

## **Prevailing Wage Opinion letter 10-12-08-09**

Re: Clarification to PW-2009-05-8.18.09 Letter Regarding Applicability of the Massachusetts Prevailing Wage Law to XXXX Technicians Employed by XXXX, Inc.

I am writing in response to your request, made on behalf of your client, XXXX, Inc. ("XXXX, Inc."), that the Division of Occupational Safety ("DOS") clarify its written opinion letter, dated August 18, 2009, regarding the applicability of the Massachusetts Prevailing Wage Law to certain tasks performed by employees of XXXX, Inc. on public works projects. Specifically, you have asked that DOS clarify the following point:

*Whether post-commissioning writing of computer code to integrate HVAC systems with servers and computers is currently subject to payment of prevailing wages, whether performed on site or off site.*

This work is not currently covered by the prevailing wage law, regardless of where it is performed. 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." G.L. c. 149, §27D. When public awarding authorities contract for construction work, within the meaning of the statute, 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 and understandings to determine the appropriate job classifications under the prevailing wage law.

As stated in our letter of August 18, 2009 (PW-2009-05-8.18.09), 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 and understandings to determine the appropriate job classifications under the prevailing wage law. In this instance, neither the collective bargaining agreements with the pipefitters' union, nor other collective bargaining agreements we have reviewed, covers the post-commissioning task of writing of computer code to of integrate HVAC systems with servers and computers. However, please be mindful that testing, adjusting and balancing (TAB), commissioning (or re-commissioning in the case of a replacement project), to ensure the proper operation of the HVAC system is covered by the prevailing wage law and the proper classification for such work is Pipefitter or HVAC Mechanic, which are the same pay rate (See PW-2008-04-6.11.08.)

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

Sincerely,  
Patricia A. DeAngelis  
Legal Counsel