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**CONTRACTS FOR STATE PROJECTS SUBJECT TO ACT 166****D1.00**

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**Purpose**

To establish uniform criteria for determining whether a contract for a "state project is subject to the provisions of the Michigan Prevailing Wage Law.

**Responsibility**

The investigator is responsible for reviewing all complaints to determine whether the contract is subject to the provisions of the Act.

**Policy**

1. Except as provided in policy 2, a contract for a state project shall be subject to state prevailing rate requirements if the contract;
  - a. is executed between a contracting agent and a successful bidder as contractor, and
  - b. is entered into pursuant to advertisement and invitation to bid, and
  - c. involves the employment of construction mechanics, and
  - d. is sponsored or financed in whole or in part by the State of Michigan. (Sec. 2) and,
  - e. includes an express term and/or other evidence exists in the bid specifications that the Michigan prevailing rates of wages and fringe benefits be paid each class of mechanics by the contractor and all subcontractors and (Sec. 2)
  - f. a prevailing rate schedule issued by the department is a part of the contract.
2. Contracts on state projects which require the payment of prevailing wages pursuant to the federal Davis-Bacon Act or related acts (see appendix B of 29 CFR Part I) or contracts that contain wage or fringe benefits rates that are equal or greater than the prevailing rate are not subject to the Act. (Sec. 2)
3. Cities, counties, townships or economic development corporations are not contracting agents, and are not subject to the Prevailing Wage Act, even if state prevailing rates are incorporated in contracts.

**CONTRACTS FOR STATE PROJECTS SUBJECT TO ACT 166****D1.00**

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**Application 1 - on Coverage**

Michigan's prevailing wage law covers state, public school (including community colleges) and state university projects, paid for by state funds or state backed bonds.

It does not cover construction projects:

- initiated by cities, townships, counties or
- initiated by economic development corporations or
- initiated by other entities not defined in the Act as "contracting agent."

Political subdivisions or governmental units that are not "contracting agent(s)" may have their own prevailing wage requirements, but those requirements are not subject to Act 166.

**Application 2 - State University and State Government Agencies**

All state universities and state government agencies are considered Contracting Agents. Western Michigan University Board of Control and Associated Builders & Contractors v. State of Michigan (refer to appendix C for Michigan Supreme Court decision).

**Application 3 - on Advertisement or Invitation to Bid, Competitive Bidding**

The revised school code, MCL 380.1267 MSA 15.41267, requires competitive bidding by all public school districts or a public school academy (except for emergency repairs, or repairs done by school district employees) for projects over the annual amount established by the Michigan Department of Education. This amount is adjusted yearly to reflect increases in the consumer price index (see appendix G).

**Application 4 - on Advertisement or Invitation to Bid**

A state university has entered into a \$75,000 contract with a contractor for alteration of a facility without an advertisement or invitation to bid. This contract would not be within the jurisdiction of the act because the university failed to advertise or invite contractors to bid on the project.

**Application 5 – on Advertisement or Invitation to Bid**

A state university has entered into a \$75,000 contract with a contractor for alteration of a facility. The university sent a letter inviting one or more contractors to bid on the project. This contract would be within the jurisdiction of the act because the university invited contractors to bid on the project.

**CONTRACTORS AND SUBCONTRACTORS SUBJECT TO ACT 166****D1.01**

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**Purpose**

To establish uniform criteria for determining whether a "contractor or subcontractor" is subject to the provisions of the Michigan Prevailing Wage Law, Act 166, of 1965.

**Responsibility**

Investigators are responsible for reviewing all complaints to determine if the contractor is subject to the Act.

**Policy**

1. A contractor awarded a contract to perform work on a covered state project is subject to the Act.
2. A subcontractor who contracts for work under a contract subject to Act 166 is also subject to the Act.
3. Each contractor or subcontractor is separately liable for the payment of the prevailing rate to its workers on a covered project.
4. The prime contractor is responsible for advising all subcontractors of the requirement to pay the prevailing rate prior to commencement of work.

**PREVAILING WAGE ON STATE PROJECTS****CONSTRUCTION MECHANICS PROTECTED BY THE ACT****D1.02****Purpose**

To establish uniform criteria for determining whether construction mechanics are protected by the provisions of the Michigan Prevailing Wage Law, Act 166, P.A. 1965.

**Responsibility**

The investigator is responsible for reviewing all complaints to determine if a construction mechanic is subject to the Act.

**Policy**

1. A "construction mechanic" employed by a contractor to perform work as described in the contract specification is covered by the Act.
2. An employer/employee relationship must exist for the Act to apply to a construction mechanic.
3. Civil service employees subject to the jurisdiction of the State Civil Service Commission are not covered by the Act.
4. Site of Work – (USDOC regulatory definition, 29 CFR 5.2)...“site of the work is the physical place or places where the...work called for in the contract [is occurring]; and any other site where a significant portion of the...work is constructed, provided that such site is established specifically for the performance of the contract or project.”

The site of work for most projects (including MDOT let projects) is defined as the entire construction site as specified in the plans and proposal. The site of work also includes batch plants, borrow pits, job headquarters, tool yards, etc., provided they are established for and dedicated exclusively, or nearly so, to the project, **and** are adjacent or virtually adjacent to the site of the work.

**Covered:**

A driver whose activities are confined to the project worksite and / or a site specifically created to serve the project is covered for all hours worked. Drivers who work for a contractor on the project delivering materials from a supply depot created for the project are covered.

**Not Covered:**

Time spent transporting materials to or from a project site is not covered whenever materials are transported to and from an offsite location not specifically created to serve the project. Drivers delivering materials to a project site, employed by a manufacturer or material supplier, from a plant or site that serves the public and who perform no work on the project, are not covered because their work is only incidental to the project. A truck driver whose only contact with a “state project” is the removal of materials from a project is not covered by the prevailing wage law for time spent loading or transporting the material to a refuse site.

**PREVAILING WAGE ON STATE PROJECTS****CONSTRUCTION MECHANICS PROTECTED BY THE ACT****D1.02****Application for construction mechanics****EXAMPLE 1:**

A driver whose activities are confined to the project worksite and / or a site specifically created to serve the project is covered for all hours worked. Drivers who work for a contractor on the project delivering materials from a supply depot created for the project are covered. A truck driver whose work on a project is 20 % or less of a work week is not covered.

A driver employed by a project contractor or subcontractor to haul materials, such as sand, dirt, gravel, asphalt, concrete, etc., to and from a location offsite is covered for all time worked if the supply source, such as a gravel pit or other facility, was created to serve the project, after the project was advertised for bid. In these cases, the driver's work is integrally related to the project and is covered.

S&L Road Building Co. leased or invoiced D&H Trucking Co. to haul dirt from point A and deliver it to point B on the project site. D&H became a project subcontractor at the time it was allowed to perform work on the project site. The truck driver(s) employed by D&H must be paid the prevailing wage rate for all time worked that is related to the project.

**EXAMPLE 2:**

A worker, employed by the contractor engaged on the project, assembles electrical panels offsite for installation at the project work site. The worker performs no work on the project work site. The time spent assembling the electrical panels is not covered by the Act.

**EXAMPLE 3:**

A supervisor/foreman who performs no construction mechanic work on the project is not covered by the Act.

A supervisor/foreman, who works on the project will be considered a construction mechanic if 40% or more of their duties, while working on the project, are as a construction mechanic. The mechanic will be compensated at least the journeyman rate for the classification involved for all project hours worked.

**EXAMPLE 4:**

- A. A complaint is received against George Johnson Wiring, Inc. for not paying prevailing wage rates to George Johnson. The contractor states Mr. Johnson is not covered because he is president of his corporation. Mr. Johnson performs skilled labor on the project site, is employed by a corporation, and therefore must be paid the prevailing wage rate.
- B. A complaint is received against Bill's Carpentry for not paying prevailing wage rates. Bill's Carpentry responds that all mechanics who worked on the site were independent contractors. The investigation will include examining the work circumstances to determine if there was an employer/employee relationship; if so, the prevailing wage rate must be paid.

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**PREVAILING WAGE ON STATE PROJECTS**

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