

# ***Frequently Asked Questions Regarding Public Work – Supplemental Benefits***

## **A. What is annualization?**

Annualization simply refers to the time frame (annual) over which contributions to benefit plans are divided to calculate an hourly credit toward the amount an employer is required to pay according to the prevailing wage schedule. Total annual contributions per employee are divided by the total annual hours worked by that employee, on both public and private jobs.

## **B. When referring to annualization, what time period is used?**

The Department will generally look to the time frame used by the employer, i.e. fiscal year, calendar year, plan year, etc. If the employer has not utilized a specific time frame to calculate their credit, in most instances the Department will use a calendar year. An employer needs to be consistent in using the same twelve-month period year to year.

## **C. How can I provide the required hourly supplement amounts listed in the wage schedule to my employee?**

1. The hourly amount can be provided in cash in the employee's weekly paycheck when working on a public work project. Paying the required supplement amount weekly in cash with the employee's wages fulfills the requirement under Article 8; or
2. A contribution can be made to a bona fide benefit plan on behalf of the employee. If this option is chosen and the contributions are not made on an hourly basis for all hours worked, both public and private, then the hourly cash credit the employer receives for supplement contributions must be determined (i.e. annualization). Once that credit is determined, if there is any deficiency between the required supplement amount and the hourly credit amount, it must be made up weekly along with employee's wages.
3. If, pursuant to a collective bargaining agreement, contributions are made for all hours worked (public and private) and are at least the amount shown in the wage schedule, the requirements of the law have been met.

## **D. How can I determine the hourly cash credit for supplements provided?**

In order to calculate the hourly cash credit, the Department's regulation on supplements provides the formula for making that determination.

1. Determine the actual annual contribution made for supplements for each employee.

## ***Frequently Asked Questions Regarding Public Work – Supplemental Benefits***

2. Determine the total annual hours worked by each employee on both public and private work
3. Divide the actual contribution or cost in (1) by the total number of hours worked in (2).

Once that credit is determined, if there is a deficiency between the required supplement amount and the hourly credit amount, it must be made up weekly with the employee's wages.

Where such proof of total hours worked by each employee is not provided by the employer, the Commissioner of Labor will:

1. divide the amount in (1) above by 2080 hours (8 hours per day x 5 days per week x 52 weeks); or
2. divide the amount in (1) above) by 1820 hours (7 hours per day x 5 days per week x 52 weeks) where proof is provided establishing that the employee worked only 7 hours per day.

### **Example A**

Total annual employer contribution to benefit plan(s) on behalf of individual employee = \$5000

The individual employee works 1000 hours on a public work project and 1000 hours on a private project for a total of 2000 hours.

\$ 5000 contribution divided by / 2000 total hours worked = 2.50 per hour credit

The employer is responsible to pay the difference between the credit for contributed amounts, \$2.50 in this case, and amounts called for in the prevailing wage schedule.

For example;

If the employee worked as a carpenter for 20 hours and the carpenter supplement amount in the prevailing wage schedule is \$10, subtract the \$2.50 credit from \$10. The carpenter would be owed \$7.50 in cash for every hour worked as a carpenter on the public work project.

If the same employee also worked 15 hours as a laborer and the laborer supplement amount is \$7.50, subtract the \$2.50 credit from the \$7.50. The laborer would be owed \$5.00 in cash for each hour worked as a laborer on the public work project.

## ***Frequently Asked Questions Regarding Public Work – Supplemental Benefits***

### **Example B**

Employer pays \$150 per month Health insurance, \$50 per month dental plan

\$150 x 12 months = \$1800 paid per year for health insurance

\$50 x 12 months = \$600 paid per year for dental insurance

Total annual contribution = \$2400

The employee worked 2080 hours (52 weeks x 40 hours) during the year on both public and private work (52 - 40 hour weeks)

Divide the employer contribution to the plan (\$2400) by the total number of hours worked during the year (2080 hours) to calculate the per-hour credit against supplement, \$1.15 in this case.

If the employee worked as an operating engineer and the operating engineer supplement in the prevailing wage schedule is \$11.50 per hour, subtract the \$1.15 credit from \$11.50. The operating engineer would be owed \$10.35 in cash for the hours worked as an operating engineer on the public work project.

### ***E. Does an employer receive credit for contributions to plans that have waiting periods to qualify for health insurance benefits or pension plans with extended vesting schedules?***

Yes. The New York State Department of Labor (NYS DOL) does not regulate waiting periods, vesting schedules, etc. That responsibility lies with the United States Department of Labor's Employee Benefit Security Administration.

The NYS DOL will verify that:

1. The plan is a bona fide plan; and
2. The employee is a plan participant; and
3. The monies claimed to have been contributed on behalf of each employee have in fact been contributed.

### ***F. Does an employer have to provide a full range of benefits such as pension, health insurance, dental, etc., or can they just provide one or a combination of some?***

## ***Frequently Asked Questions Regarding Public Work – Supplemental Benefits***

It is the employer's choice as to the type and level of particular benefit they provide as long as they calculate any contributions to bona fide benefit plans according to the NYS DOL regulation.

### ***G. Would a cafeteria plan comply with the annualization requirement?***

Yes. A true cafeteria plan, where the total dollar value of the supplement amount is provided to the employee and the employee is provided the option or vehicle to purchase their own benefits, is considered the same as cash.

### ***H. Are there any “benefits” that an employer is not allowed to take credit for when calculating supplemental benefit cost and contributions?***

Yes. The following are some items which do not qualify as a supplemental benefit for the purposes of complying with the Article 8:

- Travel expenses such as meals and lodging
- Use of company vehicle or gas, toll and vehicle reimbursement
- Meal allowances
- Reimbursement for tools or company provided equipment
- Uniforms or uniform cleaning

If you have a question on whether or not an item you provide would qualify for credit towards your supplemental benefit requirement, please contact the Bureau of Public Work.