

Prevailing Wage Program Opinion Letter February 22, 2010

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RE: Confirmation of Prevailing Wage Requirements for Apprentices

I am writing in response to your request for a written opinion from the Division of Occupational Safety ("DOS") regarding the applicability of the Massachusetts Prevailing Wage Law, G.L. c. 149 §§ 26 and 27, with respect to the use of apprentices by contractors which perform work on public works projects. Specifically, you have asked that we confirm that a contractor (or subcontractor) on a public works project, which employs apprentices in excess of the ratio of apprentices to journeymen set forth in the wage determinations issued by DOS, is in violation of the prevailing wage law to the extent the contractor (or subcontractor) pays less than the journeymen wage rate to the "excess" apprentices.

Analysis

The Massachusetts Prevailing Wage Law governs the setting and payment of wages on public works projects constructed by the commonwealth, or by a county, town, authority or district. G.L. c. 149, § 26, provides, in pertinent part: "In the employment of mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works by the commonwealth, or by a city, town, authority or district[T]he rate per hour of the wages paid...in the construction of public works shall not be less than the rate or rates of wages to be determined by the commissioner as hereafter provided...." The law contains detailed standards regarding how the commissioner is to determine the appropriate wage rates including that the wage rates shall not be less than those wage rates established in "certain trades and occupations by collective agreements or understandings" between "organized labor and employers." See § 26. Accordingly, the wage rates established by the DOS: (1) reflect the wage rates established in collective bargaining agreements between unions and employers and (2) include wage rates for apprentices.

As you know, the collective bargaining agreements containing apprenticeship programs provide that apprentices are paid a lower wage rate than journeymen employed in the same trade. The lower wage rate for apprentices established by the various collective bargaining agreements reflects the fact that apprentices are learning the trade. This is evidenced by the increase in such wage rates as the apprentice graduates to the next "step" in his or her training. As required by §§ 26 and 27, the wage determinations for apprentices reflect this arrangement, and may only be paid to those apprentices who are registered by the Division of Apprentice Training. [\[1\]](#) The Division of Apprentice Training may only register an apprentice program if, inter alia "[t]he ratio of apprentices to journeypersons [does] not conflict with the ratio established in apprenticeable occupations operated by the joint labor management apprentice training programs approved under this chapter." G.L. c. 23, § 11K. The ratios of apprentices to journeymen are designed to ensure a balance between skilled trained workers and trainees to ensure a safe, efficient working environment. Contractors may not circumvent the prevailing wage law through the overuse of apprentices in conflict with the established ratios. Accordingly, a contractor which employs apprentices in excess of the ratio of apprentices to journeymen, as set forth in the wage

determination issued by DOS, violates the prevailing wage law if it pays the "excess" apprentices less than the journeymen wage rate. [\[2\]](#)

Please call me at **** if you would like to discuss this confirmation letter.

Sincerely,
Patricia A. DeAngelis
Legal Counsel

[\[1\]](#) G.L. c. 23 § 11W requires that an apprentice maintain an apprenticeship identification card in his or her possession while performing work on a project subject to the Prevailing Wage Law. Chapter 149, § 27B requires that a copy of the apprenticeship identification card be attached to the certified payroll that contractors are required to submit weekly to the awarding authority to ensure compliance with the prevailing wage requirements.

[\[2\]](#) Similarly, the U.S. Department of Labor requires that apprentices, employed by contractors in excess of the ratio set forth in determinations it issues pursuant to the Davis Bacon Act (40 U.S.C.A. 3142 et seq.), be paid the full journeymen's rate. *See , U.S. Department of Labor Prevailing Wage Resource Guide 2009, Section 16 (Davis Bacon Act Compliance Principles)*