

# The Prevailing Wage



# Watch

Volume Five, Issue Three

A Newsletter for Construction workers

Summer 2004

## Know Your Rights

The Foundation for Fair Contracting hears from construction workers everyday who call looking for answers to a simple question: "What are my rights on the job?" Some want information about the prevailing wage. Others are responding to an FFCM mailing they've received, having learned that they're not getting the rate they deserve under the law. Still others aren't getting overtime, or have been misclassified as independent contractors. And while we try to address one of these problems in every issue of the Wage Watch, here we've brought together all of the most common questions we get from public construction workers. Feel free to carry this around on the job, and if you need more information, give one of our monitors a call at 1-800- 224-FAIR.

### Money—How Much Should You Be Getting?

If you are a public construction worker in Massachusetts employed on projects that are paid for by public funds, your employer is required to pay you what's called the **prevailing wage**. How much you take home is determined by your trade; there are specific rates for laborers, operators, electricians, etc. If you're working on a public works project, your employer is required to post a rate sheet where everyone can see it.

### Overtime—When Does it Kick In?

This is an easy one: any time you work more than 40 hours per week, you are entitled to "time and a half." That rule applies even if you work more than 40 hours in a week for the same employee but on different work sites. And construction workers must be paid overtime whether they're employed on public or private projects.

### What Trade Am I Anyway?

Lots of public construction workers perform different tasks on the same job. Because the rate of pay often differs among trades, it's important to keep track of the work you're doing—what it is, when you're doing it, and for how long (for more on this, see "Compliance Man.") Case in point: if you operate a backhoe for three hours in the morning, but then work as a laborer for the rest of the day, your employer **MUST** pay you the operator's rate for those first three hours.

### Am I My Own Boss?

This question comes up again and again at tax time, as construction workers find out the hard way that an unscrupulous employer has categorized them not as employees but as independent contractors. Fall for the ruse and you could get stuck with a gigantic tax bill. Now the good news: the IRS has strict rules

### \$\$\$\$\$ Complaining Pays Off \$\$\$\$\$

Forget what your mother told you; sometimes it pays to complain. If you're a public construction worker in Massachusetts and you've been paid less than the prevailing wage, denied overtime, misclassified as an independent contractor, or otherwise cheated out of money, you're entitled to under the law, the Foundation for Fair Contracting can help. Last year alone, the FFCM helped recoup more than \$250,000 for construction workers who were owed money by their employers. "Massachusetts law says that as a public construction worker, if you're being paid less than the prevailing wage, you should be able to get that money back," says Karen Courtney, FFCM executive director. "We're here to help you do that."

about who qualifies as an independent contractor, and construction workers rarely, if ever, fit that description. If you're using someone else's tools and following someone else's instructions, you are **NOT** an independent contractor.

*continued on next page*

### Keep a Log - It Helps!!!

- ✓ Save your pay stubs;
- ✓ Keep track of your hours;
- ✓ Call us @ 1-800-224-FAIR

Work Schedule			
Project: Kingston High School		Week of: 2/10/98	
Date	Describe Work Performed	Hourly Rate	Hours
Sunday			
Monday	Ran backhoe, worked with J. Fernandez	\$35.38	20
Tuesday	Ran front end loader, worked with J. Jones	\$35.38	7.5
Wednesday	Hand shoveled dirt, worked with J. Jones	\$25.80	8
Thursday	Hand shoveled dirt, worked with J. Jones	\$25.80	8
Friday	Hand shoveled 7 min backhoe, worked with J. Smith	\$25.80 / \$35.38	4 / 4.5
Saturday			
Total			92



## Compliance Man

*Got a question about your rights on the job? Ask Compliance Man.*

### Dear Compliance Man:

I'm a construction worker and my company does some work on prevailing wage projects. In the last year I've worked mostly as a laborer, but sometimes I operate heavy equipment depending on the job. A buddy told me that I should be getting paid more when I'm working the equipment, but my boss says no. He says that my trade is laborer and that's the wage I get no matter what work he's got me doing. So who is right?

Signed:

### Confused in Chelmsford

#### Dear Confused:

If I had a dollar for every time I've been asked a version of this question I'd be a rich man! Because state and federal prevailing wage laws classify trades by different wage rates, contractors are often tempted

to go for the cheapest rate whether it applies to the work you're doing or not. Your buddy is correct: the prevailing wage rate for operators IS higher than that for laborers. When you're operating heavy equipment like a grader, a bull dozer or a fork lift, you should be receiving the operator's rate. (Not sure what your rate is? Your employer is required by law to post a list of prevailing wage rates on the job site). For construction workers like you who move from one kind of work to another, the most important thing is to keep good records of what work you're doing on what day. That way, if it turns out that you are being ripped off—and it sounds like you are—you'll have the necessary records to file a claim and get the money you're owed. There's more good news for you as well: to make your record keeping easy, the Foundation For Fair Contracting has put together a handy log book in which you can jot down the kind of work you're doing.

Good luck and thanks for writing.

### Compliance Man

By the way, if you need help filing a claim against your boss for the money you're owed, just give us a call at 1-800-224-FAIR, drop us an e-mail at [info@ffcm.org](mailto:info@ffcm.org) or send a letter to The Foundation for Fair Contracting, P.O. Box 256, Boston, MA 02133-0256.

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## Your Rights on the Job

*Continued from cover*

### Do Apprentices Have Rights Too?

Yes—absolutely. Apprenticing is a great way for aspiring construction workers to learn a trade. But before you sign up, make sure that your employer has an apprenticeship program that is registered with the Massachusetts Division of Apprentice Training. Also, because apprentices are paid a percentage of the rate that fully-trained public construction workers receive, employers will occasionally take advantage of this difference and call workers apprentices when they're not.

### What Can I Do?

You've figured out that something is wrong, now you

need to know how to get the money you're owed. The first step is to document your case. Do you have pay stubs? Collect them. How about a day by day log of your work schedule, including the work you performed and the hourly rate you should have been receiving? The better you document your case, the more likely your employer will have to pay you what you're owed.

### Can Anyone Help?

The Foundation for Fair Contracting was established more than a decade ago to assist public construction workers. We can help you determine whether you have a case, and aid you in filing a claim with the Attorney General's office. If you think that you're owed wages, call us today at 1-800-224-FAIR (all inquiries are free and confidential) or send us an e-mail at [info@ffcm.org](mailto:info@ffcm.org), and we'll tell you how to get your money back.



The Wage Watch is a publication of the non-profit Foundation for Fair Contracting of Massachusetts. The FFCM mailing address is Box 256, State House Station, Boston, MA 02133. The Wage Watch accepts letters to the editor. For information, call 1-800-224-FAIR or write [www.ffcm.org](http://www.ffcm.org).

# The Rap Sheet

*The following contractors were recently 'rapped' by the Massachusetts Attorney General's Office for violating the state's wage and hour laws. The Foundation For Fair Contracting was involved in each citation, from meeting and advising workers, to providing information.*

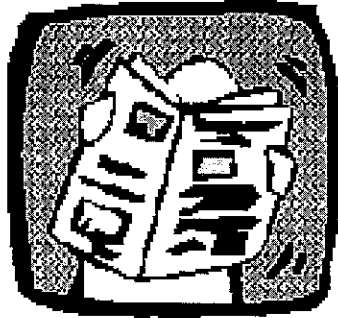
**Northern Site Contractors** and its owner, **Arthur Mercure III**, has been fined a total of \$9,850 for failing to pay the prevailing wage on two school projects in Wrentham and Medfield, MA. The Smithfield, RI-based contractor was also fined for failing to submit certified payroll records to the awarding authority and for submitting false payroll records on both construction projects. FFCM inspectors subjected the contractor's payroll records to review after being notified that operators and laborers employed by the company were being paid less than the prevailing wage for those trades. The cases were investigated by Jeffrey Ambrose of the AG's office.

An Amherst painting contractor has been ordered to pay 3 painters a total of \$10,000 after failing to pay them the prevailing wage on two different public works project. **Cameron Painting, Inc.** and its owner, **Donald E. Cameron**, were charged with underpaying the workers over a two-year period while they were employed on the New Belchertown High School public works project and various sites for the Springfield Housing Authority. The FFCM sent a mailing to employees of the company, notifying them of the wage they should have been receiving under the law. FFCM Western Massachusetts monitor Art Butler then met with the workers, who were being paid just \$16 an hour, \$10 less per hour than mandated by state's prevailing wage. Inspector Joseph Drzyzga investigated the cases for the AG's office.

**Thomas W. Wyman Electrical Contractor** and its owner, **Thomas W. Wyman**, have been ordered to pay \$2,958.36 after failing to pay the prevailing wage to two workers employed on the Amherst Well Modification project. For five months last year, the contractor attempted to skirt prevailing wage laws

by classifying the two employees as apprentices. A routine payroll inspection by FFCM monitor Art Butler brought the scam to light. A further check with the Division of Apprentice Training revealed that the company has no registered apprentice program, and the workers should have been receiving the prevailing wage for journeymen electrician. Inspector Joseph Drzyzga investigated the case for the AG's office.

**National Water Main Cleaning Company** and its owner, **Salvatore F. Perri** of Newark, NJ, have been ordered to pay a total of \$1,424 to four employees. The laborers, who were employed on the North Quincy Lateral Sewer Improvement project for two months in 2003, were paid less than the prevailing wage. The FFCM's Christopher Burger discovered the problem when attempting to review the company's payroll records; the contractor had failed to submit certified records as Massachusetts law requires. The case was investigated by AG inspector Brian Macera.



**Emerald Excavating Co.** of Plymouth, MA and its owner, **Ingeborg Kelleher**, must pay \$910 after failing to pay ten workers the prevailing wage on the Middleboro Fire Station public works project. Mario Paiva investigated the case for the AG's office.

**Arthur C. Lamb Company** and its owner, **Arthur C. Lamb**, must pay \$200 for failing to submit payroll records on the Rockland/Abington Water Main project. Edward Horniak investigated the case for the AG's office.

**Prime Interior Contractors** and its owners, **Leo G. Carmichael** and **Eileen Baker** of Wakefield, MA, must pay \$200 after failing to submit payroll records on the Pentucket Regional High School project in West Newbury, MA last year. Jeffrey Ambrose investigated the case for the AG's office.

*Think you've been paid less than the prevailing wage on a public works job? Call the FFCM at 1-800-224-FAIR to find out how you can get your money back.*

**It's an Emergency!  
No Matter How Urgent the Job —  
You Still Get the Rate**

If you're a regular Wage Watch reader, you'll know that we've been following the story about contractors who use emergency jobs as an excuse to avoid paying their workers the prevailing wage. Last year we reported on a pair of painters who'd been sent into to a public school in West Newbury, MA to repair a new paint job that had been ruined by heavy rains. The contractor, Donlon Coating, and its owner, James P. Donlon, maintained that because of the urgent nature of the job, and the fact it was a repair, the prevailing wage didn't apply.

The Foundation For Fair Contracting disagrees. After Donlon failed to submit payrolls as state law requires, FFCM monitor Joe Meagher sent a complaint to the Attorney General's office. This spring, the AG's office weighed in: emergency or not, the painters were entitled to receive the prevailing wage. "Contractors often tell their employees that small jobs and emergency jobs don't fall under the prevailing wage when it's just not the case. Anytime you're working on a public construction job, assume that you should be getting the prevailing wage. If your employer says you're not, question that," says Meagher.

**Where to Find Help**

**FFCM Hotline - 1-800-224-FAIR**

Division of Apprentice Training  
1-617-626-5409

IRS - For tax-related questions  
1-800-829-3676

National Labor Relations Board  
1-617-565-6700

Occupational Health & Safety Administration  
1-617-565-8110

Massachusetts Department of Labor  
1-617-727-3492

US Department of Labor (federal projects)  
1-617-624-6700

*The Massachusetts Attorney General's Fair  
Labor and Business Practices Division:*

One Ashburton Place  
Boston, MA 02108  
617-727-3465

1350 Main St. 4th Floor  
Springfield, MA 01103  
413-784-1240

One Exchange Place  
Worcester, MA 01608  
508-792-7600

184 North St.  
Pittsfield, MA 01201  
413-447-7324 x218

105 William St.  
New Bedford, MA 02740  
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