

Misclassification Task Force Presentation

By Rebuilding American Values

Rebuilding American Values

Our Mission

Our Mission

- Rebuilding American Values (RAV) is a 501(c)4 social welfare organization dedicated to educating citizens and taxpayers. We advocate for public policies that increase civic engagement, create more transparency in the function of government, and increase the level of accountability to citizens and taxpayers in the way governmental bodies spend tax dollars.
- Rebuilding American Values works to develop public policy proposals to improve enforcement, transparency, and accountability for states, counties, municipalities, and local school boards. We also advocate for improved enforcement of existing laws, while developing improvements to policies at the state and local level.



Rebuilding American Values
Good jobs. Good wages. Good benefits.

Rebuilding American Values

Our Partnership with



TEMPLE
UNIVERSITY

Our Mission

- Rebuilding American Values (RAV) has developed a program to link Temple University Master's in Public Policy (MPP) students with labor unions as interns, in order to start developing a public access database of serial violators of labor laws, as well as developing administrative and legislative policy recommendations.
- Proposed objectives we have targeted:
 - Increasing transparency and accountability in distribution of infrastructure funding from federal, state, and local municipalities and school boards.
 - Leveling the playing field for bidding on infrastructure projects.
 - Combating tax theft and insurance fraud by unscrupulous contractors and the eliminating the negative impact that fraud has on Unemployment Compensation and Workers Compensation Funds.



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The Problem

Examples

Presentation #1

Examples from the Field

Matt Toomey

International Union
of Operating
Engineers Local
542

Ed Lounsberry

Foundation for
Fair Contracts

Fritz Beinke

FR Beinke
Wrecking, Inc.

Presentation #2

Examples from the Field

Tim Crowther

International Union
of Painters and
Allied Trades
District Council 21

Steve Simone

Foundation for
Fair Contracts

Mike Dalicandro

Twindows, Inc.

Rebuilding American Values' Preliminary Recommendations

Bob Wolper

Rebuilding American Values

and

Tyler Honschke

Temple University Master's in Public Policy Intern


Administrative Recommendations

- Better enforcement coordination with other state agencies and departments
- Increase number of inspectors at Labor & Industry
- Establish specialized, industry-specific training for inspectors
- Update standards for craft notes on jurisdiction and qualified apprenticeship programs
- Increase notification and education on standards and rules for contractors (new posters, alerting employees of rights, etc.)



Administrative Recommendations

(continued)

- Increase public awareness of the impact of misclassification on taxpayers and citizens
- Public advocacy (advertising campaigns identifying serial violators of wage, benefit, and tax laws, including a whistleblower hotline and website)
- Modernize and standardize reporting forms for prevailing wage submissions
- Coordinate with surrounding states on best practices and data sharing on serial violators
- Mirror New York and New Jersey on posting pay rates
- Examples 

New York Prevailing Wage Schedule

Part 1

Prevailing Wage Rates for 07/01/2020 - 06/30/2021
Last Published on Jan 01 2021

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Introduction to the Prevailing Rate Schedule

Information About Prevailing Rate Schedule

This information is provided to assist you in the interpretation of particular requirements for each classification of worker contained in the attached Schedule of Prevailing Rates.

Classification

It is the duty of the Commissioner of Labor to make the proper classification of workers taking into account whether the work is heavy and highway, building, sewer and water, tunnel work, or residential, and to make a determination of wages and supplements to be paid or provided. It is the responsibility of the public work contractor to use the proper rate. If there is a question on the proper classification to be used, please call the district office located nearest the project. District office locations and phone numbers are listed below.

Prevailing Wage Schedules are issued separately for "General Construction Projects" and "Residential Construction Projects" on a county-by-county basis.

General Construction Rates apply to projects such as: Buildings, Heavy & Highway, and Tunnel and Water & Sewer rates.

Residential Construction Rates generally apply to construction, reconstruction, repair, alteration, or demolition of one family, two family, row housing, or rental type units intended for residential use.

Some rates listed in the Residential Construction Rate Schedule have a very limited applicability listed along with the rate. Rates for occupations or locations not shown on the residential schedule must be obtained from the General Construction Rate Schedule. Please contact the local Bureau of Public Work office before using Residential Rate Schedules, to ensure that the project meets the required criteria.

Payrolls and Payroll Records

Contractors and subcontractors are required to establish, maintain, and preserve for not less than six (6) years, contemporaneous, true, and accurate payroll records.

Every contractor and subcontractor shall submit to the Department of Jurisdiction (Contracting Agency), within thirty (30) days after issuance of its first payroll and every thirty (30) days thereafter, a transcript of the original payrolls, subscribed and affirmed as true under penalty of perjury.

Paid Holidays

Paid Holidays are days for which an eligible employee receives a regular day's pay, but is not required to perform work. If an employee works on a day listed as a paid holiday, this remuneration is in addition to payment of the required prevailing rate for the work actually performed.



New York Prevailing Wage Schedule

Part 2

Overtime

At a minimum, all work performed on a public work project in excess of eight hours in any one day or more than five days in any workweek is overtime. However, the specific overtime requirements for each trade or occupation on a public work project may differ. Specific overtime requirements for each trade or occupation are contained in the prevailing rate schedules.

Overtime holiday pay is the premium pay that is required for work performed on specified holidays. It is only required where the employee actually performs work on such holidays.

The applicable holidays are listed under **HOLIDAYS: OVERTIME**. The required rate of pay for these covered holidays can be found in the **OVERTIME PAY** section listings for each classification.

Supplemental Benefits

Particular attention should be given to the supplemental benefit requirements. Although in most cases the payment or provision of supplements is straight time for all hours worked, some classifications require the payment or provision of supplements, or a portion of the supplements, to be paid or provided at a premium rate for premium hours worked. Supplements may also be required to be paid or provided on paid holidays, regardless of whether the day is worked. The Overtime Codes and Notes listed on the particular wage classification will indicate these conditions as required.

Effective Dates

When you review the schedule for a particular occupation, your attention should be directed to the dates above the column of rates. These are the dates for which a given set of rates is effective. The rate listed is valid until the next effective rate change or until the new annual determination which takes effect on July 1 of each year. All contractors and subcontractors are required to pay the current prevailing rates of wages and supplements. If you have any questions please contact the Bureau of Public Work or visit the New York State Department of Labor website (www.labor.ny.gov) for current wage rate information.

Apprentice Training Ratios

The following are the allowable ratios of registered Apprentices to Journey-workers.

For example, the ratio 1:1,1:3 indicates the allowable initial ratio is one Apprentice to one Journeyworker. The Journeyworker must be in place on the project before an Apprentice is allowed. Then three additional Journeyworkers are needed before a second Apprentice is allowed. The last ratio repeats indefinitely. Therefore, three more Journeyworkers must be present before a third Apprentice can be hired, and so on.

Please call Apprentice Training Central Office at (518) 457-6820 if you have any questions.

Pennsylvania Prevailing Wage Act

Part 1

DUTIES OF AWARDING AGENCIES UNDER PENNSYLVANIA PREVAILING WAGE ACT

1. Prevailing Wage Determination must be incorporated into and made a part of the contract. (Section 4 and Section 8, Paragraph 3)

2. Incorporate into the specifications for the contract the following requirements:

(a) The general prevailing minimum wage rates including contributions for employe benefits as shall have been determined by the Secretary which must be paid to the workmen employed in the performance of the contract.

The contract shall specifically provide that the contractor shall pay no less than the wage rates as determined in the decision of the Secretary of Labor and Industry and shall comply with the conditions of the Pennsylvania Prevailing Wage Act approved August 15, 1961 (Act No. 442), as amended August 9, 1963 (Act No. 342), and the Regulations issued pursuant thereto, to assure the full and proper payment of said rates.

(b) The contract shall contain the stipulation that such workmen shall be paid no less than such general prevailing minimum wage rates and such other provisions to assure payment thereof as heretofore set forth in this Section.

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

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

(e) The contract shall provide that no workmen may be employed on the public work except in accordance with the classifications set forth in the decisions of the Secretary. In the event that additional or different classifications are necessary the procedure set forth in Section 7 of these Regulations shall be followed.



Pennsylvania Prevailing Wage Act

Part 2

- (f) The contract shall provide that all workmen employed or working on the public work shall be paid unconditionally, regardless of whether any contractual relationship exists or the nature of any contractor, subcontractor and workmen, not less than 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 these Regulations shall prohibit the payment of more than the general prevailing minimum wage rates as determined by the Secretary to any workman on public work.
- (g) 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 any changes thereof, in a prominent and easily accessible place or places at the site of the work and at such place or places used by them to pay workmen their wages. The posted notice of wage rates must contain the following information:
- (1) Name of project.
 - (2) Name of public body of which it is being constructed.
 - (3) The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage rate determinations for the particular project.
 - (4) The general prevailing minimum wage rates determined for each craft and classification and the effective date of any changes.



Pennsylvania Prevailing Wage Act

Part 3

- (5) 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 and/or subcontractor are not complying with the Act or these Regulations in any manner whatsoever they may file a protest with the Secretary of Labor and Industry. Any 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 must be exercised within six (6) months from the occurrence of the event creating such right.
- (h) The contract shall provide that the contractor and all subcontractors shall keep an accurate record showing the name, craft and/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 and such record must include any deductions from each workman. The record shall be preserved for two years from the date of payment and shall be open at all reasonable hours to the inspection of the public body awarding the contract and to the Secretary or his duly authorized representatives.
- (i) The contract shall provide that apprentices shall be limited to such numbers as shall be 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 provisions of the Apprenticeship and Training Act approved July 14, 1961 (Act No. 304) and the Rules and Regulations issued pursuant thereto shall be employed on the public work project. Any workman using the tools of a craft who does not qualify as an apprentice within the provisions of this subsection shall be paid the rate predetermined for journeymen in that particular craft and/or classification.
- (j) Wages shall be paid without any deductions except authorized deductions. Employers not parties to a contract requiring contributions for employe 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.
- (k) 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 these Regulations, regardless of the average hourly earnings resulting therefrom.



Pennsylvania Prevailing Wage Act

Part 4

- (l) 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 all workmen have been paid wages in strict conformity with the provisions if any wages remain unpaid to set forth the amount of wages due and owing to each workman respectively.
 - (m) The provisions of the Act and these Regulations shall be incorporated by reference in the contract.
3. If Petition for Review is filed, Awarding Agency must extend closing date for submission of bids until five (5) days after final determination of the Secretary of Labor and Industry. (Section 8, Paragraph 2)
 4. Awarding Agency must notify all interested parties of extension of closing date for submission of bids. (Section 8, Paragraph 3)
 5. Enforce the posting of wage rate determinations at the job site (Section 9 of Act and Regulation Section 9.104, Paragraph (b))
 6. Awarding Agency must require contractor and all subcontractors to file weekly wage certifications. Copy of approved form is attached. (Section 10 (a) of Act and Regulation Section 9.110, Paragraph (a)).
 7. Before final payment is made, awarding agency must require final wage certifications from all contractors and subcontractors. (Section 10 (a)).
 8. When notified by Secretary of Labor and Industry of the filing of wage claims by workmen, the awarding agency should withhold from the monies due to the contractor or subcontractor sufficient funds to pay all claims determined to be valid and when so directed by the Secretary of Labor and Industry, should pay wages directly to the workmen. (Section 10 (b)).
 9. Where an awarding agency has knowledge that any person or firm has failed to pay the rates predetermined, it must notify the Secretary of Labor and Industry in writing. (Section 11 (a)).

Regulatory Recommendations

- Increase scaled financial penalties for violations
- Institute temporary or permanent bans on bidding public projects, depending on violations
- Require more timely reporting by general contractors and subcontractors
- Leverage the use of suspended penalties to ensure future compliance



Regulatory Recommendations

(continued)

- Establish a Compliance Coordinated Working Group (CCWG) of key staff across departments to collaborate on information sharing and processes to prevent awarding public money to misclassification violators
- Through adoption of new regulations, incorporate auditing of bidders' insurance coverage as part of the bidding process, and empower staff to conduct insurance audits on project bidders
- Establish pre-audit questionnaires used during bidding processes informing each bidder of misclassification, wage & hour, prevailing wage, and insurance fraud laws, as well as requiring confirmation that the bidder understands these laws and the consequences of their violation

Legislative Recommendations

- Increase funding for Labor & Industry for increased staffing for inspections and elimination of backlogged cases
- Strengthen tax and public financing laws
- Increased criminal penalties for serial violations
- Allow Labor & Industry to apply graduated financial penalties
- Empower Labor & Industry to revoke business-related licenses of repeat misclassification violators



Legislative Recommendations

(continued)

- Legislative mandates of inter-agency enforcement cooperation
- Require follow-up audit on misclassification violations no later than one year after misclassification violation occurs
- Adopt a clear-cut ABC test for employment standards in misclassification, unemployment compensation, and workers' compensation law
- If the Prevailing Wage Act is opened for amendments, make General Contractors responsible for all subcontractors

Questions and Answers

Thank You



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