



PENNSYLVANIA

Q1. When was the state prevailing wage law adopted (or repealed) and most recently amended?

A1. Adopted 1961. Last amendment 1963.
43 P.S. §§ 165-1-165-17 (2012).

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

A2. *500 James Hance Court v. Wage Appeals Board*, 33 A. 3d 555 (Pa. 2011)
Holding prevailing wage law inapplicable to pre-development lease of charter school.

The law was upheld against claims of ERISA preemption in *Keystone Chapter, Assoc. Builders and Contractors, Inc. v. Foley*, 37 F. 3d 945 (3d Cir. 1994).

Q3. What is the monetary threshold for coverage?

A3. \$25,000. See 34 Pa. Code § 9.101

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. The law covers construction, demolition, alteration and/or repair work other than maintenance work, *i.e.*, work that includes changing or increasing the size, type, or extent of existing facilities. See 34 Pa. Code § 9.102

Q5. How is the prevailing wage determined?

A5. The Secretary of Labor ascertains the general prevailing minimum wage rates in the area where the work is done and for all types of work being done through collective bargaining agreements, information from federal agencies, the amount of workmen available for such a job, statements from contractors, subcontractors, and union representatives in the locality, and any other pertinent information. 34 Pa. Code § 9.105

This summary is provided for informational purposes only, does not constitute legal advice or opinion, and should not be relied on to determine any entity's specific legal obligations. State prevailing laws are subject to frequent revisions via unpublished administrative enforcement, judicial reinterpretations, and legislative amendments.

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

A6. Job duties are not published, but rather the Secretary of Labor determines which jobs fall into which categories of work. 34 Pa. Code § 9.102. The Department's regulations state that a workman using the tools of a craft who does not qualify as an apprentice must be paid the journeyman rate. 34 Pa. Code § 9.103(9). It is recommended that nonunion contractors should contact the Department to determine whether any hidden work assignment restrictions apply, particularly to the extent that specific wage determinations appear to be based upon union wage scales. Recent litigation has presented issues concerning fair notice requirements applicable to changing interpretations of unpublished work assignment restrictions by the Secretary. *See Worth & Co. v. Prevailing Wage Appeals Board*, 12 WH Cases 2d 1342 (Pa. Comm. Ct. 2007); *see also Heist v. Prevailing Wage Appeals Board*, 10 WH Cases 2d 988 (Pa. Comm. Ct. 2003).

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

A7. Fringe benefits are included in the calculation of prevailing wage, but are limited to those that are paid "for the benefit of employees," other than workers compensation, for sickness, disability, death, medical, surgical, hospital, vacation, travel expense, retirement and pension benefits. See 34 Pa. Code § 9.105; *Keystone Chapter, Assoc. Builders and Contractors, Inc. v. Foley*, 37 F. 3d 945 (3d Cir. 1994). Employers who do not offer such benefits must pay the difference in cash.

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

A8. Time and one half must be paid for any workweek in excess of forty hours, with certain exceptions. 34 Pa. Code §231.43.

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

A9. Apprentices are limited as per a bona fide apprenticeship program approved by the Pennsylvania Apprenticeship and Training Council. 34 Pa. Code § 9.103

Q.10 Are there criminal and civil penalties and is there a private right of action in addition to state enforcement?

A.10 After the Secretary has been notified of the failure to pay, through a workman complaint or otherwise, a hearing will be held to determine if the failure was intentional. If a failure to pay the prevailing wage was unintentional, the offending contractor will have the opportunity to correct the matter. If the failure was intentional (broadly interpreted by the Department and the courts), the contractor will be barred from public contracts for 3 years after the Secretary was made aware of the offense. The Secretary may also request that the Attorney General take additional action to recover further penalties. A private right of action exists for workmen paid less than the general prevailing wage for their jobs, as long as the action is filed within 6 months of the occurrence. 34 Pa. Code § 9.111, 9.112