

Prevailing Wage Opinion Letter 09-08-03

September 8, 2003

Re: Payment of a Day Rate on a Prevailing Wage Job

I am writing in response to your request, on behalf of a client, for this Office's written opinion regarding the applicability of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, §§26-27, to a compensation program. Specifically, you have asked if an employer may compensate employees covered under the state prevailing wage law using a day rate method of compensation.

Under the day rate method of compensation, an employee is paid a flat sum for a day's work without regard to the number of hours worked in the day. Assuming the employee receives no other compensation, his or her regular hourly rate for purposes of overtime calculation, is determined by dividing the total weekly compensation by the total hours worked. When the employee works overtime in a workweek, the employee is entitled to additional half-time pay for hours worked over 40 in that workweek. [\[1\]](#)

Your letter asks this Office to state whether the following three scenarios (in which the employer utilizes a day rate method of compensation) comply with the state prevailing wage law. For purposes of our response, we are asked to assume that the day rate used by your client will be sufficient to ensure that the resulting regular hourly rate will always be equal to or greater than the applicable prevailing hourly rate for every hour worked in the workweek. We are further to assume that the prevailing wage for the position at issue is \$17.50 per hour, and the day rate paid by your client is \$175 per day.

1. Employee works the following schedule: Monday 8 hours; Tuesday 10 hours; Wednesday 8 hours; Thursday 8 hours; Friday 4 hours. If the employee were simply paid the prevailing wage on an hourly basis, the employee's gross pay would be \$665 [$\$17.50 \times 38 \text{ hours} = \665] Your client's calculation of pay under the day rate method would be:

Sum of Day Rates: $\$175 \times 5 \text{ days} = \875
Regular Rate: $\$875 \div 38 \text{ hours} = \23.03

2. Employee works the following schedule: Monday 8 hours; Tuesday 10 hours; Wednesday 8 hours; Thursday 10 hours; Friday 8 hours. If the employee were simply paid the prevailing wage on an hourly basis plus overtime, the employee's gross pay would be \$805 [$(\$17.50 \times 40 \text{ hours} = \$700) + (\$26.25 \times 4 \text{ hours} = \$105) = \$805$] Your client's calculation of pay under the day rate method would be:

Sum of Day Rates: $\$175 \times 5 \text{ days} = \875
Regular Rate: $\$875 \div 44 \text{ hours} = \19.886
Overtime: $\$19.886 \div 2 \times 4 \text{ hours} = \39.77
Gross Pay: $\$875 + \$39.77 = \$914.77$

3. Employee works the following schedule: Monday 10 hours; Tuesday 10 hours; Wednesday 8 hours; Thursday 10 hours; Friday 12 hours. If the employee were simply paid the prevailing wage on an hourly basis plus overtime, the employee's gross pay would be \$962.50 [$(\$17.50 \times 40 \text{ hours} = \$700) + (\$26.25 \times 10 \text{ hours} = \$262.50) = \$962.50$] Your client's calculation of pay under the day rate method would be:

Sum of Day Rates: $\$175 \times 5 \text{ days} = \875
Regular Rate: $\$875 \div 50 \text{ hours} = \17.50
Overtime: $\$17.50 \div 2 \times 10 \text{ hours} = \87.50
Gross Pay: $\$875 + \$87.50 = \$962.50$

The specific compensation paid the employee in the three scenarios outlined above complies with the state prevailing wage law as, in each case, the employee is receiving the applicable prevailing wage for all hours worked and overtime in accordance with state overtime law. However, it is important to note that a simple change in the hours worked on a given day, or in the total hours for the workweek, could render this method of compensation in violation of the law. For example, if this employee worked over 50 hours in a workweek, he or she would not be paid the applicable prevailing wage and overtime. Also, if such an employee worked only a single day in a workweek, and worked 11 hours, a day rate of \$175 would not fully compensate that employee who would be due \$192.50 (\$17.50 x 11 hours) under the state prevailing wage law. Therefore, an employer wishing to compensate employees on a day rate basis must separately calculate an employee's pay on an hourly basis to ensure proper payment and make up any shortfall that might occur. Furthermore, this calculation must be done on a timely basis to ensure the prompt payment of wages required by M.G.L. c. 149, §148. Finally, your client would still be obligated to track actual hours worked and maintain and submit payroll records in accordance with M.G.L. c. 149, §27B, showing payment of the applicable prevailing wage.

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

[\[1\]](#) As a general matter, this method of compensation is permissible under Massachusetts minimum wage and overtime laws, provided the employee is never paid less than the applicable minimum wage for every hour worked. See 455 C.M.R. §2.01 (definition of "regular hourly rate" provides that, for employees paid on any basis other than an hourly rate, the regular hourly rate is determined by dividing the total hours worked during the week into the employee's total weekly earnings.) The day rate method of compensation is similarly permissible under federal wage and hour law. See 29 C.F.R. §778.112.