no information about contracts where union tradespersons performed these types of services. However, please be advised that if laborers are used to fill concrete cylinders to be used for compressive strength testing, which I understand may have been done on larger past projects, these workers must be paid the laborer's prevailing wage rate. The compressive strength testing done in the laboratory is not covered. Additionally, this letter does not address test borings performed on site to test sub-soils; this work is specifically included within the definition of construction in G.L. c. 149, §27D, and is prevailing wage 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