



COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF LABOR & INDUSTRY

BUREAU OF LABOR LAW COMPLIANCE

WWW.STATE.PA.US

800-932-0665

Labor Law Enforcement

Prevailing Wage

Minimum Wage

Child Labor

Wage Payment

Apprenticeship and
Training

Seasonal Farm

PA One Call

Medical Pay

Personnel File

Industrial
Homework

Equal Pay

Prohibition of
Excessive Overtime
in Health Care (Act
102)

Construction
Workplace
Misclassification
(Act 72)

PREVAILING WAGE ACT

Act of August 15, 1961, P.L. 987, *as amended*

- Requires that workmen employed on public work be paid the prevailing minimum wage
 - The secretary of Labor & Industry determines the prevailing wage rate in the locality of the public work
-

Public Works Project

4 prong test:

Certain work
(construction,
reconstruction,
alteration,
demolition,
repair);

done under
contract;

using funds of
a public body;
and

estimated cost
more than
\$25,000.00

1. Certain Work

- Construction, reconstruction, alteration, demolition, repair (other than maintenance)
- Maintenance exception
 - Defined as: “The repair of existing facilities when the size, type or extent of the facilities is not thereby changed or increased.”
 - Clarified by Commonwealth Court and Supreme Court

Borough of Youngwood

- Milling and repaving of a road was non-maintenance requiring Pennsylvania prevailing wages
 - The percentage of the work constituting maintenance work does not determine whether prevailing wages are required where the project is also comprised of non-maintenance work
-

Borough of Ebensburg

- Reconstruction (to construct again; to rebuild; to form again or anew) and demolition requires Pennsylvania prevailing wages
 - Demolition and in-kind replacement of curbs and sidewalks required Pennsylvania prevailing wages
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Work	Designation ¹	Comments
Crack Sealing	Maintenance	
Seal Coat	Maintenance	
Slurry Seal	Maintenance	
Ralumac application	Maintenance	
Microsurfacing	Maintenance	
Fog Seal	Maintenance	
Scrub Seal	Maintenance	
Ultrathin Friction Course	Maintenance	
Repaving	Construction	
Cold In-Place Recycling	Construction	
Hot In-Place Recycling	Construction	
Milling with and without Thin HMA Overlay (Wearing Course)	Construction	
Leveling Course with Thin HMA Overlay	Construction	
Base Repair	Construction	May be maintenance work if incidental to pothole patching.
Pavement Patching	Maintenance	
Widening	Construction	
Shoulder Upgrade	Construction	
Routine cleaning of drainage features, including minor pipe repairs	Maintenance	Pipe Replacement is reconstruction and nonmaintenance.
Repair of drainage features including pipe replacement.	Construction	
Guide Rail		
• Partial Overhaul or Patching/Replacement of Damaged Parts In Kind	Maintenance	
• Large-Scale Replacement or Upgrade.	Construction	

¹ The term construction includes construction, reconstruction, demolition, alteration and/or repair work other than maintenance work and requires Pennsylvania prevailing wages. Work that is maintenance work is excluded from these wage requirements. A project that is comprised of both maintenance and non-maintenance will likely require Pennsylvania prevailing wages. 43 P.S. § 165-2(5).

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Sewer Projects

- *Borough of Schuylkill Haven-*
Rehabilitation of sewer system is not exempt maintenance
 - *Municipality of Bethel Park-*Individual work orders under a blanket emergency sewer repair contract are not covered if under \$25,000
-

2. Done Under Contract

- Contract with “alter ego” of a covered entity for construction included (*Lycoming County*)
 - Contract does not have to be with a public body (*Penn National II*)
 - An entire project may not require prevailing wages when there are two separate contracts that have a strong and logical demarcation, such as separate phases or shell and fit out work (*500 James Hance Court*)
-

3. Using Funds of a Public Body

- Awarding agencies
 - Municipalities
 - Water and sewer authorities
 - School districts
 - PennDOT
 - Department of General Services
 - Charter schools
 - Private entities using public funds
-

Penn National Insurance

Funding that
triggers
prevailing
wage
requirements
for private
projects

- Tax Increment Financing
- Government grants
- Government loans that permit loan forgiveness

4. Estimated cost more than \$25,000.00

- Must be good-faith estimate
- Contract cannot be split up into multiple contracts under \$25,000 to avoid prevailing wage coverage (*Steve Black*)
- Estimated cost includes materials and labor together

Projects Not Covered

- Legitimate maintenance projects
 - Work performed under a rehabilitation or manpower training program
 - Public works contracts subject to the Federal Davis-Bacon and Walsh-Healey Acts
-

Project Wage Rates

- Apply on the bureau's website
www.dli.state.pa.us
 - **Call 800-932-0665**
 - Interested party has 10 days, from the time the awarding agency advertises the project, to challenge the prevailing wage rates
 - ❑ Challenging party has burden to prove what the prevailing wage should be
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PREVAILING WAGES PROJECT RATES

Project Name: Voluntary Curb/Sidewalk Program

Awarding Agency: Township of Derry

Contract Award Date: 4/10/2012

Serial Number: 12-01412

Project Classification: Highway

Determination Date: 3/9/2012

Assigned Field Office: Harrisburg

Field Office Phone Number: 717-787-4763

Toll Free Phone Number: 800-932-0665

Dauphin County

Building	Effective Date	Expiration Date	Hourly Rate	Fringe Benefits	Total
Asbestos & Insulation Workers	6/28/2010		\$30.63	\$20.13	\$50.76
Asbestos & Insulation Workers	6/27/2011		\$31.67	\$21.09	\$52.76
Boilermaker (Commercial, Institutional, and Minor Repair Work)	1/1/2010		\$23.59	\$15.15	\$38.74
Boilermaker (Commercial, Institutional, and Minor Repair Work)	3/1/2011		\$24.22	\$16.02	\$40.24
Boilermakers	1/1/2011		\$37.35	\$28.12	\$65.47
Boilermakers	1/1/2012		\$37.62	\$29.85	\$67.47
Bricklayers, Stone Masons, Pointers, Caulkers, Cleaners	5/2/2011		\$29.77	\$14.22	\$43.99
Bricklayers, Stone Masons, Pointers, Caulkers, Cleaners	4/29/2012		\$30.27	\$14.27	\$44.54
Bricklayers, Stone Masons, Pointers, Caulkers, Cleaners	4/28/2013		\$30.76	\$14.48	\$45.24
Bricklayers, Stone Masons, Pointers, Caulkers, Cleaners	5/4/2014		\$31.35	\$14.69	\$46.04
Bricklayers, Stone Masons, Pointers, Caulkers, Cleaners	5/3/2015		\$31.98	\$14.91	\$46.89
Bricklayers, Stone Masons, Pointers, Caulkers, Cleaners	5/1/2016		\$32.65	\$15.14	\$47.79
Carpenters, Drywall Hangers, Framers, Instrument Men, Lathers, Soft Floor Layers	6/1/2010		\$25.71	\$12.02	\$37.73
Carpenters, Drywall Hangers, Framers, Instrument Men, Lathers, Soft Floor Layers	6/1/2011		\$26.86	\$12.52	\$39.38
Cement Finishers	5/1/2010		\$24.00	\$17.45	\$41.45

Fringe Benefits

- Contribution to employee benefits including payment for sick, disability, death, medical, hospital, vacation, retirement and pension
 - MUST BE FOR THE BENEFIT OF THE EMPLOYEE
 - May be paid in cash if there is no contract requiring contribution to employee benefits
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Residential Construction

- Residential wage rates will be issued for residential construction (*Adams County Interfaith Housing Corporation*)
 - Examples of residential construction:
 - ❑ Townhomes or row homes
 - ❑ Apartment buildings (four stories or less)
 - ❑ Single-family homes
 - ❑ Mobile home developments
 - ❑ Student housing (four stories or less)
-

Certified Payroll Requirements

- Should be filed weekly with the awarding agency
- All contractors and subcontractors must file certified payrolls
- All workers that are working on the project must be listed on the certified payroll
- Owners working on project must be listed
- Public record subject to inspection under the Right-to-Know Law
 - Certified payrolls filed with public body are public records
 - If not possessed by public body, public body has a duty to re-obtain them from contractor
 - Certified payrolls filed with private entity are not public record

Type of Workers Covered

- Includes laborer, mechanic, skilled and semiskilled laborer and apprentices employed by any contractor or subcontractor and engaged in the **performance of services directly upon the public work project**, regardless of whether their work becomes a component part thereof, **but does not include material suppliers or their employees who do not perform services at the job site.** 43 P.S. § 165-2(7).



Workers Covered by Act

- Workers performing testing and balancing (TAB) of air handling systems (*Butler Balancing*)
 - Surveyors
 - Truck drivers hauling materials around a jobsite and from an adjacent borrow pit to the jobsite (*Bockelman Trucking*)
-

Workers Not Covered by Act

- Material handlers dropping off supplies to the jobsite
- Architects, engineers, or individuals performing geotechnical testing and inspection services
- Workers performing off-site work
- Non-working supervisors

Apprentices on Public Work

- Must be registered with state
 - Must be paid percentage of prevailing wage according to program standards.
 - Must be kept in proper ratio to journeypersons at all times.
-

Subcontractors

- Subcontractor must fill out certified payrolls on a weekly basis
 - If owner is working on job, he must show up on certified payrolls in correct classification
 - Act 72-Construction Workplace Misclassification Act-Violation if an employer fails to classify an individual as employee
-

Site Inspection

- Bureau investigators identify themselves and make known that they are doing a “site visit” to ensure compliance with the Prevailing Wage Act
 - ❑ *Ask the name of employee*
 - ❑ *Ask the employer’s name*
 - ❑ *Classification of employee*
 - ❑ *What is the rate of pay?*

Residential Rates

- Consistent with the Commonwealth Court's decision in *Adams County Interfaith Hous. Corp. v. Prevailing Wage Appeals Bd.*, 981 A.2d 352 (Pa. Cmwlth. 2009), [662CD08_9-29-09.pdf](#), and federal government practice on Davis-Bacon Act or Related Act projects, the Bureau of Labor Law Compliance will be issuing residential prevailing wage rates for the following types of Residential Type Construction:
- Residential projects involving the construction, alteration or repair of single-family houses or apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.
- Examples:
 - Town or row houses
 - Apartment buildings (four stories or less)
 - Single-family houses
 - Mobile-home developments
 - Multi-family houses
 - Residential-type student housing (other than apartment buildings more than four stories or dormitories)
- Questions concerning whether a particular project qualifies as residential construction can be directed to the Bureau of Labor Law Compliance at 800-932-0665, [RA-LI-SLMR-LLC@pa.gov](#).

Construction Workplace Misclassification Act (Act 72)

- Effective Feb. 11, 2011
- Applies to any construction
 - Includes public work construction (whether or not work is for a public body or paid for from public funds)
- Enforcement
 - Attorney General (criminal penalties)
 - District Attorneys (criminal penalties)
 - Secretary of Labor & Industry (stop work orders/administrative penalties)
 - Also applies in WC & UC proceedings

Act 72 criteria

- **If you work in construction, you may not be classified as an independent contractor unless:**
 - ❑ You have a written contract with the business or person you work for.
 - ❑ You control and direct your own work.
 - ❑ You possess the tools that are needed to perform your work.
 - ❑ Your arrangement with the business you work for allows you to earn a profit or suffer a loss from your work.
 - ❑ You are an owner or partner in your own business.
 - ❑ Your business location is separate from the location of the business or person which hired you to perform the construction.
 - ❑ You previously worked as an independent contractor, or you hold yourself out to the public as available and able to work as an independent contractor.
 - ❑ You had liability insurance of at least \$50,000.

Act 72:

Acting in concert/retaliation

It is also unlawful for a person:

- To contract with an employer knowing that the employer intends to misclassify workers.
 - Same penalties as employer
 - To retaliate against workers who exercise their rights under this law, including the right to file a complaint
-

Public Works Verification Act

SB 637 (Act 127)

- Effective Jan. 1, 2013
- Enforcement: Department of General Services
- As a precondition to being awarded a contract for public work, contractor must file form acknowledging responsibility under and compliance with act with public body
- Subcontractor must also file verifications
- Contractors and subcontractors must e-verify employment eligibility of new employees
- Penalties: warning letter, debarments, civil penalties

Department of General Services

Doing Business with the Commonwealth

Construction and Public Works

- Act 127-2012 Public Works Employment Verification
- Steel Products Procurement Act - Amendment
- Guaranteed Energy Savings
- Capital Project Planning
- Application for Qualification Projects
- All Public Works Forms
- DGS Design and Construction Documents
- Request For Proposals
- Prison Expansion Projects
- Family Court
- Small Business Design and Construction
- **Construction**
- Engineering & Architecture

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Public Works Employment Verification



The Commonwealth of Pennsylvania enacted Act 127 of 2012, known as the Public Works Employment Verification Act ('the Act') which requires all public work contractors and subcontractors to utilize the Federal Government's E-Verify system to ensure that all employees performing work on public work projects are authorized to work in the United States.

The Department defines a "Public Work" to be construction, reconstruction, demolition, alteration and/or repair work other than maintenance work, done under contract and paid for in whole or in part out of the funds of a public body where the estimated cost of the total project is in excess of twenty-five thousand dollars (\$25,000) but shall not include work performed under a rehabilitation or manpower training program.

The Department of General Services' Public Works Employment Verification Compliance Program is responsible for the administration, education and enforcement of the Public Works Employment Verification Act 127 of 2012. It provides contractors and subcontractors with educational outreach, conducts investigations when complaints are received and random audits to ensure compliance with the requirements of this Act.

Please direct your questions to the Public Works Employment Verification Compliance Office

Mail: Department of General Services Public Works
Employment Verification Compliance Office
3rd Floor Arsenal Bldg.
10th & Union Streets

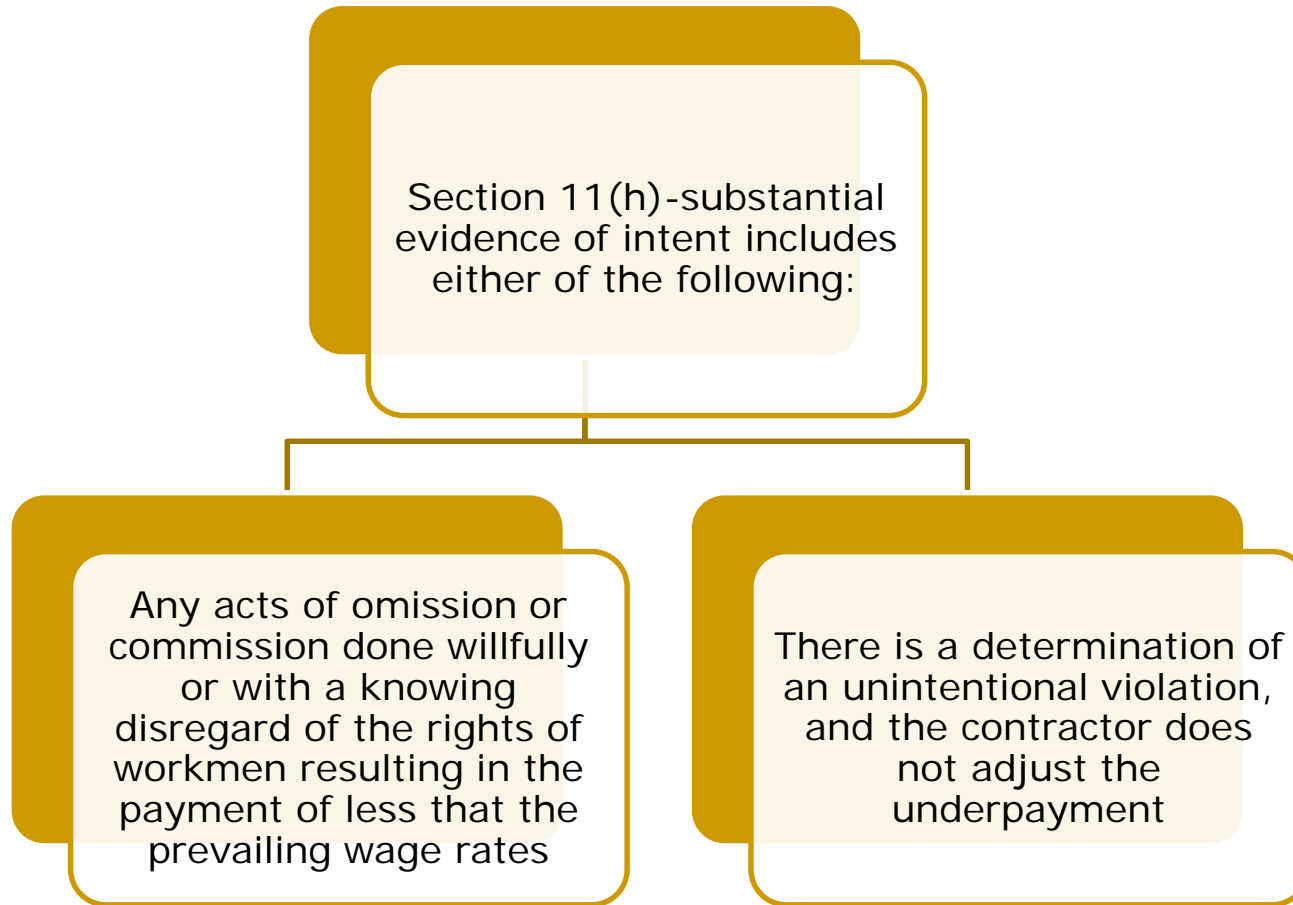
Investigating Violations

- Review certified payrolls
 - Speak with workers
 - Send out audit letter
 - Collect time cards and other relevant pay information
 - Prepare spread sheet
 - Conference with contractor
-

Unintentional Violations

- Rates not obtained by public body and not included in project specifications (*A.R. Scalise*)
- Misclassification where there was no evidence that employer knew of a worker being classified as laborer (*Leonard S. Fiore*)
- Lump sum monthly fringe benefit contributions for both prevailing wage and non-prevailing wage projects resulting in an underpayment of prevailing wages (*Jay R. Reynolds*)

Intentional Violations



Intentional Violations

- Payment based on ratio of laborer to craft time
 - Underreporting hours
 - Misclassifying workers as laborers for performing craft work
 - Violating apprentice to journeyman ratio
 - Improper fringe benefit deduction
 - Failure to report workers on certified pay rolls
 - Requiring kickbacks from workers
-

Evidence of Intentional

- Falsified certified payrolls
 - Timecards and pay statements do not match certified payrolls
 - Workers told to lie to bureau investigators
 - Employer is familiar with the act and its regulations-prior work experience, prior experience with the bureau
-

Legal Ramifications

Unintentional Violation

Contractor has a reasonable opportunity to adjust the underpayment and make payments to the workers

Intentional Violation

Contractor (individual and business) is debarred from performing work on public work for 3 years

Contractor (individual and business) has to pay the workers owed prevailing wages and is liable to the commonwealth for liquidated damages

Falsifying Certified Payrolls

Guilty of a criminal misdemeanor

- Fine not exceeding more than \$2,500 or
- Imprisonment not exceeding five years

QUESTIONS ?

**For further information, visit the
bureau's website at:**

<http://www.dli.state.pa.us>
