

deductions actually contributed by the employer.

Charles, et al., v. Roads Corp., No. 98-1380 (Sup. Ct. 1999).

Letter to J. Higgins, Patterson Smith Associates, December 19, 1997.

Under state law, employers are only required to pay overtime for hours worked in excess of forty hours in a given workweek. M.G.L. c. 151, §1A.

Letter to Chandler, Boston, MA, April 2, 2002.

Owner-Operator – definition of the term

DLS has adopted the federal test, under the Davis Bacon Act to establish a bright line to determine whether an individual qualifies as a legitimate “owner/operator” under the Prevailing Wage Law. Under the Davis-Bacon Act, an employee who owns at least a bona fide twenty percent (20%) equity interest in the enterprise in which he is employed, regardless of the type of business organization (e.g. corporation, partnership, etc.), and who is actively engaged in its management, is considered a bona fide exempt executive and **not subject to the prevailing wage requirements.**

Opinion Letter PW-2013-01-05.08.13, issued May 8, 2013

Owner-Operator/Independent Contractor Exemption

Unless hauling gravel or fill, legitimate owner-operators and independent contractors not subject to M.G.L. c. 149, §§26-27H, in that, only employees must be paid prevailing wage.

Letter to Collins, Town of Franklin, March 10, 2000.

Painting

The proper occupational classification for the removal of lead paint and clean-up related to these deleading operations is *Painter/Taper (Brush/Repaint)*. The Painters and Allied Trades’ collective bargaining agreement (between the Painters and Allied Trades District Council #35 and the Painters & Finishing Employers Association of New England, Inc.) covers deleading work and any cleanup resulting from such paint removal operations. The proper occupational classification for the removal of silica and any lead-contaminated dust that was not a result of the deleading work performed is *Laborer: Hazardous Waste/Asbestos Remover*.

Letter to Clark, Office of the Attorney General, March 2, 2005.

Painting (New Construction)

On a public work construction project, if 30 percent or more of surfaces to be painted are new construction, the appropriate wage category to be used is the new applicable paint rate.

Letter to Morrissey, August 24, 2000.

Laborers - Classification

Dismantling of steel ventilation fans and doors which are coated in lead paint and the dismantling of steel reinforced walls which do not contain lead paint, falls squarely within the Laborers occupational classification and not the deleaders occupational classification.

Letter to Zarbo, Office of the Attorney General, June 21, 2002

See also Memorandum of Understanding Between The Laborers' International Union of N.A. and The United Union of Roofers, Waterproofers and Allied Workers, dated September 8, 2003.

Landscape Maintenance

Landscaping consisting of grading of soil and installation of trees, shrubs, grass and other plants on publicly owned grounds are considered construction of public works to which the prevailing wage law applies.

27A Decision, Town of Framingham, July 25, 1995.

Leased Office Space - Landlord's Improvements

Landlord's improvements to office space leased by a public agency not subject to the prevailing wage law given that the improvements are (1) being performed as a condition of the occupancy; (2) wholly financed and executed by the Landlord; (3) with no public funds; (4) no involvement, approval rights or comments by the public agency are permitted and (5) the Landlord is in full control of the work and the outcome.

Letter to McGrane, Office of the Attorney General, August 7, 2001.

Leased Public Building – Private Lessee Improvements

Non-Profit Organization's improvements to a public building it rents from a municipality are subject to the prevailing wage because (1) the RFP and subsequent lease limited selection to non-profit organizations who will perform only a specific public service within the building, and (2) the construction is necessary for the organization to fulfill that purpose.

Letter to Clayman. Yarmouth Food Pantry, September 30, 2013. PW-2013-04-09.30.13

Line Painting

Clarification of proper occupational classification to be paid to persons who mark lines and apply paint to roads, highways, parking lots, playgrounds, etc.