



PREVAILING WAGE FOR CONTRACTORS

NYC

Background

- ✦ **Prevailing Wages are paid for Public Construction Work and Building Service Contracts.**
 - **New York Labor Law – Article 8 § 220 –workers, laborers and mechanics on public work contracts**
 - **New York Labor Law – Article 9 § 230 – building service employees**
- ✦ **Payment of Prevailing Wages to workers on public works projects has been in New York State (NYS) law since 1909**

Background

- ✦ **Projects for construction, reconstruction or maintenance on behalf of a public entity are generally public work**
- ✦ **Building services are defined as work associated with care and upkeep of an existing building (e.g., cleaners, gardeners and security guards) executed under a contract with a public entity, and which exceeds \$1,500.**

Note on Debarment

New York State Labor Law sets a five-year ban on bidding or award of public work projects to:

- **Contractors**
- **Sub-contractors**
- **Successors**
- **Substantially owned or affiliated entities**

...who have been debarred for violations of Article 8 or Article 9.

Note on Debarment

A contractor is debarred when:

- ✦ Two (2) final determinations have been rendered within any consecutive six-year (6) period determining that such contractor, sub-contractor and/or its successor has WILLFULLY failed to pay the prevailing wage and/or supplements**
- ✦ One (1) final determination involves falsification of payroll records or the kickback of wages and/or supplements**

PW Functions of the NYC Comptroller

- ✦ Establishes PW classifications and pay/benefit schedules
- ✦ Investigates PW complaints from workers
- ✦ Adjudicates contractor penalties for PW violations
- ✦ Initiates contractor debarment proceedings
- ✦ Coordinates with investigative agencies and various district attorneys on criminal cases that involve PW fraud and related crimes

Prevailing Wage Rates

- ✦ **Prevailing Wages under Labor Laws 220 and 230 include both a wage rate and a supplemental benefit rate. These rates change over time.**
- ✦ **Sample 220 rates (valid through June 30, 2015)**
 - **Carpenters: \$49.88 wages + \$44.10 benefits /hr**
 - **Electricians (A): \$53* wages + \$47.54* benefits /hr**
 - **Painters: \$39.50 wages + \$26.12 benefits /hr**

*rates will change to \$54 wages + \$50.03 benefits /hr effective 5/13/15 – 6/30/15

What Are Supplements?

- ✦ **Supplements are fringe benefits including medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, cost of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by federal, state or local law.**

Prevailing Wages – Supplemental Benefits

- ✦ In general, union employers pay supplemental benefits directly to their respective unions
 - “Travelling” union employers may meet the supplemental benefits obligation if their supplemental benefit rate is less than the prevailing supplemental rate in NYC by paying the difference in the rates directly to their employees as additional pay over and above the prevailing wage rate.
- ✦ Non-union employers may meet the supplemental benefits obligation by paying the full supplemental benefit rate directly to their employees as additional pay over and above the prevailing wage rate
 - If employer has their own company benefit plan and it has been evaluated by a CPA, they can pay the difference between the prevailing benefit rate and the company plan as additional pay

Annualization of Company Benefit Plans

- ✦ **Where a company has its own bona fide private benefits plan an evaluation of the plan based on the ‘annualization method’ is required. The purpose of the annualization method is to avoid over-valuing the benefits on an hourly basis.**

Annualization Done Right

- ✦ Health care premiums for the worker costs \$6,240 a year.
- ✦ \$6,240, divided by the 2,080 work hours (52 weeks x 40 hours) in the year, equals \$3.00 an hour.
- ✦ The suggested wage determination for health care is \$6 an hour.
- ✦ This contractor takes a \$3.00 health care fringe credit---and pays the worker an additional \$3.00 an hour in wages.

Annualization Done Right

22-168

| | (6) BASE RATE OF PAY PER HOUR | (7) TOTAL BASE PAY | SUPPLEMENTAL BENEFITS | | | (11) GROSS PAY | (12) TOTAL & OTH DEDUC |
|----|---|-----------------------------|-------------------------|-------------------|-----------------------|----------------------|---------------------------------|
| | | | (8) RATE PER HOUR | (9) PAID TO | (10) TOTAL PAID | | |
| 24 | \$31.29 | \$750.96 | E \$10.04 | E X | \$240.96 | | |
| 0 | | \$0.00 | O \$6.39 | O X | \$153.36 | \$991.92 | |
| 19 | \$31.29 | \$594.51 | E \$10.04 | E X | \$190.76 | | |
| 0 | | \$0.00 | O \$6.39 | O X | \$121.41 | | |
| 5 | \$42.31 | \$211.55 | E \$23.50 | E X | \$117.50 | | |
| 0 | | \$0.00 | O \$6.53 | O X | \$32.65 | \$1,114.32 | |
| 0 | | \$0.00 | E | E X | \$0.00 | | |
| 0 | | \$0.00 | O | O X | \$0.00 | \$0.00 | |

Understanding the PW Schedules

- ✦ **Labor Law 220 and 230 PW schedules are issued by the City Comptroller each June and are effective July 1**
 - **Addenda are also issued each December**
- ✦ **PW Schedules include wage and benefit rates for various trade classifications**
- ✦ **The 220 apprenticeship PW schedule includes information related to the utilization and pay of apprentices**

Understanding the PW Schedules

✦ In addition to wage and supplemental benefit rates for specific trade classifications, the prevailing wage schedules contain information related to **overtime, holiday pay, shift rates and rate changes** that occur at specific dates for certain trade classifications

IRON WORKER - ORNAMENTAL

Iron Worker - Ornamental

Effective Period: 7/1/2014 - 6/30/2015

Wage Rate per Hour: \$42.70

Supplemental Benefit Rate per Hour: \$45.77

Supplemental Note: Supplemental benefits are to be paid at the applicable overtime rate when overtime is in effect.

Overtime Description

Time and one half the regular rate after a 7 hour day for a maximum of two hours on any regular work day (the 8th and 9th hour) and double time shall be paid for all work on a regular work day thereafter, time and one half the regular rate for Saturday for the first seven hours of work and double time shall be paid for all work on a Saturday thereafter.

Overtime

Double time the regular rate for Sunday.

Overtime Holidays

Double time the regular rate for work on the following holiday(s).

New Year's Day

President's Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Christmas Day

Paid Holidays

None

Shift Rates

For off shift work - 8 hours pay for 7 hours of work. When two or three shifts are employed on a job, Monday through Friday, the workday for each shift shall be seven hours and paid for ten and one-half hours at the single time rate. When two or three shifts are worked on Saturday, Sunday or holidays, each shift shall be seven hours and paid fifteen and three-quarters hours.

(Local #580)

Understanding the PW Schedules

- **The Comptroller sets the prevailing wage rates and classifications in each PW schedule based on specific provisions in the NYS labor law**
- **Contractors working under Sections 220 or 230 must pay each worker the appropriate wage and supplement for the trade being performed whether or not that worker or contractor is a signatory to a union agreement**

Overtime (OT) and Section 220

- All work more than 8 hours in a day is OT
- All work on a 6th day is OT—even if the total work hours for the week is under 40 hours
- Depending on the trade classification, work between 35 and 40 hours may be covered by overtime
- Overtime rates may apply to Saturday and/or Sunday work in certain trade classifications regardless of the total hours worked

Note on Apprentices

- **Since the 1950's, NYS Labor Law has included a provision that allows for the employment of apprentices on public works projects provided that:**
 - **The contractor participates in an apprenticeship program approved by NYS**
 - **The individual apprentices must each be registered with the NYS DOL**
 - **The number of apprentices working in a particular trade on a specific project must be within the “approved and prevailing ratios” of apprentices to journeypersons**

Certified Payrolls

Certified Payroll Reports (CPs) must be used by each contractor, subcontractor & on-site service provider (each entity must have its own CP)

- **The format provided by the NYC Comptroller must be utilized**
- **CPs must be submitted at least monthly by each contractor, subcontractor & on-site service provider**
- **All workers performing work under PW law must appear on each certified payroll report**
- **Separate entries by trade must be made for individual workers that work in multiple trade classifications during the same week**

Requirements on Public Work Project Sites (LL 220)

- Posters posted in a prominent and accessible place with a legible statement of wages to be paid to workmen based on their trade classification
 - Prevailing wage notices are available on the Comptroller's website in multiple languages
- Daily sign-in sheets-signed by each worker showing time in and out
- For all work subject to the Standard Construction Contract of the City of New York, each worker must wear a visible PHOTO ID that includes their name, company and primary trade (see Standard Construction Contract (rev. Dec 2013), Article 37. Labor Law Requirements)

Requirements on Building Service Work Sites (LL 230)

- **No later than the first day upon which work on said contract is performed by any employee, the contractor must post a legible statement of the wages to be paid to the workmen employed in a prominent and accessible place on the job site**
- **Records required to be maintained (including copies of certified payrolls), shall be kept on the site of work during all of the time that the work under contract is being performed**

Key Duties for Contractors on Prevailing Wage Contracts

- ✦ **Contractors and subcontractors on public works projects and public building service contracts and all other covered employers must post written notices concerning applicable prevailing or living wage rates and employees' right to contact the Comptroller to request an investigation.**
- ✦ **Contractors and subcontractors on public works projects must specify the applicable trade classifications and prevailing rates of wage and benefits for their covered employees on their pay stubs. If the required information will not fit on the pay stub, an accompanying sheet or attachment with the rate and classification will suffice.**

Construction Industry Fair Play Act

- ✦ It is against the law for an employer to misclassify employees as independent contractors or pay employees off the books
- ✦ Required Posting: Construction industry employers must post a notice about the Fair Play Act in a prominent and accessible place on the job site

For more information, visit:

<http://www.labor.ny.gov/sites/legal/laws/construction-industry-fair-play-act.page>

Project Labor Agreements and Prevailing Wage

- ✦ **Project Labor Agreement (PLA)** - An agreement by an owner (here, the City) with construction trades that all bidders must agree to as part of a responsive bid. Subcontractors to be used by prime contractors on a City contract with a PLA must also agree to the terms of the PLA and sign a Letter of Assent to be approved.

PLAs By NYC Mayoral Agencies

- ✦ **Specified new construction PLAs**
- ✦ **Programmatic PLA for building rehabilitation, renovation & repair: DDC, DCAS, DSNY, DPR, ACS, DFTA, DHS, DOC, DOHMH, HRA, FDNY, NYPD**
- ✦ **DEP buildings/plants within New York City**
- ✦ **DEP By-Pass Tunnel (Hudson Valley)**
- ✦ **HPD TIL Buildings (currently not funded)**

Project Labor Agreements and Prevailing Wage

- ✦ **The PLA adjusts holidays, overtime and shift pay by the agreement being with ‘prevailing unions’.**
- ✦ **The PLA Does NOT change the base hourly rate of pay and benefits**

Project Labor Agreements and Prevailing Wage

- ✦ **Certified payrolls of projects under the PLA should be marked 'Project under [{2009 or 2015} Renovation or New Construction or DEP] PLA' on each CP form.**
- ✦ **All benefits for trade workers will be paid to union benefit funds—where workers are not union members they are 'agency shop fee payers' and will acquire union benefits without becoming union members per se.**

Prevailing Wage Compliance Tips For Contractors

Prior to bidding:

- ✦ **Carefully review PW schedules 220 and 230**
- ✦ **Know the trade classifications that will be employed on the contract**
- ✦ **Do not confuse prevailing wage requirements under NYS labor law Sections 220 and 230 with Federal Davis Bacon requirements—while they share some similarities, they are not the same**
- ✦ **Take escalation into account when factoring prevailing wage costs into the bid price**

Prevailing Wage Compliance Tips For Contractors

Prior to contract award:

- ✦ **Read the contract carefully**
 - Is your contract (or subcontract) subject to a PLA?
- ✦ **Understand labor law requirements that apply to your contract (See Article 37 SSC Rev Dec. 2013)**
- ✦ **Know the trades to be employed on the contract**
- ✦ **Familiarize yourself with the Comptroller's certified payroll form and required labor postings**
- ✦ **Review and sign the Prime Contractor Pre-Award Statement**

Prevailing Wage Compliance Tips For Contractors

Prior to beginning work:

- ✦ **All workers under NYS labor law 220 must have OSHA 10 OSHA 10-hour safety course hour safety course if project is valued at over \$250K**
- ✦ **Make sure subcontractors are aware of PW Compliance requirements**
 - **For subcontracts valued at over \$250K, subcontractors must complete and sign the Subcontractor Pre-approval Statement for PW Contracts as part of the subcontractor pre-approval process**
- **The prime contractor shall be liable to the City for the cost of enforcement in the event any subcontractor contractor is found in violation of PW requirements**

Prevailing Wage Compliance Tips For Contractors

Throughout the life of the contract, make certain:

- ✦ **Current PW rates are paid to workers (PW rate changes typically occur in July and January [selected trades as per addenda])**
- ✦ **Sign-in sheets are properly utilized by workers on the job site (including all subcontractors)**
- ✦ **All required labor postings are maintained throughout the duration of the project**
- ✦ **All workers on job site wear PHOTO ID badges that list their name, company and primary trade (if required by contract)**

Online Resources

For more information on prevailing wage compliance and other labor initiatives at the Mayor's Office of Contract Services, visit:

http://www.nyc.gov/html/mocs/html/programs/labor_initiatives.shtml

To download the most current prevailing wage resources including prevailing wage schedules, certified payroll reports and daily sign-in sheets, visit the New York City Comptroller's Bureau of Labor Law website at:

<http://comptroller.nyc.gov/general-information/prevailing-wage/>

For more information on the NYC Project Labor Agreements, visit:

<http://www.nyc.gov/html/mocs/html/vendors/pla.shtml>

NYS Bureau of Public Work

<http://labor.ny.gov/workerprotection/publicwork/PWContents.shtm>