

# Overtime Required for Prevailing Wage Cash Fringe Benefits???

## Labor & Employment Law Update

on January 17, 2014

### Another Attempt to Help Labor Unions

Last month, we reported the recent amendment to the Illinois Prevailing Wage Act (IPWA) requiring fringe benefits to now be annualized for purpose of taking a credit for fringe benefit payments. The Illinois Department of Labor (IDOL) recently updated its Frequently Asked Questions (FAQs) to explain how the IDOL interprets the new annualization requirement. In the process of updating its guidance, the IDOL has expanded on how fringe benefits might affect the prevailing base hourly rate that a contractor must pay. See <https://www.illinois.gov/idol/FAQs/Pages/contractor-faq.aspx#faq9>.

The IDOL now asserts that any prevailing wage fringe benefits paid in cash must be added to the base hourly rate. There is no dispute that the IPWA requires contractors to pay the base wage in addition to fringe benefit payments. Prior guidance from the IDOL explained the requirement as follows:

Fringe benefits or the equivalent are a part of the total prevailing wage just like the basic hourly wage rate. To be in compliance with the Act, all components of the prevailing wage (base and fringes) must be paid by all contractors who perform regardless of their affiliation or lack of affiliation with a union.

In other words, the IDOL recognized that payment of base wages was a requirement separate and distinct from the requirement to pay fringes. Although both components had to be paid to be in compliance, there was no requirement to add the hourly cash equivalent of fringes to the hourly base wage rate. To be sure, IDOL's prior examples of how to off-set fringe requirements with cash payments clearly identified the hourly cash amount required for that fringe benefit category with no reference or indication that that hourly amount was to be added to the base wage. This made sense and was consistent with federal prevailing wage law where the regulations make it clear that cash fringe benefit payments are not subject to overtime premiums. 29 C.F.R. § 5.32.

IDOL's revised guidance now states that any prevailing wage fringe benefits paid as an hourly cash equivalent must be added to the base hourly wage rate. The obvious impact is that the hourly cash equivalent for fringe benefits would be

subject to overtime premium calculations. As a result, those paying cash fringe benefits will pay more when working overtime (in excess of 40 hours) in any workweek, or when working in excess of 8 hours on an IPWA job Monday through Friday, or for any and all time worked on Saturdays, Sundays or Legal Holidays.

The IDOL claims that this specific application of the IPWA applies equally to those with collective bargaining agreements and those without. In reality, the IDOL is well aware that requiring payment into fringe benefit funds are standard provisions of collective bargaining agreements and the fringe benefit rates under the IPWA are derived directly from such collective bargaining agreements. Payment of cash fringes is rarely, if ever, an option for those with collective bargaining agreements. This new manner of enforcing the IPWA is just another example of how the IPWA is used and applied to give labor unions an artificial advantage when bidding public works projects.

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