



Pennsylvania's Prevailing Wage Law Needs to Go

Summary: Earlier this month Michigan repealed its prevailing wage law. As the Michigan Senate majority leader said “the time has come to eliminate this outdated law and save our taxpayers money.” Michigan did the right thing by shedding this union-backed wage mandate. Now it’s time for Pennsylvania to do the same.

State-level prevailing wage laws require the paying of the local wage (typically the union rate) and benefits on government-financed construction projects. Prevailing wage laws (Davis-Bacon at the federal level) were enacted to protect local labor from cheap migrant labor. Pennsylvania’s 1961 law requires all projects of \$25,000 or more to pay workers the prevailing wage. With Michigan repealing its 1965 law, there are now 24 states without a prevailing wage law with five of those states—Indiana, West Virginia, Arkansas, Kentucky and now Michigan—repealing their laws since 2015. Note that Michigan, West Virginia and Kentucky have also passed right-to-work laws in the last few years.

The prevailing wage is the local rate as determined by the Department of Labor and Industry (DLI). Prevailing wages are determined for the county where the work is done. In subchapter E of the Prevailing Wage Act, § 9.105 *Determination of classification and general prevailing minimum wage rates*, the guidance for determining the prevailing wage is stated as follows.

(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 employe (sic) 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 employe (sic) 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.

Nowhere does the law explicitly prevent using market wages in the determination. But in practice the use of wages established in collective bargaining agreements has been the determining factor.

The use of federal standards would require above market wages as well. Then, too, the language in subparagraph (b) clearly suggests that the Secretary focus on union wages.

Prevailing wage rates set by DLI are determined by the type of work being done and for each occupation. The hourly wage rate is specified as is the cash rate for fringe benefits if a benefits package is not being offered. Thus, there is a total mandated compensation rate. For example, in April 2016, East Stroudsburg University in Scranton, Monroe County (one of the state system schools) awarded a contract for some concrete work which was classified as a highway project. DLI provided a 13-page list of all occupations and listed the hourly rate plus fringe benefit rate. For a painter (class 3) the hourly rate (as of 5/1/2017) was \$33.25 with a fringe benefit rate of \$21.17 for a total rate of \$54.42 per hour. Laborers (class 1) had the cheapest hourly rate on the list of \$23.49 plus a fringe rate of \$18.19 totaling \$41.68 per hour.

It is important to point out that painters statewide were paid an average wage of \$20.30 in 2017 and the average wage for construction laborers was \$18.84. Average wage figures are taken from the Bureau of Labor report of Occupational Wage Statistics. In this case, painters on the university projects were paid 64 percent more than the state average wage for painters and laborers were paid 25 percent more than the state average.

Fringe benefits were also out of line. And in both prevailing wage cases, fringe benefits (64 percent of wages for painters and 77 percent of wages for laborers) were far above the norm for these occupations. Nationally, construction worker benefits are about 50 percent of wages.

Think of the manpower expended by the DLI in preparing a very long list of occupations and hourly wages and fringe rates for all the projects that get underway every year. Talk about the heavy hand of government and wasted resources.

The prevailing wage discourages competition for government contracts. If a non-union contractor bids on a government contract and must pay the prevailing wage, it may have some workers (those on the government project) earning more money than those working on a private contract. This could cause a large headache in trying to explain to its employees why some are being paid more than others for doing the same work although on different projects. Also think of the record keeping and reporting requirements a non-union contractor must face. The costs imposed by working on a government contract may not be worth submitting a bid.

The lack of full market competition and the inevitable higher costs created by prevailing wage may have been a contributing factor in Pennsylvania's poorly rated infrastructure. If projects are unnecessarily expensive, government both the local and state level will be unable to carry out as many projects as they would in the absence of the extra expense created by prevailing wages.

According to PennDOT's 2017 annual report, \$2.57 billion was spent on 703 bridge and road projects. Even if the labor compensation savings from doing away with prevailing wage were just 10 percent—a low figure as most research places the savings at anywhere from 10 to 25 percent depending on the percent of a project's cost that stems from labor compensations—PennDOT would have had an extra \$257 million to spend on more projects. And this figure does not include the potential savings to be derived from the billions spent on local road projects and all the publically financed non-road building across the state each year. In a state that seems to struggle every year to fund its budget and where school districts are having to raise taxes steadily to meet obligations including for unnecessarily expensive building projects, hundreds of millions in savings would certainly be welcome.

Note that the Mackinac Center in Michigan estimates that the repeal of the prevailing wage law will save that state \$400 million per year on construction of schools, roads, bridges, universities, town halls and other critical infrastructure.

The original intent of the prevailing wage laws may have been to protect local laborers from cheap migrant labor, but today the law simply shields union workers from having to compete with other qualified workers in their own community. The lack of full-throated competition for government contracts results in higher costs for taxpayers who ultimately pay for this excessive generosity to the unions—and to the companies who are union shops and get all the work.

Indeed, the prevailing wage law is cut from the same cloth as binding arbitration, teacher strikes, transit worker strikes and the lack of a right-to-work law. Pennsylvania is losing ground steadily as a result. The state's workforce is declining while nationally the labor force is climbing and the number of the state's residents working has also been sliding of late.

Moreover, Pittsburgh's cost of government and taxes per resident are far above the national average for cities in its size range. And its schools are outrageously expensive per pupil while academic performance of a majority of students is abominable. What do the Pittsburgh and Pennsylvania situations have in common? A deeply entrenched anti-free market ideology that stifles growth.

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