

## Prevailing Wage Opinion Letter 09-08-03

September 8, 2003

Re: Health Care Deductions Contributed to Employee "Hour Bank"

I am writing in response to your request for this Office's written opinion regarding the applicability of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, §§26-27. Specifically, you have asked if the utilization of "hour banks" for the purchase of bona fide health benefits is in compliance with state law.

In your letter of August 19, 2003, you stated that it is common for construction industry employers to make irrevocable contributions for health care benefits to an employee "hour bank." The purpose of the hour bank is to establish an account from which to draw consistent amounts for health benefits when the actual number of hours worked in a given month may vary due to weather or other factors. The hour bank is administered by a third party administrator or insurance company. Under the terms of such a plan, the amounts contributed on behalf of a specific employee cannot be redistributed to provide benefits to any other individual. If an employee terminates employment and there are amounts remaining in his or her hour bank, the employee is entitled to extended health care coverage or a refund of these amounts. You would like assurance that the use of such hour banks complies with Massachusetts state law.

The answer to your question necessitates interpretation of two different state laws: the state prevailing wage law that determines what wage an employee working on a covered public project is due, and the state timely payment of wage law, M.G.L. c. 149, §148, that determines when the employee must be paid that wage. Addressing the prevailing wage law, employers are permitted to deduct contributions to bona fide health and welfare plans, pension plans, and certain supplementary unemployment plans from the hourly prevailing wage rate. An employer may not deduct more from an employee's prevailing wage than is actually contributed to a bona fide plan on his or her behalf. See M.G.L. c. 149, §27. As you know, this Office has previously determined that employers may calculate an hourly health benefit deduction by dividing a monthly health insurance premium by an employee's customary monthly work hours. The employer may then deduct this pre-specified amount from the employee's hourly wage, provided it ensures that the sum total of all such hourly deductions does not exceed the premium paid on the employee's behalf. See DOS Letter to Gregory Beeman, dated October 2, 2002. Under the state prevailing wage law, such deductions could be contributed to an hour bank such as the one you describe because the employee would still receive the total prevailing wage owed to him or her in the form of either a cash wage or health benefits.

The second issue regarding the timeliness of such payments requires interpretation of M.G.L. c. 149, §148. This statute is interpreted and enforced by the Office of the Attorney General. You may want to seek guidance from that Office regarding this issue.

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

Sincerely,  
Lisa C. Price  
Legal Counsel