



OFFICE OF THE COMMISSIONER  
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*The Commonwealth of Massachusetts*  
*Executive Office of Labor*  
*Department of Labor and Industries*  
*Leverett Saltonstall Building, Government Center*  
*100 Cambridge Street, Boston, 02202*

October 5, 1989

David J. Hopwood, Esquire  
Attorney for Coviello Electric  
Heafitz & Hopwood  
31 Channing Street  
Newton, MA 02158-1677

Dear Attorney Hopwood:

The Department has received your letter of July 11, 1989, by which you request that your employee benefit plan be evaluated for allowable deductions.

Massachusetts General Law Chapter 149, Sections 26 and 27 establish the procedure that the Commissioner must use in setting the predetermined wage rate for all public works construction projects in the Commonwealth. Section 26 states:

Payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided.

This language limits the allowable credits to the three enumerated areas; health and welfare, pension and supplementary unemployment benefit plans. The law also clearly requires that the amount included in setting the wage rate be based on the amount set in the relevant collective bargaining agreement or understanding between organized labor and the employer.

Section 27 states:

The aforesaid rate of wages in the schedule of wage rates shall include payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans as provided in section twenty-six, and such payments shall be considered as payments to persons under this section performing work as herein provided.

This language allows the Department to give an employer credit for contributions made to qualifying plans when determining whether the employer has paid the employee the required rate of wages.

Section 27 continues:

Any employer engaged in the construction of public works who does not make payments to a health and welfare plan, a pension plan and a supplementary unemployment benefit plan, where such payments are included in said rates of wages, shall pay the amount of said payments directly to each employee engaged in said construction.

This provision requires employers who do not contribute to bona fide plans to pay all of the money established by the Commissioner directly to the employee.

Credit will not be given for contributions in excess of the amount set by the Commissioner, nor may an employer take credit for more than the amount actually contributed. If a contribution is less than the amount set in the wage rate, the remainder must be paid directly to the employee.

In examining company's payroll practices for compliance with the law, the department will examine all deductions from the predetermined wage rate for the following indicators:

1. Is the deduction being made from the total wage being contributed to a bona fide health and welfare plan, pension plan or supplementary unemployment benefit plan? (a deduction may be taken for each contribution)

1A: A bona fide plan must be legal in all respects, and the contribution made in behalf of the employee must be verifiable. The employee must receive actual benefit from the plan.

2. Does the contribution reflect the actual cost of the benefit to the employee?
3. Is the employer contributing the entire deduction to the appropriate benefit provider? (Employers may not charge any fee for providing a benefit plan to the employee.)
4. Is the amount being deducted within the limits set by the applicable collective bargaining agreement or understanding between organized labor and the employer? (For example, if the agreement used to set the wage rate allows a deduction of \$1.00 per hour for a health and welfare contribution, the maximum amount that may be deducted in the plan being examined may be \$1.00 per hour for health and welfare.) As this figure varies from trade to trade, this information will be provided to interested persons upon individual written request.

In addition to the indicators listed above, the department may examine the proposed deductions for any other indicator of

reliability and authenticity it deems necessary to establish the legality of the deduction.

Qualified deductions may be taken by any public works contractor, regardless of union affiliation.

Deductions may not be taken for any benefit which is not mentioned in the law. For example, employers may not deduct for travel, tools, uniforms, vacations, holiday pay, workers compensation insurance, unemployment insurance or other non conforming purposes.

I hope this information is adequate to allow you to conform with the requirements of the law. If you have specific questions which have not been addressed, you may send written question to:

Manager-Prevailing Wage Rate Section  
Department of Labor and Industries  
11th Floor  
100 Cambridge Street  
Boston, MA 02202

The breakdown which you requested is attached.

Very Truly Yours,

  
James F. Snow  
Commissioner

Enclosure

cc: Supervising Inspector - Lawrence Office

WAGE RATE BREAKDOWN - ELECTRICIAN (LAWRENCE)

<u>Date</u>	<u>Base</u>	<u>H &amp; W</u>	<u>Pen</u>	<u>NEBF</u>	<u>Annuity</u>	<u>Total</u>
6-1-87	\$18.75	\$2.25	.75	.56	\$3.00	\$25.13
6-1-88	\$19.17	\$2.25	.75	.59	\$3.60	\$26.36
6-1-89	\$20.20	\$1.66	\$1.38	.61	\$3.60	\$27.45