

**CHAPTER 9. EMPLOYMENT AND WAGES**

<b>Subchap.</b>		<b>Sec.</b>
<b>A.</b>	<b>WAGE PAYMENT AND COLLECTION LAWS .....</b>	<b>9.1</b>
<b>B.</b>	<b>OPERATION OF PRIVATE EMPLOYMENT AGENCIES .....</b>	<b>9.11</b>
<b>C.</b>	<b>EQUAL PAY LAWS .....</b>	<b>9.61</b>
<b>D.</b>	<b>MISCELLANEOUS HAZARDS AND CONDITIONS OF EMPLOYMENT .....</b>	<b>9.71</b>
<b>E.</b>	<b>PREVAILING REGULATIONS .....</b>	<b>9.101</b>
<b>F.</b>	<b>CONTRACTS FOR COMMONWEALTH PRINTING .....</b>	<b>9.201</b>

**Subchapter A. WAGE PAYMENT AND COLLECTION LAWS**

- Sec. 9.1. Authorized deductions.
- 9.2. Restrictions.
- 9.3. Penalty.
- 9.4. Common carriers by railroad.

**Authority**

The provisions of this Subchapter A issued under section 3 of the act of July 14, 1961 (P. L. 637, No. 329) (43 P. S. § 260.3), unless otherwise noted.

**Source**

The provisions of this Subchapter A adopted August 26, 1961; amended through September 1, 1969, unless otherwise noted.

**GENERAL PROVISIONS**

**§ 9.1. Authorized deductions.**

The following deductions from wages are authorized for the convenience of employes in accordance with the provisions of section 3 of the Wage Payment and Collection Law (43 P. S. § 260.3).

- (1) Contributions to and recovery of overpayments under employe welfare and pension plans subject to the Federal Welfare and Pension Plans Disclosure Act (29 U.S.C.A. § 301 et seq.).
- (2) Contributions authorized in writing by employes or under a collective bargaining agreement to employe welfare and pension plans not subject to the Federal Welfare and Pension Plans Disclosure Act (29 U.S.C.A. § 301 et seq.). These include group insurance plans, hospitalization insurance, life insurance, provided such insurance policies are written by companies certified by the Pennsylvania Insurance Department, and group hospitalization and medical service programs offered by nonprofit hospitalization and medical service organizations and medical group plans.

- (3) Deductions authorized in writing for the recovery of overpayments to employe welfare and pension plans not subject to the Federal Welfare and Pension Plans Disclosure Act (29 U.S.C.A. § 301 et seq.).
- (4) Deductions authorized in writing by employes or under a collective bargaining agreement for payments into the following:
  - (i) Company-operated thrift plans.
  - (ii) Stock option or stock purchase plans to buy securities of the employing or an affiliated corporation at market price or less provided such securities are listed on a stock exchange or are marketable over the counter.
- (5) Deductions authorized in writing by employes for payment into employe personal savings accounts such as the following:
  - (i) Payments to a credit union.
  - (ii) Payments to a savings fund society, savings and loan, or building and loan association.
  - (iii) Payments to the savings department of banks for Christmas, vacation or other savings funds.
  - (iv) Payroll deductions for the purchase of United States Government bonds.
- (6) Contributions authorized in writing by the employe for charitable purposes such as the United Community Fund and similar organizations.
- (7) Contributions authorized in writing by the employe for local area development activities.
- (8) Deductions provided by law, including but not limited to deductions for Old Age and Survivors Insurance (Social Security taxes), withholding of Federal or local income or wage taxes or occupation privilege taxes and deductions based on court orders.
- (9) Labor organization dues, assessments and initiation fees, and such other labor organization charges as are authorized by law.
- (10) Deductions for repayment to the employer of bona fide loans provided the employe authorizes such deductions in writing either at the time the loan is given him or subsequent to such loan.
- (11) Deductions for purchases or replacements by the employe from the employer of goods, wares, merchandise, services, facilities, rent or similar items provided such deductions are authorized by the employe in writing or are authorized in a collective bargaining agreement.
- (12) Deductions for purchases by the employe for his convenience of goods, wares, merchandise, services, facilities, rent or similar items from third parties not owned, affiliated or controlled directly or indirectly by the employer if the employe authorizes such deductions in writing.
- (13) Such other deductions authorized in writing by employes as in the discretion of the Department is proper and in conformity with the intent and purpose of the Wage Payment and Collection Law (43 P. S. §§ 260.1—260.12).

**Notes of Decisions**

Deduction from employe's wages under earnings participation plan which placed employes' salaries on a sliding scale varying as a function of employer's profit or loss ratio required both the written authorizations of the employes involved and an authorization by the Department of Labor and Industry that the plan conforms to the intent and purpose of The Wage Payment and Collection Law (43 P. S. §§ 260.1—260.12). *Ressler v. Jones Motor Co., Inc.*, 487 A.2d 424 (Pa. Super. 1985).

**Cross References**

This section cited in 34 Pa. Code § 31.52 (relating to administration—general).

**§ 9.2. Restrictions.**

Nothing in this subchapter authorizes a deduction below the minimum wage applicable under The Minimum Wage Act of 1968 (43 P. S. §§ 333.101—333.115) for an expense or charge which is required or authorized by the employer in connection with the employe's performance of the duties assigned by the employer.

**Source**

The provisions of this § 9.2 amended September 26, 1980, effective December 1, 1973, 10 Pa.B. 3789. Immediately preceding text appears at serial page (40543).

**Cross References**

This section cited in 34 Pa. Code § 31.52 (relating to administration—general).

**§ 9.3. Penalty.**

A person who violates this subchapter or the regulations of the Department or who interferes with the Department or its authorized representative in the enforcement of the regulations or this subchapter shall upon conviction be punishable in accordance with section 9 of act of July 14, 1961 (P. L. 637, No. 329) (43 P. S. § 260.9) (Repealed).

**Cross References**

This section cited in 34 Pa. Code § 31.52 (relating to administration—general).

**§ 9.4. Common carriers by railroad.**

(a) Every common carrier by railroad shall furnish to its operating personnel in train and engine service at the time of payment a separate listing of each daily wage and how it was computed.

(b) The method by which each common carrier by railroad shall furnish the listing shall be submitted to the Board and be approved by it before it will be deemed in compliance with subsection (a).

**Source**

The provisions of this § 9.4 adopted November 24, 1978, 8 Pa.B. 3337.

**Cross References**

This section cited in 34 Pa. Code § 31.52 (relating to administration—general).

**Subchapter B. OPERATION OF PRIVATE  
EMPLOYMENT AGENCIES****GENERAL PROVISIONS**

- Sec.
- 9.11. Definitions.
  - 9.12. Penalty.
  - 9.13. Qualifications and conditions determining the granting or denial of a license.
  - 9.14. Schedule of fees and forms.
  - 9.15. Agencies in violation of regulations.
  - 9.16. Refunds.
  - 9.17. Petition.

**REPRESENTATIVES**

- 9.21. Registration procedure.
- 9.22. Application for registration.
- 9.23. Termination of registration.
- 9.24. Reregistration.

**THEATRICAL AGENCIES**

- 9.31. Clearing of contracts.
- 9.32. Theatrical engagements by foreign agents.
- 9.33. Distribution of regulations to parties.

**ADVERTISING**

- 9.41. Advertising generally.

**REFERRALS**

- 9.51. Referrals generally.

**Authority**

The provisions of this Subchapter B issued under section 27 of the act of July 31, 1941 (P. L. 616, No. 261) (43 P. S. § 561), unless otherwise noted.

**Source**

The provisions of this Subchapter B adopted July 1, 1968; amended April 19, 1974, 4 Pa. B. 763, unless otherwise noted.

**GENERAL PROVISIONS****§ 9.11. Definitions.**

(a) The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Employment Agency Law (43 P. S. §§ 535—581).

*Hearing*—A quasi-judicial proceeding held by the Department for the purpose of taking evidence to determine issues.

*Interested person*—Any person who has a demonstrable interest in the decision resulting from any hearing.

*Lose a position*—An applicant has voluntarily or involuntarily terminated employment within 10 weeks from the starting date.

*Party*—Any person whose rights are necessarily and directly affected by the decision from any hearing.

*Temporary fee*—The fee due for any position which is known, at the time of its acceptance, to be for a duration of 10 weeks or less, or if originally permanent, ceases within 10 weeks from the starting date for any reason except the following:

(i) Applicant accepts a position but fails to report for work on the agreed upon starting date.

(ii) Applicant resigns to accept employment elsewhere.

(b) Those terms used in this subchapter and which are defined in the Employment Agency Law (43 P. S. § 535) and not otherwise defined in (45 P. S. §§ 535—581) subsection (a), shall have the same meaning as specified in such law, unless the context clearly indicates otherwise.

**Notes of Decisions***Lose a Position*

The definition of “lose a position”, in that losing a position includes voluntary and involuntary termination, must be read into the intent of 43 P. S. § 574(m). *Novelli v. Pancoast Personnel, Inc.*, 390 A.2d 1323 (Pa. Super. 1978).

**§ 9.12. Penalty.**

Any person who violates any of the provisions of this Subchapter or any regulations of the Department or who interferes with the Department or its duly authorized representative in the enforcement of such regulations or provisions

shall be subject to summary proceedings before an alderman, magistrate, or justice of the peace, and upon conviction shall be penalized under the provisions of the act.

**§ 9.13. Qualifications and conditions determining the granting or denial of a license.**

(a) *Character of applicant.* In interpreting the phrase “the character of the applicant makes him unfit to be an employment agent” in section 7 of the act (43 P. S. § 541), the Department will consider, among other factors, the following:

- (1) Reputation of the applicant in the community.
- (2) The criminal record, if any, of the applicant whether or not the applicant has ever been convicted of any crime, exclusive of minor traffic violations.
- (3) The record of the applicant, if any, in the employment agency field and, when applicable, the effect that the lack of training, experience or education in employment agencies or related fields may have in the operation of the agency.
- (4) Whether the applicant has sufficient familiarity with the provisions of the act and this Subchapter so that he will be able to comply with them.
- (5) The financial stability and responsibility of the applicant.

(b) *Plan of business.* In interpreting the phrase “the proposed plan of business is unjust or unfair under the terms of this act” in section 7 of the act (43 P. S. § 541), the Department will presume any plan to be unjust or unfair if any of the following conditions exist:

- (1) If the applicant is required to sign a contract containing a confession of judgment clause unless the employe is a nonresident of this Commonwealth and is placed in a position outside of this Commonwealth.
- (2) If the schedule of fees does not provide for a temporary fee applicable in situations specified in the act and this Subchapter, not to exceed 10% of the total amount earned for the first ten weeks of employment, but in no case to exceed the applicable fee for a permanent position.
- (3) If the proposed schedule of fees and forms do not comply with the requirements of § 9.14 (relating to schedule of fees and forms).
- (4) If the employment agent has any agreement or enters into any agreement with any lender of monies which agreement provides that the employment agency will receive a commission from the lender by the employment agent.
- (5) If the plan provides for a fee based on remuneration in excess of that initially contracted for between the employer and the applicant.

(c) *Bonds.* If the same employment agency has two or more licenses he shall file a separate bond for each license as required by section 9 of the act (43 P. S. § 543).

**§ 9.14. Schedule of fees and forms.**

(a) *Fees.* The schedule of fees filed with the Department pursuant to section 11 of the act (43 P. S. § 545) shall specify the following:

(1) The standard by which commissions, bonuses, gratuities and other perquisites of his employment are to be valued in computing the wage on which the fee is based.

(2) The value of meals and lodging if these are included in wage or salary on which the fee is based.

(b) *Forms.* No form or contract shall be filed with the Department which does not conform with all the requirements of the act and this Subchapter. The Department may refuse to accept for filing any form or contract which in its opinion does not indicate with sufficient clarity of language, or in printing of sufficient size, the rights and obligations of the applicant who signs or is bound by the terms of the form or contract.

(c) *Requested information.* Upon acceptance of a position for which the applicant assumes liability for any portion of the fee, the following information shall be furnished to the applicant in writing:

- (1) Name and address of employer.
- (2) Title of position.
- (3) Starting date.
- (4) Starting salary.
- (5) The amount of fee.

(d) *Additional requirements.* In addition to the requirements of subsection (c), the following words shall be included:

“This agency is duly licensed by and bonded to the Commonwealth of Pennsylvania. Inquires may be addressed to (herein shall be noted the name and address of the area office of the Division of Private Employment Agency licenses).”

(e) *Receipts.* A receipt, bearing the agency name, shall be issued by the Employment Agency for all monies received from applicants.

**Cross References**

This section cited in 34 Pa. Code § 9.13 (relating to qualifications and conditions determining the granting or denial of a license).

**§ 9.15. Agencies in violation of regulations.**

No placement fee shall be considered earned by an employment agency if the agency has violated the employment agency law or regulations in referring an applicant to an employer, even though the applicant may subsequently accept the position.

**§ 9.16. Refunds.**

If an applicant voluntarily or involuntarily loses a position and is therefore entitled to a refund as provided in the act, such refund shall be made by the agency to the applicant within 15 days from the date on which the applicant terminated employment or the date on which the applicant notified the agency of such termination, whichever is the later of the two dates. If the agency has substantial reason to believe that the applicant has resigned to accept employment elsewhere, an additional 7 days will be allowed to complete investigations and make a refund, if refund is due.

**§ 9.17. Petition.**

For the modification of any of these rules, the following shall be the method of procedure.

(1) Any licensed employment agent, or other person interested, affected by any such regulations, or otherwise, may petition for a hearing on the reasonableness of a rule or regulation. Such petition for hearing shall be by verified petition filed with the Industrial Board, setting out specifically and in full detail the rule or regulation upon which a hearing is desired, and the reasons why such rule or regulation is deemed to be unreasonable.

(2) Upon receipt of a petition the Industrial Board will determine the merits and if a hearing is necessary, notice of time and place will be given to the petitioner and to such other persons as the Industrial Board may find directly interested.

**REPRESENTATIVES****§ 9.21. Registration procedure.**

Upon receipt of an application for registration as a representative or counselor, the Department shall within five days notify the applicant that he is eligible to sit for an examination covering the provisions of the act and the regulations pertaining thereto. This examination shall be given at least once each week in Harrisburg, Philadelphia and Pittsburgh. The test having been completed satisfactorily, the Department shall within ten days register the representative or counselor.

**§ 9.22. Application for registration.**

Application for registration as a representative or counselor shall be made on the date employment commences.

**§ 9.23. Termination of registration.**

A representative or counselor registration shall terminate when the representative or counselor leaves the agency by whom persons were employed when the registration took place or 1 year after that date. In this event it shall be the

responsibility of the employment agency and the representative or counselor to return notice of registration to the Department.

**§ 9.24. Reregistration.**

If a previously registered representative or counselor re-applies for registration within a period of 2 years, the Department may waive re-examination.

**THEATRICAL AGENCIES**

**§ 9.31. Clearing of contracts.**

No employment agency may make any theatrical engagement, except as provided in § 9.32 (relating to theatrical engagements by foreign agents), unless it is licensed as a theatrical employment agency (class “2”) by the Department.

**§ 9.32. Theatrical engagements by foreign agents.**

(a) *Definitions.* The following words and terms, when used in this section, have following meanings, unless the context clearly indicates otherwise:

*Endorsing agent*—A class “2” employment agent duly licensed by the Department under the act and this subchapter, who approves the contract for a theatrical engagement by a foreign agent.

*Foreign agent*—A theatrical agent or employment agent validly operating under the law of the state in which he has his principal place of business.

(b) *Approval by endorsing agent.* A foreign agent may make a theatrical engagement in this Commonwealth if the contract for such engagement is in writing and is approved by an endorsing agent. Except as provided for in subsection (c), such approval shall be given prior to commencement of the engagement. The approval shall be an endorsement signed by the agent or, in the case of a corporation, an officer of such corporation. The endorsement shall appear in all copies of the contract.

(c) *Emergency engagement.* In the case of an emergency engagement, as defined by section 2 of the act (43 P. S. § 536(2)), the endorsement shall be made within 48 hours after the engagement is made and, in no case, more than 48 hours after the commencement of the engagement.

(d) *Responsibility of endorsing agent.* The endorsing agency shall be responsible for compliance with all conditions and requirements of the act and this subchapter. All statements, forms, and contracts required to be filed by the act shall be filed with the endorsing agent. The endorsing agent shall be considered the employment agent for all purposes under the act and this subchapter.

(e) *Agreement between foreign and endorsing agent.* No foreign agent shall act as an endorsing agent, and no endorsed contract shall be valid unless there is filed with, and approved by, the Department at least seven days in advance of such endorsement, a written agreement between the foreign agent and the endorsing agent, stating that for a consideration, the endorsing agent agrees to endorse

such employment contracts as the foreign agent shall present to him, if such contracts, in the opinion of the endorsing agent, are and will be fair and equitable to the entertainer, and are proper under the terms of the act and this subchapter and if the endorsing agent understands that he is responsible for compliance with all the requirements of the act and this subchapter. Such statement shall also contain a provision by which the foreign agent appoints the endorsing agent as his agent for receipt of any service of process, whether civil or criminal, before any court whether or not of record, or any agency of the Commonwealth. Such statement shall be sworn to by both the endorsing agent and the foreign agent before any person duly authorized to take oaths under the laws of the Commonwealth.

(f) *Suspension or revocation.* The Department may suspend or revoke for cause the authority of any foreign or endorsing agent to act under the terms of the statement. A hearing shall be provided for in all such cases but a suspension may be ordered pending the hearing and its outcome.

#### **Cross References**

This section cited in 34 Pa. Code § 9.31 (relating to clearing of contracts); and 34 Pa. Code § 9.33 (relating to distribution of regulations to parties).

### **§ 9.33. Distribution of regulations to parties.**

Whenever a contract is executed under § 9.32 (relating to theatrical engagements by foreign agents), the endorsing agent shall be responsible for assuring that there is distributed free, to both the employer and the entertainer, a copy of the act and this subchapter or such abstract of the act and this subchapter as may be made available by the Department, so that all parties will be informed of their rights and obligations. Copies of the act and this subchapter or abstracts thereof, will be distributed to all licensed class “2” agents without charge.

## **ADVERTISING**

### **§ 9.41. Advertising generally.**

In conjunction with section 20(d) of the act (43 P. S. § 574(d)) which states, in part, “No employment agent shall publish or cause to be published any false or fraudulent or misleading information, representation, notice or advertisement,” the Department will require the following:

- (1) No employment agency may advertise a position unless the agency has, in its possession, a current bona fide job order for that position.
- (2) An advertisement for a position that an employment agency publishes or causes to be published shall accurately reflect the information and requirements given to the agency by the employer requesting the agency’s services in supplying candidates for the position.

## REFERRALS

### § 9.51. Referrals generally.

Only one fee is payable for a placement. In the case of a duplicate or overlapping referral resulting in a dispute which the parties are unable to resolve or compromise, the matter may be referred to the Department, in which case the Department will use the principle of effective action and determine whose professional effort actually resulted in the placement and will award the fee accordingly.

## Subchapter C. EQUAL PAY LAWS

- |       |                            |
|-------|----------------------------|
| Sec.  |                            |
| 9.61. | Definition of “wages.”     |
| 9.62. | Record keeping.            |
| 9.63. | Posting.                   |
| 9.64. | Assignment of wage claims. |
| 9.65. | Penalty.                   |

### Authority

The provisions of this Subchapter C issued under act of December 17, 1959 (P. L. 1913, No. 694) (43 P. S. §§ 336.1—336.10), unless otherwise noted.

### Source

The provisions of this Subchapter C adopted April 24, 1960; amended through July 1, 1968, unless otherwise noted.

### Cross References

This subchapter cited in 34 Pa. Code § 31.52 (relating to administration—general).

### § 9.61. Definition of “wages.”

When used in this subchapter, the term “wages” means every form of remuneration or compensation for work or labor performed or services rendered and includes, but is not limited to, salary, commissions, drawing account, piece rates, stock option plans, profit sharing plan and bonuses, unless the context clearly indicates otherwise.

### Notes of Decisions

#### *Wage Payment & Collection Law*

There is no requirement in the Wage Payment and Collection Law, act of July 14, 1961 (P. L. 637) that the Department of Labor promulgate standards or regulations to aid the Secretary of Labor in exercising the conferred discretionary authority; thus, this law is not unconstitutional because there are no standards contained therein to guide the Department’s discretion in determining whether to order the posting of a bond. *Gwynedd Development Group, Inc. v. Department of Labor and Industry*, 666 A.2d 365 (Pa. Cmwlth. 1995); appeal granted 675 A.2d 1220 (Pa. 1996); appeal dismissed 672 A.2d 1318 (Pa. 1996).

**§ 9.62. Recordkeeping.**

(a) Employers shall keep the following records which shall be made available, at the place of employment, upon request, to authorized employees of the Department during the usual business hours of the employer:

- (1) The name and address of each employe.
- (2) The rate of wage paid each employe.

(b) The records shall be kept for a period of 1 year unless an action is pending in which the records are relevant.

**§ 9.63. Posting.**

(a) Employers who employ persons of both sexes shall post the abstract of the Equal Pay Law (43 P. S. §§ 36.1—336.10) provided by the Department.

(b) The abstract shall be posted in a conspicuous place at the place of business where all employes shall know of its existence and may conveniently read it.

**§ 9.64. Assignment of wage claims.**

An employe who is of the opinion that he has suffered discrimination in wages based on sex may report the matter to the Department of Labor and Industry, Harrisburg, Pennsylvania, for investigation.

**§ 9.65. Penalty.**

A person who violates this subchapter or who interferes with the Department or its authorized representative in the enforcement of this subchapter may be penalized under section 8 of the Equal Pay Law (43 P. S. § 336.8).

**Subchapter D. MISCELLANEOUS HAZARDS AND  
CONDITIONS OF EMPLOYMENT**

Sec.	
9.71.	General requirements.
9.72.	Exposure to dust, fumes and other atmospheric impurities.
9.73.	Cigar manufacturing.
9.74.	Meat grinding.
9.75.	Linoleum manufacturing.
9.76.	Centrifugal extractors.
9.77.	Electric welding.
9.78.	Needle trades.
9.79.	Treatment of horsehair.
9.80.	Forging and hot metal stamping.
9.81.	Protection of persons engaged in fumigating.
9.82.	Storage of volatile inflammable liquids.
9.83.	Guarding of guillotine cutters.
9.84.	Guarding bakery machinery.

- 9.85. Drinking water on contracting operations.
- 9.86. Portable power hand saws.
- 9.87. Blasting operations.
- 9.88. Proof of liability of employers for Workmen's Compensation Insurance.
- 9.89. Alteration, painting or glazing of windows.
- 9.90. Maintenance of stairs, ramps or walking surfaces.
- 9.91. Posted guard near manhole entrance.
- 9.92. Penalty.

#### Authority

The provisions of this Subchapter D issued under act of June 2, 1913 (P. L. 396, No. 267) (71 P. S. § 1444), unless otherwise noted.

#### Source

The provisions of this Subchapter D adopted August 1, 1968.

### § 9.71. General requirements.

- (a) Indulgence in foolish play, unnecessary pushing and nudging and similar activities while at work, which involves the safety of fellow workers, is prohibited.
- (b) Where male employes work two shifts, an intermission shall be scheduled between shifts for the purpose of permitting time for meals.
- (c) The sharing of towels in any establishment is prohibited.
- (d) Smoking is prohibited in every work room or stockroom in any factory or workshop in this Commonwealth in which explosive or readily combustible material is used, handled or stored, and in other parts of such factories where there is an equally great fire hazard.
- (e) No employe may have in his possession at any time in any room or other portion of a building where ether is manufactured or otherwise handled, any match or other flame-producing device, unless he is authorized in writing by the superintendent to do so, in which case safety matches only may be used. A search for matches shall be made by an authorized person at least twice a week, at irregular intervals. The finding of a match or other flame-producing device on the person of any employe not authorized to have matches in his possession shall be cause for immediate dismissal, and the fact shall be reported to the Department.
- (f) In every establishment there shall be provided and properly maintained approved first aid kits at all times, without cost to employes, in such locations and in sufficient number to meet the demands of the various working groups. At least one person for each such kit shall be properly instructed in the application of first aid to injured persons and shall have charge of the first aid kit and its maintenance. Special consideration shall be given to the type of injuries peculiar to the type of industry as well as general first aid instruction.

**§ 9.72. Exposure to dust, fumes and other atmospheric impurities.**

(a) All dust, fumes, vapors, gases, fibers, fogs, mists or any other atmospheric impurities that, in connection with any process of manufacture or use, are created in, emitted into, or disseminated through areas where persons are employed in such quantities as, in the judgment of the Department, would or might tend to injure the health of employees shall be removed by means of suction devices at their point of origin or by other methods acceptable to the Department.

(b) When required by the Department the employer shall have determinations made of the kind and amount of the atmospheric impurities from a sample taken under conditions and at a point or points indicated by the Department. This shall be performed by an analyst qualified for the purpose.

(c) The quantity of any impurities as shown by the determinations may not be of an amount considered by the Department to be injurious to the health of employees.

**§ 9.73. Cigar manufacturing.**

The practice of bringing the cigar or cigar band to the mouth in the process of manufacture or banding of cigars is prohibited.

**§ 9.74. Meat grinding.**

All power-driven meat grinders of the worm type shall be so constructed that meat can be safely fed to the worm by any of the following methods:

- (1) By a mechanical method of feeding the worm.
- (2) By the use of a permanently attached neck to the cylinder enclosing the worm which shall have an opening of not more than 2 1/2 inches in diameter at a point at least 4 1/2 inches above the worm.
- (3) Any other means of protection approved by the Board.

**§ 9.75. Linoleum manufacturing.**

The height of the railing along runways of drying stoves or festooners used in the manufacture of linoleum shall not be less than 36 inches.

**§ 9.76. Centrifugal extractors.**

Centrifugal machines, such as extractors and whizzers, shall be provided with covers for the revolving drums or baskets. These covers shall be electrically or mechanically arranged so that they are closed at all times while the drums are in motion. Machines shall be provided with effective brakes which are mechanically operated.

**§ 9.77. Electric welding.**

(a) The point where electric welding operations are being conducted shall be so enclosed to prevent the harmful rays from the arc from reaching the eyes of any workmen.

(b) For the protection of the welder, that portion of the enclosure which is behind the welder shall be coated with a substance which will minimize all reflection and eliminate ultraviolet radiations.

(c) Operators of electric welding machines shall be provided with approved helmets or goggles unless such machines are equipped with shields attached to the top electrode.

**§ 9.78. Needle trades.**

Power-driven single needle sewing machines used for straight sewing without folders shall be provided with an approved needle guard so that the fingers of the operator are protected from accidentally slipping under the needle. The guard shall be of such form that the needle can be threaded conveniently without removing the guard.

**§ 9.79. Treatment of horsehair.**

All horsehair, as early as possible in the process of its manufacture, preferably before the bales are opened, or with the minimum amount of handling after the bales have been opened, shall be subjected to one of the following processes:

- (1) Subjection to dry heat at a temperature of 200° F for 24 hours.
- (2) Subjection to steam at 15 pounds pressure for 2 hours.
- (3) Boiling, with the hair constantly covered with boiling water, for 3 hours.

**§ 9.80. Forging and hot metal stamping.**

(a) All hammers operated by steam, air, gravity or electricity shall be provided with positive locking devices so that when the ram is at the top or the bottom of its stroke, it cannot be accidentally moved.

(b) Every steam and air hammer shall be provided with a stop valve in the admission pipe line, which shall be closed, prior to, and during the repair of the hammer or while changing dies.

**§ 9.81. Protection of persons engaged in fumigating.**

Any person engaged in fumigating and using cyanogen compounds or any other gases, fumes or vapors which are dangerously toxic shall wear a protective device such as a gas mask with a canister containing an effective absorbent, or a device supplying fresh air or oxygen to the user.

**§ 9.82. Storage of volatile inflammable liquids.**

No volatile inflammable liquids may be stored or handled in any room not properly ventilated or within dangerous proximity to open flame, fire or spark-emitting devices.

**§ 9.83. Guarding of guillotine cutters.**

All power-driven guillotine paper cutters installed after July 1, 1933, shall be equipped with a two-handed tripping device and a nonrepeat device.

**§ 9.84. Guarding bakery machinery.**

(a) Each dough brake shall be provided with either a foot-operated belt shifter or a guard in front of the rolls so arranged that the striking of the guard by the hand of the operator will stop the machine. These devices shall be so located that the operator can stop the machine without moving from the normal operating position.

(b) Each cone on a macaroni kneader shall be provided with a guard which will protect the operator on the nip or intake side of the cone. Such guard shall completely cover the intake side of the cone including the nip point. No dough shall be removed from any macaroni kneader pan while the pan is in motion under power. Dough adhering to cones shall not be removed while the kneader is in motion under power.

(c) Each nontilting type of dough mixer shall be provided with an interlocking device and cover so arranged that power cannot be applied to the agitator unless the cover is within three inches of complete closure.

(d) Each tilting type dough mixer shall be provided with one of the following devices:

(1) An interlocking device and cover so arranged that power cannot be applied to the agitator unless the cover is within three inches of complete closure.

(2) An automatic power cutoff which will cut off all power from the agitator when the bowl is tilted more than three inches from full closure. A substantial stationary cover shall be provided which will close the bowl when it is in the mixing position.

(e) An auxiliary device, in connection with either the interlocking device or the automatic power cutoff for operating the agitator when the bowl is in the tilted or unloading position shall be accepted, if such device functions only when the hand of the operator is on the power control.

(f) None of the provisions of this section shall be construed as applying to cake dough mixers or icing mixers.

**§ 9.85. Drinking water on contracting operations.**

(a) Where possible, a sufficient quantity of pure and wholesome drinking water of a quality approved by the Department of Health of the Commonwealth shall be provided by contractors for employes engaged in contracting operations.

(b) Where it is not possible to supply drinking water which has been approved by the Department of Health of the Commonwealth, contractors shall supply a sufficient quantity of pure and wholesome water and shall further be responsible for the testing of such water.

**§ 9.86. Portable power hand saws.**

Portable power hand saws shall be of an approved type.

**§ 9.87. Blasting operations.**

The conduct of all blasting operations shall be under the direct control and supervision of competent and responsible persons who are blasters licensed by the Department. No person shall be permitted to fire any charge of explosives in blasting operations except a competent licensed blaster. The superintendent, foreman, or person in charge of every operation where blasting is necessary shall post in a conspicuous place in proximity to the operation the name or names of licensed blasters whom he has designated to handle this work.

**§ 9.88. Proof of liability of employers for Workmen's Compensation Insurance.**

Every employer of labor in this Commonwealth shall display in a prominent place, readily accessible to employes and to the Department or its representative, a notice certifying compliance with Article III of the Pennsylvania Workmen's Compensation Act (77 P. S. §§ 411—413, 431, 461—463, 481, 484, 501, 511—514, 517, 531, 541, 561—563, 582, 583, 601—604, 621, 631—633, 651, 671, 672, 676). Observance of this requirement shall be indicated by the proper posting, of one of three notices to be prepared and distributed by the Workmen's Compensation Bureau of the Department after approval by the Board. The notices shall outline the following:

- (1) Acceptance of Article III of the Pennsylvania Workmen's Compensation Act including a statement showing the name of the insurance company carrying compensation insurance and the expiration date of the current policy.
- (2) Acceptance of Article III of the Pennsylvania Workmen's Compensation Act including a statement that the Department has accepted application to be listed as a self-insured employer.
- (3) Rejection of Article III of the Pennsylvania Workmen's Compensation Act in accordance with the option therein contained.

**§ 9.89. Alteration, painting or glazing of windows.**

Where alterations, painting or glazing of windows requires the workmen to stand on the outside window sills located 12 feet or more above grade or adjoining flat roof, the workmen shall wear an approved belt for window-cleaning use attached to approved anchors, or a suitable scaffold shall be provided.

**§ 9.90. Maintenance of stairs, ramps or walking surfaces.**

In every establishment stairs, ramps or walking surfaces shall be safely maintained. Where treads or walking surfaces become worn, broken or unsafe, they shall be repaired or replaced by treads or walking surfaces in first class condition.

**§ 9.91. Posted guard near manhole entrance.**

A person whose duties require him to enter a manhole, or who allows another under his supervision to do so, shall have a person posted to act as guard at the entrance to the manhole. The guard shall remain on duty as long as the party remains within the open manhole.

**§ 9.92. Penalty.**

A person who fails to comply with this subchapter or regulations of the Department shall be subject to the penalties defined in section 1 of the act of August 22, 1961 (P. L. 1034, No. 467) (35 P. S. § 5401).

**Subchapter E. PREVAILING REGULATIONS**

Sec.	
9.101.	Purpose and scope.
9.102.	Definitions.
9.103.	Required provisions.
9.104.	Duty of the public body.
9.105.	Determination of classification and general prevailing minimum wage rates.
9.106.	Payment of general prevailing minimum wage rates.
9.107.	Petition for review of rates and hearing.
9.108.	Posting of wage rates.
9.109.	Records and inspection.
9.110.	Certification of rate of wage and payment by contractor or subcontractor.
9.111.	Remedies and penalties.
9.112.	Workmen's rights.

**Authority**

The provisions of this Subchapter E issued under act of August 15, 1961 (P. L. 987) (43 P. S. § 165-14), unless otherwise noted.

**Source**

The provisions of this Subchapter E adopted May 23, 1975, 5 Pa.B. 1347, unless otherwise noted.

**Notes of Decisions**

The Secretary of Labor and Industry's definition of workers as "electricians" on a public works project, requiring prevailing wages under the Pennsylvania Prevailing Wage Act (43 P. S. §§ 165-1—165-17) would not be disturbed as the determination was neither erroneous nor inconsistent with the statute. *Henkels & McCoy, Inc. v. Department of Labor and Industry*, 598 A.2d 1065 (Pa. Cmwlth. 1991) appeal denied 610 A.2d 46 (Pa. 1992).

**§ 9.101. Purpose and scope.**

(a) Every contract to which the Commonwealth, its political subdivisions, an authority created by the General Assembly of the Commonwealth including authorities created under the Municipality Authorities Act of 1945 (53 P. S. §§ 301—401) and instrumentalities or agencies of the Commonwealth is a party, for construction, reconstruction, demolition, alteration or repair work other than maintenance work where the estimated cost of the total project is in excess of \$25,000, which requires or involves the employment by a contractor or subcontractor of laborers, mechanics, skilled and semi-skilled laborers and apprentices in the performance of services directly upon the public work project shall include in its specifications a provision stating the general prevailing minimum wage rates as determined by the Secretary which shall be paid for each craft or classification of workmen needed to perform the contract during the anticipated term thereof in the locality in which the public work is performed.

(b) Every person paid by a contractor or a subcontractor in any manner for his labor in the construction, reconstruction, demolition, alteration or repair work other than maintenance work done under contract and paid for in whole or in part out of the funds of a public body except work performed under a rehabilitation program or manpower training programs is "employed" and "receiving wages."

(c) These regulations do not apply to a public works contracts subject to the Walsh-Healey Act (41 U.S.C.A. §§ 35—45) or section 1 of the Davis-Bacon Act (40 U.S.C.A. § 276(a)).

(d) Work performed under a rehabilitation program arranged by and at a State institution primarily for teaching and up-grading the skills and employment opportunities of the inmates of the institution is not to be considered public work performed by a public body as defined in the act and this Subchapter.

**Notes of Decisions***Preemption*

The court declared the Pennsylvania Prevailing Wage Act (Act) (43 P. S. §§ 165-1—165-17) and its accompanying regulations invalid and unenforceable because they were preempted by ERISA where the Act related to ERISA plans regarding fringe benefits. *Keystone Chapter, Assoc. Builders and Contractors, Ind. v. Foley*, 837 F.Supp. 654 (M. D. PA. 1993); aff'd in part, rev'd in part, 37 F.3d 945 (3rd Cir. 1994); cert. denied 514 U. S. 1032 (1995).

**§ 9.102. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Pennsylvania Prevailing Wage Act (43 P. S. §§ 165-1—165-17).

*Apprentice*—A person employed and working under a bona fide apprenticeship program, directly related to the particular craft involved in the construction industry and registered with an approved by the Pennsylvania Apprenticeship and Training Council and whose training and employment are in full compliance with the provisions of The Apprenticeship and Training Act (43 P. S. §§ 90.1—90.10), approved July 14, 1961.

*Authorized deduction*—Those deductions which are authorized by the Wage Payment and Collection Law (43 P. S. §§ 260.1—260.45), approved July 14, 1961 and the Regulations of the Department of Labor and Industry issued pursuant thereto.

*Bona fide collective bargaining agreement*—The agreement negotiated between the historically established and recognized bargaining representatives for the employers and of the workmen for the particular crafts or classifications involved providing for applicable wage rates, hours of work, working conditions and contributions for employe benefits as defined in “contributions for employe benefits” in this section.

*Classification*—Specific categories of jobs which are performed within a “craft” as defined in this section. The term includes those specific categories of jobs which are performed by a “workman,” as defined in section 2(7) of the act (43 P. S. § 165-2(17)) and this section, and “apprentice,” as defined in this section.

*Contributions for employe benefits*—“Fringe benefits” paid or to be paid, including payment made whether directly or indirectly, to the workmen for sick, disability, death, other than Workmen’s Compensation, medical, surgical, hospital, vacation, travel expense, retirement and pension benefits.

*Craft*—Special skills and trades which are recognized as such by custom and usage in the building and construction industry.

*Department*—The Department of Labor and Industry of the Commonwealth.

*General prevailing minimum wage rates, prevailing wage rates, minimum wage rates and wage rates*—Rates as determined by the Secretary, as payable in the locality in which the public work is to be performed, for the respective crafts and classifications, including the amount of contributions for employe benefits as required by the act.

*Locality*—A political subdivision, or combination of the same, within the county in which the public work is to be performed. When no workmen for which a prevailing minimum wage is to be determined hereunder are employed in the locality, the locality may be extended to include adjoining political sub-

divisions where the workmen are employed in those crafts or trades for which there are no workmen employed in the locality as otherwise herein defined.

*Maintenance work*—The repair of existing facilities when the size, type or extent of the facilities is not thereby changed or increased.

*Public body*—The Commonwealth of Pennsylvania, its political subdivisions, authorities created by the General Assembly of the Commonwealth and instrumentalities or agencies of the Commonwealth.

*Public work*—Construction, reconstruction, demolition, alteration or repair work other than maintenance work, done under contract and paid for in whole or in part out of the funds of a public body where the estimated cost of the total project is in excess of \$25,000. The term does not include work performed under a rehabilitation or manpower training program.

*Secretary*—The Secretary of Labor and Industry or his authorized deputy or representative.

*Workman*—Includes laborer, mechanic, skilled and semiskilled laborer and apprentices employed by a contractor or subcontractor and engaged in the performance of services directly upon the public work project, regardless of whether their work becomes a component part thereof. The term does not include material suppliers or their employes who do not perform services at the job site.

#### Notes of Decisions

##### *Preemption*

The union fund correctly argued that its suit under the Public Works Contractors' Bond Law (8 P. S. § 191 et seq.) was not preempted by Employee Retirement and Income Security Act (ERISA), 29 U.S.C.A. § 1001 et seq., because the Bond Law made no reference to ERISA plans and was not related to employee benefit plans or the enforcement of those plans. Thus, the Union Fund's cause of action against the bond insuring company can survive the company's motion for summary judgment. *Carpenters Local 261 Health and Welfare Fund v. National Union Fire Insurance of Pittsburgh*, 686 A.2d 1373 (Pa. Cmwlth. 1996) appeal denied 694 A.2d 623 (Pa. 1997).

#### Cross References

This section cited in 34 Pa. Code § 9.105 (relating to determination of classification and general prevailing minimum wage rates).

### § 9.103. Required provisions.

The specifications for every contract for a public work as defined herein shall contain at least the following conditions, provisions and requirements:

- (1) The general prevailing minimum wage rates including contributions for employe benefits as determined by the Secretary which shall be paid to the workmen employed in the performance of the contract. The contract shall specifically provide that the contractor shall pay at least the wage rates as determined in the decision of the Secretary of Labor and Industry and shall comply with the conditions of the act approved August 15, 1961, and the regulations issued thereto, to assure the full and proper payment of the rates.

(2) The contract shall contain the stipulation that workmen shall be paid at least the general prevailing minimum wage rates and other provisions to assure payment thereof as set forth in this section.

(3) The contract provisions apply to work performed on the contract by the contractor and to work performed on the contract by subcontractors.

(4) The contractor shall insert in each of his subcontracts the stipulations contained in these required provisions and other stipulations as may be required.

(5) The contract shall provide that no workmen may be employed on the public work except in accordance with the classifications in the decision of the Secretary. If additional or different classifications are necessary the procedure in § 9.107 (relating to petition for review of rates and hearings) shall be followed.

(6) The contract shall provide that workmen employed or working on the public work shall be paid unconditionally, regardless of whether a contractual relationship exists or the nature of a contractual relationship which may be alleged to exist between a contractor, subcontractor and workmen, at least once a week, without deduction or rebate, on any account, either directly or indirectly except authorized deductions, the full amounts due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in the contract, the act or this title prohibits the payment of more than the general prevailing minimum wage rates as determined by the Secretary to a workman on public work.

(7) The contract shall provide that the contractor and each subcontractor shall post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of changes thereof, in a prominent and easily accessible place or places at the site of the work and at the places used by them to pay workmen their wages. The posted notice of wage rates shall contain the following information:

- (i) The name of project.
- (ii) The name of the public body for which it is being constructed.
- (iii) The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage rate determination for the particular project.
- (iv) The general prevailing minimum wage rates determined for each craft and classification and the effective date of changes.
- (v) A statement advising workmen that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the contractor or subcontractor are not complying with the act or this title, they may file a protest in writing with the Secretary within 3 months of the date of the occurrence, objecting to the payment to a contractor to the extent of the amount due or to become due to them as wages for work performed on the public work project. A workmen paid less than the rate specified in

the contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the contract, which right of action shall be exercised within 6 months from the occurrence of the event creating the right.

(8) The contract shall provide that the contractor and subcontractors shall keep an accurate record showing the name, craft or classification, number of hours worked per day and the actual hourly rate of wage paid, including employe benefits, to each workman employed by him in connection with the



public work. The record shall include deductions from each workman. The record shall be preserved for 2 years from the date of payment and shall be open at reasonable hours to the inspection of the public body awarding the contract and to the Secretary or his authorized representatives.

(9) The contract shall provide that apprentices shall be limited to numbers in accordance with a bona fide apprenticeship program registered with and approved by The Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with The Apprenticeship and Training Act (43 P. S. §§ 90.1—90.10), approved July 14, 1961, and the regulations issued thereto shall be employed on the public work project. A workman using the tools of a craft who does not qualify as an apprentice within this subsection shall be paid the rate predetermined for journeymen in that particular craft or classification.

(10) Wages shall be paid without deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the Secretary has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workmen.

(11) Payment of compensation to workmen for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the act and this subchapter, regardless of the average hourly earnings resulting therefrom.

(12) The contract shall also provide that each contractor and each subcontractor shall file a statement each week and a final statement at the conclusion of the work on the contract with the contracting agency, under oath, and in form satisfactory to the Secretary, certifying that workmen have been paid wages in strict conformity with the provisions of the contract as prescribed by this section or if wages remain unpaid to set forth the amount of wages due and owing to each workman respectively.

(13) The provisions of the act and this subchapter shall be incorporated by reference in the contract.

#### Cross References

This section cited in 34 Pa. Code § 9.108 (relating to posting of wage rates); and 34 Pa. Code § 9.110 (relating to certification of rate of wage and payment by contractor or subcontractor).

#### § 9.104. Duty of the public body.

(a) It is the duty of the public body awarding a contract for public work to request the Secretary for determination of the general prevailing minimum wage rates to be paid workmen on the public work project. The request shall be made on forms issued for the purpose by the Department. A new request for predetermination shall be made if the contract is not awarded within 120 days from the determination date.

(b) It is the duty of the public body to enforce the posting of wage rate determinations in accordance with the provisions of section 9 of the act (43 P. S. § 165-9) and § 9.108 (relating to posting of wage rates). The fiscal officer of the

public body, the treasurer or other officer of the public body, charged with the custody and disbursement of the funds of the public body, shall ascertain that the wage rates as determined by the Secretary are paid and that the job classifications are maintained, otherwise it is his duty to hold up final payment and to inform the Secretary of the failure by the contractor or a subcontractor to comply with the act.

#### Notes of Decisions

##### *Time Limitations*

Although the borough awarded the company the contract more than 120 days after the determination of the prevailing minimum wage and although the borough never made a new request for a predetermination, the company waived its right to protest the predetermination by failing to adhere to the 120 day time period. *Linde Enter., Inc. v. Prevailing Wage Appeals Board*, 676 A.2d 310 (Pa. Cmwlth. 1996).

#### **§ 9.105. Determination of classification and general prevailing minimum wage rates.**

(a) For the purpose of making a determination of the general prevailing minimum wage rates in the locality in which the public work is to be performed for each craft or classification during the anticipated term of the contract, the Secretary may ascertain and consider the wage rates and employee benefits established by collective bargaining agreements.

(b) If a bona fide collective bargaining agreement has expired by the terms thereof, the Secretary may ascertain and consider the wage rates and employee benefits established thereby until a new bona fide collective bargaining agreement, as defined in § 9.102 (relating to definitions), has been executed.

(c) The Secretary may also consider the following:

(1) Information obtained from Federal agencies charged with the administration of labor standards provisions of Federal acts applicable to contracts covering contractors and subcontractors on public building and public work and on building and work financed in whole or in part by loans and grants of the United States, within the locality.

(2) The number of skilled, competent and experienced workmen within the locality who are generally available for employment on public work.

(3) Statements signed and certified by contractors and subcontractors and union representatives showing wage rates paid on projects, within the locality. These statements to be relevant to a wage determination shall indicate the names and addresses of the contractors, including the subcontractors, the locations, approximate cost, dates of construction and type of projects, the number of workmen employed and the number of man hours worked in each craft or classification on each project and the respective wage rates paid the workmen, which wage rates shall consist only of rates paid for services performed solely within the classification for which it is submitted.

(4) Other information pertinent to the determination of prevailing minimum wage rates.

(d) The Secretary will conduct a continuing program for obtaining and compiling of wage rate information and shall encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to workmen in the various types of construction in the locality. Rates shall be determined for varying types of projects within the entire range of work performed by the building and construction industry. Information submitted shall reflect not only the specified wage rate or rates paid to a particular craft in the locality but also the type or types of construction on which the wage rate or rates have been paid. If the Secretary deems that the data at hand is insufficient to make a determination with respect to the crafts or classifications necessary to perform the proposed public work, he may have a field survey conducted by his staff representative for the purpose of obtaining additional information upon which to make a determination of the wage rates, and also the customs, usages and practices as to the type of work to which the wage rates apply and the size of available force of qualified workmen within the locality in which the public work is to be performed.

#### Notes of Decisions

##### *Abuse of Discretion*

Where the Secretary considered two collective bargaining agreements, and the data included wages for the type of work performed by the petitioner's members, the Secretary's determination was not an abuse of discretion, and the Board correctly upheld the Secretary's decision setting the prevailing wage. *International Brotherhood of Electrical Workers v. Department of Labor and Industry*, 816 A.2d 1220 (Pa. Cmwlth. 2003), appeal denied 836 A.2d 123 (Pa. 2003).

Because the Prevailing Wage Appeal Board affirmed the Secretary's determination of prevailing wages, and that determination was based on a survey that failed to consider public-works projects as required in the court's earlier order in *Pennsylvania State Building and Construction Trades Council, AFL-CIO v. Prevailing Wage Appeals Board*, 722 A.2d 1139 (Pa. Cmwlth. 1999), that determination was an abuse of discretion and is therefore reversed. *International Union of Bricklayers and Allied Craftworkers, Local 5 PA v. Prevailing Wage Appeals Board*, 778 A.2d 1264 (Pa. Cmwlth. 2001) appeal denied 808 A.2d 574 (Pa. 2002).

##### *Equal Protection*

Granting authority to the Secretary to consider fringe benefits determined by collective bargaining when he is making prevailing wage determinations is not an unconstitutional denial of equal protection to nonunion contractors and employees, since he is not required to make his determination solely on the basis of rates in collective bargaining. *Keystone Chapter of Associated Builders and Contractors, Inc. v. Department of Labor and Industry*, 414 A.2d 1129 (Pa. Cmwlth. 1980).

##### *Weight of the Evidence*

If the parties introduce exhibits which in some way do not comply with the standards of 34 Pa. Code § 9.105(c)(3), the Secretary may give more weight to evidence which includes fringe benefits and projects of every nature and which clearly demonstrates prevailing wage rates for the year in question rather than evidence which does not include fringe benefits, excludes public works projects and some major private projects, and lumps together wage rates from previous years to establish current

wage rates. *Keystone Chapter of Associated Builders and Contractors, Inc. v. Department of Labor and Industry*, 414 A.2d 1129 (Pa. Cmwlth. 1980).

**§ 9.106. Payment of general prevailing minimum wage rates.**

(a) Not less than the general prevailing minimum wage rates determined by the Secretary under the act and this subchapter may be paid unconditionally, by contractors and subcontractors to workmen in their respective crafts and classifications on public work and the workmen can not be required to refund, directly or indirectly, part of the wages. It is no defense that workmen accepted or agreed to accept less than the required rate of wages or voluntarily made refunds, in any form or manner.

(b) Wages shall be paid without deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the Secretary has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workmen.

(c) Payment of compensation to workmen for work performed on public work on a lump sum basis or a piece work system or a price certain for the completion of certain amount of work or the production of a certain result shall be deemed a violation of the act and this subchapter, regardless of the average hourly earnings resulting therefrom.

**Notes of Decisions**

*Unintentional Violation*

While a contractor's statutory obligation to pay the prevailing wage is not contingent on ability to pay, subcontractor's failure to pay workers was an unintentional violation of the Prevailing Wage Act when contractor failed to timely pay subcontractor for work completed, preventing subcontractor from paying its workers. *Department of Labor and Industry v. Lawson Demolition*, 856 A.2d 860, 862 (Pa. Cmwlth. 2004); appeal denied 879 A.2d 783 (Pa. 2005).

**§ 9.107. Petition for review of rates and hearings.**

(a) A prospective bidder or his representative, a representative of a group of employers engaged in the particular type of construction, reconstruction, demolition, alteration or repair work, a representative of a craft or classification of workmen or the public body affected by the determination made by the Secretary, may on verified petition request a review of this determination in accordance with the procedures required by section 8 of the act (43 P. S. § 165-8).

(b) The Secretary will, after notice and hearing as prescribed by section 8 of the act, make a final determination of the general prevailing minimum wage rates to be paid to workmen on the public work project. The public body when notified by the Secretary that a verified petition has been filed shall extend the closing date for the submission of bids until 5 days after the Secretary's final determination. Within 10 days after hearing the Secretary will make a determination and transmit it in writing to the public body and to the interested parties. This determination shall be final unless within 10 days an appeal is filed with the Appeals Board.

(c) If, after a contract has been awarded, it is deemed advisable by the public body because of unforeseen construction development to list an additional classification and wage rate therefor the public body shall request, in writing, a determination thereof by the Secretary. A copy of this request shall be given to interested parties and shall also be posted at an appropriate place at the site of the public work project. The Secretary will thereupon give consideration to the request and if he determines that the additional classification requested is necessary, he will determine the classification and wage rate therefor and notify the interested parties of his determination, which shall be effective as of the date on which it is made. Additional classifications shall be made in conformity with this procedure.

**Cross References**

This section cited in 34 Pa. Code § 9.103 (relating to required provisions).

**§ 9.108. Posting of wage rates.**

The contractors and subcontractors on the public work project shall post a notice or notices in the manner and form prescribed by § 9.103 (relating to required provisions). This notice is to be clearly legible and placed in a prominent and easily accessible place at the site of the public work project and at places used by them to pay workmen their wages.



**Cross References**

This section cited in 34 Pa. Code § 9.104 (relating to duty of the public body).

**§ 9.109. Records and inspection.**

The accurate record of employment and wage payments required to be kept and preserved by contractors and subcontractors on public work shall include at least the following information:

(1) The name, address and social security number of each workman.

(2) The craft, if applicable, the classification within each craft, and any other classification including apprenticeship, at which the workman worked. These records shall show the number of hours in each day, specified by actual calendar date, during which each workman worked and if he worked in more than one craft or classification for which different rates were payable the records shall show the number of hours in each day as aforesaid in which he worked at the different crafts or classifications. Time cards of employees shall be kept and preserved as records required by the act and this subchapter. In addition, the original signed indentures for each apprentice and the approvals of the Pennsylvania Apprenticeship and Training Council shall be kept. The records shall be preserved for 2 years from date of payment and shall be open at all reasonable hours for inspection by the public body awarding the contract and by the Secretary, and shall be made easily accessible within this Commonwealth within a period of 7 days from the date on which the Secretary requests in writing that these records be made so available.

**§ 9.110. Certification of rate of wage and payment by contractor or subcontractor.**

(a) It is the duty of the treasurer or other officer charged with the custody and disbursement of public funds applicable to the public work contract under and pursuant to which payment is made, to require the contractor and subcontractor to file a statement each week and a final statement at the conclusion of the work on the contract with the contracting agency under oath in form satisfactory to the Secretary certifying that workmen have been paid wages in strict conformity with the contract as prescribed by § 9.103(7) (relating to required provisions) or if wages remain unpaid to set forth the amount of wages due and owing to each workman respectively.

(b) It is the duty of the treasurer or other officer charged with the custody and disbursement of public funds to withhold the amount of wages unpaid or not paid in accordance with § 9.103 for the benefit of the workman whose wages have not been paid by the contractor and he may pay directly to a workman the amount shown to be due him. Each contractor and subcontractor shall also certify that he is not receiving or requiring, or will not receive or require, directly or indirectly, from a workman a refund of the minimum wage.

(c) A contractor or subcontractor who shall, under oath, verify the statements required to be filed under section 10 of the act (43 P. S. § 165-10) which are known to him to be false, shall be guilty of a misdemeanor, and shall, upon conviction, be sentenced to pay a fine of not exceeding \$2,500 or to undergo imprisonment not exceeding 5 years, or both.

#### Notes of Decisions

##### *Public Records*

Certified payroll records in the custody of a school district for contractual roofing work performed on three school district buildings by a nonunion roofing company were an essential component of the school district's decision regarding whether and what amount to pay the roofing company, where the regulations implementing the Prevailing Wage Act (43 P. S. §§ 165-1—165-17), require the officer of the public body charged with custody of the public funds to ensure that all wages due to workers by the contractor are paid, and if not, the officer must withhold the amount of unpaid wages from disbursements to the contractor. *Sapp Roofing Co., Inc. v. Sheet Metal Workers' International Association, Local Union No. 12*, 713 A.2d 627 (Pa. 1998).

#### § 9.111. Remedies and penalties.

(a) It is the duty of the Secretary where a timely protest has been filed by a workman that he has been paid less than the general prevailing minimum wage rate, to investigate the matter and determine whether or not there has been a failure to pay the general prevailing minimum wage rate and whether this failure was intentional or otherwise. The Secretary will hold appropriate hearings upon due notice to interested parties including the workman, the employer and their respective representatives, if any. If the Secretary, after hearing, has determined that the failure to pay the general prevailing minimum wage rate was not intentional he shall afford the person or firm a reasonable opportunity to adjust the matter by making payment to the workmen or providing adequate security to insure payment. If the Secretary determines that the failure to pay the general prevailing minimum wage rates intentional, he will thereupon notify the public bodies of the names of the persons or firms and no contract may be awarded to the person or firms or to a firm, corporation or partnership in which the person or firms have an interest until 3 years have elapsed from the date of the notice to the public bodies. The Secretary may, in addition thereto, request the Attorney General to proceed to recover the penalties for the Commonwealth of Pennsylvania which are payable under section 11(f) of the act (43 P. S. 16511(f)).

(b) The following constitutes substantial evidence of intentional failure to pay prevailing wage rates:

(1) Acts of omission or commission done willfully or with a knowing disregard of the rights of workmen resulting in the payment of less than prevailing wage rates.

(2) If the Secretary has made a finding that a person or firm has failed to pay the general prevailing minimum wage rate as determined by the Secretary in accordance with the act, and thereafter a person or firm continues to fail to

pay the prevailing wages or a person or firm fails to comply with an opportunity to adjust differences which shall be afforded him by the Secretary.

(c) If the Secretary has determined that a person or firm has failed to pay the prevailing wages under section 11(e) and (f) of the act (43 P. S. § 165(e) and 165 (f)), he may direct the public body to terminate, and the public body may terminate, the contractor's right to proceed with the public work.

#### Notes of Decisions

##### *Statute of Limitations*

There is no language in this regulation which provides for a statute of limitations applicable to the Department of Labor and Industry's initiation of enforcement actions for underpayment of workers. *Linde Enter., Inc. v. Prevailing Wage Appeals Board*, 676 A.2d 310 (Pa. Cmwlth. 1996).

#### § 9.112. Workmen's rights.

(a) A workman who has been paid less than the general prevailing minimum wage rate for his job classification as specified in the contract or who has not been paid, may file a protest, in writing with the Secretary within 3 months of the date of the occurrence, objecting to the payment to a contractor to the extent of the amount due or to become due to him as wages for work performed on the public work project. If the formal protest is filed with the Secretary, it is the duty of the Secretary to direct the fiscal or financial officer of the public body or the person charged with the custody of the disbursement of the funds of the public body, to deduct the money so due and owing from the whole amount or of any payment due the contractor.

(b) Any workmen paid less than the rates specified in the contract shall have a right of action for the difference between the wage paid and the wages stipulated in the contract, which right of action must be exercised within 6 months from the occurrence of the event creating the right.

#### Notes of Decisions

##### *Statute of Limitations*

There is no language in this regulation which provides for a statute of limitations applicable to the Department of Labor and Industry's initiation of enforcement actions for underpayment of workers. *Linde Enter., Inc. v. Prevailing Wage Appeals Board*, 676 A.2d 310 (Pa. Cmwlth. 1996).

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
HARRISBURG

REQUEST FOR PREVAILING MINIMUM WAGE PREDETERMINATION

TO: Prevailing Wage Section
Department of Labor and Industry
Harrisburg, Pennsylvania

Date of Request \_\_\_\_\_

It is requested that the Secretary of Labor and Industry furnish us a determination of the prevailing minimum wages to be paid in accordance with the Pennsylvania Prevailing Wage Act for the following project:

- 1. Popular or descriptive name of project:
2. Project No.
3. Location of project: County Twp.
4. Official name of awarding authority or agency
5. Estimated amount involved for completion of project
6. Proposed date for releasing specifications for bids:
7. Anticipated date for opening of bids:
8. Anticipated date for awarding of contract(s):
9. Proposed date for commencement of work on project:
10. Estimated date for completion of project:
11. General description of type of facility and facilities which will constitute the completed project.

12. Mail predetermination to: \_\_\_\_\_

13. DEPARTMENT USE ONLY
SERIAL NUMBER ( )
SCHEDULED FOR DETER.
AUTHOR, RECORD POSTED.
FOLDER MADE
FOLDER AVAILABLE
DATE DETER. MADE

SIGNATURE

SIGNATURE

### Subchapter F. CONTRACTS FOR COMMONWEALTH PRINTING

Sec.	
9.201.	Definitions.
9.202.	Localities.
9.203.	Invitation to bid.
9.204.	Certification of bidders.
9.205.	Determination of rates.
9.206.	Inspection of records.
9.207.	Preservation of records.
9.208.	Records of employment.
9.209.	Violations.
9.210.	Employee rights.

#### Authority

The provisions of this Subchapter F issued under act of August 21, 1961 (P. L. 1014, No. 455) (71 P. S. §§ 654—1656), unless otherwise noted.

#### Source

The provisions of this Subchapter F adopted December 29, 1978, 8 Pa.B. 3812, unless otherwise noted.

### § 9.201. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

*Act*—The act of August 21, 1961 (P. L. 1014, No. 455) (71 P. S. (§§ 1654—1656)).

*Bidder*—Any person who or business entity which submits a bid for a contract for printing to the Commonwealth or any department, board, commission, or agency thereof.

*Classification*—The specific categories of jobs which are performed within a craft.

*Contractor*—Any person who or business entity which enters into a contract for printing with the Commonwealth or any department, board, commission, or agency thereof.

*Craft*—The special skills and trades which are recognized as such by custom and usage in the printing industry.

*Locality*—An economically integrated area within which workers may readily change jobs without changing their place of residence. Economic and geographic factors and not political jurisdiction alone shall be considered in the determination of any given locality.

*Prevailing wages and working conditions prevalent*—The hourly wage rate together with overtime, premium, differential, holiday and vacation pay, and fringe benefits received by the employes of each craft or classification and the conditions under which they work, prevalent in the locality in which the contract is being performed.

*Printing*—All processes and operations involved in printing—as that term is used in the printing industry—including but not limited to letterpress, offset, and gravure processes and lithographic printing or the multilith method, or both; the operations of composition, platemaking, presswork and binding; and the end products of such processes, methods and operations. The term “printing” shall not apply to newspaper advertisements.

### § 9.202. Localities.

(a) This Commonwealth is hereby divided into 45 localities as follows:

Allentown-Bethlehem-Easton (Lehigh Valley):	Carbon, Lehigh and Northampton counties
Altoona:	Blair County
Erie:	Erie County
Harrisburg:	Cumberland, Dauphin and Perry counties
Johnstown:	Cambria and Somerset counties
Lancaster:	Lancaster County
Northeast Pennsylvania:	Lackawanna, Luzerne and Monroe counties
Philadelphia:	Bucks, Chester, Delaware, Montgomery and Philadelphia counties
Pittsburgh:	Allegheny, Beaver, Washington and Westmoreland counties
Reading:	Berks County
Williamsport:	Lycoming County
York:	Adams and York counties
Berwick-Bloomsburg:	Columbia County
Bradford:	McKean County
Butler:	Butler County
Chambersburg-Waynesboro:	Franklin and Fulton counties
Clearfield-DuBois:	Clearfield County: Part of Centre County including Philipsburg and South Philipsburg boroughs, and Rush Township
Indiana:	Indiana County
Kittanning-Ford City:	Armstrong County
Lebanon:	Lebanon County
Lewistown:	Juniata and Mifflin counties
Lock Haven-Renovo:	Clinton County

Meadville:	Crawford County excluding boroughs of Centerville, Hydetown, Spartansburg and Townville, townships of Athens, Bloomfield, Oil Creek, Rome, Sparta, Steuben and Troy; and City of Titusville
New Castle:	Lawrence County
Oil City-Franklin-Titusville:	Forest and Venango counties and the following civil subdivisions in Crawford County: city of Titusville, Centerville, Hydetown, Spartansburg and Townville boroughs; Athens, Bloomfield, Oil Creek, Rome, Sparta, Steuben and Troy townships
Pottsville:	Schuylkill County
St. Marys:	Elk County
Sayre-Athens-Towanda:	Bradford County
Sharon-Farrell:	Mercer County
State College-Bellefonte:	Centre County except Philipsburg and South Philipsburg boroughs and Rush Township
Sunbury-Shamokin-Mt. Carmel:	Montour, Northumberland, Snyder and Union counties
Uniontown-Connellsville:	Fayette County
Warren:	Warren County
Bedford:	Bedford County
Clarion:	Clarion County
Coudersport:	Potter County
Dushore-Laporte:	Sullivan County
Emporium:	Cameron County
Honesdale-Matamoras:	Pike and Wayne counties
Huntingdon:	Huntingdon County
Punxsutawney:	Jefferson County
Tunkhannock:	Wyoming County
Waynesburg:	Greene County
Susquehanna County:	
Wellsboro:	Tioga County

(b) The listing and determination of localities set forth in subsection (a) shall be applicable solely to the act relative to Commonwealth printing and shall not be applicable to and is not intended to be used in any manner in the determination of prevailing wages under the Pennsylvania Prevailing Wage Act (43 P. S. §§ 165-1—165-17).

(c) If the printing is performed in a plant outside the jurisdiction of the Commonwealth, it shall be deemed produced in the Commonwealth locality in which delivery of the printing ordered is required to be made. If such printing is required to be delivered to more than one Commonwealth locality, such printing shall be deemed produced in the Commonwealth locality to which the largest dollar volume of printing under the contract is to be delivered.

**§ 9.203. Invitation to bid.**

Every invitation to bid on and every set of specifications for printing contracts for the Commonwealth, or printing contracts to be paid for wholly or in part with Commonwealth funds shall contain a statement that the contractor shall pay every employe engaged in the performance of the printing contract the prevailing wage rate and provide working conditions prevalent in the locality in which the contract is being performed or that a collective bargaining agreement is in effect—pursuant to the provisions of the act.

**§ 9.204. Certification of bidders.**

Upon submission of a bid, bidders shall certify to the existence of a collective bargaining agreement or file a sworn statement to the effect that its employes who are to perform work in connection with the contract for printing shall receive the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.

**§ 9.205. Determination of rates.**

The Prevailing Wage Division of the Department will establish rate schedules pursuant to the following:

- (1) The Prevailing Wage Division will, on a continuing basis, obtain relevant information from employers, employes, employe representatives and interested parties as an aid in determining the prevailing wage rate for localities.
- (2) The Department will make public its proposed prevailing wage rates and advertise same in the *Pennsylvania Bulletin* and invite and receive written comments and objections for a period of 14-calendar days following the advertising of the proposed rates. Within 14 days after the last day for receiving comments and objections, the Department will review the proposed rates, comments, and objections and publish in the *Pennsylvania Bulletin* a schedule of rates which shall become effective upon publication.
- (3) Any prospective bidder or contractor or their representative, any representative of any group of employers or of any craft or classification of workmen, or of both a group and craft or classification, engaged in the particular type of printing involved may, within a 10-day period following publication of the final rates, file with the Secretary a verified petition to review the Department's determination of the prevailing wage rate or rates. The petition shall set

forth the facts upon which it is based. Upon receipt of such petition, the Secretary will, upon notice to the petitioner and the recognized collective bargaining representatives for the particular printing crafts and classifications involved and to other interested persons who shall in writing request the Secretary so to do, hold a public hearing in accordance with the procedures set forth in 1 Pa. Code Chapter 35 (relating to formal proceedings) within 30 days after the filing of such petition. Following such hearing, the Secretary will make a determination which will be final unless appealed to the Commonwealth Court.

**§ 9.206. Inspection of records.**

Contractors shall afford the Secretary or his authorized representative access to their premises and to the records which they are required to maintain under § 9.208 (relating to records of employment) at such reasonable times as the Department deems necessary for the enforcement of the act. Contractors shall further permit the Secretary or his authorized representative to interrogate any employe in the place of employment and during working hours with respect to the contractors' records and any other matter relevant to the enforcement of the act. Where such records are maintained at a central record keeping office outside of the Commonwealth, such records shall be made available for inspection at the place of employment within seven calendar days following verbal or written notice from the Secretary or his authorized representative.

**Cross References**

This section cited in 34 Pa. Code § 9.209 (relating to violations).

**§ 9.207. Preservation of records.**

Contractors shall preserve the records which they are required to maintain under § 9.208 (relating to records of employment) for a minimum period of two years following the date of final payment under the contract or following the date of last entry in such records, whichever is later. The Department may audit such records at any time during such two-year period and, for that purpose, the contractor shall provide representatives of the Department with necessary access, space, and assistance.

**Cross References**

This section cited in 34 Pa. Code § 9.209 (relating to violations).

**§ 9.208. Records of employment.**

Contractors shall maintain the following records of employment:

- (1) Name, address, social security number, and occupation of each employe engaged in the performance of the printing contract.
- (2) Wage-and-hour records for each such employe, including the rate of wages and the amount paid each pay period, the hours worked each day and

each week, and the period during which each such employe was engaged on a printing contract for the Commonwealth, with such contract individually identified.

(3) All basic time cards or sheets of the contractor on which are entered the daily starting and stopping time of individual employes or of separate work forces or the individual employe's daily, weekly or pay period amounts of work accomplished—for example, units produced—when those amounts determine in whole or in part the pay period earnings or wages of those employes.

(4) All tables or schedules of the contractor which provide the piece rates or other rates used in computing straight-time earnings, wages or salary, or overtime excess compensation.

(5) All schedules or tables of the employer which establish the hours and days of employment of individual employes or of separate work forces.

(6) All other records necessary to determine whether the contractor has complied with the act.

#### **Cross References**

This section cited in 34 Pa. Code § 9.206 (relating to inspection of records); 34 Pa. Code § 9.207 (relating to preservation of records) and 34 Pa. Code § 9.209 (relating to violations).

### **§ 9.209. Violations.**

Complaints that a contractor has violated the act shall be filed with the Department, which will investigate such complaints and, where appropriate, hold hearings upon due notice to all interested parties. Failure of a contractor to maintain records as required by § 9.208 (related to records of employment) or to permit inspection as required by §§ 9.206 and 9.207 (relating to inspection of records; and preservation of records) will be a basis for a finding by the Secretary that the contractor has violated the act.

### **§ 9.210. Employe rights.**

This chapter is not intended to replace or otherwise affect employe rights to sue or otherwise pursue remedies available for the payment of wages due.

[Next page is 11-1.]