

# A Couple of Really Good Prevailing Wage Questions

By Philip Ely, Advantage Resource Inc.

When Prevailing Wage is the subject, there is no shortage of questions. Here are a couple of common ones.:

**Q. IRS Publication 15-B identifies many items as legitimate fringe benefits. If the IRS identifies something as a legal fringe benefit (such as cell phones, uniforms or vehicle use), why can't I count that as a part of my required fringe on prevailing wage projects?**

A. Very simply, the Department of Labor (both Federal and Kentucky) defines which fringe benefits may be credited as part of a Prevailing Wage Required Fringe. These are listed as "Bona Fide Fringes" and are specifically defined as the only type of fringe that may count towards the required Prevailing Wage rate. Bona Fide fringes are limited to:

**Insurance.** Defined as medical or hospital care, life insurance, disability and sickness insurance or accident insurance. Any employer-paid insurance required by law, such as workman's compensation or unemployment insurance, cannot be counted as a prevailing wage required fringe. Bona Fide insurance, for fringe purposes, is solely for the benefit of the employee or his dependents.

**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.

**Pensions on Retirement.** Contributions to a properly designed 401k Pension 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 defined as Company contributions, and not 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 requirements assist in the implementation of the pension plan. Too many times a contractor accepts a "standard" plan while not being fully aware of all the options available.

**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.

**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". 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.

**Cash.** Cash, in lieu of fringe, is always acceptable. However, any Prevailing Wage fringe amount paid in cash shall be paid as regular wages and is subject to the associated labor related burden (matching FICA, unemployment, workman's comp, liability insurance, etc.).

**Q. Does prevailing wage have to be paid to a truck driver making deliveries to a prevailing wage project?**

A. The short and to the point answer is "maybe". Determining factors that tip the scale are how the "site of the job" is defined for the project, whether or not the driver's actions while on the job site are contributing to the project's completion, the driver's employment status (employee/subcontractor/owner operator), and the governing authority's requirements. Assuming the question pertains to a contractor's own employees, and the project is in the state of Kentucky, here are some considerations:

"Site of the project" is generally considered to be the physical place or places where the construction

called for in the contract will remain when work on it has been completed, as well as other adjacent or nearby property used by the contractor or subcontractor in such construction. This includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, and tool yards, provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are located in proximity to the actual construction location that it would be reasonable to include them. Locations whose continuance of operation are determined without regard to a particular public work contract or project, to include permanent home offices, branch plant establishments, fabrication plants, and tool yards, are not included in "site of the project". Transportation of materials on the "site of the project" by employees of

contractors or subcontractors for use at the "site of the project" is covered by prevailing wage requirements. Transportation of materials to the "site of the project", if from a location that is not deemed "site of the project" may not be subject to prevailing wage requirements.

While transporting materials or supplies to (not on) the "site of the project", if the driver's time on site is not more than "de minimis", then prevailing wage is not required. While "de minimis" is not explicitly defined in the Federal Register, "the Department does not assert coverage for material delivery truckdrivers (sic) who come onto the site of the work for only a few minutes at a time merely to drop off construction materials" ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction, Final Rule." Federal

Register 65:245, (20 December 2000) p. 80276). This also assumes that the driver is in no way aiding in the completion of the project, for then, in effect, the driver is becoming a "mechanic" or a "laborer". Examples of aiding in a project's completion (perhaps requiring the payment of prevailing wage) would be spending more than a minimal period of time on site merely to place material at different locations, or erecting scaffold being delivered by a rental company.

*Philip Ely is a project manager for Advantage Resource Inc. Based in Lexington, Kentucky, Advantage Resource provides fringe benefits administration and compliance assistance to prevailing wage contractors. More information can be found by visiting [www.advantageresource.com](http://www.advantageresource.com) or by contacting Philip directly at [pely@advantageresource.com](mailto:pely@advantageresource.com).*

# MORSEY *Exceeding Expectations* CONSTRUCTORS *A Harper Industries Company*

**WE ARE YOUR LEADER IN PROVIDING INDUSTRIAL CONTRACTING SERVICES**

## SERVICES

- STEEL ERECTION
- EQUIPMENT RIGGING AND SETTING
- PROCESS PIPING FABRICATION & INSTALLATION
- BOILER & PRESSURE VESSEL INSTALLATION/REPAIR
- CONCRETE FORM & PLACEMENT
- GENERAL CONSTRUCTION
- MAINTENANCE REMEDIATION & REPAIR WORK
- EQUIPMENT ALIGNMENT & LEVELING

## PROFESSIONAL STAMPS, CERTIFICATIONS & QUALIFICATIONS

- KENTUCKY BOILER LICENSE
- TENNESSEE BOILER LICENSE
- ILLINOIS BOILER & PRESSURE REPAIR
- NATIONAL BOARD BOILER & PRESSURE "R" STAMP
- AUTHORIZED MANUFACTURER & ERECTOR OF POWER BOILERS "S" STAMP
- AUTHORIZED FABRICATOR & ERECTOR OF PRESSURE PIPING "PP" STAMP
- NUCLEAR NQA-1 QUALIFIED

777 DOCTOR SMITH LANE • CALVERT CITY, KY 42029  
PHONE 270-395-4025 • FAX 270-395-1765 • [cbright@morsey.com](mailto:cbright@morsey.com)  
[www.morsey.com](http://www.morsey.com)