



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
360/902-5335 Fax 360/902-5300

August 12, 2008

Mr. James A. McPhee
Workland & Witherspoon, PLLC
741 Washington Mutual Financial Center
601 West Main Avenue
Spokane, WA 99201-0677

Re: Request for Determination - Overtime with mixed public and private work, ten hour days, and roundtrips for deliveries to public works.

Dear Mr. McPhee:

You have asked for guidance on overtime including four-tens, a mixture of public and private work; and a determination of the prevailing wage requirements on roundtrip deliveries.

For the overtime question, you gave an example of a work day in which there were four hours worked by an employee on public work and another 8 hours worked on a private work.

For the ten hour day question with a four-ten agreement in place for public work, you asked about a work day in which the public work was less than ten hours and the private work made the total hours worked in the day exceed ten hours.

For round trip deliveries, you asked two questions: (1) For a single trip to deliver, spread, and roll gravel, when do the prevailing wage requirements start and end? And (2) For multiple roundtrips to deliver, spread, and roll gravel on a public works, when do the prevailing wage requirements apply?

The answers below are based on the information you provided. References to the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC) are included. Again, these answers are based on your fact set. If the facts differ from those you provided, the answers may be different.

James A. McPhee Letter

August 12, 2008

Page 2

In a work day in which there were four hours worked by an employee on public work and another 8 hours worked on a private work the answer would be the same with or without a four-ten agreement: The over eight, or over ten hour requirements govern the public work but not the private work. Given that, we would be looking for any overtime codes that might apply to the public work such as Saturday, Sunday, or holiday provisions. Absent a prevailing overtime requirement, the four hours on public work could likely be straight time and the hours of private work could be straight time so long as the total hours worked in the work week were less than forty hours.

Your ten hour day question is addressed in the paragraph above. The applicable rule is WAC 296-127-022.

For a single delivery trip to a public work with the stated incorporation of the product, all the time spent performing work that is contemplated by or necessary to complete the public work will require the prevailing rate of pay.

For example: A trip from your shop to a gravel pit is compensable but does not require prevailing wage unless some task related to performing the public work is added. The loading at the gravel pit, travel time to the public works project, all work on or near the public works project including spreading, rolling, and even any waiting time will require the payment of the prevailing rate of pay. When the truck has left the public work and will not return to any public work project or projects but, rather, goes to perform private work, the prevailing wage requirement does not apply to the private work portion of the work day. If no work, cleaning, material pickup, etc. related to any public work is performed after the single delivery to the public works project, the prevailing wage requirement stops upon leaving the public works project and does not apply to a trip back to the shop or a trip to a private project.

For multiple round trips to public works project(s), prevailing wage requirements apply to the entire round trip including the empty leg. For the first empty trip from the shop in the morning and the last empty trip back to the shop at night, the answers are the same as those stated in the paragraph above.

Please remember, if new or different facts are present the answer(s) could change.

Washington State prevailing wage information, including the WACs, are available on the Department's web site: <http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp>

James A. McPhee Letter

August 12, 2008

Page 3

I hope this answers your questions. If you need additional information or have questions, please call or email me at 360 902-5330 or somd235@lni.wa.gov.

Sincerely,

David J. Soma

Industrial Statistician

Prevailing Wage Program Manager

WORKLAND & WITHERSPOON, PLLC

ATTORNEYS AT LAW

714 WASHINGTON MUTUAL FINANCIAL CENTER

601 WEST MAIN AVENUE

SPOKANE, WASHINGTON 99201-0677

Telephone: (509) 455-9077

Facsimile: (509) 624-6441

E-mail: jmcphce@workwith.com

PETER A. WITHERSPOON
GARY D. BRAJCICH
ERIC J. SACTJEN*
JAMES A. MCPHEE†
LAWRENCE W. GARVIN
MICHAEL A. AGOSTINELLI
KELLY M. DREW
MARIE KAGIE-SHUTEY**

OF COUNSEL:
JAMES J. WORKLAND
GARY C. RANDALL†

† Also Admitted in Idaho

* Also Admitted in Alaska

** Licensed Only in Arizona

April 25, 2008

Mr. David J. Soma
Washington State Department of Labor & Industries
Specialty Compliance Services Division
P.O. Box 44540
Olympia, WA 98504-4540

Re: Request for Determination

Dear Mr. Soma:

I write this letter to request a determination of the following issues:

1. Overtime. If overtime is defined as all time worked in excess of eight hours *per day*, unless there is a specific agreement to work four ten-hour days, how does one calculate overtime pay when only a portion of the total daily work is "prevailing wage?" For example, assume an employee works twelve hours, from 8:00 a.m. to 8:00 p.m. The employee performed work on a public works project from 8:00 a.m. to 12:00 p.m. and then performed work on a non-public works project from 12:00 p.m. to 8:00 p.m. Does the employee receive overtime based on the prevailing wage rate for the overtime that occurred after 4:00 p.m. even though the work was performed on a non-public works project?

2. Ten Hour Day Limitation For Public Works Projects. If an employee is prohibited from working more than ten hours per day at a public works project, is it permissible for an employee to work more than ten total hours in one day on both public works and non-public works projects, *provided that* no more than ten hours are spent on public works projects in one day? For example, assume an employee works twelve hours from 8:00 a.m. to 8:00 p.m. Is it permissible for that employee to work at a public works project from 8:00 a.m. to 5:00 p.m. (nine hours), and then work at a non-public works project from 5:00 p.m. to 8:00 p.m.? If this is permissible, would the overtime pay be based on the prevailing wage rate or non-prevailing wage rate in light of the fact that the overtime hours were actually performed on a non-public works project?

3. Roundtrip – Single Trip. When an employee is delivering and spreading a single load of gravel at a public works project, when does the prevailing wage time begin and end? Specifically, does the prevailing wage time begin when the truck is loaded at the commercial site or when the truck arrives at the public works site? Furthermore, does the prevailing wage end as soon

ES/PA/RCD MAY 05 '08 AM08:11

Mr. David J. Soma

April 25, 2008

Page 2

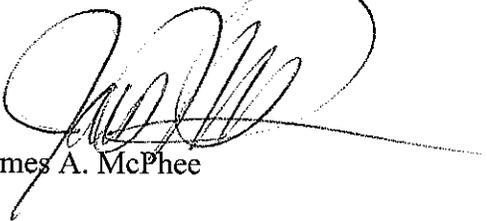
as the truck is emptied at the public works site or when the truck is returned to its storage location for the night?

4. Round Trip – Multiple Trips. When an employee is delivering and spreading multiple loads of gravel to a public works project, does the prevailing wage time stop after the initial “dump and spread” and resume when the next load of gravel arrives at the public works project? Or does the employee get paid prevailing wage on the trips to and from the commercial site, whether empty or full?

Thank you for your courtesies and please contact me if you have any questions.

Very truly yours,

WORKLAND & WITHERSPOON, PLLC



James A. McPhee