

## Prevailing Wage Opinion Letter 11-15-02-v3

November 15, 2002

### Re: Prevailing Wage Applicability; Heating System Repairs; Maintenance Contracts

This letter responds to your request for a clarification of the applicability of the prevailing wage law, Mass. G.L. c.149, §§ 26 - 27D, to various projects undertaken in public buildings. According to your letter dated October 29, 2002, XXXX, Inc. engages in the business of installing and repairing heating systems.

Your letter infers that you are already aware that the installation of heating systems in public buildings is covered by the prevailing wage law. Confusions seems to arise, however, when your company is faced with various "maintenance" contracts which, given the breadth of that term, may include different activities under different public contracts. Thus there is no easy answer to whether "maintenance" contracts are covered by the prevailing wage law, namely because that term is not used in the law to describe covered activities.

The prevailing wage statute makes repeated references to "construction" and "construction of public works" which is defined by section 27D as follows:

Wherever used in sections twenty-six to twenty-seven C, inclusive, the words "construction" and "constructed" as applied to public buildings and public works shall include *additions to and alterations of public works*, the installation of resilient flooring in , and the painting of, public buildings and public works; certain work done preliminary to the construction of public works, namely, soil explorations, test borings and demolition of structures incidental to site clearance and right of way clearance; and the demolition of any building or other structure ordered by a public authority for the preservation of public health or public safety. (Emphasis added.)

The operative words in this section, for purposes of your questions, are "additions to and alterations of public works." Any activities performed by your company that involve the addition to or alteration of public buildings or public works is covered by the statute.

In practical terms, this means that installing parts, fixing pipe, and conducting other activities that alter existing heating systems are covered by the prevailing wage law. For further illustration, I have attached a copy of a letter issued by the Division of Occupational Safety ("DOS") that discusses the testing and balancing of HVAC systems. It should help to highlight the practical application of the term "alteration of public works."

As for the difficulty you face in dealing with various public awarding officials who may include different tasks under their "maintenance" contracts, please be aware that awarding authorities are required to adhere to the prevailing wage law if the work involves additions or alterations of public works. It is immaterial whether such work is performed under a contract, on an as-needed basis, or in response to an emergency. Also, as you correctly state in your letter, there is no minimum dollar threshold associated with the applicability of the prevailing wage law. All public construction projects, as defined above, are covered regardless of the cost.

You expressed concern that some public officials may not be properly informed of the prevailing wage requirements in the area of heating system installation and repair. I have three suggestions for dealing with such a scenario: 1) share this and other DOS letters with them; 2) ask them to call DOS for clarification; and 3) suggest they attend one of the training seminars offered for public purchasing officials by the Inspector General's Office. More information on these seminars is available at the following website: \*\*\*\*. You can also call the Inspector General's office at \*\*\*\*

If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,  
Ronald E. Maranian  
Program Manager