

REGULATIONS FOR PENNSYLVANIA PREVAILING WAGE ACT



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF LABOR LAW COMPLIANCE**

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Subchapter E. PREVAILING REGULATIONS

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Authority

The provisions of this Subchapter E issued under act of August 15, 1961 (P.L. 987) (43 P.S. § 165-14), unless otherwise noted.

Source

The provisions of this Subchapter E adopted May 23, 1975, 5 Pa.B. 1347, unless otherwise noted.

Notes of Decisions

The Secretary of Labor and Industry's definition of workers as "electricians" on a public works project, and therefore subjecting their employer to payment of the wages not paid in violation of the Pennsylvania Prevailing Wage Act (43 P.S. §§ 165-1 - 165-17) would not be disturbed as the determination was neither erroneous nor inconsistent with the statute. *Henkels & McCoy, Inc. v. Department of Labor and Industry*, 598 A.2d 1065 (Pa. Cmwlth. 1991).

§ 9.101. Purpose and scope.

(a) Every contract to which the Commonwealth, its political subdivisions, an authority created by the General Assembly of the Commonwealth including authorities created under the Municipality Authorities Act of 1945 (53 P. S. §§ 301 - 401) and instrumentalities or agencies of the Commonwealth is a party, for construction, reconstruction, demolition, alteration or repair work other than maintenance work where the estimated cost of the total project is in excess of \$25,000, which requires or involves the employment by a contractor or subcontractor of laborers, mechanics, skilled and semi-skilled laborers and apprentices in the performance of services directly upon the public work project shall include in its specifications a provision stating the general prevailing minimum wage rates as determined by the Secretary which shall be paid for each craft or classification of workmen needed to perform the contract during the anticipated term thereof in the locality in which the public work is performed.

(b) Every person paid by a contractor or a subcontractor in any manner for his labor in the construction, reconstruction, demolition, alteration 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 except work performed under a rehabilitation program or manpower training programs is "employed" and "receiving wages."

(c) These regulations do not apply to a public works contracts subject to the Walsh-Healey Act (41 U.S.C.A. §§ 35 - 45) or section 1 of the Davis-Bacon Act (40 U.S.C.A. § 276(a)).

(d) Work performed under a rehabilitation program arranged by and at a State institution primarily for teaching and up-grading the skills and employment opportunities of the inmates of the institution is not to be considered public work performed by a public body as defined in the act and this Subchapter.

Notes of Decisions

The court declared the Pennsylvania Prevailing Wage Act (Act) (43 P. S. §§ 165-1 - 165-17) and its accompanying regulations invalid and unenforceable because they were preempted by ERISA where the Act related to ERISA plans regarding fringe benefits. *Keystone Chapter, Assoc. Builders and Contractors, Ind. v. Foley*, 837 F.Supp. 654 (M. D. PA. 1993).

§ 9.102. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Act - The Pennsylvania Prevailing Wage Act (43 P. S. §§ 165-1 - 165-17).

Apprentice - A person employed and working under a bona fide apprenticeship program, directly related to the particular craft involved in the construction industry and registered with an approved by the Pennsylvania Apprenticeship and Training Council and whose training and employment are in full compliance with the provisions of The Apprenticeship and Training Act (43 P. S. §§ 90.1 - 90.10), approved July 14, 1961.

Authorized deduction - Those deductions which are authorized by the Wage Payment and Collection Law (43 P. S. §§ 260.1 - 260.45), approved July 14, 1961 and the Regulations of the Department of Labor and Industry issued pursuant thereto.

Bona fide collective bargaining agreement - The agreement negotiated between the historically established and recognized bargaining representatives for the employers and of the workmen for the particular crafts or classifications involved providing for applicable wage rates, hours of work, working conditions and contributions for employe benefits as defined in "contributions for employe benefits" in this section.

Classification - Specific categories of jobs which are performed within a "craft" as defined in this section. The term includes those specific categories of jobs which are performed by a "workman," as defined in section 2(7) of the act (43 P. S. § 165-2(17)) and this section, and "apprentice," as defined in this section.

Contributions for employe benefits - "Fringe benefits" paid or to be paid, including payment made whether directly or indirectly, to the workmen for sick, disability, death, other than Workmen's Compensation, medical, surgical, hospital, vacation, travel expense, retirement and pension benefits.

Craft - Special skills and trades which are recognized as such by custom and usage in the building and construction industry.

Department - The Department of Labor and Industry of the Commonwealth.

General prevailing minimum wage rates, prevailing wage rates, minimum wage rates and wage rates - Rates as determined by the Secretary, as payable in the locality in which the public work is to be performed, for the respective crafts and classifications, including the amount of contributions for employe benefits as required by the act.

Locality - A political subdivision, or combination of the same, within the county in which the public work is to be performed. When no workmen for which a prevailing minimum wage is to be determined hereunder are employed in the locality, the locality may be extended to include adjoining political

subdivisions where the workmen are employed in those crafts or trades for which there are no workmen employed in the locality as otherwise herein defined.

Maintenance work - The repair of existing facilities when the size, type or extent of the facilities is not thereby changed or increased.

Public body - The Commonwealth of Pennsylvania, its political subdivisions, authorities created by the General Assembly of the Commonwealth and instrumentalities or agencies of the Commonwealth.

Public work - Construction, reconstruction, demolition, alteration 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 \$25,000. The term does not include work performed under a rehabilitation or manpower training program.

Secretary - The Secretary of Labor and Industry or his authorized deputy or representative.

Workman - Includes laborer, mechanic, skilled and semiskilled laborer and apprentices employed by a 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. The term does not include material suppliers or their employees who do not perform services at the job site.

Notes of Decisions

Preemption

The union fund correctly argued that its suit under the Public Works Contractors' Bond Law (8 P. S. § 191 et seq.) was not preempted by Employee Retirement and Income Security Act (ERISA), 29 U.S.C.A. § 1001 et seq., because the Bond Law made no reference to ERISA plans and was not related to employee benefit plans or the enforcement of those plans. Thus, the Union Fund's cause of action against the bond insuring company can survive the company's motion for summary judgment. *Carpenters v. National Union Fire Insurance of Pittsburgh*, 686 A.2d 1373 (Pa. Cmwlth. 1996).

Cross References

This section cited in 34 Pa. Code § 9.105 (relating to determination of classification and general prevailing minimum wage rates).

§ 9.103. Required provisions.

The specifications for every contract for a public work as defined herein shall contain at least the following conditions, provisions and requirements:

(1) The general prevailing minimum wage rates including contributions for employe benefits as determined by the Secretary which shall be paid to the workmen employed in the performance of the contract. The contract shall specifically provide that the contractor shall pay at least the wage rates as determined in the decision of the Secretary of Labor and Industry and shall comply with the conditions of the act approved August 15, 1961, and the regulations issued thereto, to assure the full and proper payment of the rates.

(2) The contract shall contain the stipulation that workmen shall be paid at least the general prevailing minimum wage rates and other provisions to assure payment thereof as set forth in this section.

(3) The contract provisions apply to work performed on the contract by the contractor and to work performed on the contract by subcontractors.

(4) The contractor shall insert in each of his subcontracts the stipulations contained in these required provisions and other stipulations as may be required.

(5) The contract shall provide that no workmen may be employed on the public work except in accordance with the classifications in the decision of the Secretary. If additional or different classifications are necessary the procedure in § 9.107 (relating to petition for review of rates and hearings) shall be followed.

(6) The contract shall provide that workmen employed or working on the public work shall be paid unconditionally, regardless of whether a contractual relationship exists or the nature of a contractual relationship which may be alleged to exist between a contractor, subcontractor and workmen, at least once a week, without deduction or rebate, on any account, either directly or indirectly except authorized deductions, the full amounts due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in the contract, the act or this title prohibits the payment of more than the general prevailing minimum wage rates as determined by the Secretary to a workman on public work.

(7) The contract shall provide that the contractor and each subcontractor shall post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of changes thereof, in a prominent and easily accessible place or places at the site of the work and at the places used by them to pay workmen their wages. The posted notice of wage rates shall contain the following information:

(i) The name of project.

(ii) The name of the public body for which it is being constructed.

(iii) The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage rate determination for the particular project.

(iv) The general prevailing minimum wage rates determined for each craft and classification and the effective date of changes.

(v) A statement advising workmen that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the contractor or subcontractor are not complying with the act or this title, they may file a protest in writing with the Secretary within 3 months of the date of the occurrence, objecting to the payment to a contractor to the extent of the amount due or to become due to them as wages for work performed on the public work project. A workmen paid less than the rate specified in the contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the contract, which right of action shall be exercised within 6 months from the occurrence of the event creating the right.

(8) The contract shall provide that the contractor and subcontractors shall keep an accurate record showing the name, craft or classification, number of hours worked per day and the actual hourly rate of wage paid, including employe benefits, to each workman employed by him in connection with the public work. The record shall include deductions from each workman. The record shall be preserved for 2 years from the date of payment and shall be open at reasonable hours to the inspection of the public body awarding the contract and to the Secretary or his authorized representatives.

(9) The contract shall provide that apprentices shall be limited to numbers in accordance with a bona fide apprenticeship program registered with and approved by The Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with The Apprenticeship and Training Act (43 P. S. §§ 90.1 - 90.10), approved July 14, 1961, and the regulations issued thereto shall be employed on the public work project. A workman using the tools of a craft who does not qualify as an apprentice within this subsection shall be paid the rate predetermined for journeymen in that particular craft or classification.

(10) Wages shall be paid without deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the Secretary has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workmen.

(11) Payment of compensation to workmen for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the act and this subchapter, regardless of the average hourly earnings resulting therefrom.

(12) The contract shall also provide that each contractor and each subcontractor shall file a statement each week and a final statement at the conclusion of the work on the contract with the contracting agency, under oath, and in form satisfactory to the Secretary, certifying that workmen have been paid wages in strict conformity with the provisions of the contract as prescribed by this section or if wages remain unpaid to set forth the amount of wages due and owing to each workman respectively.

(13) The provisions of the act and this subchapter shall be incorporated by reference in the contract.

Cross References

This section cited in 34 Pa. Code § 9.108 (relating to posting of wage rates); and 34 Pa. Code § 9.110 (relating to certification of rate of wage and payment by contractor or subcontractor).

§ 9.104. Duty of the public body.

(a) It is the duty of the public body awarding a contract for public work to request the Secretary for determination of the general prevailing minimum wage rates to be paid workmen on the public work project. The request shall be made on forms issued for the purpose by the Department. A new request for predetermination shall be made if the contract is not awarded within 120 days from the determination date.

(b) It is the duty of the public body to enforce the posting of wage rate determinations in accordance with the provisions of section 9 of the act (43 P. S. § 165-9) and § 9.108 (relating to posting of wage rates). The fiscal officer of the public body, the treasurer or other officer of the public body, charged with the custody and disbursement of the funds of the public body, shall ascertain that the wage rates as determined by the Secretary are paid and that the job classifications are maintained, otherwise it is his duty to hold up final payment and to inform the Secretary of the failure by the contractor or a subcontractor to comply with the act.

Notes of Decisions

Time Limitations

Although the borough awarded the company the contract more than 120 days after the determination of the prevailing minimum wage and although the borough never made a new request for a predetermination, the company waived its right to protest the predetermination by failing to adhere to the 120 day time period. *Linde Enter., Inc. v. Prevailing Wage Appeals Board*, 676 A.2d 310 (Pa. Cmwlth. 1996).

§ 9.105. Determination of classification and general prevailing minimum wage rates.

(a) For the purpose of making a determination of the general prevailing minimum wage rates in the locality in which the public work is to be performed for each craft or classification during the anticipated term of the contract, the Secretary may ascertain and consider the wage rates and employee benefits established by collective bargaining agreements.

(b) If a bona fide collective bargaining agreement has expired by the terms thereof, the Secretary may ascertain and consider the wage rates and employee benefits established thereby until a new bona fide collective bargaining agreement, as defined in § 9.102 (relating to definitions), has been executed.

(c) The Secretary may also consider the following:

(1) Information obtained from Federal agencies charged with the administration of labor standards provisions of Federal acts applicable to contracts covering contractors and subcontractors on public building and public work and on building and work financed in whole or in part by loans and grants of the United States, within the locality.

(2) The number of skilled, competent and experienced workmen within the locality who are generally available for employment on public work.

(3) Statements signed and certified by contractors and subcontractors and union representatives showing wage rates paid on projects, within the locality. These statements to be relevant to a wage determination shall indicate the names and addresses of the contractors, including the subcontractors, the locations, approximate cost, dates of construction and type of projects, the number of workmen employed and the number of man hours worked in each craft or classification on each project and the respective wage rates paid the workmen, which wage rates shall consist only of rates paid for services performed solely within the classification for which it is submitted.

(4) Other information pertinent to the determination of prevailing minimum wage rates.

(d) The Secretary will conduct a continuing program for obtaining and compiling of wage rate information and shall encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to workmen in the various types of construction in the locality. Rates shall be determined for varying types of projects within the entire range of work performed by the building and construction industry. Information submitted shall reflect not only the specified wage rate or rates paid to a particular craft in the locality but also the type or types of construction on which the wage rate or rates have been paid. If the Secretary deems that the data at hand is insufficient to make a determination with respect to the crafts or classifications necessary to perform the proposed public work, he may have a field survey conducted by his staff representative for the purpose of obtaining additional information upon which to make a determination of the wage rates, and also the customs, usages and practices as to the type of work to which the wage rates apply and the size of available force of qualified workmen within the locality in which the public work is to be performed.

Notes of Decisions

Granting authority to the Secretary to consider fringe benefits determined by collective bargaining when he is making prevailing wage determinations is not an unconstitutional denial of equal protection to nonunion contractors and employees, since he is not required to make his determination solely on the basis of rates in collective bargaining. *Keystone Chapter of Associated Builders and Contractors, Inc. v. Department of Labor and Industry*, 414 A.2d 1129 (Pa. Cmwlth. 1980).

If the parties introduce exhibits which in some way do not comply with the standards of 34 Pa. Code § 9.105(c)(3), the Secretary may give more weight to evidence which includes fringe benefits and projects of every nature and which clearly demonstrates prevailing wage rates for the year in question rather to evidence which does not include fringe benefits, excludes public works projects and some major private projects, and lumps together wage rates from previous years to establish current wage rates. *Keystone Chapter of Associated Builders and Contractors, Inc. v. Department of Labor and Industry*, 414 A.2d 1129 (Pa. Cmwlth. 1980).

§ 9.106. Payment of general prevailing minimum wage rates.

(a) Not less than the general prevailing minimum wage rates determined by the Secretary under the act and this subchapter may be paid unconditionally, by contractors and subcontractors to workmen in their

respective crafts and classifications on public work and the workmen can not be required to refund, directly or indirectly, part of the wages. It is no defense that workmen accepted or agreed to accept less than the required rate of wages or voluntarily made refunds, in any form or manner.

(b) Wages shall be paid without deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the Secretary has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workmen.

(c) Payment of compensation to workmen for work performed on public work on a lump sum basis or a piece work system or a price certain for the completion of certain amount of work or the production of a certain result shall be deemed a violation of the act and this subchapter, regardless of the average hourly earnings resulting therefrom.

§ 9.107. Petition for review of rates and hearings.

(a) A prospective bidder or his representative, a representative of a group of employers engaged in the particular type of construction, reconstruction, demolition, alteration or repair work, a representative of a craft or classification of workmen or the public body affected by the determination made by the Secretary, may on verified petition request a review of this determination in accordance with the procedures required by section 8 of the act (43 P. S. § 165-8).

(b) The Secretary will, after notice and hearing as prescribed by section 8 of the act, make a final determination of the general prevailing minimum wage rates to be paid to workmen on the public work project. The public body when notified by the Secretary that a verified petition has been filed shall extend the closing date for the submission of bids until 5 days after the Secretary's final determination. Within 10 days after hearing the Secretary will make a determination and transmit it in writing to the public body and to the interested parties. This determination shall be final unless within 10 days an appeal is filed with the Appeals Board.

(c) If, after a contract has been awarded, it is deemed advisable by the public body because of unforeseen construction development to list an additional classification and wage rate therefor the public body shall request, in writing, a determination thereof by the Secretary. A copy of this request shall be given to interested parties and shall also be posted at an appropriate place at the site of the public work project. The Secretary will thereupon give consideration to the request and if he determines that the additional classification requested is necessary, he will determine the classification and wage rate therefor and notify the interested parties of his determination, which shall be effective as of the date on which it is made. Additional classifications shall be made in conformity with this procedure.

Cross References

This section cited in 34 Pa. Code § 9.103 (relating to required provisions).

§ 9.108. Posting of wage rates.

The contractors and subcontractors on the public work project shall post a notice or notices in the manner and form prescribed by § 9.103 (relating to required provisions). This notice is to be clearly legible and placed in a prominent and easily accessible place at the site of the public work project and at places used by them to pay workmen their wages.

Cross References

This section cited in 34 Pa. Code § 9.104 (relating to duty of the public body).

§ 9.109. Records and inspection.

The accurate record of employment and wage payments required to be kept and preserved by contractors and subcontractors on public work shall include at least the following information:

(1) The name, address and social security number of each workman.

(2) The craft, if applicable, the classification within each craft, and any other classification including apprenticeship, at which the workman worked. These records shall show the number of hours in each day, specified by actual calendar date, during which each workman worked and if he worked in more than one craft or classification for which different rates were payable the records shall show the number of hours in each day as aforesaid in which he worked at the different crafts or classifications. Time cards of employes shall be kept and preserved as records required by the act and this subchapter. In addition, the original signed indentures for each apprentice and the approvals of the Pennsylvania Apprenticeship and Training Council shall be kept. The records shall be preserved for 2 years from date of payment and shall be open at all reasonable hours for inspection by the public body awarding the contract and by the Secretary, and shall be made easily accessible within this Commonwealth within a period of 7 days from the date on which the Secretary requests in writing that these records be made so available.

§ 9.110. Certification of rate of wage and payment by contractor or subcontractor.

(a) It is the duty of the treasurer or other officer charged with the custody and disbursement of public funds applicable to the public work contract under and pursuant to which payment is made, to require the contractor and subcontractor to file a statement each week and a final statement at the conclusion of the work on the contract with the contracting agency under oath in form satisfactory to the Secretary certifying that workmen have been paid wages in strict conformity with the contract as prescribed by § 9.103(7) (relating to required provisions) or if wages remain unpaid to set forth the amount of wages due and owing to each workman respectively.

(b) It is the duty of the treasurer or other officer charged with the custody and disbursement of public funds to withhold the amount of wages unpaid or not paid in accordance with § 9.103 for the benefit of the workman whose wages have not been paid by the contractor and he may pay directly to a workman the amount shown to be due him. Each contractor and subcontractor shall also certify that he is not receiving or requiring, or will not receive or require, directly or indirectly, from a workman a refund of the minimum wage.

(c) A contractor or subcontractor who shall, under oath, verify the statements required to be filed under section 10 of the act (43 P. S. § 165-10) which are known to him to be false, shall be guilty of a misdemeanor, and shall, upon conviction, be sentenced to pay a fine of not exceeding \$2,500 or to undergo imprisonment not exceeding 5 years, or both.

§ 9.111. Remedies and penalties.

(a) It is the duty of the Secretary where a timely protest has been filed by a workman that he has been paid less than the general prevailing minimum wage rate, to investigate the matter and determine whether or not there has been a failure to pay the general prevailing minimum wage rate and whether this failure was intentional or otherwise. The Secretary will hold appropriate hearings upon due notice to interested parties including the workman, the employer and their respective representatives, if any. If the Secretary, after hearing, has determined that the failure to pay the general prevailing minimum wage rate was not intentional he shall afford the person or firm a reasonable opportunity to adjust the matter by making payment to the workmen or providing adequate security to insure payment. If the Secretary determines that the failure to pay the general prevailing minimum wage rates intentional, he will thereupon notify the public bodies of the names of the persons or firms and no contract may be awarded to the person or firms or to a firm, corporation or partnership in which the person or firms have an interest until 3 years have elapsed from the date of the notice to the public bodies. The Secretary may, in addition thereto, request the Attorney General to proceed to recover the penalties for the Commonwealth of Pennsylvania which are payable under section 11(f) of the act (43 P. S. 16511(f)).

(b) The following constitutes substantial evidence of intentional failure to pay prevailing wage rates:

(1) Acts of omission or commission done willfully or with a knowing disregard of the rights of workmen resulting in the payment of less than prevailing wage rates.

(2) If the Secretary has made a finding that a person or firm has failed to pay the general prevailing minimum wage rate as determined by the Secretary in accordance with the act, and thereafter a person or firm continues to fail to pay the prevailing wages or a person or firm fails to comply with an opportunity to adjust differences which shall be afforded him by the Secretary.

(c) If the Secretary has determined that a person or firm has failed to pay the prevailing wages under section 11(e) and (f) of the act (43 P. S. § 165(e) and 165(f)), he may direct the public body to terminate, and the public body may terminate, the contractor's right to proceed with the public work.

Notes of Decisions

Statute of Limitations

There is no language in this regulation which provides for a statute of limitations applicable to the Department of Labor and Industry's initiation of enforcement actions for underpayment of workers. *Linde Enter., Inc. v. Prevailing Wage Appeals Board*, 676 A.2d 310 (Pa. Cmwlth. 1996).

§ 9.112. Workmen's rights.

(a) A workman who has been paid less than the general prevailing minimum wage rate for his job classification as specified in the contract or who has not been paid, may file a protest, in writing with the Secretary within 3 months of the date of the occurrence, objecting to the payment to a contractor to the extent of the amount due or to become due to him as wages for work performed on the public work project. If the formal protest is filed with the Secretary, it is the duty of the Secretary to direct the fiscal or financial officer of the public body or the person charged with the custody of the disbursement of the funds of the public body, to deduct the money so due and owing from the whole amount or of any payment due the contractor.

(b) Any workmen paid less than the rates specified in the contract shall have a right of action for the difference between the wage paid and the wages stipulated in the contract, which right of action must be exercised within 6 months from the occurrence of the event creating the right.

Notes of Decisions

Statute of Limitations

There is no language in this regulation which provides for a statute of limitations applicable to the Department of Labor and Industry's initiation of enforcement actions for underpayment of workers. *Linde Enter., Inc. v. Prevailing Wage Appeals Board*, 676 A.2d 310 (Pa. Cmwlth. 1996).