

Prevailing Wage & the Dirt, Gravel, and Low-Volume Road Program Frequently Asked Questions for Municipalities

updated 4/2022

NOTE: The information provided here is to help Dirt, Gravel, and Low-Volume Road (DGLVR) grant recipients understand how the Pennsylvania Prevailing Wage Act affects DGLVR Projects and is NOT an official determination on whether or not Prevailing Wage applies to a specific project. If a DGLVR grant recipient has any questions about whether Prevailing Wage applies to a specific project, they should contact the PA Department of Labor and Industry for an official determination.

Thank you to the Huntingdon County Conservation District and the PA Department of Labor and Industry for preparing this document

1. What is the Pennsylvania Prevailing Wage Act?

This piece of legislation requires the “prevailing wage” rate to be paid to contracted labor for construction projects with an estimated cost of \$25,000.00 or more when public funds are involved.

2. Who determines prevailing wage rates?

The Bureau of Labor Law Compliance, which is part of the PA Department of Labor and Industry

3. When does the Pennsylvania Prevailing Wage Act apply to Dirt, Gravel, and Low-Volume Road (DGLVR) projects?

When the estimated or total cost of a project funded in part or in whole by the DGLVR program is \$25,000 or more, any contracted labor must be paid prevailing wage. “In-kind” in the chart below for PW refers to cash or materials only, non-reimbursed municipal equipment or labor does not count toward the in-kind or total project cost for determining Prevailing Wage, as long as those in-kind costs are clearly identified in the grant application and final project paperwork. In-kind equipment and labor should still be reported as in-kind expenses for Program reporting purposes.

Total <u>estimated</u> project cost (DGLVR Grant + in-kind materials/cash)	Total <u>actual</u> project cost (DGLVR Grant + in-kind materials/cash)	Does Prevailing Wage apply?
\$25,000 or more	\$25,000 or more	Yes
\$25,000 or more	Less than \$25,000	Yes
Less than \$25,000	\$25,000 or more	Yes
Less than \$25,000	Less than \$25,000	No

4. How do I get a prevailing wage rate determination?

- ➔ Contact the Bureau of Labor Law Compliance for a prevailing wage rate determination at (717)-705-5969
- ➔ This determination can also be initiated online at <https://www.dlisureweb.pa.gov/PrevWage/Pages/DetermRequest.aspx?ID=&PageType=>
- ➔ Solicitors and DGLVR program staff can give their interpretation of the Prevailing Wage Act, but ONLY the Bureau of Labor Law Compliance can make determinations.
 - If you have any doubt about whether or not prevailing wage applies to your project, contact the Bureau of Labor Law Compliance!

- 5. Why is the prevailing wage threshold for DGLVR projects \$25,000 instead of \$100,000?**
In 2013, Act 89 raised the prevailing wage threshold to \$100,000 for certain funding sources, but did not include the DGLVR program as one of those funding sources. The Penn State Center for Dirt and Gravel Road Studies provides a more detailed explanation of this.
- 6. Can I split my project into different phases to avoid paying prevailing wage?**
→ If you complete work for your DGLVR-funded project in multiple phases over the life of one DGLVR grant, the work is still considered one project and prevailing wage applies if the total project cost is \$25,000 or more
→ If you receive two different DGLVR grants for the same road in different years, prevailing wage is determined for each project separately
- 7. My DGLVR grant is over \$25,000. What if the municipal road crew completes part of the project and a contractor completes part of the project?**
→ The portion of work completed by municipal employees is not subject to prevailing wage because it is not contracted labor, but it does count towards the total cost of the project if those costs are reimbursed as part of the grant. Non-reimbursed labor and equipment provided by the municipality do not count toward the total cost of the project, as long as those costs are clearly identified in the grant application and final project paperwork.
→ Since the total cost of the project is over \$25,000, prevailing wage must be paid to any contracted labor, regardless of how much of the project the contractor works on
- 8. My DGLVR grant is over \$25,000, but two contractors each complete part of the project and each part costs less than \$25,000. Do the contractors still need to be paid prevailing wage?**
→ Yes, the total cost of the project is still over the prevailing wage threshold of \$25,000, so the contractors must be paid prevailing wage
- 9. Prevailing Wage applies to construction projects, but not maintenance projects. How do I know whether my project is construction or maintenance?**
→ For the Prevailing Wage Act, maintenance work is defined as “the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased” 43 P.S. § 165-2(3).
→ The Bureau of Labor Law Compliance provides guidance on which PennDOT Treatments are considered construction and maintenance (see attached pages from the PA Department of Labor and Industry’s website). NOTE: This list is only guidance and the Bureau retains the authority to determine PA prevailing wage requirements.
→ ***DGLVR projects are required to provide an improvement to the road and therefore are almost always considered construction for the purpose of prevailing wages.***
- 10. How much more does prevailing wage cost than other labor rates?**
→ Prevailing wage rates vary by location and project. The rates for your project are not set until you receive your rate determination from the Bureau of Labor Law Compliance.
→ To estimate how much prevailing wage might cost when planning your DGLVR project, you can use past prevailing wage rates from similar projects.
 - talk to your neighboring municipalities about how much their prevailing wage rates were
 - you can search for registered prevailing wage projects and view their rates on the Department of Labor and Industry’s website here: <https://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/prevailing-wage/Pages/Prevailing-Wage-App.aspx>

11. If the Prevailing Wage Act applies to my project, who gets paid prevailing wage?

- Municipal employees are not contractors and therefore do not need to be paid prevailing wage
- All contracted labor actively involved in construction, including owner/operators of a contracting business, must be paid prevailing wage
- Supervisory personnel do NOT need to be paid prevailing wage
 - Supervisory personnel inspect/provide guidance on site. If they actively participate in the construction, such as by picking up a shovel to help spread aggregate, they should be paid prevailing wage for the hours they spend actually doing road construction
- Vendors whose sole involvement in the project is delivering materials on site, including truck drivers delivering aggregate, do NOT need to be paid prevailing wage
 - Trucks delivering aggregate/pavement into a paver are vendors
 - If a truck delivers aggregate and then stays on site, is loaded with debris, and hauls it off site, the truck is no longer considered a vendor and the driver should be paid prevailing wage for the time spend participating in project work

12. As a DGLVR grant recipient, what are my responsibilities in regards to the Prevailing Wage Act?

- It is the grant recipient's responsibility to contact the Bureau of Labor Law Compliance for a prevailing wage rate determination on your DGLVR project
- If prevailing wage applies to your project, you must bid the project as a prevailing wage project and include the prevailing wage rates in the contract with your contractor
- The prevailing wage determination is valid for 120 days from the date of issue. If there is no signed contract within 120 days, you will need to request a new project serial number.
- DGLVR Grant contracts include a "Prevailing Wage Notification Letter" (attachment F) that grant recipients must sign and return to the county conservation district with the signed contract. DGLVR Grant recipients must also provide the conservation district with a copy of a notarized "Certified Statement of Compliance" (attachment G to the DGLVR Contract) for each contractor involved in your DGLVR Project before final grant payment can be made to the grant recipient.

13. What if the Prevailing Wage Act applies to my DGLVR project and I didn't know?

- You are still required to pay prevailing wage and can do so without additional fees or consequences
- Notify the contractor, contact the Bureau of Labor Law Compliance to obtain a rate determination, and provide a copy of the certified payroll to the Conservation District to verify that you have followed the provisions of the Prevailing Wage Act

14. What happens if I (a municipality/public entity) don't pay prevailing wage when required?

- If a municipality/public entity does not pay its contracted labor the prevailing wages legally required, that is a civil matter between the municipality/public entity and the contractor
- You can rectify the situation by paying the difference in wages due to the contractor
- If the municipality/public entity refuses to pay prevailing wages when required, the civil matter can turn into a criminal matter

15. What if my contractor doesn't want to pay prevailing wage to themselves and/or their employees?

- If the contractor is working on a DGLVR project that totals \$25,000 or more, they are required by law to comply with the Pennsylvania Prevailing Wage Act.
- *Small "owner/operator" contractors where the owner performs all the work are still required to pay themselves prevailing wage.*
- If the contractor does not pay prevailing wage (even to themselves) when required by law, they can be debarred from working on publicly funded projects for up to 3 years. The company's name and owner's name are published on a debarment list so that municipalities and other public entities know that the contractor is ineligible to work on their public projects.

16. What if my (the municipality's) DGLVR project also includes federal funding?

- Different types of federal funding have different prevailing wage requirements.
- Often, federal funding will require the Davis-Bacon Act to be followed.
- If the requirement to use Davis-Bacon wages is in writing, the PA Department of Labor and Industry will accept their guidelines for wages.
- For questions about Davis-Bacon applicability to a federally funded construction project contact the federal agency from which any federal funding was obtained.

17. What is the Davis-Bacon Act?

- The Davis-Bacon and Related Acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.
- The Davis-Bacon Act and Related Acts require contractors and subcontractors to pay their laborers and mechanics the locally prevailing wages and fringe benefits as determined by the U.S. Department of Labor.
- See Wage and Hours' **Davis-Bacon Fact Sheet** for additional information:
 - <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs66.pdf>

18. What are my (municipal) requirements under the Davis-Bacon Act?

- When hiring a contractor, the Davis-Bacon Labor Standards Clauses must be included in the bid documents and contract with the contractor.
 - These are available online at: <https://www.ecfr.gov/current/title-29/subtitle-A/part-5/subpart-A/section-5.5>
- Obtain a wage determination from <https://sam.gov/content/wage-determinations> and include this in the bid documents and contract with your contractor. These wage and fringe benefit rates must then be paid to contracted labor.
- All contractors and subcontractors must use the WH-347 or equivalent paperwork to certify that the wages and fringe benefits were paid to mechanics and laborers as required.
 - See Revised WH-347 Form: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf>
 - Instructions for Revised WH-347 Form: <https://www.dol.gov/agencies/whd/forms/wh347>
- DGLVR Grant contracts include a "Prevailing Wage Notification Letter" (attachment F) that grant recipients must sign and return to the county conservation district with the signed contract. DGLVR Grant recipients must also provide the conservation district with a copy of a "WH-347 Certified Payroll form" or equivalent approved by the US Department of Labor for each contractor involved in your DGLVR Project before final grant payment can be made to the grant recipient.

19. Where can I find more information about the Davis-Bacon Act?

- Davis-Bacon learning portal: <https://www.dol.gov/agencies/whd/government-contracts/construction>
- For basic Davis-Bacon Act compliance questions, contact your local U.S. Wage and Hour office: 1-866-4-US-WAGE or 1-866-487-9243.
 - <https://www.dol.gov/agencies/whd/contact>

Interpretation of Maintenance Work for Road Projects Under Pennsylvania Prevailing Wage Act

GENERAL RULE

Construction, reconstruction, demolition, alteration and/or repair work requires prevailing wages. Maintenance work does not trigger payment of Pennsylvania prevailing wages. For Pennsylvania prevailing wage purposes, *maintenance work* is defined as: “the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.” Maintenance work also occurs when a facility, once in usable condition, was restored to that condition by being partially overhauled or patched. 43 P.S. § 165-2(3).

SPECIFIC WORK

[Listed on attached table](#) (Prevailing Wage/PennDOT Treatments). The list serves only as a guide and the Bureau has the final discretion on determining Pennsylvania prevailing wage requirements.

RECENT COURT CASES

1) *Milling and repaving of a road was non-maintenance requiring Pennsylvania prevailing wages. The percentage of the work constituting maintenance work does not determine whether prevailing wages are required where the project is also comprised of non-maintenance work. Borough of Youngwood v. Prevailing Wage Appeals Board, 938 A.2d 1198 (Pa. Cmwlth. 2007) affirmed __A.2d__, No. 8 WAP 2008 (Pa. June 4, 2008).*

2) *Reconstruction (to construct again; to rebuild; to form again or anew) and demolition requires Pennsylvania prevailing wages. Demolition and in-kind replacement of curbs and sidewalks required Pennsylvania prevailing wages. Borough of Ebensburg v. Prevailing Wage Appeals Board, 893 A.2d 181 (Pa. Cmwlth. 2006).*

Important Note: Labor & Industry reviews the facts particular to the project and utilizes other relevant court cases.

PENNSYLVANIA PREVAILING WAGE ACT

Construction projects (construction, reconstruction, demolition, alteration and or repair work *other than maintenance work*) financed by a public body where the estimated cost is at least \$25,000 require Pennsylvania prevailing wages under the Pennsylvania Prevailing Wage Act (43 P.S. §§ 165-1 through 165-17). *A municipality has the responsibility of obtaining Pennsylvania prevailing wage rates from the Commonwealth, Department of Labor & Industry for a project. The public body must also include Pennsylvania prevailing wage rates in the contracts, notice for bids and advertisements.* 43 P.S. § 154-4; 34 Pa. Code § 9.104.

Pennsylvania prevailing wage rates and information may be obtained from the following:

Bureau of Labor Law Compliance
1301 Labor & Industry Building
651 Boas Street
Harrisburg, PA 17121
717-787-4671

E-mail: [LI, BLLC-WEB-EMAIL](mailto:LI_BLLC-WEB-EMAIL)

Web site: www.dli.state.pa.us

[Prevailing Wage Determination Request:](https://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/prevailing-wage/Pages/Prevailing-Wage-App.aspx)

<https://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/prevailing-wage/Pages/Prevailing-Wage-App.aspx>

FEDERAL PREVAILING WAGES

If the project cost exceeds \$2,000 and the U.S. Government *requires* Federal prevailing wages, the municipality should at least utilize these wages. Where Federal prevailing wages *are required*, Pennsylvania prevailing wages do not have to be used. 43 P.S. § 165-15. The Bureau should review projects funded by Federal and other public sources if Federal prevailing wages are not required.

<https://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/prevailing-wage/Pages/Updated-Prevailing-Wage-Information.aspx>

Prevailing Wage/PennDOT Treatments

Work	Designation ¹	Comments
Crack Sealing	Maintenance	
Seal Coat	Maintenance	
Slurry Seal	Maintenance	
Ralumac application	Maintenance	
Microsurfacing	Maintenance	
Fog Seal	Maintenance	
Scrub Seal	Maintenance	
Ultrathin Friction Course	Maintenance	
Repaving	Construction	
Cold In-Place Recycling	Construction	
Hot In-Place Recycling	Construction	
Milling with and without Thin HMA Overlay (Wearing Course)	Construction	
Leveling Course with Thin HMA Overlay	Construction	
Base Repair	Construction	May be maintenance work if incidental to pothole patching.
Pavement Patching	Maintenance	
Widening	Construction	
Shoulder Upgrade	Construction	
Routine cleaning of drainage features, including minor pipe repairs	Maintenance	Pipe Replacement is reconstruction and nonmaintenance.
Repair of drainage features including pipe replacement.	Construction	
Guide Rail		
<ul style="list-style-type: none"> Partial Overhaul or Patching/Replacement of Damaged Parts In Kind 	Maintenance	
<ul style="list-style-type: none"> Large-Scale Replacement or Upgrade. 	Construction	

¹ The term construction includes construction, reconstruction, demolition, alteration and/or repair work other than maintenance work and requires Pennsylvania prevailing wages. Work that is maintenance work is excluded from these wage requirements. A project that is comprised of both maintenance and non-maintenance will likely require Pennsylvania prevailing wages. 43 P.S. § 165-2(5).

<https://www.dli.pa.gov/Individuals/Labor-Management-Relations/lrc/prevailing-wage/Pages/Prevailing-Wage---PennDOT-Treatments.aspx>