

Prevailing Wage Program Opinion Letter October 6, 2009

RE: Prevailing Wage on certain ongoing work at the XXXX Building

When we met on September 15, 2009, and in your follow-up memorandum dated September 21, 2009, you described certain work being performed under what you characterized as a contract for operations and maintenance at the XXXX Building, and you have asked whether the Massachusetts Prevailing Wage Law applies to that work.

It is important to note that the Massachusetts prevailing wage law does not make a distinction between contracts for construction and contracts for maintenance. The 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, the installation of resilient flooring in, and the painting of, public buildings and public works." G.L. c. 149, §27D. When public awarding authorities contract for construction work, within the meaning of the statute, the Division of Occupational Safety (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.

Accordingly, in general, those aspects of the work described that would entail making additions to or alterations of the building would be covered by the prevailing wage law. The following tasks, as you described them in our meeting and in your subsequent memorandum, are covered by the prevailing wage law:

- Painting throughout the building (including repainting in offices);
- Flushometer work that results in additions or alterations to the plumbing system in the building (i.e. repair or replacement of parts of the flushometer)
- HVAC work that results in addition to or alteration of the system (including, but not limited to testing and balancing the system); and
- Thermostat replacement that requires wiring or other adjustments to the heating or cooling system, including but not limited to HVAC testing and balancing.

The following tasks, as you have described them, would not be covered by the prevailing wage law to the extent that they do not result in additions or alterations to the building:

- Changing out locks in office doors;
- Thermostat replacement as described in your September 21, 2009 memorandum (involving snapping the thermostat into place without making any additions or alterations to the heating or cooling system or to the building structure);
- Replacement of removable ceiling tiles on top of an existing frame (without adding to or altering the structure of the ceiling or of the building);
- Replacement of broken or missing floor raceway covers, as described in your September 21, 2009 memorandum (involving "snapping on a cover" without making any additions or alterations to the building); and

- Removal of parts of the flushometer for cleaning purposes, and replacement of the existing parts after cleaning.

Please be advised that DOS does not have independent knowledge about the processes involved in any of these tasks and is relying on the descriptions provided by XXXX. If any of the tasks described above do in fact involve additions to or alterations of the building, the prevailing wage law would apply to those tasks. Therefore, XXXX is advised to ensure that prevailing wage rates are included in any contract that may constitute a contract for construction under the definitions and provisions of G.L. c. 149, §§ 26 and 27 et seq.

I hope this has been helpful. If you have any further questions or require additional information, please do not hesitate to contact us.

Sincerely,
Laura M. Marlin
Commissioner