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May 12, 2010

Prevailing Wage Law

- Ohio's Prevailing Wage Law is codified in Revised Code Chapter 4115, and requires the payment of union scale wages to workers on public construction projects



Thresholds

- Applies to “New” Construction Over \$73,258.00. (1-1-10) R.C. 4115.03(B)(1)
 - Applies to “Reconstruction, Enlargement, Alteration, Repair, Remodeling, Renovation or Painting” above \$23,447.00. (1-1-10) R.C. 4115.03(B)(2)
 - Rates Adjusted every two years to reflect market changes
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New or Renovated structures if leased by a public agency within six months of completion. R.C. 4115.03(B)(2)



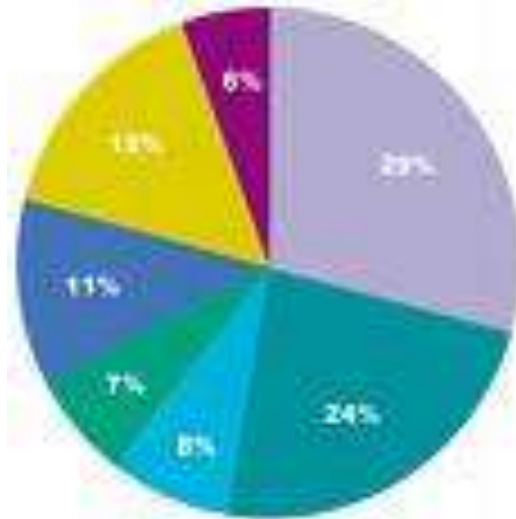
Effect of Recent Decision in Anchor Management case:

The Franklin County Common Pleas Court held prevailing wage does not apply to improvements made to space leased to a public agency unless public funds actually fund the construction. The Court relied heavily on the Supreme Court's recent decision in *Ottawa County Improvement Corp.* The case is currently under appeal to the Tenth District Court of Appeals.

Defined: Prevailing Wages Is The Sum Of:

Hourly Base Rate: *Plus*

- Life Insurance
- Pensions
- Health Insurance
- Vacation or Paid Holidays
- Apprenticeship Programs
- Other Bona fide Fringe Benefits





Bond Provisions

R.C. 4115.032

Construction on any project, facility, or project facility to which section 122.452 [122.45.2], 122.80, 165.031 [165.03.1], 166.02, 1551.13, 1728.07, or 3706.042 [3706.04.2] of the Revised Code applies

Subdividing Project

- Not allowed unless “conceptually separate and unrelated or meeting independent and unrelated needs.” R.C. 4115.033



Bidding A Project

- Commerce sets wage rates prior to bid.
R.C. 4115.04 R.C. 4115.08
 - Apprentices must be registered in a bonafide program. R.C. 4115.05
 - Contract must be awarded within 90 days of rate establishment. R.C. 4115.05
 - Contract executed must contain provision requiring prevailing wage payment.
R.C. 4115.06, R.C. 4115.08
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No Deductions For Food, Transportation, Accommodation, Use of Tools or Anything Else Unless:

- In writing
 - At beginning of employment
 - Submitted to Public Authority
 - Approved as Fair and Reasonable
- R.C. 4115.07



- Records must be kept for one year and open to public authority or Commerce



Duties of Prevailing Wage Coordinators

- **Set up and maintain for inspection certified payrolls R.C. 4115.071 (Received two weeks after initial payment and monthly thereafter)
R.C. 4115.071(C)**
 - **Find out when wages are to be paid
R.C. 4115.071(A)(2)**
 - **Receive complete payroll including names, current addresses, social security number, number of hours worked, pay, fringes, job classification and deductions. R.C. 4115.071(A)(3)**
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Certified Payrolls Must Include

- **Hours worked**

- **Each Day**

- **Weekly total (See O.A.C. 4101: 9-4-08)**

Reason: To evaluate overtime



- **Fringe benefit payments:**

- **A hourly fringe total is allowed by dividing fringe benefit cost by total hours worked. If the contractor does not provide total hours worked, the hourly fringe is established by dividing the total cost by 2080 hours**
O.A.C. 4101:9-4-06



Job Classifications

- Ratios for apprentices, helpers, serving, laborers, trainers or assistants must not exceed wage schedule rates
O.A.C. 4101:9-4-9(H)
 - Multiple job functions: the classification for a worker may change hourly depending on the type of work performed
O.A.C. 4101:9-4-15
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Prevailing Wage Coordinators Cont.

- Monitor compliance with timely filing of certified payrolls R.C. 4115.071(A)(4)
- Receive Affidavit of Compliance at end of project R.C. 4115.071(A)(5)
- Report delinquency in filing to public authority and Commerce R.C. 4115.071(A)(6)



Additional Public Authority Issues

- Increased wage rates
 - public authority must pass along increases within five days
 - if the public authority fails to give notice of increases public authority is liable until notice is given R.C. 4115.05



Enforcement Remedies

**Double penalties for non-payment. R.C.
4115.10**

- Supported by recent Ohio Supreme Court Decision in *Bergman v. Monarch Constr. Co.*, Slip Opinion No. 2010-Ohio-622.



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- In *Bergman*, the Court held that in an employee-initiated action to enforce the prevailing wage law, the penalties set forth in R.C. 4115.10(A) are mandatory and must be imposed against the violating employer. Specifically, the Court found that the 25% penalty payable to the employee is mandatory, as is the 75% penalty payable to the Director of Commerce.
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Debarment Provisions. R.C. 4115.13

- Currently four contractors are listed on the Secretary of State's Website as Debarred

- **Criminal Prosecution Provisions. R.C.
4115.99**



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- **Injunctive Actions by the Attorney General. R.C. 4115.14**



- **Recent Ohio Supreme Court Decisions**



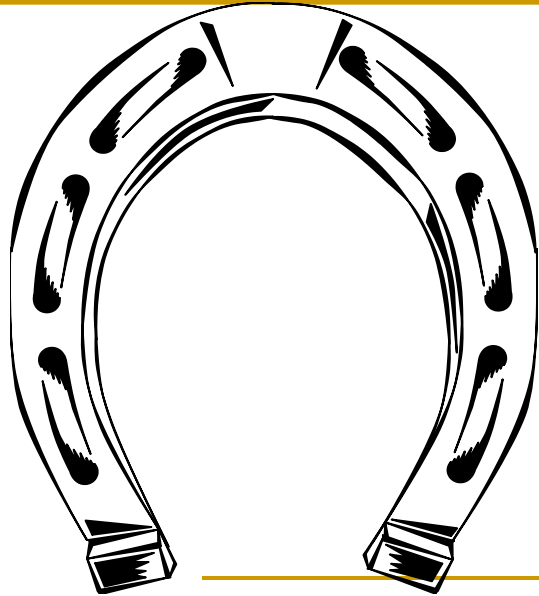
- ***Sheet Metal Workers' Internatl. Assn., Local Union No. 33 v. Gene's Refrigeration, Heating & Air Conditioning, Inc., Slip Opinion No. 2009-Ohio-2747:***

Prevailing Wage Law Applies Only to Work Performed on the Site of a Public Improvement Project





- ❑ *Northwestern Ohio Bldg. & Constr. Trades Council v. Ottawa Cty. Improvement Corp.*, Slip Opinion No. 2009-Ohio-2957
 - ❑ **Ohio's Prevailing Wage Law applies only to work performed in the construction of a "public improvement" by or for the benefit of a public authority, and does not apply to work performed on a private development project that was partially funded by state and county economic development grants.**
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Good Luck!!

If you have any questions please contact:

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