



# Pennsylvania's Prevailing Wage Act

43 P.S. § 165-1 *et seq.*

34 Pa. Code § 9.101 *et seq.*

*This presentation is intended as  
general information only and does  
not carry the force of a legal opinion.*





# Program

- Pennsylvania Prevailing Wage Act Basics:
  - Public Work.
  - Agencies
  - Wage Rates and Appeals.
  - Classifications.
  - Workers.
  - Public Financing
  - Projects
- Exclusions:
  - Maintenance Work.
  - Other Excluded Work
  - Workers not covered.
- Opinions and Grievances
- Public Body Duties
- Contactor/Subcontractor Duties
- Employee Duties
- Deductions
- Overtime.
- Enforcement
- Intentional and Unintentional Violations





# Pennsylvania Prevailing Wage Act

Pennsylvania Prevailing Wage Act requires that prevailing wages are required for a *public work*.

A *public work* project is comprised of all of the following:

- Construction, reconstruction, demolition, alteration and/or repair work other than maintenance work;
- Done under contract;
- Paid for in whole or in part out of the funds of a public body; and,
- The project's *estimated* total cost is over \$25,000.
  - A project may not be divided into components or separate projects to fall below the \$25,000 threshold.

Pennsylvania prevailing wages are required for a *public work* even if these were not in the bid specifications or contracts or construction commenced or was completed.

Contractors may exceed prevailing wage rates.





# Public Financing

- Payment of Pennsylvania prevailing wages is unconditionally required if the work is financed *in whole or in part* with public funds or payment by a public body.
  - For example, a private developer receiving any public financing for a commercial project is required to pay Pennsylvania prevailing wages.
  - The project's total cost, not the amount of the public financing, determines whether Pennsylvania prevailing wages are required.
  - The public body does not have to be a party to the contract under this financing.
- Prevailing wages may be required if a private entity is performing work on a public body's behalf including acting as the public body's instrumentality or *alter ego*.



# ENFORCEMENT



## Labor & Industry

- **Determines prevailing wage rates and job classifications.**
- **Investigates complaints and alleged violations.**
- **Engages in routine inspections.**
- **Renders coverage opinions.**
- **Prosecutes intentional and unintentional violations of the Act.**

## Public Bodies

- **Must include PA prevailing wages in bid specifications.**
- **Assure that contractors and subcontractors are paying prevailing wages and complying with the Act.**
- **Require the submission of certified payrolls from contractors and subcontractors on public works projects.**
- **Public Bodies include:**
  - Commonwealth government and agencies.
  - Any authority created by the Pennsylvania General Assembly.
  - A Commonwealth instrumentality.
  - State university and state-related university.
  - Pennsylvania political subdivision including the following:
    - County.
    - City.
    - Borough.
    - Incorporated town.
    - Township.
    - School district.
    - Vocational school district.
    - County institution.





## Pennsylvania Prevailing Wage Rates



- Prevailing wage rates are determined by the Bureau for the *actual work performed* based upon the workers' job classification and the locality (county) of the work being performed.
- Classifications are based upon the custom and usage in the county where the work is being performed.
- Rates are based upon collective bargaining agreements and other data for the craft and classification in the county where work on the public works project is being performed.
- The prevailing wage rate may include the cash paid and fringe benefits provided to the worker. See "Notes as Referenced in Predeterminations:"  
<https://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/prevailing-wage/Pages/Quick-Links.aspx>
- Payment of wages by lump sum or piece rate violates the Prevailing Wage Act.



# Prevailing Wage Rate Types

## BUILDING

Construction of sheltered enclosure with a walk-in access for housing people, equipment or supplies and includes utility installation, equipment and incidental grading and paving. The structure does not have to be habitable.

## HIGHWAY

Includes the construction, alteration or repair of roads, streets, highways, taxiways, alleys, trails, paths, parking areas and other projects which are not incidental to building or highway construction.

## HEAVY

Projects that may not be classified as building, highway or residential. Examples include:

- Antenna towers.
- Bridges.
- Dams.
- Demolition that is not necessary for building construction.
- Pipeline installation.
- Subways.
- Sewage installation not necessary for building.

## RESIDENTIAL

Includes detached single-family home, single unit in condominium, unit in duplex and a single townhouse





**Modified Date:** 9/16/2022  
**Project Name:** Unserved High Speed Broadband (UHSB) Award to Comcast to extend broadband service in Franklin Co (Metal and Peters Twp)  
**Awarding Agency:** Commonwealth Financing Authority (CFA)  
**Contract Award Date:** 3/22/2022  
**Serial Number:** 22-07404  
**Project Classification:** Heavy/Highway  
**Determination Date:** 9/7/2022  
**County:** Franklin  
**Assigned Field Office:** Harrisburg  
**Field Office Phone Number:** (717)787-4763  
**Toll Free Phone Number:** (800)932-0665

Building

Find:

Search returned 131 record(s)

Contractor Craft	Hourly Rate	Fringe Benefits	Total	Effective Date	Expiration Date
Asbestos & Insulation Workers	\$35.80	\$28.26	\$64.06	06/28/2021	
Asbestos & Insulation Workers	\$35.80	\$30.01	\$65.81	07/27/2022	
Asbestos & Insulation Workers	\$35.80	\$32.01	\$67.81	06/26/2023	
Asbestos & Insulation Workers	\$35.80	\$34.06	\$69.86	07/01/2024	
Boilermakers	\$49.32	\$34.90	\$84.22	01/01/2021	
Boilermakers	\$50.17	\$35.30	\$85.47	01/01/2022	
Bricklayer (Pointer, Cleaner, Caulker, Cement Mason, Plasterer, Tile Setter)	\$36.37	\$18.18	\$54.55	05/01/2022	
Bricklayers, Stone Masons, Pointers, Caulkers, Cleaners	\$34.62	\$17.78	\$52.40	05/01/2021	
Bricklayers, Stone Masons, Pointers, Caulkers, Cleaners	\$36.37	\$18.18	\$54.55	05/01/2022	
Bricklayers, Stone Masons, Pointers,	\$38.27	\$18.18	\$56.45	04/30/2023	

## Issuance of Prevailing Wage Rates

- Bureau of Labor Law Compliance issues prevailing wage rates for each project. These are contained on the Bureau's website:

<https://www.dli.pa.gov/Individuals/Labor-Management-Relations/lmc/prevailing-wage/Pages/Prevailing-Wage-App.aspx>

- The Pennsylvania prevailing wage rates must be contained in the bid specifications and contracts for a public works project.





# Prevailing Wage Rate Challenges

## Section 8 (43 P.S. § 165-8)

- An interested party, defined in the Prevailing Wage Act, may file a petition and seek a hearing challenging a rate determination within 10 days from the publication and issuance of the specifications for the contract for a specific project.
- Party challenging the prevailing wage rate has the evidentiary and legal burden of establishing alternative rates at an expedited hearing.
- Hearing decision may be appealed to Prevailing Wage Appeals Board.





# Workers Entitled to Prevailing Wages

**A worker includes a laborer, mechanic, skilled and semi-skilled laborer, and apprentices employed by any contractor or subcontractor engaged in the performance of duties directly upon the public works site regardless of whether the work becomes a component part of the project.**

Examples of *workers* include:

- Apprentices registered with the Pennsylvania Apprenticeship and Training Council.
  - Must be paid percentage of prevailing wage according to approved program standards..
  - There must be proper ratio of journeypersons to apprentices working on the project.
- Workers performing testing and balancing of air handling, alarm, cable, and other systems.
- Surveyors.
- Truck drivers hauling materials around a jobsite and from an adjacent borrow pit to the jobsite.
- Individuals engaged in on-site engineering, testing or inspection work on a public works project occurring during construction or which is an integral part of the construction that is necessary for its completion. (Classified according to the prevailing wage classifications related to these services).





# Project

- A project may not be divided into components or separate projects to fall below the \$25,000 threshold.
- Prevailing wages may govern a stage or stages of a multi-phase construction project that constitute separate projects.
  - There must be major, commonly-appreciated construction milestones such as the completion of site preparation or completion of a commercial building's shell.
  - *But artificial construction phasing bearing no independent business justification to evade prevailing wage requirements is prohibited.*
- The Bureau of Labor Law Compliance should review these projects for prevailing wage requirements.





# Opinions and Grievances

## Bureau Opinions

- Upon request, the Bureau of Labor Law Compliance will issue opinion letters on prevailing wage coverage and requirements.
- Issues include whether a project is a public work, whether work is excluded maintenance, or whether there are separate projects.

## Prevailing Wage Appeals Board

- An interested party may file a grievance with the Prevailing Wage Appeals Board seeking review of a Bureau opinion.
  - The Board also reviews section 8 rate proceedings and adjudications on violations.
- The 7-member Board is comprised of an attorney representing Labor & Industry, a public representative, public body representative union representatives, contractor associations.
- Board procedures and forms are contained at 34 Pa. Code §§ 213.1-213.10

## Appellate Court Review

- Parties may appeal Board decisions to Commonwealth Court.

**BEFORE THE PENNSYLVANIA PREVAILING  
WAGE APPEALS BOARD  
COMMONWEALTH OF PENNSYLVANIA**

IN RE: (Name and Address:  
of Grievant)

: \_\_\_\_\_  
: (Project Serial # )  
: \_\_\_\_\_  
: (Project Name)  
: \_\_\_\_\_  
: (Contracting Public  
: Body)

# Exclusions



- **Projects where the U.S. Government requires Federal prevailing wages for the project and its cost exceeds \$2,000.**
- **Maintenance work. (To be Discussed).**
- **Work performed under a rehabilitation or manpower training program.**
  - **Work performed under a rehabilitation program is work arranged by and at a Pennsylvania State institution primarily for teaching and upgrading the skills and employment opportunities of that institution's inmates.**
- **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.**





# More Exclusions

- Construction financed by tax abatements if no public financing is used. This exception does not apply if the language specifically creating the tax abatement requires the payment of prevailing wages.
- Off-site work.
- Material suppliers who do not perform services at the job site.
- Public body employees.
- Furniture assembly if the furniture is not installed, incorporated, or attached to the structure.
- Supervisory work if the supervisor does not use any tools or equipment.





# Maintenance Work (Excluded from Prevailing Wages)

## ***Maintenance work:***

- The repair of existing facilities when the size, type or extent of the facilities is not changed.
- Maintenance work also occurs when a facility, once in usable condition, was restored to that condition by being *partially* overhauled or patched.
- **Examples:**
  - Minor sewer repairs performed under an annual “find and fix”-style contract.
  - Filling individual potholes.
  - Replacing bulbs on streetlights.





# Not Maintenance (Requires Prevailing Wages)

Reconstruction and replacement in kind is *not* excluded as maintenance and requires Pennsylvania prevailing wages.

Work requiring prevailing wages includes reconstruction which is defined as “to construct again; to rebuild; to form again or anew.”

Maintenance work *does not* include facilities that are enlarged or altered according to industry standards.

The following are examples of work that requires Pennsylvania prevailing wages which is **not** *maintenance work*:

- In-kind sidewalk replacement.
- Telecommunication wiring using existing conduits.
- Roof replacement.
- Road milling and replacement.
- Repair and rehabilitation of manholes.
- Painting other than covering up minor imperfections.







## Public Bodies' Duties

- **Request Pennsylvania prevailing rates for the project from the Bureau of Labor Law Compliance. A new request must be made if the contract is not awarded within 120 days from the determination date. Requests may be accessed:**
  - <https://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/prevailing-wage/Pages/Prevailing-Wage-App.aspx>
- **Submit the Prevailing Wage Awarding Agency Form to the Bureau within 5 days from the date of award of contracts. This form may be accessed:**
  - <https://www.dli.pa.gov/Individuals/Labor-Management-Relations/Documents/LLC-68.pdf>

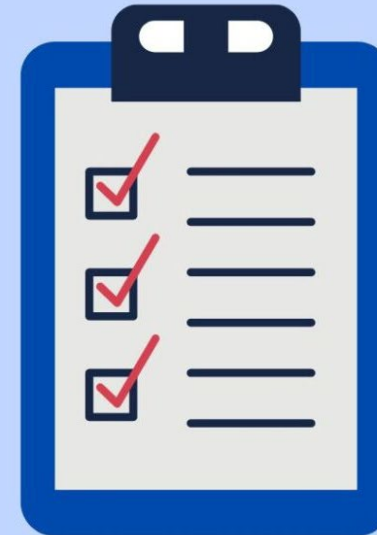




## More Public Bodies' Duties

- Place the PA prevailing wage rates in the specifications and the notice for securing bids for every public works project.
- Incorporate the PA prevailing wage rates issued by the Bureau of Labor Law Compliance for the project into the contract. The contract shall also contain the information specified in the Regulations, 34 Pa. Code § 9.103.
- Enforce the posting of PA prevailing wage determinations at the public works project.
- Require the weekly filing of certified payrolls from contractors and subcontractors.
- Assure that the Bureau's prevailing wage rates were paid on the public works project and that the job classifications were maintained before payment is made to the contractor and/or a subcontractor.
- Inform Bureau if the contractor or subcontractor fails to pay the PA prevailing wage rates for the correct classifications.
- *Public bodies must fulfill these duties even if construction already commenced and PA prevailing wages were not contained in the bid specification and contracts.*

## Request for Proposals






# Certified Payrolls

- All contractors and subcontractors must file certified payrolls with the public body.
- The certified payrolls must contain all workers that are working on the public works project
- Owners working on project must be listed.
- **Labor Law Compliance has an approved certified payroll form:**  
<https://www.dli.pa.gov/Individuals/Labor-Management-Relations/Documents/llc-25.pd>
- Certified records filed with a public body are a *public record* subject to inspection under Right-to-Know Law
  - If the public body no longer has the certified payrolls, it should obtain them from the contractor.

UNIVERSITY CITY OF PHILADELPHIA - UNIVERSITY CITY PROJECT

Contractor or  Subcontractor (Please check one) ALL INFORMATION MUST BE COMPLETED

CONTRACTOR		SUBCONTRACTOR		 DEPARTMENT OF <b>LABOR &amp; INDUSTRY</b> <small>UNIVERSITY CITY OF PHILADELPHIA</small> BUREAU OF LABOR LAW COMPLIANCE PREVAILING WAGE DIVISION 7TH & FORSTER STREETS HARRISBURG, PA 17120 1-800-953-6665	
ADDRESS		ADDRESS			
PAYROLL NUMBER	WEEK ENDING DATE	PROJECT AND LOCATION			
		PROJECT SERIAL #	PROJECT #		

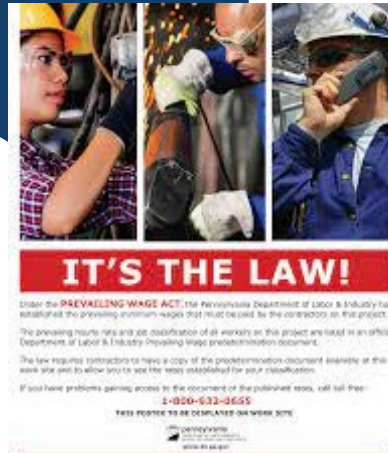
EMPLOYEE NAME	APPR. RATE (%)	WORK CLASSIFICATION	DAY AND DATE							S-TIME 0- TIME	BASE HOURLY RATE	TOTAL FRINGE BENEFITS (C=Cash) (FB=Contributions)*	TOTAL DEDUCTIONS	GROSS PAY FOR PREVAILING RATE JOB(S)	CHECK #
												C: FB:			
												C: FB:			
												C: FB:			
												C: FB:			
												C: FB:			
												C: FB:			



# Contractor and Subcontractor Duties

## Pay Prevailing Wages

Unconditionally pay Pennsylvania prevailing wages, except for authorized deductions, to all its workers on the project for their actual trade, craft and classification.



## Mandatory Postings

- Post Pennsylvania prevailing wage rates for the public works project in an accessible location for the duration of the construction.
- The posting shall also contain the information listed in Labor & Industry's regulations, 34 Pa. Code § 9.103(7) pertaining to required wage determinations for public work contracts.



# Contractor and Subcontractor Duties (Records)

- **Maintain the following records:**
  - **Accurate records showing each worker's name, craft or classification, number of hours worked each day, hourly wage rate including employee benefits, deductions to each worker on the public works project.**
  - **Accurate and complete records of fringe benefits and deductions.**
  - **Timecards for all workers.**
  - **Signed indentures for each apprentice and approvals of the Pennsylvania Apprenticeship and Training Council.**
- **Complete and submit weekly certified payrolls to the public body. Falsification of certified payrolls may be prosecuted as a criminal offense in Pennsylvania.**
- **Keep all required records for at least 2 years and provide access to these records to the Bureau of Labor Law Compliance and the public body that awarded the contract at reasonable hours.**



# Fringe Benefits



Contractors and subcontractors must pay workers the prevailing wage rate for all hours worked on a public works project in cash or take credit for *bona fide* fringe benefit contributions or legitimate authorized deductions.

Contractors or subcontractors may claim credit for contributions made to a *bona fide* fringe benefit program.

The Bureau of Labor Law Compliance will also recognize certain authorized deductions as bona fide fringe benefits that are provided solely for the workers' benefit and convenience, and which were previously authorized in writing by the worker.

*Bona fide* fringe benefits include:

- Health insurance.
- Vacation.
- Certain travel expenses (reimbursement but not charging for transportation).
- Retirement funds.
- Fringe benefits where the Bureau certifies that the contributions are actually being paid to a *bona fide* fringe benefit program that is for the worker's exclusive benefit.





## Unintentional Violation

**A contractor or subcontractor which unintentionally violated the Pennsylvania Prevailing Wage Act has the opportunity to pay the prevailing wages owed to its workers (e.g. the public body did not request prevailing wages and work commenced on the construction).**

**Failure to correct these underpayments may constitute an intentional violation of the Prevailing Wage Act.**





# Authorized Deductions

- Contractors and subcontractors may claim *authorized deductions that are for the convenience of employees* allowed by Pennsylvania's Wage Payment and Collection Law and regulations (34 Pa. Code § 9.1).
- Examples of other authorized deductions include the following if these are authorized in writing by the employee and solely for the worker's benefit:
  - Payment into worker's personal savings account or Christmas club at a credit union, bank, or the purchase of United States Government bonds.
  - Contributions for charitable purposes.
  - Repayment to the employer of *bona fide* loans.
  - Purchases for goods, wares, merchandise, services, rent or similar items from the employer or third parties.
- The regulations containing authorized deductions are located at: <https://www.dli.pa.gov/laws-regs/regulations/Pages/Wage-Payment-and-Collection-Law.aspx>.







# Unauthorized Deductions

*Unauthorized* fringe benefits or deductions include:

- *Per diem* payments.
- Motel room expenses.
- Employer funded events, such as parties and picnics.
- Providing transportation to the job site.
- Costs of obtaining clearances required by law.
- Tool rental.
- Safety fines.
- Clothing and hats with company logos.
- Company-provided meals.
- Holiday bonuses.

## Deductions Not Requiring Worker Authorization

These Include:

- Amounts deducted to comply with a court order.
- Administrative fees for processing garnishments (up to statutory limit).
- Pension administrative fees charged by outside firms.





# Overtime Requirements

Pennsylvania's Minimum Wage Act requires overtime for work exceeding 40 hours per workweek. That rate should be calculated at 1½ times the hourly prevailing wage rate issued by the Bureau of Labor Law Compliance for the public works project.



# Contractor and Subcontractor Violations



## Unintentional

**Failure to pay prevailing wages that was unintentional.**

**For example, an unintentional violation may occur where the public body did not request prevailing wages and work commenced on the construction.**

## Intentional

**Any act of omission or commission done willfully or with a knowing disregard of the rights of workers resulting in payment of less than the prevailing wage rates; or,**

**Failure to correct underpayments to workers after Labor & Industry found that the contractor committed an unintentional violation of the Pennsylvania Prevailing Wage Act.**

**Being oblivious to the obvious or looking the other way when violations are being committed.**

**A contractor's or subcontractor's ability to pay is not a defense to an intentional violation.**



# Intentional Violation Examples

- False certification of payment of prevailing wages.
- Advising workers to lie to Labor & Industry investigators.
- Failure to provide requested payroll information to Labor & Industry investigators.
- Using preset ratios of craft and laborer work instead of paying workers for the actual work performed.
- Paying workers at a lower rate in a contractor's training program that was not a program registered with the Pennsylvania Apprenticeship and Training Council.
- Failure to keep required records.
- Requiring workers to under-report craft time.
- Misclassification of workers to avoid paying higher prevailing wage rate.
- Secret payment of cash supplements instead of the full prevailing wage with tax deductions.
- Requiring workers to endorse blank checks to make it appear as if some workers received prevailing wages.





# Intentional Violation Penalties

May be levied against contractors and subcontractors  
and a person, firm, corporate officer or partnership

<b>Debarment</b>	<b>Payment</b>	<b>Referral</b>	<b>Termination</b>	<b>Criminal</b>
<p>Contractor or subcontractor must be debarred from public works projects for 3 years during which the contractor or subcontractor may not be awarded public works contracts for that time.</p>	<p>Contractor or subcontractor must pay prevailing wages owed to workers.</p>	<p>Referral may be made to the Pennsylvania Office of Attorney General to seek liquidated damages.</p>	<p>Labor &amp; Industry may direct the public body to terminate the contractor or subcontractor from continuing to work on the public works project.</p>	<p>There may also be criminal penalties if the contractor or subcontractor committed fraud or misrepresented records required under the Prevailing Wage Act.</p>



# Proceedings

## Intentional and Unintentional Violations

- Contractors and subcontractors have the right to a stenographically-recorded administrative hearing before a neutral hearing examiner to contest these allegations.
- Each party may present testimony and documents and engage in direct and cross-examination of witnesses. Bureau of Labor Law Compliance bears the burden of proof.
- Labor & Industry's adjudication and order may be appealed to the Prevailing Wage Appeals Board and then to Commonwealth Court.
- The Bureau and the contractor or subcontractor are parties to these proceedings. Other parties may seek permission to intervene.

## Worker Protest

- Workers may file a written protest alleging underpayment of prevailing wages on a public works project.
- If the protest is timely filed within 3 months of the alleged underpayment, the Bureau will investigate the claim and provide the protesting worker with the opportunity to request a hearing.
- This hearing has less formalities than other hearings under the Prevailing Wage Act.





## Bureau of Labor Law Compliance Website:

<https://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/prevaling-wage/Pages/default.aspx>

Contains prevailing wage information and forms including:

- Pennsylvania Prevailing Wage Act and Regulations.
- Certified Payroll forms.
- On-line prevailing wage application and rate search.
- On-line prevailing wage determination request and rate submittal forms.
- Frequently Asked Questions.
- Complaint forms.
- Mandatory workplace poster.
- Worker classification notes as referenced in predeterminations.
- Debarment and Settlement List.

Other laws and information on Pennsylvania's labor standards is accessible.

# Pennsylvania Department of Labor & Industry, Bureau of Labor Law Compliance:



## **Altoona Regional Office:**

1130 Twelfth Avenue, Suite 200  
Altoona, PA 16601-3486  
Telephone: 1-877-792-3486 or 814-940-6225

## **Harrisburg Regional Office:**

1301 L&I Building  
651 Boas Street  
Harrisburg, PA 17120-0019  
Telephone: 717-787-4671 or 1-800-932-0665

## **Philadelphia Regional Office:**

110 North 8th Street, Suite 203  
Philadelphia, PA 19130-4064  
Telephone: 215-560-1858

## **Pittsburgh Regional Office:**

301 5th Avenue  
Room 350  
Pittsburgh, PA 15222  
Telephone: 1-877-504-8354 or 412-565-5300

## **Scranton Regional Office:**

201-B State Office Building  
100 Lackawanna Avenue  
Scranton, PA 18503-1923  
Telephone: 570-963-4577 or 1-877-214-3962

