



The FAIR CONTRACTOR

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Construction Workers Owed Thousands of Dollars for Taunton Public Works Project

City Liable for Wages; New Front in Prevailing Wage Enforcement Seen

This is the kind of rip-off we see happening in this state all the time; CJ Mabardy and Michelle Construction seem to have gone out of their way to try to get around the law.

Janine Yodanis, Foundation for Fair Contracting

Two workers who were employed as field engineers on a major public works project in Taunton have filed a claim against that city, alleging that they are owed more than \$20,000 in back wages from two sub-contractors on the project. Both workers were employed by the Cambridge-based **CJ Mabardy and Michelle Construction** companies on the West Taunton Middle and Elementary School Project from 1998-1999.

City of Pittsfield Latest to Consider Responsible Employer Ordinance

The city of Pittsfield is the latest Massachusetts municipality to consider adopting a Responsible Employer Ordinance. If Pittsfield city council members vote to adopt the measure, they will join 14 other cities and towns including Cambridge, Worcester, Lowell, Fall River, Springfield and New Bedford.

The ordinances are intended to set minimal standards for contractors who wish to bid on publicly-funded construction projects, usually requiring them to pay their workers the prevailing wage, provide apprenticeship training and health insurance as part of the bidding process. Several of the ordinances also mandate that contractors hire a percentage of their employees from the local area.

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Under Massachusetts law, workers who are owed money for public construction have the right to file a claim against the city or town that commissioned the project.

According to the claims filed against the City of Taunton on June 23, the two workers did not receive the legally required prevailing wage for the majority of the time they were employed on the West Taunton Schools Project. Instead, CJ Mabardy and Michelle Construction paid them the legal rate only when they were physically inside one of the school buildings.

Explains Janine Yodanis of the Foundation for Fair Contracting which is assisting the workers with their claim: "This is the kind of rip-off we see happening in this state all the time; CJ Mabardy and Michelle Construction seem to have gone out of their way to try to get around the law. As a result, these two workers have had to take their case to the City of Taunton."

In response to the workers' claim, the City of Taunton moved promptly, withholding \$25,000 in payments from Eastern Contractors, the general contractor on the project.

After 30 days, however, the claim was still unresolved. The two workers have since decided to move forward with their claims, holding the City of Taunton liable for the money they are owed.

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In recent months, the Foundation for Fair Contracting has assisted numerous workers in reaching settlements with employers who failed to pay the prevailing wage on public construction projects. Here are some highlights:

In a case originated and closely monitored by the FFCM, workers have received close to \$19,000 in back pay from Reale Associates. Reale was employed on several small park projects in and around Boston and was not paying its employees the prevailing wage.

FFCM Wins Backpay for Workers

GSP, Inc. paid back \$4,439 to a painter who was employed on multiple public works projects but received only \$10 per hour.

G & R Construction handed back \$2,295 to four laborers and operators who were employed on a Brockton Transit Authority project but not paid overtime.

Rice Concrete Construction paid back \$7,565 to compensate carpenters, laborers and operators who were not paid the prevailing wage for their work on a bridge project in Reading.



**Need information about
Prevailing Wage Laws?
Call the Foundation for
Fair Contracting at
1-800-224-FAIR**

The Foundation for Fair Contracting monitors public works projects all over the state, reviewing payroll records and talking to workers, making sure that contractors who receive public money aren't breaking the law.

Sometimes warning signs can be detected early on, during the bidding process. If a bid is drastically lower than the others submitted, there may be something wrong. The FFCM encourages cities and towns to take a second look before awarding contracts to abnormally low bids. Here are a few examples of bids that caught our attention:

When **GVW, Inc.** filed an extremely low restricted bid for the Summer Street School Project in Lawrence, it caught the attention of the Foundation for Fair Contracting. For starters, GVW's bid was as much as 66% less than the next lowest bidder. And by submitting an excessively low restricted bid, GVW was breaking the law.

According to a 1995 decision by the Attorney General's office, an unrealistically low sub-bid restricted to the exclusive use of one general contractor gives that contractor an unfair advantage. The FFCM pointed this out to the awarding authority, noting as well that GVW's bid was too low to cover the cost of supplies and wages. As a result, Lawrence later denied GVW the project.

The FFCM's Worcester field monitor was concerned at what seemed to be an improbably low bid submitted by **Jackson Glass Co., Inc** for the Holliston Flagg-Adams Middle School Project. The bid was 26% lower than the next lowest bidder, raising concerns that Jackson Glass might not be able meet the terms of the contract, which includes specifications for supplies and materials as a provision to pay the prevailing wage.

The FFCM contacted the town of Holliston and relayed his concerns. Shortly thereafter, Jackson Glass Co. acknowledged that a 'substantial arithmetic error' in totalling labor hours in their original bid. Jackson asked to withdraw the bid and has since been replaced by the second lowest bidder.

In Massachusetts, contractors on public construction projects are required to pay the prevailing wage. Make sure to figure this in when compiling your bid!

CONTRACTOR COULD FACE JAIL TIME

A grand jury in Norfolk County recently handed down multiple indictments against a former Stoughton contractor for failing to pay wages, unemployment taxes and overtime pay, failure to provide workers' compensation insurance and falsifying payroll records. According to the Attorney General's office, which recently announced the indictments, Zachary Pinnick of Dorchester faces charges on a total of 31 indictments.

Pinnick is the former owner of **Z.P. Construction Corporation** of Stoughton and is currently the president of **Diamond Construction and Associates, Inc.** of Randolph. Pinnick and Z.P. Construction filed for bankruptcy on April 9 of last year. Five days later, Pinnick began operating under the newly incorporated Diamond Construction.

The 31 indictments stem from Pinnick's alleged failure to pay 11 former employees at Z.P. Construction a total of \$1,362.22. A subsequent investigation revealed that Pinnick had also failed to pay time-and-a-half for overtime for four employees on one job.

Pinnick's company was a sub-contractor on several public works construction projects including the Millis Memorial School, Dorchester High School, The Pine Hill Elementary School in Sherborn, the Mary Ellen McCormack Housing Project in South Boston and the Haverhill Police Station.

If convicted, Pinnick faces up to one year in jail and up to \$1,500 in fines for each workers' compensation offense; up to one year in jail and up to \$3,000 in fines for each non-payment of wages charge; 10-90 days in jail and up to \$200 in fines for each overtime offense; and up to \$2,000 in fines for each false payroll records charge.

Pinnick also faces debarment from public works projects should he be found guilty. A conviction for failure to provide workers' compensation insurance carries a mandatory three-year debarment from public works projects.



If only I hadn't violated the Prevailing Wage Law

**LINE PAINTING
CONTRACTOR
ACCUSED OF
CROOKED BUSINESS
PRACTICES**

The Attorney General's office recently announced that one of the largest line painting companies in Massachusetts must pay \$150,633 in back wages to 44 current and former employees, after failing to pay the prevailing wage during the past two years.

Markings, Inc., based in Pembroke and its president, Stephen R. Stella of Scituate, had contracted with cities and towns across the state to paint traffic lines on more than a hundred public works projects in 1997 and 1998. While the rate set by the Division of Occupational Safety is anywhere from \$23-\$26 per hour, Markings employees were paid between \$8.50-\$14 per hour.

The employees, a number of whom originally contacted the Foundation for Fair Contracting for assistance, received settlements of \$2,000-\$8,000 a piece. The company has entered into an agreement to pay the prevailing wage in all future public jobs.

**Legal
Beat**

HYANNIS CONSTRUCTION COMPANY DEBARRED

The owner of a Hyannis Construction company was recently debarred from working on public works projects for six months. According to the Attorney General's office, John Fein, owner of **Brentwood Construction** of Hyannis, admitted that he failed to pay the prevailing wage to two former employees who worked as drivers and operators on two public works projects, one on Martha's Vineyard and one in Yarmouth. Fein and his company have agreed to pay the employees \$10,613 by September 14.

**Want to Stay off of this Page?
It's Easy--Don't Break the Law!**



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Davis-Bacon: The High Cost of Repeal

A new study, done by a team of economists at the University of Wisconsin, looks at what happened in nine states where prevailing wage laws were repealed during the 1980's. Drs. Dale Belman and Paula Voos found that in contrast to claims made by opponents of the wage laws, state budgets and taxpayers did not benefit from the repeal. In states such as Alabama, Colorado, Utah, Florida and New Hampshire the consequences of striking down prevailing wage laws included:

- Lower wages for all construction workers
- Lower quality construction and increased cost overruns
- A severely weakened system of apprenticeship training
- Increased occupational injuries and increased costs for workers' compensation
- Lowered minority participation in construction job training and increased minority unemployment in the skilled trades.

In Utah and Arizona, for example, the authors found that repealing the wage laws led to a near collapse of apprenticeship training programs, with training rates dropping 40%. As the number of skilled construction workers in these states has dropped, construction itself has boomed, leading to a severe labor shortage.

Their study is confirmed by a recent survey of contractors conducted by the National Association of Home Builders. The survey results indicate that 36% of contractors are responding to labor shortages by hiring less skilled or experienced labor.

In the states where prevailing wage laws were struck down, construction costs have actually increased. In Utah, the size of cost overruns on state road construction tripled in the ten year period following the repeal of that state's prevailing wage statute.

Why would construction costs rise when wages drop? Belman and Voos conclude that the shift to low-wage labor has resulted in lower productivity, costly change orders and lower quality construction that is far more expensive to maintain in the long run.

Pittsfield latest to consider enacting Responsible Employer Ordinance

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While the ordinances have been criticized by some as being largely symbolic, the cities in which they have been passed are demonstrating an increasing willingness to enforce them—even when it means rejecting a low bid if the contractor fails to meet city standards.

Worcester's decision to sanction 20 contractors for violating the city's Responsible Employer Ordinance has raised a new awareness among towns and contractors alike regarding the teeth that such measures can have.

Explains Christopher Burger, FFCM Field Monitor for central Massachusetts: "This is exactly what these ordinances were intended for, to provide towns with a mechanism for weeding out law-breaking contractors prior to the bidding process and to make sure that bid winners continue to follow the law after they are on the job."

Towns Show Determination to Enforce REO's; Contractors Also Take Measures Seriously

If cities and towns are taking the new ordinances seriously, there is growing evidence that contractors are doing so as well. A recent issue of the **New England Real Estate Journal** featured a statement by Greg Beeman, Executive Director of **Associated Builders and Contractors**, alerting contractors that they need to be in compliance with the new ordinances.

"Contractors!!! Don't get stopped from bidding on jobs," warns Beeman, reminding contractors that unless they can show proof of participation in an approved apprenticeship program, their bids will be rejected.

Field Monitor Burger views the ABC's attention to the ordinances as a positive development: "Educating contractors about the rules of the game creates the kind of level playing field that can help make fair contracting a reality."

For more info about Responsible Employer Ordinances, call the FFCM at 1-800-224-FAIR



Office of the Attorney General

Debarment List

W.G. Burns and Sons, Inc. and William G. Burns, President, Haverhill, MA—debarred for a period of three years continuing through August 26, 2000.

Roosevelt Building Products, Roosevelt Morin, President, Bristol, CT—debarred for a period of three years continuing through September 22, 2000.

M.P.E. Equipment Leasing, Braintree, MA—debarred for a period of three years through January 20, 2001.

Creative Construction and Improvements, Inc., Vicki Malone Wright, President, Springfield, MA—debarred for a period of seven years continuing through March 24, 2005.

George Vasiliades d/b/a Olympic Painting, George Vasiliades, President, Peabody, MA—debarred for a period of three years through October 19, 2001.

EMP Sweeping and Asphalt Paving Corporation, Deanna Zucchari, President, Walpole, MA—debarred for a period of three years through November 20, 2001.

Kingsberry Building Technologies, Inc., and Charles J. Martin, President, Wakefield, MA—debarred for a period of eighteen months through December 1, 2000.

Amaral Excavating, Inc., Somerville, MA—debarred for a period of three years through February 3, 2002.

J.C. Bostonian Enterprises, Inc., Roxbury, MA—debarred for a period of six months through September 9, 1999.

J & G Electric, Inc. and Joseph O. Gauthier, President, Lynnfield, MA—debarred for a period of six months through September 18, 1999.

Diversified Contracting, Inc., Dorchester, MA—debarred for a period of six months through October 4, 1999.

Quality Insulation, Joseph Jillson, President, Milford, MA—debarred for a period of six months through October 26, 1999.

Dam Concrete Forms, Inc., Michael L. Dormady, Operations Manager, Hanover, MA—debarred for a period of six months through October 26, 1999.

Finish Line Construction or any company owned by Michael Mullen or David Angelli, Owners, Leominster, MA—debarred for a period of six months through November 17, 1999.

Bartholomew Molloy d/b/a Molloy Excavating, Norwood, MA—debarred for a period of six months through December 15, 1999.

Brentwood Construction and John Fein, President, Falmouth, MA—debarred for a period of six months through December 14, 1999.

Commercial Epoxy Flooring Co., Inc., Robert Attenello, President, Bloomfield, CT—debarred for a period of six months through December 8, 1999.

George E. Frotton Trucking Co., Inc., George E. Frotton, President, Tewksbury, MA—debarred for a period of six months through December 18, 1999.

Workers File Claim Against City of Taunton

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Contractors, city officials as well as advocates are closely watching the case. A settlement or favorable decision for the workers could serve to open an important new avenue for prevailing-wage enforcement.

The case is also significant in that the city moved to withhold money from Eastern Contractors, the general contractor on the Taunton Schools Project. Such a move sends a clear signal to general contractors that they stand to lose by sub-contracting to unscrupulous contractors.

Asked if the case is likely to have implications beyond the City of Taunton, Yodanis speculated that the impact could be far reaching: "We're likely to see many more public construction workers turning to the cities and towns that commission public works projects. The lesson for cities such as Taunton is 'be careful who you do business with,' because you just may be left holding the tab.

FFCM Legal Update

The claim by two field engineers against the city of Taunton is just the latest in a series of attempts to enforce the prevailing wage in Massachusetts. In the 1990 year, the Foundation for Fair Contracting has assisted a number of workers in filing suits against employers who have failed to pay the prevailing wage or overtime. Here are some of the results:

Painting and flooring Contractor **K and E Maintenance, Inc.** agreed to pay \$2700 in back wages and \$1300 in attorney's fees to settle litigation brought by a former employee who was improperly paid.

An out of court settlement was reached between **Lyons Insulation Inc.**, and two former employees who didn't receive overtime. Lyons agreed to pay a total of \$6,700 to the workers as well as \$2,200 to go towards the legal costs incurred by the FFCM.

The FFCM is awaiting a decision on a class action suit filed by five former employees of **Roads Paving, Inc. and Roads Corporation** representing a class of more than 200 current and former workers. The lawsuit, filed last year, could result in a recovery of more than \$1,000,000 for the class of employees.

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