

# **PREVAILING WAGE (PW) COMPLIANCE in New York City Under NYS Labor Law Sections 220 and 230**



**The Mayor's Office of Contract Services (MOCS)**

# Background

- **Prevailing Wages (PW) are paid for Public Work and Building Service Contracts**
  - Labor Law Section 220 – workers, laborers and mechanics on public work contracts
  - Labor Law Section 230 – building service employees
- **Payment of PW to workers has been in New York State (NYS) law for public work projects since 1909 and building services since 1934**

# 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**

# PW Functions of the NYC Comptroller

- Establishes PW classifications and pay/benefit schedules
- Answers questions concerning prevailing trade practices [Classification Unit (212) 669-4437]
- 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, 2011)**
  - **Electricians (A): \$49/hr wages + \$40.16 benefits**
  - **Carpenters: \$46.15/hr wages + \$38.50 benefits**
  - **Painters: \$35/hr wages + \$24.27 benefits**

# 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**

# 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

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
§220 PREVAILING WAGE SCHEDULE

## PLASTERER

### Plasterer

Effective Period: 7/1/2010 – 1/9/2011

Wage Rate per Hour: **\$38.78**

Supplemental Benefit Rate per Hour: **\$25.30**

Effective Period: 1/10/2011 – 6/30/2011

Wage Rate per Hour: **\$39.53**

Supplemental Benefit Rate per Hour: **\$26.30**

### **Overtime**

Time and one half the regular rate after a 7 hour day.

Time and one half the regular rate for Saturday.

Double time the regular rate for Sunday.

Saturday may be used as a make-up day at straight time when a day is lost during that week to inclement weather.

### **Overtime Holidays**

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

New Year's Day

Martin Luther King Jr. Day

President's Day

Good Friday

Memorial Day

Independence Day

Labor Day

Columbus Day

Presidential Election Day

Thanksgiving Day

Christmas Day

### **Paid Holidays**

None

### **Shift Rates**

When it is not possible to conduct alteration work during regular work hours, in a building occupied by tenants, said work shall proceed on a shift basis; however work over seven (7) hours in any twenty four (24) hour period, the time after seven (7) hours shall be considered overtime.

The second shift shall start at a time between 3:30 p.m. and 7:00 p.m. and shall consist of seven (7) working hours and shall receive eight (8) hours of wages and benefits at the straight time rate. The workers on the second shift shall be allowed one-half (½) hour to eat with this time being included in the seven (7) hours of work.

(Local #530)

# Understanding the PW Schedules

- **The Comptroller sets the prevailing 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 6<sup>th</sup> 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:
  1. The contractor participates in an apprenticeship program approved by NYS
  2. The individual apprentices must each be registered with the NYS DOL
  3. 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

# Key Document - Certified Payrolls (CPs)

- **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**

## NYC Requirements on Public Work Project Sites Include:

- Posters posted in a prominent and accessible place with a legible statement of wages to be paid to workmen based on their trade classification
- 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 ID that includes their name, company and primary trade (see Article 37. Labor Law Requirements)

## Requirements on Building Service Contracts Include:

- **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**

# Prevailing Wage Compliance Tips For Vendors

## Prior to bidding:

- 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
- Carefully review PW schedules 220 and 230
- Know the trade classifications that will be employed on the contract
- Take escalation into account when factoring prevailing wage costs into the bid price

# Prevailing Wage Compliance Tips For Vendors

## Prior to contract award:

- Read the contract carefully
- 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 Vendors

**Prior to beginning work:**

- **All workers under NYS labor law 220 must have OSHA 10-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 is found in violation of PW requirements**

# Prevailing Wage Compliance Tips For Vendors

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 ID badges that list their name, company and primary trade (if required by contract)**

# 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>**

## Note on Project Labor Agreements (PLAs)

- The City has entered into a group of PLAs with the Building and Construction Trades Council of Greater New York (“BCTC”). These agreements adjust overtime, shift pay and holiday pay on projects subject to these PLAs

For more information on the PLAs, visit:

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

# Note on the Department of Investigation (DOI)

- In the event you have direct knowledge of criminal activity that violates prevailing wage law.....

**THE APPROPRIATE COURSE OF ACTION IS TO CONTACT DOI DIRECTLY**

**For information on how to contact DOI, visit:**

**<http://www.nyc.gov/html/doi/html/home/home.shtml>**

## Online Resources

**For more information on prevailing wage compliance and other labor initiatives at MOCS, visit:**

[http://www.nyc.gov/html/mocs/html/programs/labor\\_initiatives.shtml](http://www.nyc.gov/html/mocs/html/programs/labor_initiatives.shtml)

**To download the most current prevailing wage resources including prevailing wage schedules, prevailing wage flyers (in multiple languages) and the public works poster, visit the New York City Comptroller's Bureau of Labor Law website at:**

<http://www.comptroller.nyc.gov/bureaus/bl/schedules.shtm>

: