

Montgomery County Maryland Labor Compliance Annual Report Fiscal Year 2015-2016



Overview:

Montgomery County Maryland implemented its prevailing wage/living wage law in July 2009. Contractor Compliance and Monitoring Inc. 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:

1. An audit process to specifically address the requirements of the County's Prevailing Wage law;
2. The educational aspect of labor compliance at the Preconstruction Conference (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);
3. A monthly process of auditing payrolls and providing prompt feedback to contractors and the County's Prevailing Wage Program Manager;
4. An onsite interview format and report tailored to the provisions of the County's Prevailing Wage law;
5. Drafts of documentation for final project close out, draft of final report to Director and addressing due process appeal rights of contractors with County;
6. Updated forms, processes and protocols as the County's labor compliance program matured and best practices were established.

Scope of Services Provided:

Work with Montgomery County to ensure proper language for Labor Compliance is in all contracts:

Status: Completed. Discussion and sample language provided to the Prevailing Wage Program Manager to be considered for County contracts, including prevailing wage language and language mandating the use of LCPTTracker for the submission of electronic payrolls.

Work with Montgomery County to pull appropriate federal language and Davis Bacon wage determination for ongoing projects:

Status: Ongoing, for each new Davis Bacon funded project, CCMI consults with the County to identify the proper Davis Bacon wage determination for each project.

Conduct LCP Training at Preconstruction Conference meetings.

Status: On going. At least one preconstruction conference meeting is provided for each project. In a few instances when projects were started before CCMI was notified, CCMI quickly coordinated with the prime contractor on these projects and offered to provide a separate meeting to review prevailing wage requirements on the project.

Provide a phone line and e-mail contact where contractors and subcontractors can contact CCMI for clarification on prevailing wages, certified payrolls, and apprenticeship and compliance issues.

Status: On going. There are two full time employees dedicated as lead staff members to the Montgomery County projects: Jessica Finau and Steven Noguera. Three other staff members assist Finau and Noguera with audits, investigations and other issues which might arise. Deborah Wilder, President of CCMI, is also available to consult on any issue or provide additional assistance.

State License Check and Check for worker's compensation.

Status: On going. This requirement is only set forth in certain County contracts and is checked for those contracts only.

Monitoring of all Apprenticeship Requirements.

Status: On going. This verification occurs on all projects for all workers listed as apprentices. Both Maryland State regulations and Davis-Bacon regulations require that apprentices must be enrolled in a properly recognized apprenticeship program; all apprentices must be supervised by a journeyman-level worker in the same trade; and apprentices must be employed at a stated ratio to allow for proper supervision of on-the-job training. The Montgomery County ordinance provides that apprentices must be properly enrolled in an approved apprenticeship program. CCMI verifies that the apprentice is enrolled in such a program. Apprentices who work on County financed projects must be registered in a program approved by the Maryland Apprenticeship Training Council.

Monthly audit of certified payrolls forms.

Status: On-going. Audits are conducted on every project, every month, for every employee, for every contractor and every subcontractor. This includes comparing the classification and wage rate listed on the certified payroll with the applicable Montgomery County rate, reviewing the amount of fringe benefit contribution claimed and verifying that the contractor/ subcontractor has properly calculated these amounts, verifying that any overtime and holiday time is properly paid, comparing daily reports and monthly interview sheets with the certified payrolls and identifying any deficiencies.

Periodic review of Daily Jobsite Reports.

Status: On going. This is done periodically on a project-by-project basis. The frequency of this review depends on the length of the project, the number of subcontractors, the number of employees, and whether serious potential underpayments have been identified, etc.

Periodic jobsite audits and random interviews of workers.

Status: On going. Each month CCMI visits each jobsite at least once and interviews various workers. The number of the workers interviewed depends on the size of the project, the number of subcontractors on the project and any potential claims of under-reporting of hours/employees or misclassification. While the workers are selected randomly, CCMI does attempt to interview one or more workers from each subcontractor working on the project

over the course of the project. In 2015-2016, CCMI conducted interviews on 71 different projects/task orders for more than 1,821 interviews.

Investigations.

Status: On going. Investigations are conducted when CCMI receives information either as a result of review of certified payrolls and related documentation, through employee interviews or independent contact from employees that proper wages are not being paid.

**See separate section on investigations in this report.*

Most investigations have focused around the misclassification of workers or a contractor's failure to list and/or pay employee(s) on certified payrolls the proper prevailing wage rate.

Monthly reports to Montgomery County and contractors.

Status: On going. In order to promote efficient compliance with the law on the project, any deficiency identified must be communicated promptly to the prime contractor on each project. The prime contractor then contacts any applicable subcontractor regarding missing documentation, underpayment or other deficiencies listed in the report. To help expedite this process, a separate report for each subcontractor is prepared to allow the contractor to then quickly turn this report around to the affected subcontractor either by email or facsimile.

Each report details the certified payrolls which were reviewed, any missing or deficient documentation, identification of any underpayment of wages and other outstanding issues. If documentation or clarifications was previously requested and not addressed by the subcontractor, this information is also noted on this report. The report also includes the total amount of any outstanding liquidated damages for the late submission of payrolls.

These reports are sent each month to both the County and the prime contractor for each project. The prime contractor is asked to distribute these reports to their subcontractors and to follow up by providing the missing or corrected information to CCMI within 30 days.

An additional matrix summary of the projects and an expanded narrative of CCMI's activity was developed during the 2011-2012 fiscal year and has been provided to the County each month thereafter.

Communication of potential violations with recommended action.

Status: On going. In addition to the monthly reports outlined above, CCMI is in regular contact several times a week with the Prevailing Wage Program Manager regarding unresolved issues and investigations being conducted.

Communication with Contractors.

Status: On going. CCMI works with all contractor and subcontractors with the goal of amicably resolving issues related to violations, liquidated damages and compliance. CCMI has daily individual phone calls, conference calls, emails and/or facsimile communications with contractors and subcontractors regarding these issues.

Communicate with Montgomery County LCP designee regarding violations, corrections and appropriate assessment of liquidated damages.

Status: On going. While CCMI provides monthly written reports to the County, CCMI is also in contact with the County on a weekly basis.

Summary Report to Montgomery County LCP designee at Project Completion.

Status: On going. At the close of each project, a final report is sent to the County. The report details, by contractor and subcontractor, each prevailing wage violation identified; 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 a recommendation to the Director of the Department of General Services regarding the imposition of liquidated damages.

For federally funded (Davis-Bacon) projects, we perform similar, but not identical services:

1. Confirm the Davis–Bacon wage determination applicable to each project. The Agency is responsible for inserting the appropriate Davis Bacon language in the bid specifications and construction contract.
2. Conduct a preconstruction meeting with Contractors to review Davis-Bacon requirements for prevailing wages on the project.
3. Remind the contractor of its obligation to post a copy of the Davis Bacon wage rate and poster onsite.
4. Collect and review certified payroll and related documents each month from contractors. Review certified payrolls for proper wages and fringe benefits paid. Compare Davis-Bacon prevailing wage requirements to certified payroll to ensure that the proper wages and fringe benefits are paid. While Davis-Bacon wage rates and work classifications are identical in many instances, they are NOT always so.
5. Collect “certifications” for all apprentices working on the project (who must be enrolled in an approved Office of Apprenticeship Training (DOL) apprenticeship program).
6. Conduct monthly jobsite visits interviewing employees on the project to verify proper prevailing wages are paid and verifying that the appropriate Davis-Bacon poster is posted on site.
7. Provide Agency with report on prevailing wage compliance/deficiencies on a monthly basis.
8. Provide prime contractor with monthly reports of audit finding and probing detailed information relating to any missing documentation or deficiencies in Davis Bacon prevailing wage compliance requirements.
9. Conduct additional investigations as may be warranted by payrolls and interviews.
10. Work with contractors to ensure full compliance with prevailing wage and apprenticeship requirements.
11. Imposition of penalties (only as required).
12. Final project report to County at conclusion of project.

Additional Services: CCMI continues to provide additional assistance, including a discussion of procedures, protocols and forms for the administration of the County’s Prevailing Wage program. Among these are enhancements to preconstruction handout information, monthly reports to contractors and the final close out procedure and due process requirements for the contractors. CCMI has worked with the County Prevailing Wage Program Manager and County staff to discuss and, when appropriate, recommend or draft/update materials, forms, and procedures for the administration of this program.

Projects:

During Fiscal Year 2015-2016, Contractor Compliance and Monitoring Inc. (CCMI) provided Labor Compliance Services for 71 projects/task orders in Montgomery County.

Federally Funded Projects:

Silver Spring Transit Center (DGS)
Long Branch Walkway & Pedestrian Bridge (DOT)
Valley Road Bridge (DOT)

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

County Projects:

Department of General Services:

Circuit Court Interior Alterations
Colesville Depot
County Office Building Roof
Dennis Avenue Health Center
Glenmont Fire Station #18
Judicial Center Annex
MASP-Depots
North Potomac Recreation Center
Progress Place
PSTA-Service Park
Ross Boddy Recreation Center
Silver Spring Library
Western County Pool Renovation

Department of Transportation:

Chapman Avenue
Elmhurst Parkway Bridge
EOB Traffic Circle

Task Orders:

8818 Georgia Avenue
Agricultural Farm Road Bridge
Cabin John Fire Station #10
Chadswood Pond
Colesville/Greencastle
Courtroom 3E
Curb & Gutter Replacement
D&F-ADA Program (countywide)
D&F-Bikeshare Pads
D&F-Bus Stop Improvement Program (countywide)
D&F-Fawsett Road Improvement
D&F-Franklin Knolls Phases 3&4
D&F-Guardrails along County Roads
D&F-Needwood Road Bike Path Phase 1
D&F-Residential Roadway

D&F-Sidewalk Program (countywide)
D&F-Sligo Hills LID
D&F-Travilah Road-Phase 2-sidewalk/bikepath
Germantown Park-SWM
Glen Lynch Urban Park
Holiday Park Senior Center
HSS2950EF-Rte 355 & Collins Drive
HSS2950ES-Fire Station #24
HSS2950EY-Demp Phase 3-County Service Park
HSS2950FF-Demo Gaithersburg Maintenance Depot
HSS2950FJ-Ken Gar Community Center
HSS2950FK-Demo EMOC
HSS2950FT-Germantown Marc Parking Lot
HSS2950FV-Hillandale Fire Station
HSS2950GB-100 Edison Park
HSS2950GM-Piccard Drive Concrete Landing
Kensington Library
Kensington & Twinbrook Libraries Renovations
Leisure World Liquor Store
Longwood Recreation Center
MCPS-Warehouse Demo
Montgomery Manor & Metro Park North
Overlay of Primary and Arterial Roads
Pre-Release Center
Replacement Concrete-Business Districts Countywide
Residential Resurfacing (M. Luis)
Residential Roadway & Resurfacing (F.O. Day)
Roadway Patching
Roof Replacement-PSHQ
Scotland Rec Center
Silver Spring Library Utility Work
Slurry Seal Group 1
Slurry Seal Group 2
Strathmore Mansion Repairs
SWM-Glynshire Way Ponds
Twinbrook Library
Whetstone Run Ponds

Projects/Task Orders Closed Out:

Silver Spring Transit Center
Cabin John Fire Station #10
Chadswood Pond
Chapman Avenue
Colesville Depot
County Office Building Roof
Courtroom 3E
Curb & Gutter Replacement
D&F-ADA Program (countywide)
D&F-Bikeshare Pads
D&F-Bus Stop Improvement Program (countywide)
D&F-Fawsett Road Improvement

D&F-Guardrails along County Roads
D&F-Residential Roadway
D&F-Sidewalk Program (countywide)
D&F-Sligo Hills LID
D&F-Travilah Road-Phase 2-sidewalk/bikepath
Holiday Park Senior Center
HSS2950EF-Rte 355 & Collins Drive
HSS2950ES-Fire Station #24
HSS2950EY-Demp Phase 3-County Service Park
HSS2950FF-Demo Gaithersburg Maintenance Depot
HSS2950FJ-Ken Gar Community Center
HSS2950FK-Demo EMOC
HSS2950FT-Germantown Marc Parking Lot
HSS2950FV-Hillandale Fire Station
HSS2950GB-100 Edison Park
HSS2950GM-Piccard Drive Concrete Landing
Judicial Center Annex
Kensington & Twinbrook Libraries Renovations
Leisure World Liquor Store
Long Branch Walkway & Pedestrian Bridge
MCPS-Warehouse Demo
North Potomac Recreation Center
Replacement Concrete-Business Districts Countywide
Residential Resurfacing (M. Luis)
Scotland Rec Center
Silver Spring Library
Silver Spring Library Utility Work
Slurry Seal Group 1
Slurry Seal Group 2
SWM-Glynshire Way Ponds
Valley Road Bridge
Whetstone Run Ponds

Investigations:

Investigations were launched for 7 contractors on the 5 projects identified below. An investigation is more than review of deficiencies and seeking correction (which in itself can take several months and require the review of additional documentation, verification of restitution, etc.). An “investigation” is launched by CCMI when we receive 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). Some employees have even called our offices after they had left the jobsite to provide us with the names of other employees who were not paid properly.

Our investigation may include contacting each of the employees listed on the certified payrolls via letter (in both English and Spanish), asking them a series of questions about the type of work they perform and the hours worked on the project and asking them to contact us or respond if they believe they were not paid the correct wages or paid for all hours worked. These “letters to workers” are not a routine form, but are tailored to address the situation with each subcontractor under investigation. For those employees who respond to our letters or with whom we have already spoken during onsite interviews, we then call these employees and verify additional information. (These conversations are held in English or in Spanish).

An investigation frequently includes requesting additional documentation from the contractor or subcontractor and then reviewing timecards, pay stubs and cancelled checks and cross checking that information against the certified payrolls submitted. At times, we also request copies of Daily Job Logs from the prime contractor, particularly in instances where we actually interview an employee or subcontractor on the jobsite, but that employee does not appear on the certified payrolls or the subcontractor submits no payrolls for that time frame.

Colesville Depot-Mid-Atlantic Specialty Construction

CCMI investigator Steven Noguera identified several workers performing panel siding installation, but were paid below the required wage rate and classification. Sub-contractor Mid Atlantic Specialty Construction submitted restitution payment; however, the workers stated that they did not receive the payment. Subsequent communication with the workers revealed that they were told to sign the restitution checks; however, no payment was ever received.

Glenmont Fire Station #18-Autumn Contracting/Requenos Construction/Medel Services

CCMI investigator Steven Noguera identified workers performing Roofing Work who were not reported on certified payroll reports. Throughout the investigation it became apparent that five different sub tier contractors were involved in the Roofing work. First tier sub-contractor Autumn Contracting will issue restitution to workers of lower tier subs due to the lower tier subs, Requenos Construction and Medel Services' failure to acknowledge any reports and requests for back pay.

Judicial Center Annex-Subcontractor-JP Construction

CCMI investigator Steven Noguera received information from employees that confirmed same schedule as previously closed projects Animal Shelter/Gaithersburg Library/EMOC 6:30-3:15 Monday-Thursday and 6:30-2:30 Friday =.5hr OT due per week. Jessica Finau requested retro-pay for all employees at .5/hr week for Overtime wages due per discussion with Jack Gibala of lunch breaks given. JP Construction stated that the evidence was incorrect and employees did not work any time for which they were unpaid. They later stated that they did their own internal investigation and no employees reported being unpaid for time worked. No retro-pay was issued by the time project was closed out so outstanding wages due for Overtime showed on the closeout report forwarded to the County for further action.

Judicial Center Annex-Subcontractor-Parkinson

In December 2012 CCMI sent letters to all employees regarding possible misclassification for this site which occurred on previous site, EMOC. In January 2013 CCMI was contacted by a single employee of Parkinson who previously had been assigned to EMOC project. Employee confirmed that a similar misclassification issue was occurring on this site with employees working as Laborer-Mason Tenders, but being classified and paid as Laborers-Unskilled for half a day's work and Bricklayers for the other half of the day. In this way Parkinson was covering themselves for about half of the Mason Tender hours/wages that would be due. CCMI contacted Jack Gibala and it was decided that for the time being CCMI would wait to do further investigations as the EMOC outcome for wages due would set the standard by which other similar projects would be enforced. Employees continued to contact analyst, Jessica Finau, stating that from about third week of March 2013 many employees had been let go due to lack of work. The employees were aware that there was no shortage of work being done by Parkinson. It appears that this subcontractor likely let all employees go who were due restitution for EMOC so that CCMI could not contact them for similar investigation on this site. DLLR rescinded the original wage determination for Laborer-Mason Tenders stating that the correct rate should have been published as \$18.05 in July 2013. After this information was issued the investigation was dropped. No outstanding wages were found to be due to employees however,

liquidated damages were still assessed at closeout for intentional misclassification of employees as Laborer-Unskilled.

Silver Spring Library -General-Costello Const.

CCMI inspector Steven Noguera had observed several employees at Silver Spring Library doing Cement Masonry and Carpentry duties, but on the certified payroll records they were being classified as Unskilled Laborers. Due to the amount of complaints received for the misclassification, Jessica Finau requested the daily logs for the Silver Spring Library project. A list of days/employees/ hours in which “Laborers” are performing work other than “Unskilled” was compiled and forwarded to the County as requested. Meeting held with Costello at which they denied any wrongful classification of employees or underpayments. It was determined they would submit refuting evidence to the County. Costello stated that their individual employee timecards are the accurate records and not the daily site logs filled out by the Superintendent and such daily logs cannot be used as verifiable evidence of employee duties. This issue was not resolved by time of closeout therefore outstanding wages/liquidated damage worksheets run by CCMI were forwarded to County for further action.

**Same misclassification situation occurred on MCPS-Food Distribution Relocation except employees were shown on payrolls as Laborer-Concrete Tenders. Daily log program is different in terms of the way information is displayed. Therefore it was not possible to run the same worksheets and outstanding assessments. Project closed without an estimate of outstanding wages due and liquidated damages to be assessed for this intentional misclassification.*

Silver Spring Transit Center-Misivike & Structural Preservation

Project is currently complete. The issue of misclassification was not resolved and Misivike did not pay overtime to the employees for this project, or any other project they worked on per investigation into timecards and paystub details. This issue was reported to the Department of Labor. No response has ever been received from the DOL. Provided spreadsheet to Montgomery County for Structural Preservation, who also misclassified and did not issue retro-pay, and Misivike’s misclassification and Overtime underpayment/violation which noted Liquidated Damage penalties to withhold along with outstanding wage amounts due.

Final Investigation Summary:

While CCMI has outlined the “investigations” we conducted and are conducting, 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. Any underpayment of wages and fringe benefits also requires a correction of the certified payrolls, which must be reviewed again by CCMI. We also require proof of any restitution paid to employees so we follow up with the contractor or subcontractor to receive and review copies of cancelled checks to ensure employees are “made whole” by the previous misclassifications or underpayments.

Trends:

The Prevailing Wage/Labor Compliance program has just completed its sixth year. For some contractors, this is a new program. Questions frequently arise from contractors and subcontractors as this may be their first time working on a project having Montgomery County Ordinance regulations. CCMI and LCPTTracker staff are easily accessible by telephone and email. While some of the auditing work is performed through our west coast office, some CCMI employees are routinely answering telephone calls and emails as early as 7:30 a.m. EST (4:30

a.m. PST). CCMI also maintains staff in Maryland which is available to conduct jobsite interviews, attend preconstruction meetings or available to the County for meetings or consultation upon request. All task orders are assigned to the Maryland office as well as about half of the regular projects.

LCPTracker:

The County requires all contractors and subcontractors on all projects to use LCPTracker to submit certified payrolls and related labor compliance documentation. The cost for the LCPTracker program is included in the fee for services paid to CCMI. The use of LCPTracker provides several benefits to the contractor and the County. First, it provides uniformity of forms, data and information by requiring all contractors and subcontractor to use the same forms and data entry system. Secondly, it allows 24-7 access of the records by the County and CCMI. For the contractors and subcontractors, it permits immediate submission of certified payrolls all within the control of the contractor or subcontractor. Once the individual contractor “certifies” the payroll, it is immediately submitted, date stamped, logged and available to CCMI for auditing. This prevents loss of the documentation and complaints that documents were previously submitted and allegedly lost or submitted multiple times.

Additionally, it saves time for audits completed by CCMI as the trades are available to contractors from a dropdown menu which forces them to choose an applicable trade. In the past when hard copy certified payroll records were submitted they would often note under Classification “Journeyman”, “Apprentice”, “Mechanic” or “Laborer”. These payrolls would then be rejected for improperly classifying employees and the contractor/subcontractor would need to resubmit using only trades available on the determination wage scale page as provided in their bid specs. Another great feature of using the LCPTracker software is that once an employee has been set up in the LCPTracker system their information is saved. This leads to saved time from week to week when the contractor/subcontractor administrator would previously be hand writing employee information each week of work onsite. Now if an employee works more than one week they can be selected the following weeks from a drop down menu which lists their personal information already previously recorded as well as previous trades which they have worked under.

Finally, the use of LCPTracker is a green solution. This is in stark contrast to the older system, which required the submission of massive amounts of paper containing certified payrolls, fringe benefit and related information.

However, LCP Tracker is only a tool and it is only as good as the information entered by the contractors. If incorrect information is entered by the contractor, then there is typically a wage violation. Thus, CCMI does not rely merely on the LCPTracker “alert” system, but individually reviews and audits every certified payroll submitted.

While there have been some complaints by subcontractors relating to the LCPTracker system, these have been relatively few when considering the massive number of subcontractors and documents submitted on the scores of projects using the system since the program was implemented. CCMI found that many of the complaints were the result of a subcontractor’s unwillingness to learn the LCPTracker system. LCPTracker provides online training of their system as well as interface uploads. Additionally, LCPTracker provides free weekly one-hour webinars that any contractors may attend. The purpose of these sessions is to assist that contractor with questions about the system. While CCMI tries to answer questions relating to a contractor’s use of LCPTracker, we found most of the complaints were because the subcontractor had not bothered to review the online tutorial, attend the webinar or had not called

LCPTracker's technical support line. Most contractors are now comfortable with this system of submitting documentation.

Fringe Benefits:

Contractors who do not contribute to a union trust fund or an approved hours bank program for fringe benefits are required to amortize or annualize the value of certain benefits they pay over the course of all hours worked by those employees. As this sometimes requires calculations to be done for each employee to arrive at this fringe benefit number, open shop contractors are frequently confused. CCMI has created a sample worksheet, with several footnotes, describing in detail how fringe benefits are to be correctly amortized to assist the contractors who have not previously been aware of these regulations.

The rules and regulations relating to pension contributions are distinct from those relating to health and welfare, vacation and holiday pay paid by contractors. Many contractors have worked on publicly funded projects for years/decades without ever having anyone review or audit the projects. Thus, improper payments and "habits" have been adopted by contractors and subcontractors which now need to be corrected.

Even some contractors on the federally funded projects are not compliant with Davis-Bacon requirements. Prior to the County's ordinance, these contractors proceeded along believing they were complying with state or federal prevailing wage law. In reality, even those contractors who have performed federal Davis-Bacon work in the past have never been audited. As such, the proper implementation of the County law as well as the Davis-Bacon requirements has found numerous violations. While many of these are minor, some are substantial and involve substantial sums of money and restitution of wages to workers.

Apprentice Issues:

In a few instances, contractors will claim to use an "apprentice" who is not enrolled in a properly approved apprenticeship program. We verify that all apprentices are bona fide enrolled apprentices and confirm with the appropriate Apprenticeship committee, the proper level of wages and benefits set forth in the Apprenticeship Standards Agreement and approved by the Maryland Apprenticeship Training Council and the US DOL. All apprenticeship programs approved by the State of Maryland, MATC, are also approved by the Bureau of Apprenticeship Standards with the U.S. Department of Labor. However, this does not apply vice versa. If an Apprentice is enrolled/approved by the U.S. DOL they are NOT automatically approved as a valid apprentice to work in the State of Maryland. This situation has caused much confusion for contractors who assume because their Apprentice is registered in a federal program that they need not enroll them in the MATC program. CCMI has confirmed on more than one occasion with the Maryland DLLR that every Apprentice working in the State of Maryland must be enrolled/approved by MATC. While this is not a frequent occurrence, this assumption can cost the effected contractor large sums of money as non-registered Apprentices must be paid at Journeymen rates for all hours worked.

Wage Violations:

The typical wage violation from contractors and subcontractors usually stems from the use of an improper wage rate (either the contractor's regular rate of pay or a "prevailing rate" used on a prior project). Many times the underpayment is due to the improper calculation of fringe benefits. (This is especially true relating to open shop contractors who are not accustomed to amortizing their benefits.) CCMI has observed the most blatant wage violations relate to intentional misclassification of workers into a lower paid classification or the underreporting of hours and overtime.

Liquidated Damages:

There are a number of contractors who remain under the impression that if they correct wage errors or EVENTUALLY submit the late payroll that all liquidated damages will disappear. CCMI has been clear at the preconstruction conference and throughout the project in advising the contractor and subcontractors that the County is within its right to assess liquidated damages for these violations and the liquidated damages will not automatically disappear if the items are ultimately, albeit late, corrected.

Observations:

Contractors who have worked on multiple projects with the County seem to now understand the proper requirements set forth by the County (Davis-Bacon Act for the federally funded projects).

With the increase of construction work during this heightened building season, some subcontractors (who are not familiar with the County's labor compliance program) are attempting to "cut corners" by underpaying employees through a variety of methods. While this is not a majority of the contractors, the investigation and enforcement of the prevailing wage requirements with these contractors does take an inordinate amount of time when compared to other auditing requirements. A typical error or mere deficiency typically takes a minimum of 3 months or more to resolve (1 month of work occurs before the payrolls are reviewed and the issue identified and provided to the contractor; 1 month for the subcontractor to correct the error and provide the correction and documentation to CCMI; 1 month to receive proof of restitution.) When contractors object or do not understand the basis for the deficiency or underpayment, it takes additional time to work with the contractor and subcontractor to resolve the issue. In a few instances contractors who do not understand the deficiency notices just ignore them. This only adds more work for CCMI and delays the closeout of the project. This is because when the sub/contractor eventually does submit the missing information, there is usually months and months of documentation to review. CCMI must then go back several months in their audits to verify if what has finally been submitted is compliant. Sometimes at the end of the project, CCMI must complete closeout paperwork and liquidated damages which include a complete reaudit of the delinquent sub/contractor's entire certified payroll submission. This has a large impact on CCMI's time, delaying the closeout by several weeks and impacting the prime contractor's retention funds as often the effected subcontractor had the missing items all along, but was ignoring the requests. CCMI continues to encourage prime contractors to be more active in insisting timely compliance by their subcontractors.

The typical investigation can take 6 months or more. This is because a contractor in this instance may be falsifying records and therefore is reluctant to provide back-up documentation. It may take two or three requests before the documentation is provided. When documentation is produced, it is not for a single month of work, but for the entire project and frequently for all employees. This involves a massive amount of time to review and essentially re-audit the project comparing weekly time cards with payroll records and then to the certified payroll submitted. When employees are contacted by CCMI via letter, it can take several weeks before we receive a response. This is typically followed up with additional phone calls and review of documentation (in some instances) received from the employees. It is necessary that this process be thorough and complete. First, CCMI does not want to accuse a contractor of a violation without sufficient proof (disgruntled employees have been known to report a violation when none existed). Secondly, the information CCMI ultimately provides to the County regarding a violation for

which liquidated damages will be assessed must be **thoroughly substantiated** should the contractor appeal the decision of the Director to order the payment of corrected wages and imposed liquidated damages.

The need to enforce prevailing wages evenly and fairly is necessary to ensure the worker is fairly compensated, and also because it maintains an even playing field for contractors when bidding work. If all are required to comply with the prevailing wage laws, then no single contractor or subcontractor is receiving an unfair advantage in the bidding process by undercutting wages.

Detailed Project/Status Information:

The best indicator of the status of any project is a review of the monthly reports CCMI provides to the prime contractor (with a copy to the County). CCMI provides a separate report for each subcontractor we have audited on the project. As the prime contractor is ultimately responsible for the payment of prevailing wages on the project and with whom the County has privity of contract, the Contractor is responsible to ensure that all subcontractors are in compliance and correct any deficiency. Breaking the reports down by subcontractor provides greater efficiency for the prime contractor in getting this information to each subcontractor without having to engage in a time consuming extraction of information about subcontractors from one single report. Typically, a prime contractor can take the report for each subcontractor and deliver this to that subcontractor by email or facsimile in a matter of minutes.

The report identifies the payrolls reviewed, documents missing or completed incorrectly, any deficiency in wages which have been identified, misclassification or underreporting of hours, etc. If there are issues relating to fringe benefits, amortization or apprentices, these items are also noted. Additionally, each subcontractor is provided with a running total of potential liquidated damages which may be imposed for the late submission of payrolls.

Recommendations:

With any new program, areas of improvement are identified during the first few years of implementation. CCMI has changed its implementation, updated forms and procedures over the years to respond more quickly and more fully to requests by contractors and the County. By the same token, we have identified areas which may require clarification/action by the County's governing Board:

Clarifications of Liquidated Damages:

The County ordinance reflects a liquidated damage to be assessed for "misclassification". CCMI interprets that to include any wage violation. So, for instance, it is not merely a Carpenter being listed as a Laborer on the payroll that is a misclassification; it also includes a contractor who failed to report all hours worked. A contractor who lists and pays only 25 hours to an employee when that employee actually worked 40 hours is a misclassification of hours for which a liquidated damage is issued. When a contractor states it is paying a worker \$25 an hour, but only pays the worker \$15 per hour, CCMI has also interpreted this as a misclassification and imposes liquidated damages. A narrower reading of the ordinance and the term "misclassification" would restrict the imposition of liquidated damages to only those instances in which the contractor selected an improper wage classification. In that instance, there would then be no provision to penalize an employer for the underpayment of prevailing wages. A clearer delineation of liquidated damages and the use of a broader term such as "wage violation" instead of "misclassification" would be helpful.

Apprentices:

The County ordinance also requires that apprentices must be enrolled in an approved apprenticeship committee. The standards of any apprenticeship committee approved by the DLLR and the US DOL require that the apprentice be properly supervised and employed in proper ratio. If this does not occur, then the worker is entitled to full journeyman wages for the work performed while unsupervised or while out of ratio (too many apprentices to journeyman). While the County's ordinance does not provide this level of detail, the reference to an approved apprenticeship program incorporates by reference the apprenticeship standards under which an apprentice must be employed on this project. Further clarification on these issues would be helpful. Specifically noting that Apprentices working on County funded projects MUST be registered with the Maryland Apprenticeship & Training Council and not just any approved apprenticeship program would be beneficial. Contractors seems to be confused, and often disgruntled, when the Apprentice registration forms submitted from Virginia or D.C. programs are rejected by CCMI and the contractor is then asked to issue restitution to those employees at full Journeyman pay rates because of improper state or federal apprenticeship registration forms.

Ramifications for falsification of payrolls:

There are no ramifications for a contractor who falsifies its certified payrolls. Many jurisdictions have a debarment or a "disqualification" process if a "willful violation" or falsification is found. In some instances, agencies have merely stated that any findings of wages and/or liquidated damages due over a set amount (\$5,000 or \$10,000) result in disqualification from a bidder list for 1-3 years. In instances where employees are substantially underpaid (when certified payroll state differently) or when workers are not paid any overtime worked, it seems appropriate that some additional ramification should apply. Obviously, the County would need to implement a procedure, such as disqualification from bidding County contracts for 1-3 years (a typical ramification in other jurisdictions); while perhaps providing the Director the discretion to determine which contractor should be considered making a willful violation or falsification. (Clearly, there is a difference between a contractor confused over the proper amortization of fringe benefits versus a contractor who intentionally misclassifies workers and/or consistently underpays those employees.)

Imposition of Liquidated Damages:

The County ordinance does not apply to projects "subject to a Federal or State prevailing wage law..." The County may want to revisit this portion of the ordinance. Many states and local agencies require that the local prevailing wage rate and restrictions apply on all locally funded projects. In this instance, the higher wage rate and the more restrictive wage requirements (i.e. daily overtime, holidays, etc.) would apply. In this way, the County could also assess liquidated damages for misclassification, underpayments and late payrolls. Currently, the only liquidated damage that may be assessed on a federally funded project is a federally authorized penalty of \$10 per day for overtime violations (after 40 hours in a week).

Imposing the Montgomery County ordinance on the federally funded projects, where the County still has an interest because of the amount of County funds being used as well, would provide consistency to contractors. Contractors who work on one project where the County ordinance is in place and then work on a federally funded project where the County ordinance is not in place are often confused over pay rates, overtime requirements, payroll submission requirements and liquidated damages. Another consideration is that contractors are more mindful of submitting certified payrolls on County projects where the potential liquidated damage for late payrolls is an incentive to submit this information promptly.

Repeat Offenders:

The County ordinance makes no reference to imposition of more stringent liquidated damages assessed for contractors who have previously had the same assessments on a previous project. Many other agencies have a scale of liquidated damages to be assessed related to the continued frequency of violations occurring across multiple projects. For example, if a contractor received a waiver for late payroll submittals on one project they could not there after receive a waiver on subsequent projects. Or if an underpayment occurred due to fringe miscalculation on a previous project at \$20/day, that same contractor would be subject to \$40/day on a subsequent project since they already had learned the correct procedure previously and chose not to apply it. Such other agencies have a range of withholdings for repeated violations (i.e. \$20/day for first violation, \$40/day for second violation, etc. until maximum amount of \$100/day issued on 5th violation occurring within a certain number of years.) The County would be well within its rights to issue such a change as the Prevailing Wage Law Program has now been in place for six years.

Some states, like California, impose penalties/liquidated damages up to \$200 per day per worker for wage violations, additional penalties of \$25 per day per worker for overtime violations and \$100 per calendar day for apprenticeship violations. Repeat or egregious violations carry a 1-3-year debarment from public works. Illinois imposes a penalty/liquidated damage of 20% of the restitution due to workers with 2% going to the worker (in addition to the restitution in wages). A second violation increases the penalty/liquidated damages to 50% of the restitution amount with the worker receiving 5% of that amount. There are several models from other states and jurisdictions which could be reviewed and recommended.

Timeliness of Project Closeouts:

It would be beneficial for the County to implement a timeline and procedure whereby CCMI is notified of the last week worked onsite and then have a 30-day window for last outreach attempt to contractors with outstanding issues. If no such response is received, then CCMI would close out the project during the following 30 days. In this way CCMI would be able to issue reports to contractors with FINAL WARNING notated and the corresponding County language. This would notify those non-responsive contractors that there will be no further opportunity to correct issues, as well as allow those contractors who are a few months behind to become aware of the necessity to respond right away. Currently the procedure has been for the County to send an email confirming the project needs to be closed as soon as possible but no timeline given for final corrections. Several contractors receive copies of the closeout report issued by CCMI and submitted to the County and continue to request review of items which were deficient because they were not given a final deadline by which items were to be submitted. Although CCMI does provide ample time for all contractors to submit corrections, most outstanding requests are repeated several times through monthly reports. It would still be extremely helpful to implement a timeline in writing for formal closeout procedures.

Additional Contractor Training:

There are still contractors who are new to the County's LCP program; CCMI proposes that it conduct 1/2 day or full day labor compliance in person training. This will allow contractors to bring their payroll personnel and other staff to learn and review Montgomery County's prevailing wage requirements as well as include a review of the Davis Bacon obligations. CCMI did two full day training sessions for contractors in February and April 2016. Should the County wish to make a training schedule for early 2017, inviting any "new contractors" who have just begun work, or those that wish to engage in work with the County for future projects, that would be highly recommended.

Other Action by CCMI:

During the 2010-2011 fiscal year, CCMI applied for and was granted its DBE certification from the Maryland Department of Transportation. That certification has been renewed and remains in force and in good standing. Deborah Wilder (president of CCMI) authored the *AGC of America's Davis-Bacon Compliance Manual*, 3rd Edition (2010) and 4th Edition (2012). CCMI has also attended and provided technical presentation on prevailing wage compliance at the APWA (American Public Works Association) conference in Boston, Massachusetts; presentations at the LCPTracker National User's Conference, Palm Desert, California (2011), San Diego (2012), Chicago (2013), Dana Point, California (2014), New Port Beach (2015 & 2016) ; and numerous workshops and presentation throughout the country. In 2013, Deborah Wilder authored the *Davis Bacon Handbook for Public Agencies* and recently updated that book in 2016.

Conclusion:

Since the County has completed several years of the labor compliance program and scores of projects, now would be the time to make adjustment and fine tune the program ordinances and regulations with mechanisms to allow for more prompt closing of projects (i.e. within 60 days of last work onsite), resolution of liquidated damage issues, clarification of apprenticeship obligations and other suggestions listed above CCMI's commitment is to "get it right" in whatever format and context the County ultimately decides. CCMI has national expertise in this field and hopes that this expertise will assist the County as it implements this important program.

Ensuring that the proper prevailing wage rates and the requirements of the labor compliance program are followed is an important mandate from the County's Governing Board. We highly value our relationship with Montgomery County and will continue to do our very best to assist you in the implementation of your program.