

**New Developments In Prevailing Wage**

by Susan M. Zeamer, Esq.

“Prevailing Wage” – this two-word phrase can raise a range of emotions...all in the same person, and all at the same time. Prevailing wage can mean available work, when otherwise there aren’t many jobs to bid; and it can mean work for an “owner” you often do not have to chase for payment. Prevailing wage, however, also has negative connotations, particularly for merit shop contractors and subcontractors. Often, it is a phrase that the general public might not even recognize, and that folks in the industry may not even understand well. One way to combat fear of the unknown is to, well, make it a little less “unknown”. While this article is too brief to provide all you need to know about prevailing wage, I will take this opportunity to update you on some of its more recent developments.

One of the more confusing aspects of Pennsylvania’s Prevailing Wage Act (“the Act”) can be that, while in many ways it is similar to the federal version known as the Davis-Bacon Act, it also has its differences. In a recent opinion issued by Labor & Industry’s legal counsel, however, one of these differences has been eliminated. Generally speaking, under the Davis-Bacon Act, contractors were permitted to fulfill prevailing wage requirements through a combination of the pay provided and the fringe benefit. Until recently, the same was not true in PA. In the past, PA required a mandatory cash base, or minimum. The fringe benefit could then be paid in either cash or benefit. PA has now softened its stance on this issue, falling into step with the federal counterpart. PA has removed the requirement of a minimum cash base and now permits contractors to pay its workers’ prevailing wage rate by cash or “bona-fide” fringe benefit contributions. One caveat is that Labor & Industry’s Bureau of Labor Law Compliance will not credit contractors for payments made to a fringe benefit program that greatly exceed the predetermined amount for fringe benefits.

Additionally, under both state and federal law, a contractor may substitute cash in place of fringe benefits. One thing that PA contractors need to be aware of, however, if opting for cash payments in lieu of some or all of the fringe is the affect this practice has on overtime requirements. Generally speaking, if you opt to pay your workers in cash instead of all or some of the fringe benefits on prevailing wage jobs in PA, you will be required to pay your workers overtime on all cash payments. In affect, you have raised your workers’ rate of pay. For example, and using generic numbers for ease in demonstration, if your workers’ rate of pay is \$20/hr with fringe benefits of \$5/hr and you elect to pay the fringe in cash as opposed to benefits, you have affectively raised your workers’ rate of pay to \$25/hr. Any overtime then, in this example, would be paid at a rate of \$37.50/hr. In this regard, by electing to pay cash in place of fringe benefits, you may be increasing your costs on the project.

There are many other aspects of the Act that you should be familiar with if and when you are doing public works. I hope this is a good starting point, however. Should you have any questions on these examples, or the Act in general, you may contact the Keystone Chapter, your counsel or, should you not have one, our office.