

Prevailing Wage Opinion Letter 08-26-08

I am writing in response to your request, on behalf of your client, 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 confirmation of the proper methodology for crediting employer payments to self-funded health and welfare plans.

As I understand it, your client's Medical, Prescription Drug, and Dental Benefits Plans (hereinafter referred to as "the Plans") are administered by third party administrators, Blue Shield and CIGNA. These plans are "self-funded plans," and your client makes monthly payments to cover expenses for employee health care services that have already been provided during the preceding month. (Under conventional type insurance plans, employers make monthly payments to fund future benefits.) These payments are made to specially designated health and welfare accounts, and may only be used to cover employee health and welfare expenses. These dedicated funds may not revert back to the employer. Your client utilizes an outside actuary to calculate the prevailing wage credit for all eligible employees on public works projects. The computation method takes into account all employee hours, whether on or off prevailing wage projects. As required under federal prevailing wage law, the Davis-Bacon Act, your client has sought and received approval from the U.S. Department of Labor (DOL) to take credit for contributions to these Plans. See 29 C.F.R. §5.5(a)(1)(iv).

Under the Massachusetts prevailing wage law, the Division of Occupational Safety (DOS) sets prevailing wages for public construction projects. G.L. c. 149, §§26, 27. The prevailing wage rate set by DOS includes employer payments to bona fide health and welfare, pension, and supplementary unemployment benefit plans. G.L. c. 149, §27. Employers are permitted to deduct such contributions from the total wage rate listed on the prevailing wage schedule for a given job classification.

DOS has not previously addressed the crediting of employer contributions to self-funded health and welfare plans under the state prevailing wage law. Your request for a written opinion gives us the opportunity to provide some guidance in this area. It is this agency's determination that employer contributions to an ERISA-compliant, self-funded health and welfare plan, which has received DOL approval pursuant to 29 C.F.R. §5.5(a)(1)(iv), may be similarly deducted from the total state prevailing wage rate set by DOS.

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