Pennsylvania Department of Labor & Industry

PWA-1

Prevailing Wage Act and Supplemental Unemployment Benefit (SUB) Plans

Employers may be permitted to take credit towards their prevailing wage obligations for contributions to Supplemental Unemployment Benefit (SUB) plans only if those plans do not contain forfeiture provisions.

The Pennsylvania Prevailing Wage Act (PWA) requires that all workers on a construction project meeting the definition of "public work" be paid prevailing wage rates recognized by the Department of Labor & Industry. 43 P.S. § 165–5. In addition to wages, some employers elect to provide employees fringe benefits such as health insurance or retirement contributions.

Employers may take a credit toward their prevailing wage obligations if all of the following conditions are met:

- The fringe benefit contribution is paid directly to the worker, or indirectly through a third-party administrator or trustee of a fund, plan or program and is made unconditionally.
- The fringe benefit program is related to the following categories: "sick, disability, death, other than [Workers'] Compensation, medical, surgical, hospital, vacation, travel expense, retirement and pension."[1]
    - If the fringe benefit program is not clearly related to one of the listed categories, an employer must receive approval from the Department as to the bona fide nature of the proposed fringe benefit program prior to taking a credit towards its prevailing wage obligation.

[1] 34 Pa. Code §§ 9.102; 9.106. See also Keystone Chapter, Assoc. Builders & Contractors, Inc. v. Foley, 37 F.3d 945, 962–63 (3d Cir. 1994) (discussing how employers ensure fringe benefits are "bona fide").

- The fringe benefit contribution is for the sole benefit of the employee and held for, or attributable to, the employee.
- The employer is able to substantiate that such contributions were actually made to the Department.

Many employers in Pennsylvania contribute to Supplemental Unemployment Benefit (SUB) plans or programs on behalf of their employees. These SUB plans are generally administered by third-parties and provide employees with supplemental income when employees are temporarily out of work.

Contributions to SUB plans or programs may be creditable as a fringe benefit towards an employer's prevailing wage obligation so long as such contributions conform with all of the legal requirements under the PWA.

The Department has recently become aware, however, of a number of SUB plans which allow for contributed funds to be forfeited and redistributed to pay for administrative costs or to other employees if an employee does not use his or her funds within a certain period of time. These forfeiture provisions do not comply with the PWA requirement that contributions be made unconditionally and be held for, or attributable to, the individual employee in order to be creditable towards prevailing wage obligations.

Therefore, under the PWA and its regulations, **employers in Pennsylvania are not permitted to take a credit towards prevailing wage obligations for contributions made to SUB plans or programs that permit forfeiture of funds.**

This guidance does not apply to any other fringe benefit plan or program.

Disclaimer: This fact sheet does not have the force and effect of law and is intended only to provide additional clarity to the public regarding existing requirements under the law or L&I policies.