

PREVAILING WAGE SUMMARY

Department of Labor and Industry
Bureau of Labor Law Compliance
June 7, 2007

General

- The Pennsylvania Prevailing Wage Act (Act) requires that all workers on a *public work* must be paid the prevailing wage determined by the Department of Labor and Industry (L&I). 43 P.S. § 165-5.
- A *public work* is comprised of all of the following: (1) certain work (construction, reconstruction, demolition, alteration, and/or repair work, *other than maintenance work*); (2) under contract; (3) paid for in whole or in part with public funds; and, (4) its estimated cost exceeds \$25,000. 43 P.S. § 165-2(5); *Pennsylvania National Mutual Casualty Insurance Co. v. Dep't of Labor and Industry*, 552 Pa. 385, 715 A.2d 1068 (1998) (*Penn National I*).
- A *public body* is the Commonwealth of Pennsylvania, any authority created by the General Assembly and any instrumentality or agency of the Commonwealth. It also includes the Commonwealth's *political subdivisions* comprised of any county, city, borough, incorporated town, township, school district, vocational school district and county institution district. 43 P.S. § 165-2(4); 1 Pa.C.S. § 1991.
- Prevailing wages are not required for grants pertaining to the use or acquisition of equipment, job training, etc. *only* if the grant recipient does not have any discretion to utilize the grant for construction. 43 P.S. § 165-2(5); *Henkels & McCoy, Inc. v. Dep't of Labor and Industry*, 598 A.2d 1065 (Pa. Cmwlth. 1991).
- L&I issues rates for each craft and classification by county. 43 P.S. § 165-7; 34 Pa. Code § 9.105(a). Affected parties may seek an expedited hearing for review of rates and classifications. 43 P.S. § 165-8; 34 Pa. Code § 9.107.
- L&I's Bureau of Labor Law Compliance (Bureau) administers and enforces the Act.

- A public body is responsible for assuring that prevailing wage rates are appended to bid specifications and contracts. Prevailing wages are still required if construction already commenced and rates not appended to specifications and contract. A public body must assure that prevailing wages are being paid. 43 P.S. §§ 165-4, 165-10; 34 Pa. Code §§ 9.103, 9.104, 9.110; *Linde Enterprises, Inc. v. Prevailing Wage Appeals Bd.*, 676 A.2d 310 (Pa. Cmwlth. 1996).
- Prevailing wage rates and information may be obtained from the Bureau at the following:

Bureau of Labor Law Compliance
 1301 Labor and Industry Building
 Seventh & Forster Streets
 Harrisburg, PA 17120-0019
 717-787-4671
 E-Mail: www.dli.state.pa.us (Keywords “Prevailing Wage/Apprenticeship” then “Prevailing Wage Determination Request”)

- Two types of violations of the Act (43 P.S. § 165-11; 34 Pa. Code § 9.111):
 - *Intentional*- Any act of omission or commission done willfully or with a knowing disregard of workers’ rights resulting in the payment of less than the prevailing wage *or* where a contractor does not pay the prevailing wage differential for an unintentional violation or violates a settlement agreement. Contractor guilty of intentional violation is debarred for 3 years and matter is referred to Office of Attorney General for collection of money owed to workers and liquidated damages.
 - Unintentional—Allows for contractor to adjust underpayments to workers.
 - Contractor has right to hearing to contest allegations of violation.
- Prevailing wages are not required for project requiring federal Davis Bacon rates. 43 P.S. § 165-15.

Maintenance

- Maintenance work: “The repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.” 43 P.S. § 165-2(3). However, construction, reconstruction, demolition, alteration and/or repair work is covered prevailing wage work. 43 P.S. § 165-2(5).
- Maintenance work refers to the repair of existing facilities that were operating properly but now need to be fixed. Maintenance also occurs when a facility, once in usable condition, was restored to that condition by being “*partially* overhauled or patched.” However, when a component of a facility is replaced in such a manner as to effect a change in its size or type, the project would be repair work requiring prevailing wages. *Butler Balancing Co., Inc. v. Dep’t of Labor and Industry*, 780 A.2d 840 (Pa. Cmwlth. 2001); *Kulzer Roofing, Inc. v. Commonwealth, Dep’t of Labor and Industry*, 450 A.2d 259 (Pa. Cmwlth. 1982).
- Reconstruction and replacement in kind is not excluded as maintenance and requires prevailing wages. Work requiring prevailing wages includes reconstruction: “to construct again; to rebuild; to form again or anew.” *Borough of Ebensburg v. Prevailing Wage Appeals Bd.*, 893 A.2d 181 (Pa. Cmwlth. 2006).

Private Development Financed with Public Funds.

- A public body does not have to be a party to a public works contract if the construction is *financed in whole or in part* with public funds. Money originating from a private source, placed in a public body’s treasury and then paid to the contractor constitutes funds of a private body requiring prevailing wages if the project constitutes covered work, performed under contract and with an estimated cost of \$25,000. *Payment by the public body governs*. 43 P.S. § 165-2(5); *Pennsylvania State Building and Construction Trades Council, AFL-CIO v. Prevailing Wage Appeals Bd.*, 570 Pa. 96, 808 A.2d 881 (2002) (*Penn National II*); *Borough of Ebensburg*, 893 A.2d at 184.
- Prevailing wages may also apply where a private entity is performing work on behalf of a public body. Prevailing wages are required if a private entity uses *public funds* for a *public purpose* proposed by a *public body*. *Penn National II*, 808 A.2d at 889-890; *Lycoming County Nursing Home Association, Inc. v. Commonwealth, Dep’t of Labor and Industry*, 627 A.2d 238 (Pa. Cmwlth. 1993).

- Tax abatements alone do not trigger prevailing wage coverage. Construction loans that are repaid in full and which do not contemplate loan forgiveness alone generally do not trigger prevailing wage coverage. *Penn National II*, 808 A.2d at 889.

Opinions on Coverage

- The Bureau issues letter opinions on prevailing wage coverage.
- Information that is reviewed includes the following:
 - Grant application and agreement.
 - Construction contract.
 - Overview of construction contract.
 - Financing agreements.
 - Other information requested by the Bureau.
- An interested party may seek review of an opinion with the Prevailing Wage Appeals Board. 43 P.S. § 165-2.2(e)(1); 34 Pa. Code § 213.8; *Penn National I*, 715 A.2d at 1072-1073.