

Prevailing Wage Program Opinion Letter December 13, 2010

RE: Request for Confirmation of Classification for Workers Constructing Sidewalks

I write in response to your letter to Commissioner Heather Rowe, dated October 22, 2010, in which you request that the Division of Occupational Safety ("DOS") confirm the job classifications, under the Massachusetts Prevailing Wage Law, for workers who perform certain tasks related to the construction of either concrete or asphalt sidewalks in Eastern Middlesex County [1] various locations across the Commonwealth of Massachusetts.

Explanation

The Massachusetts Prevailing Wage Law applies to the construction of public works by the commonwealth, or by a country, town, authority or district. G.L. c. 149 §§ 26 and 27. The term "construction" includes "additions and alternations of public works, including the repair and replacement of public works. See c. 149, § 27D. DOS sets prevailing wage rates established by "collective agreements or understandings in the private construction industry between organized labor and employers." c. 149 §26. DOS also looks to these agreements and understandings to determine the appropriate job classifications under the prevailing wage law. Following are the DOS job classifications of the tasks listed in your letter, as well as additional classifications which I thought would be helpful:

1. Removal of the existing materials (old sidewalk) using a backhoe or front-end loader.
2. Removal of existing materials with hand tools, primarily shovels, or jackhammer.
3. Gravel and sub-grade materials are put in place using hand shovels and rakes.
4. With respect to concrete sidewalks, the installation with hammers and stakes of wood edging of 1 inch by 4 inches. Thereafter, the area is filled with concrete from a pre-mix truck using shovels, rakes and wheelbarrows. The cement is leveled and swept with brooms.
5. In the asphalt installation, the process is similar to the concrete, but the asphalt is leveled with rakes and shovels. It is then rolled with a hand roller.
6. Installation of curbing using a front end loader and guidance of the curbing into place.

With the exception of the operation of the backhoe, front end loader, and jackhammer, described in items 1, 2, and 6, each of the listed tasks is paid at the rate for "Laborer" as indicated on the rate sheet. The operation of a jackhammer, as described in item 2, is paid at the rate for "Jackhammer & Paving Breaker Operator" as indicated on the rate sheet. The DOS established these classifications by reference to the Building and Site Construction Agreement between the Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL-CIO and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc and Building and Trades Employers' Association of Boston and Eastern Massachusetts, Inc., effective June 1, 2008 through May 31, 2012 and the predecessor agreements thereto.

The operation of a backhoe or loader, as described in items 1 and 6, is paid at the rate for a "Backhoe/Front End Loader" as indicated on the rate sheet. The DOS established this classification by reference to the collective bargaining agreement among the International Union of Operating Engineers Local 4 and its Branches and the Labor Relations Division of Construction Industries of Massachusetts, Foundation and Marine Contractors Association of New England, Inc., the Building Trades Employers Association of Boston and Eastern Massachusetts and the Labor Relations Division of the Associated Builders and Contractors of Massachusetts, Inc.

I hope this information has been helpful.

Sincerely,
Patricia A. DeAngelis
Acting Deputy Commissioner

[1] Although your request references Eastern Middlesex County, the classifications referenced herein apply to the construction of public sidewalks throughout the Commonwealth of Massachusetts.