

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
**DIVISION OF OCCUPATIONAL SAFETY**  
WWW.STATE.MA.US/DOS

**JANE SWIFT**  
GOVERNOR

**ANGELO R. BUONOPANE**  
DIRECTOR

**ROBERT J. PREZIOSO**  
DEPUTY DIRECTOR

November 15, 2002

Mr. William F. Holloway, Controller  
George T. Wilkinson, Inc.  
280 Libbey Parkway  
P.O. Box 890147  
East Weymouth, MA 02189-0003

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

Dear Mr. Holloway:

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, George T. Wilkinson, 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: [www.state.ma.us/ig/mcppo/igmpo.htm](http://www.state.ma.us/ig/mcppo/igmpo.htm). You can also call the Inspector General's office at 617-727-9140.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Ronald E. Maranian", with a long horizontal flourish extending to the right.

Ronald E. Maranian  
Program Manager

cc: Robert J. Prezioso, DOS Deputy Director  
Kathryn Palmer, DOS General Counsel  
Daniel S. Field, Office of Attorney General



*Specialists in Advanced Combustion Technology for the 21st Century*

October 29, 2002

The Commonwealth of Massachusetts  
Division of Occupational Safety  
399 Washington Street, 5<sup>th</sup> Floor  
Boston, MA 02108

**OCT 31 2002**

Attn: Mr. Ron Maranian  
Program Manager

RE: Prevailing Wage Rates on Service

Dear Ron:

I have talked with you on one occasion, and have spoken with Steve Falcone on several occasions. Each time, the subject has been what is, and what is not Prevailing Wage. You and Steve have been clear and concise on the examples I have provided. The confusion is encountered when I'm dealing with the various town administrators, business and purchasing agents. They are unclear as to what Prevailing Wage is, and reluctant to ask the State for anything contractual/statutory such as a rate sheet.

If George T. Wilkinson, Inc. goes into any state, city or town public building (school, town hall, housing authority, library, police or fire station,) where we have a maintenance contract in effect and performs normal, contract maintenance on an operating heating system, this is not Prevailing Wage. Correct?

In the same maintenance contract situation: if we repair or replace a part(s) not covered by the maintenance contract, GTW will bill the customer for time & materials not covered under the existing maintenance contract. Is this a Prevailing Wage situation?

If George T. Wilkinson, Inc. goes into any state, city or town public building (school, town hall, housing authority, library, police or fire station,) without an existing maintenance contract (service call) on the heating system and completes a repair on a malfunctioning or inoperative heating system. This is Prevailing Wage. Correct?

If George T. Wilkinson, Inc. goes into any state, city or town public building (school, town hall, housing authority, library, police or fire station,) without an existing maintenance contract on the heating system, performs a normal maintenance function and charges for time & materials, this is also Prevailing Wage. Is this Correct, or not?

It is immaterial whether a maintenance contract is a bid contract or not! Correct?

There is no dollar threshold, over which a maintenance contract is, or isn't, Prevailing! Correct?

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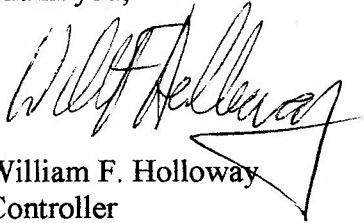
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The most common comment I hear from the town representatives is "I've never had to do this before". Although most of them are familiar with Prevailing Wage Rate Schedules when a large new or replacement apparatus contract is bid, a Periodic (6-Month) Rate Sheet and how to get one is a new item.

I've tried to make this as brief as possible. I hope the questions are clear for you. If you have any questions for me at all, please do not hesitate to call.

I appreciate the time and effort you and Steve have already spent on these questions. Your written response will enable me to avoid any penalties, and help inform any town administrators that ask.

Thank you,

A handwritten signature in cursive script, appearing to read "W. F. Holloway". The signature is written in dark ink and is positioned above the printed name and title.

William F. Holloway  
Controller



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**ANGELO BUONOPANE**  
DIRECTOR

**ROBERT J. PREZIOSO**  
DEPUTY DIRECTOR

November 12, 1999

Maria Camerlango  
E. Amanti & Sons, Inc.  
392 Highland Av.  
Salem, MA 01970

Re: Prevailing Wage Applicability: Testing and Balancing of HVAC Systems

Dear Ms. Camerlango:

This letter responds to your request for clarification of whether the testing and balancing of HVAC systems – Heating Ventilating and Air Conditioning systems – is covered under the prevailing wage law.

Pursuant to M.G.L. ch. 149, § 27D, prevailing wage rates apply to construction work which is defined as "additions to and alterations of public works, the installation of resilient flooring in, and the painting of, public buildings and public works ..." Any persons engaged in such work must be paid prevailing wage rates.

The testing and balancing of HVAC systems, when conducted as part of a construction or alteration project, would require payment of prevailing wage rates. Whether the testing and balancing is performed as part of the installation of a new system or the repair of an existing system, such tasks are necessary for components to be installed correctly and to bring the system into proper service.

In other circumstances when testing and balancing is not part of a construction or alteration project, prevailing wage rates would not apply. This generally includes testing and balancing on a functioning HVAC system. Any construction or alterations performed to repair defects uncovered during testing and balancing would, however, require payment of prevailing wage rates.

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

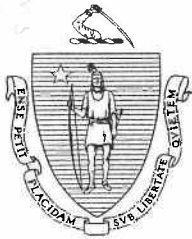
Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Prezioso". The signature is fluid and cursive, with a large, stylized initial "R".

Robert J. Prezioso  
Deputy Director

cc: Linda Hamel, General Counsel, DOS  
Benjamin B. Tymann, DOS  
Francis X. Flaherty, Office of the Attorney General





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Program Manager

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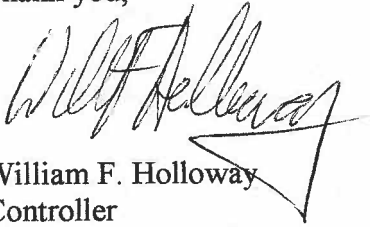
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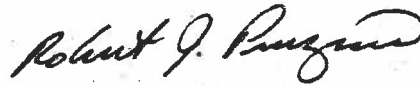
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Robert J. Prezioso  
Deputy Director

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