



ILLINOIS DEPARTMENT OF LABOR

Pat Quinn
Governor

Joseph Costigan
Director

May 10, 2013

David Bennett
Executive Director
Metropolitan Mayors Caucus
233 South Wacker Drive, Suite 800
Chicago, IL 60606

Dear Mr. Bennett:

Enclosed is a copy of the Department's final Questions and Answers regarding Landscaping which will be posted on our website. The Department believes these Questions and Answers address majority of issues raised. While there still will remain certain situations which may need to be examined on a case by case basis, we believe that the vast majority of situations should be resolved.

We thank you for your time and input on these issues.

Sincerely,

Joseph Costigan
Director

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LANDSCAPE QUESTIONS AND ANSWERS

Many questions have been posed to the Department regarding the application of the Prevailing Wage Act in the counties of Cook, Lake, McHenry, DuPage, Kane, Will, Kendall, Boone and Grundy to work involving landscape (e.g. plants, bulbs, seeds, bushes, shrubs etc, dirt, organic materials, sod, and nonorganic materials used in connection with landscape) and the issues relating to modifications to real estate because of the uniqueness of the work and materials involved. In response to the above referenced inquiries regarding work in these counties and comments received from concerned persons, the Department believes it is appropriate to set forth certain questions and answers, which illustrate the Department's position as a matter of its enforcement policy to issues involving landscape work and the application of the Prevailing Wage Act.

Nothing set forth below should be interpreted as a change in the Department's view regarding traditional "hardscape work" (by way of example and not limitation "work associated with building, making, forming, demolishing brick or concrete paths or walk ways, fountains, concrete or masonry planters or retaining walls") that some might consider or refer to as falling under "landscape work." The Department has considered this work to have fallen under the Prevailing Wage Act and remains covered work under the Prevailing Wage Act.

Where examples are given, they should be considered as examples only to help provide guidance and should not be considered all encompassing.

1. Question: Is work in connection with landscape work covered under the Prevailing Wage Act?

Answer: Real estate is considered by the Department as a fixed work to which the Prevailing Wage Act applies. Work performed in connection with landscape is covered work depending upon the nature of the work.

2. Question: What established classification of employees under the Prevailing Wage Act covers those employees who perform landscape work, which falls under the coverage of the Prevailing Wage Act?

Answer: For the purpose of the Prevailing Wage Act, the Department of Labor does not recognize the classification of "landscape plantsman," "landscape laborer" "landscape helper" "landscape installer" "landscape operator" or "landscape truck driver." Work performed by persons who sometimes may be called "landscape plantsman" or "landscape laborer" is covered by the classification of laborer. Work performed by persons sometimes referred to as "landscape operator" is covered by the classification of operator and work performed by persons sometimes call "landscape truckdriver" is covered by the classification of truckdriver. Neither bids nor contracts nor acceptances on landscape work covered by the Prevailing Wage Act should be based upon rates of pay

other than that those associated with the classifications of laborers, operator, or truckdriver the Department has published.

3. Question: What are examples of landscape work that is covered under the Prevailing Wage Act when performed in connection with other work covered under the Prevailing Wage Act?

Answer: All work involving the installation or removal of landscape materials in conjunction with or as part of work which is otherwise covered under the Prevailing Wage Act is also work covered by the Prevailing Wage Act. For example only, and not by way of limitation; 1) original installation of landscape materials in connection with covered work involving buildings or structures; 2) landscape work in conjunction with covered work involving any road, boulevard, street, highway, bridge project, sewer or underground project; 3) lawn and landscape restoration performed in conjunction with covered work involving trenches and manholes, pipes, cables and conduits; 4) preparation of and landscaping of approaches associated with covered work performed in connection with shafts, tunnels, subways, and sewers; 5) landscaping of an old or new site in conjunction with covered work involving underpinning, lagging, bracing, propping and shoring; 6) landscaping in connection with covered work involving earthmoving and grading; 7) landscaping in connection with covered work performed at a park or preserve.

Even if the landscaping is to be performed after completion of the covered project, if it is an integral part of the overall project, it is deemed being performed in conjunction with or part of the project. The passage of time is not determinative. For example a municipality builds a new city hall, and the landscaping is to occur a year later or in stages over years, the landscape is an integral part of the overall project and is covered.

4. Question: When is landscape work no longer, considered to be performed in conjunction with or as part of a project otherwise covered under the Prevailing Wage Act?

Answer: Landscape work is no longer considered to be performed in conjunction with or as part of a project when the architect, project manager, or other appropriate authorized representative issues a certificate of substantial completion to the landscape contractor or other document reflecting substantial completion, such as final payment, which under the contract is to be made upon completion of work. If the manager refuses to issue such a certificate, then when the installation and or removal of all materials as required in the contract has been completed, subsequent work is no longer considered in conjunction with or part of the project. For example, after planting a tree or shrub, the initial edging, mulch application and watering and continued mulching, watering, edging, trimming of already installed materials while the contractor is at the job site performing work under the contract, is work performed in conjunction with and/or part of a project since it is work integral to the covered activities. However, if the contractor has fulfilled the installation/removal work required under the contract and left the project, and the contractor has to return months later to replace an installed plant that has died or is required to water the plants, the replacement would not be deemed work in conjunction

with or part of a project since it is not integral to the covered activities. Thus, continued watering or pruning or mulching after the substantial completion is no longer work performed in conjunction with or as part of a covered project.

5. Question: Can work associated with landscape work by itself be considered work covered under the Prevailing Wage Act?

Answer: When landscape work changes the nature, function, or character of the real estate, although no other covered work such as “hardscape” is involved, the work is covered work under the Prevailing Wage Act. For example, and not by way of limitation, covered work under the Prevailing Wage Act would include projects involving earthmoving and grading; converting a vacant lot by the planting of trees, flowers, shrubs, or sod-grass; removing all trees on a lot and the replacing of trees by the planting of shrubs, grass or the making of a nature park; or the removal of trees and vegetation to leave the lot as a vacant lot so as to make the lot ready for construction.

6. Question: What are examples of work associated with landscaping that is not covered work when it is not done in conjunction with or part of covered work or does not fall within the scope of the work described in Question 5?

Answer Lawn mowing or grass cutting; line trimming; edging; weeding; cultivating beds; mulch application; bed preparation using soil amendments; core aeration; sweeping and blowing of landscape materials; pruning, planting, removal or replacement of shrubs, plants, and flowers; pruning of trees and replacement of trees that are planted as a replacement due to the removal of diseased or irreparably damaged trees, or trees that constitute a hazard; non-substantive replacement of sod, the removal of diseased or irreparably damaged trees or trees that are a hazard; seeding, including the preparation and application of erosion control blanket, application of fertilizer, herbicide, pesticide, fungicide; aquatic applications, raking, watering of trees, shrubs, plants, flowers, bulbs, seeds and sod; grooming; dividing plants; dead-leafing; sweeping; trash pick-up and removal of landscape litter; holiday light and seasonal decoration installation excluding the electrical connections if any.