



OHIO

Q1. When was the state prevailing wage law adopted (or repealed)?

A1. 1931; Ohio Rev. Code Ann. §§ 4115.03 to 4115.16; 4115.99. That portion of the Act imposing prevailing wage requirements on schools was repealed in 1997 by creation of an exemption for school construction. ORC § 4115.04.

Q2. Have there been any recent challenges to enforcement of the state prevailing wage law?

A2. Yes:

- State ex rel Associated Builders & Contractors of Central Ohio v. Franklin County Bd. Of Commissioners, 125 Ohio st. 3d 112 (2010)
Improper for County to debar contractor for prevailing wage violations that were settled without being subjects of contested case findings.
- Sheet Metal Workers Int'l Ass'n v. Gene's Refrigeration, Heating & Air Conditioning, Inc., 122 Ohio St. 3d 248 (Ohio 2009):
Prevailing wage requirements to not apply to workers off-site. Applies only to persons whose work is performed directly on the site of the public improvement project.
- Bergman v. Monarch Constr. Co., 124 Ohio St. 2d 534 (Ohio 2010).
In an employee-initiated action to enforce prevailing wage, the penalties set forth in ORC 4115.10(A) are mandatory penalties that must be imposed against a party found to have violated the law.
J.A. Croson Co. v. J.A. Guy, Inc., 691 N.E.2d 655 (Ohio 1998): Union "job targeting" programs were protected by the National Labor Relations Act; thus, Ohio wage law was preempted to the extent that it restrained or inhibited a contractor from participating in such programs.
- Vaughn Indus. v. Dimech Servs., 856 N.E.2d 312 (Ohio Ct. App. 2006):
A subcontractor violated Ohio Rev. Code Ann. § 4115.05 by not keeping the ratio of apprentices to journeymen required by the relevant CBA at a certain job site, but it did not violate Ohio Rev. Code Ann. § 4115.071 as it certified all fringe benefits due under the CBA had been or would be paid. Its attorney's fees liability had to be redetermined.
- United Bhd. of Carpenters & Joiners, Local Union No. 1581 v. Bell Eng'g Ltd., Inc., 2006 Ohio App. LEXIS 1724 (Ohio Ct. App. April 14, 2006): Where an engineering firm served in a planning role for a public improvement project, not as a construction contractor, and where its employees

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performed no actual physical construction tasks, the engineering firm was not liable for alleged prevailing wage violations under Ohio Rev. Code Ann. § 4115.10(A).

- [Suhadolnik v. Lee's Heating & Cooling, Inc.](#), 812 N.E.2d 992 (Ohio Ct. App. 2004): Ruling that non-union employee was to get prevailing sheet metal apprentice, rather than journeyman, wages on public authority construction project was not error; he participated in non-trade specific, registered, state, apprenticeship program.
- [Bowland v. Esprit Contrs., Inc.](#), 2000 Ohio App. LEXIS 3383 (Ohio Ct. App. July 27, 2000): Subcontractor possessed a duty to pay its employees the prevailing wage irrespective of the quality of the information it received from the cities' prevailing wage coordinators; application of carpenter's rate to job was appropriate.

Q3. What is the monetary threshold for coverage?

A3. As of January 1, 2006 (adjusted ever even-numbered year) ORC 4115.034: New construction - \$200,000

Reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting - \$60,000

See http://www.com.ohio.gov/laws/docs/dico_prevailingwagethresholds.pdf.

Q4. Does the law cover more than "construction" work, and if so, what type of work has been found to be included or excluded from such coverage of "construction."

A4. No, but construction includes projects which are considered public improvement and excludes schools and some hospital construction (depending on financing).

Q5. How is the prevailing wage determined?

A5. The prevailing wage of wages may not be less at any time during a contract than the prevailing rate of wages then payable to person in the same trade in the county in which the public work is being performed under collective bargaining agreements relating to the particular trade. If there is no collective bargaining agreement in that county, the prevailing rate of wages becomes the rate in effect for a particular trade in the nearest county in which a collective bargaining agreement exists. ORC § 4115.05.

Q6. Are job duties published and are there any special work assignment restrictions?

A6. No.

Q7. Are there any restrictions on recognition or crediting of fringe benefits?

A7. See website for the "Ohio Department of Commerce: Division of Labor & Worker Safety, Wage and Hour Bureau – Prevailing Wage Contractor Responsibilities," including the following:

- Payrolls must include the following information:
 - Where fringes are paid into a bona fide plan instead of cash, list each benefit and amount per hour paid to program for each employee.

- When the amount contributed to the fringe benefit plan and the total number of hours worked by the employee on all projects for the year is documented, the hourly amount is calculated by dividing the total contribution of the employer by the total number of hours worked by the employee.
- When the amount contributed to the fringe benefit is documented but not the total hours worked, the hourly amount is calculated by dividing the total yearly contribution by 2080.

(Information available at http://www.com.ohio.gov/laws/docs/dico_prevalingwagethresholds.pdf)).

Q8. At what point does the law require payment of time-and-one-half for overtime?

A8. Over 40 hours in a week. See website for the "Ohio Department of Commerce: Division of Labor & Worker Safety, Wage and Hour Bureau – Prevailing Wage Contractor Responsibilities" available at www.com.oh.us.

Q9. Are there defined apprenticeship ratios and/or special requirements for apprentices?

A9. The allowable ratio of apprentices to skilled workers permitted to work shall not be greater than the ratio allowed the contractor or subcontractor in the collective bargaining agreement or understanding referred to in this section under which the work is being performed. § 4115.05. Apprentices must be registered with the Ohio Apprenticeship Council.

Q10. Are there criminal and civil penalties and is there a private right of action in addition to state enforcement?

A10. Yes, there are civil penalties, criminal penalties and a private right of action.

- **Civil** – Not less than \$25.00, not more than \$500.00. § 4115.99
- **Criminal** – Whoever violates division (C) of §§ 4115.07.1, 4115.10, 4115.11 is guilty of a misdemeanor of the second degree for a first offense; for each subsequent offense such person is guilty of a misdemeanor of the first degree. § 4115.99
- **Private Right of Action** – Any employee who has not been paid the prevailing wage may either file a suit or file a complaint with the Director to recover wages not paid and damages. The Director can also bring suit if the employee does not. Contractors and other interested parties may also be able to bring suit against violators. § 4115.16(B)