



*PREVAILING WAGE IN THE ECONOMY,
UNDERSTANDING PREVAILING WAGE
FRINGES*

*Robert Ely-President, Advantage Resource
rsely@advantageresource.com*

It's tough everywhere. Upcoming jobs are Prevailing Wage because the government is the only one with money to spend. Experienced Prevailing Wage contractors now see twice as many bidders from farther away competing for the same project, or see companies who have never before sought Prevailing Wage work. Contractors who have avoided Prevailing Wage up until now may find this is the only work available. No matter the circumstance, everyone must work harder and smarter to get their share of the pie.

As a Prevailing Wage contractor, one monetary advantage you may have over the competition is simply how your Company addresses the fringe requirement of the Prevailing Wage rate. Consider how you might answer these questions...

- Are you paying Prevailing Wage fringes as cash simply because you don't know what else to do?
- Are you applying every cent of every fringe benefit you provide (including holiday and vacation pay) towards the Prevailing Wage rate you must pay your employees?
- Do you know how to receive the most possible credit for the health and life insurance premiums that you pay?
- Has your 401(k) been set up for maximum benefit on Prevailing Wage projects or is it only partially working for you?
- Are you receiving the appropriate credit for any Company sponsored Apprenticeship training?
- Do you have a written Company Fringe Benefit Program and are you absolutely sure it is in strict compliance with all of the Prevailing Wage statutes, codes and regulations?
- Do you really understand your Prevailing Wage fringe obligations?
- When the Prevailing Wage auditor walks in your door, can you easily produce a clear audit trail of all fringes paid that will satisfy his requirements?
- Do your employees fully understand all that you are paying on their behalf?

- Bottom line, are you needlessly paying out too much money?

If you provide vacation or holiday pay, and do not receive fringe benefit credit, you must pay that money again as some other type of fringe, which means you are paying twice. If you are not receiving credit for all the insurance premiums you pay, but only the auditor's calculated hourly amount, you are again paying twice. Although there is no "Prevailing Wage for Dummies" book, the guidelines for receiving credit for employer paid fringe benefits on Prevailing Wage projects are absolute and defined, they are just hard to find. There simply is no good resource produced from a contractor's point of view.

5 Things

By following these guidelines, a contractor will be in compliance and will receive the maximum allowable credit for the fringes paid on any Prevailing Wage project. All items can be verified in the Code of Federal Regulations (29 CFR 5), the Kentucky Statutes (KRS 337), the Kentucky Regulations (803 KAR) and the Federal DOL Field Auditors Handbook. The requirements are not complicated, just different and detailed. These are the "5 Things".

1. Only a Bona Fide Fringe counts.
2. The Benefit Program is to be communicated to your employees in writing.
3. Fringe is to be expressed and paid as a cash value per hour.
4. Benefit contributions must be irrevocably made to the benefit of the employee.
5. The Benefits Program must be administered by a trustee or a third party, not affiliated with the employer, subject to an enforceable commitment.

Keep in mind, these procedures do not have to be followed to legally pay fringes, but must be followed to take credit on Prevailing Wage projects.

1. Only a Bona Fide Fringe Counts

A Bona Fide fringe is specifically defined in the Prevailing Wage regulations as the only type of fringe that may count towards the required Prevailing Wage rate. Bona Fide fringes are limited to:

- a) Insurance. Defined as medical or hospital care, life insurance, disability and sickness insurance or accident insurance. Workman's compensation or government required unemployment insurance cannot be counted because these are required of the employer by law. Bona Fide insurance, for fringe purposes, is solely for the benefit of the employee or his dependents.
- b) Holiday and Vacation Pay (paid time off). Is specifically allowed by law if calculated and funded in a way that complies with the other listed requirements. This is frequently a very large expense incurred by the employer where no prevailing wage credit is taken.
- c) Pensions on Retirement. Contributions to a properly designed 401k plan can be used to deposit any or all of the required fringes on a Prevailing Wage project and may be used to offset other Retirement Plan contributions. Because these are not defined as employee deferrals, there is no additional wage related burden. It is important to have a third party who is well versed on prevailing wage, as well as the construction industry in general, to assist in the implementation of the pension plan. Too many times a contractor accepts a cookie-cutter plan while not being fully aware of all the options available.
- d) Apprenticeship Program. Defraying the cost of an Apprenticeship Program is considered Bona Fide if the program is properly registered and approved with the appropriate governmental agency. Specific guidelines are to be followed in determining the amount of the fringe that is allowable as a credit. Any contractor with such a program should seek guidance from a knowledgeable party when determining this amount.
- e) Other Approved Fringe. Defined as any fringe not otherwise described above. 29 CFR 5.29 (e) states “. . . it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are “bona fide” in accordance with requirements of the act . . . Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under §5.5(a)(1)(iv)”. 803 KAR 1:085 is nearly identical, and says “. . . it will be necessary for the executive director to examine the facts and circumstances to determine whether they are “bona fide” in accordance with the requirements of the statute. Employers seeking credit for such plans shall request specific permission from the executive director. . . ” If the contractor desires a furnished fringe be allowable as part of the required Prevailing Wage rate, specific approval must be requested from the DOL.
- f) Cash. Cash is always acceptable as a fringe. However, any Prevailing Wage fringe amount paid in cash shall be paid as regular wages and is subject to the associated burden (matching FICA, workman's comp, liability insurance, etc.). Any contractor who pays cash as a fringe should do so only because the employee is worth more on an hourly basis and not because the contractor feels it to be the only option.



2. The Benefit Program is to be communicated to your employees in writing

A well constructed Company Benefit Plan is not Prevailing Wage specific. Instead, the plan is constructed with benefits awarded and paid in a way that allows the company to take credit on Prevailing Wage projects. The plan should be designed to answer, not create, questions posed by employees. Simply put, the plan defines the fringe being furnished, who gets which fringe, when they get it, how calculations are performed, and how required Prevailing Wage fringes are paid. It is very important to be detailed and specific. Do not be tempted to use a fill-in-the-blank document that does not do this.

3. Fringe is to be expressed and paid as a cash value per hour

The required fringe on a Prevailing Wage project is expressed as a dollar value per hour; therefore any fringe must be expressed and paid as a dollar value per hour. A contractor who does not fund fringes this way must accept an auditor determined hourly rate as the fringe allowed.

There are two specific types of benefits: Fixed Rate Benefits and Calculated Benefits.

A Fixed Rate Benefit costs an employer the same amount no matter the number of hours worked or the wage of the employee (ex: health insurance). According to the Federal DOL Auditors Handbook, these benefits are to have their costs annualized. This means the cost of the benefit is spread over the number of hours worked in a year.

A Calculated Benefit is paid as a dollar value per hour for actual hours worked and is often expressed as a percentage of the employee wage. An example of a Calculated Benefit would be a fixed (ex: 3%) 401k contribution. This would equate to .45/hour for a 15.00/hour wage and .60/hr for a 20.00/hour wage. Paid Time Off is another example of a Calculated Benefit.

4. Benefit contributions must be irrevocably made to the benefit of the employee

This is self explanatory. Any fringe benefit monies paid cannot be reverted back to the employer. This does not, however, “. . . prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions. . . “(29 CFR 5.26). Kentucky regulations (803 KAR 1.085) mirror the federal code.

5. The Benefits Program must be administered by a trustee or a third party, not affiliated with the employer, subject to an enforceable commitment

No matter how badly a contractor wants to administer a benefit program in-house, the regulations are clear. Fringe benefit monies must be paid to an outside source and are not to be under the control of the contractor. Experienced Prevailing Wage contractors know this as one of the major reasons some fringes are not allowed when an audit is performed.

It is important to note that these “**5 Things**” are really one thing with five equally important parts. Determine the fringes to be furnished, and then follow these steps to put the Company Benefits Program in place. Doing so will insure compliance and will allow maximum credit towards the Required Fringe on Prevailing Wage projects.

Finally, unless the Contractor just wants to, there is no reason to pay any part of the Prevailing Wage fringe as cash, and there is no reason to pay fringes and not receive Prevailing Wage credit. When the auditor shows up, be a “*this is what we do*” Contractor, not a “*what will you let me have*” Contractor.



Advantage Resource

Fringe Benefits Administration and Compliance Assistance for the Prevailing Wage Contractor

Do you really understand Prevailing Wage fringes?
One simple monetary advantage you may have over your competitors is how you address the Prevailing Wage rate fringe requirement

Look at it from a Contractor's point of view

- ▶ We maximize the credit you receive for your Bona Fide Fringes
 - ▶ We provide independent third-party verification
 - ▶ We ease your administrative workload
- ▶ We serve as a reliable reference for Prevailing Wage issues

 www.advantageresource.com

1750 Alexandria Drive Ste 100 - PO Box 4099 - Lexington, KY 40544-4099 - p (859) 313-5472 - f (859) 313-5473 - email info@advantageresource.com