

FY21 Prevailing Wage Law Annual Report

Executive Summary

Beginning with contracts executed on July 1, 2009, Montgomery County's Prevailing Wage Law applies to construction contracts over \$500,000. It is modeled after the Federal Davis-Bacon and State of Maryland's Prevailing Wage Laws. The Law mandates that workers on qualified County construction projects be paid the prevailing wage rate and fringe benefit rate for work in their respective work classification. These rates are the rate paid for comparable work in the private sector within Montgomery County. The rates are calculated by the State, based on surveys submitted by construction companies located in all 23 counties and Baltimore City.

FY21 marks the 13th year of operation of the Prevailing Wage Law. During FY21 Montgomery County and its compliance vendor monitored a total of 38 projects/task orders, including 2 federally funded projects, 19 Department of General Services projects, 13 Department of Transportation projects, 2 Department of Housing and Community Development projects and 4 projects for the Department of Environmental Protection. A total of 14 construction projects/task orders were closed out during FY21.

Contractor Compliance and Monitoring, Inc. (CCMI), the County's compliance contractor, completed its 13th year of providing labor compliance services to the County. CCMI's compliance efforts included 17 investigations of subcontractors on 4 projects during the year. These investigations varied in their size and scope and their results demonstrated the need for the County to be vigilant in its oversight of construction contracts subject to the Prevailing Wage Law.

The County closed out 14 projects during the year. This resulted in the collection of \$88,301.43 in back wages, benefiting a total of 197 workers. In addition, the County assessed contractors \$130,775.00 in liquidated damages due to late submission of payroll. This reflects a reduction from the \$285,770.00 listed in the Project Completion Reports. CCMI continues to provide guidance to the County in its ongoing effort to refine and enhance the enforcement of the County's Prevailing Wage Law.

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Montgomery County implemented its prevailing wage law in July 2009. Contactor Compliance and Monitoring Inc. (CCMI) was hired to assist the County in implementing this program. Since its inception, CCMI and the County have worked together to create the following policies, practices, and protocols:

- An audit process to specifically address the requirements of the County's Prevailing Wage Law
- The educational aspect of labor compliance at the Preconstruction Conferences (including creating a specific handout for projects funded by County funds and a separate handout with tailored information relating to federally funded projects Davis-Bacon)
- A monthly process of auditing payrolls and providing prompt feedback to contractors and the County's Prevailing Wage Program Manager
- An onsite interview format and report tailored to the provisions of the County's Prevailing Wage law
- Drafts of documentation for final project close out, draft of final report to Director and addressing due process appeal rights of contractors with County
- Updated forms, processes and protocols as the County's labor compliance program matured and best practices were established

At the conclusion of each project, CCMI submits a Project Completion Report to the County. The report details, by contractor and subcontractor, each prevailing wage violation identified during the monitoring process; the steps CCMI took during its audit and/or investigative process; a narrative of the violation and any special circumstances; a discussion of the remedy (restitution); whether that restitution has been made by the effected contractor; and recommendations to the County.

Projects

During Fiscal Year FY21, CCMI provided labor compliance services for 38 projects/task orders.

Federally Funded Projects

Park View at Aspen Hill-HUD Funding
Halpine Hamlet-HUD Funding

The projects listed above include federal funding and are subject to the federal Davis Bacon and Related Acts for prevailing wage compliance.

County Funded Projects

Department of General Services

Avery Road
Bethesda Fire Station
COB Garage Repair
COB Hearing Room
EOB Roof
Fire Station 31
Gaithersburg Fire Station 8
Garage 47
Gene Lynch Park
Glenmont Forest-Green Streets
Grey Courthouse
Kensington Fire Station
Montgomery County Detention Center Roof
Salt Storage
Upper County CC Roof
Wheaton CBD

Department of Transportation

Beach Drive Bridge
Bridge Preservation County-Wide
Capital Crescent Surface Trail
Clarksburg Culvert Repair
Emory Lane Bike Path
East Gude Drive
Frederick Rd. Bike Path
Railroad Branch Dam Repairs
Seminary Road
Snouffer School Road North

Snouffer School Road South
US 29 Bus Rapid Transit
White Flint West Phase 2

Task Orders

DHHS 1301 Piccard - ADA
Long Branch Library
Lower Booze Creek
Persimmon Tree SWM
Quail Valley 1
Whetstone Lake
Wheaton Town Center IT Cabling

Projects/Task Orders Closed Out

Avery Road
Bethesda Fire Station
DHHS ADA
EOB Roof
Fire Station 31
Halpine Hamlet
Kensington Fire Station
Long Branch Library
MCDC Roof
Salt Storage
Upper County Community Center Roof
US 29 Bus Rapid Transit
Wheaton Central Business District
Wheaton Town Center IT Cabling

Investigations

CCMI investigated 17 contractors on the 4 projects listed below. An investigation is launched when CCMI receives information that employees are not being paid the correct prevailing wage rate, are not paid for all hours worked (underreporting of hours), are not being paid overtime, or are being paid in the wrong wage category (misclassification). An investigation frequently includes requesting additional documentation from the contractor or subcontractor and then reviewing timecards, daily job logs, pay stubs and cancelled checks and cross checking that information against the certified payrolls submitted.

Avery Rd. Treatment Center

Main Stream Associates: When interviews were cross checked with certified payroll, it was discovered that misclassifications occurred. Workers were handling tools specific to the trade of Sprinkler-fitter; however, were being misclassified and underpaid as Laborers. A meeting was

held with the owner of Main Stream Associates, the Prime, the County, and CCMI to clarify when using tools specific to a trade, the appropriate classification must be used. Conclusion: Mainstream understood the prevailing wage requirements apply, and promptly issued restitution to the affected workers.

Kensington Fire Station

OHCS: OHCS was a lower tier sub performing the sheet metal duct work for HVAC. CCMI began notifying OHCS of wage violations via the audit report beginning in August of 2020. Initial wage violations consisted of overtime violations and missing employees from the certified payrolls. Additionally, onsite interviews revealed a worker performing the duties of a Sheet Metal Mechanic; however, this employee was misclassified and paid at the lower unskilled Laborer rate.

CCMI also discovered that OHCS violated Federal and State Laws by not taking the proper deductions from their employees. In response to the misclassification, the contractor claimed they issued restitution to the employee; however, when CCMI sought to confirm the payment, one employee advised that he did not receive a correction payment for this project. Rather, the amount due to him for this project was given to him by the owner of OHCS and was told by the owner it was advance pay for three weeks of work in which he would perform on other, non-prevailing wage, projects. The wages due to the worker remain outstanding and are detailed in the Project Completion Report.

US 29 Bus Rapid Transit

W.F. Wilson : CCMI audited the fringe benefits and related statements and found the subcontractor had calculated the hourly rates incorrectly. After several audit reports and a meeting held with the County, W. F. Wilson brought the violation into compliance by issuing restitution to the affected employees.

Wheaton CBD

All Star Flooring: A meeting was held with All Star Flooring and their subcontractors, as it appeared they were classifying employees as independent contractors; however, interviews and further investigation revealed they were employees. The subcontractors ultimately came into compliance.

Best Fence: At the beginning of the project, CCMI discovered through the audit process that Best Fence did not pay prevailing wage rates to their workers; rather, they paid them their regular rate of pay. Audit reports were sent to the subcontractor detailing the violation; the subcontractor ultimately issued restitution to the affected employees.

C.J. Coakley: Three workers were misclassified as Laborers but were performing work as a Power Equipment Operator – Hoist. The classification was not on the project wage determination. When the County consulted with the State, they provided the rate which was higher than what the workers were paid; therefore, they were due restitution. The subcontractor promptly issued restitution payment to the affected employees.

Chato General Services: A worker was interviewed onsite; however, when the certified payroll was submitted, the worker was not listed. It was discovered the worker was not paid the prevailing wage rate; therefore, was due restitution. The subcontractor ultimately issued restitution to the affected employee.

Chesapeake Sprinkler Company: An audit of the Apprenticeship Standards Agreement revealed the program was silent on the fringe rate, meaning Apprentices enrolled in the program would be due the full prevailing wage fringe rate. However, audits of certified payrolls revealed an Apprentice was not paid the full fringe rate; therefore, was due restitution. Once the subcontractor was notified via an audit report, restitution was promptly issued to the Apprentice.

Demolition Services Incorporated: A worker was interviewed onsite; however, when the certified payroll was submitted, the worker was not listed. It was discovered the worker was not paid the prevailing wage rate; therefore, was due restitution. The subcontractor ultimately issued restitution to the affected employee.

G&M Services: During an audit of certified payroll, it was discovered that an Apprentice ratio violation had occurred, meaning the Apprentice was not supervised; therefore, due restitution for the difference of the apprentice rate and the total package prevailing wage rate. Once notified via the audit report, the subcontractor promptly issued restitution.

General Woodworking: Interviews revealed three workers were being paid as Apprentices; however, the workers stated they were not enrolled in an Apprentice program. Additional interviews confirmed the workers were performing work which fell into the classification of the Carpenter mechanic and should have been paid the full prevailing wage rate. A meeting was held with the subcontractor, the Prime, and the County and it was confirmed the workers were not enrolled in an Apprentice program – ultimately, the subcontractor issued restitution to the three employees.

J&W Caulking Applicators: After several audit requests for a fringe benefit statement and supporting documentation, it was ultimately discovered that the fringe rate was underpaid;

therefore, the employees were due restitution. Once the subcontractor was notified, restitution was issued to the affected employees.

Kensington Glass Arts: It was discovered that a misclassification occurred where an employee was performing Glazier work, but was classified and paid at the Unskilled Laborer rate. The subcontractor ultimately issued restitution to the affected worker.

Old Dominion Insulation: During an audit of certified payroll, it was discovered that an Apprentice ratio violation had occurred, meaning the Apprentice was not supervised; therefore, due restitution for the difference of the total package prevailing wage rate. Once notified via the audit report, the subcontractor promptly issued restitution.

Perlectric: During an audit of certified payroll, it was discovered that an Apprentice ratio violation had occurred, meaning the Apprentice was not supervised; therefore, due restitution for the difference of the total package prevailing wage rate. Once notified via the audit report, the subcontractor promptly issued restitution.

Source One Flooring: A meeting was held with Source One Flooring and their subcontractors as it appeared they were classifying employees as independent contractors; however, interviews and further investigation revealed they were employees. The subcontractors ultimately came into compliance.

W.E. Bowers: During an audit of certified payroll, it was discovered that an Apprentice ratio violation had occurred, meaning the Apprentice was not supervised; therefore, due restitution for the difference between the apprentice rate and the total package prevailing wage rate. Once notified via the audit report, the subcontractor promptly issued restitution.

Investigation Summary

There are scores of deficiencies identified each month through the regular monthly audit process. In most instances contractors and subcontractors are cooperative in correcting these items when they are identified. Any underpayment of wages and fringe benefits also requires a correction of the certified payrolls, which must be reviewed. CCMI requires proof of any restitution paid to employees and follows up with the contractor or subcontractor to receive and review copies of cancelled checks to ensure employees are justly compensated. In some cases, CCMI may call to confirm with employees that they did, in fact, receive the restitution due them, particularly if checks were unusually large or the contractor or subcontractor has a history of non-compliance with the County Prevailing Wage Law.

Results

For the year, the County recovered \$88,301.43 in restitution for workers on County construction contracts. This benefitted 197 workers. There are liquidated damages associated with late submission of payroll. The total liquidated damages listed in the Project Completion Reports, for projects closed out during the year, amounted to \$285,770.00. The County invites contractors to provide documentation that would refute the findings. The County weighs this documentation vary carefully. As a result, the County assessed \$130,775.00 in liquidated damages for late submission of payroll.