



Davis-Bacon and Related Acts

What Is “Construction, Alteration, Or Repair?”



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR



dol.gov/agencies/whd
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Introduction

- The Wage and Hour Division (WHD) is responsible for administering and enforcing several federal laws involving labor standards including:
 - The Davis-Bacon and Related Acts (DBRA);
 - The McNamara – O’Hara Service Contract Act (SCA);
 - Executive Orders applicable to federal contractors;
 - The Fair Labor Standards Act (FLSA);
 - Family Medical Leave Act (FMLA).



Davis-Bacon and Related Acts

- The DBRA applies to contractors and subcontractors performing on federal or federally assisted contracts in excess of \$2,000 for construction, alteration, or repair.
- Covered contractors and subcontractors must pay their laborers and mechanics working on the site of work no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.



Construction, Alteration, Or Repair

- The Davis-Bacon Act specifically applies prevailing wage requirements to contracts for “construction, alteration, or repair.”
- Understanding when work is within that category is therefore necessary to determining Davis-Bacon applicability.



Definition

- All types of work done on a particular building or work at the site of the work.
- Includes, without limitation:
 - Altering or remodeling
 - Installation (where appropriate) of items manufactured offsite
 - Painting and decorating
 - Onsite manufacturing or furnishing of materials, articles, supplies or equipment
 - Demolition
 - Transportation and related activities




Alteration or Repair

- Restoration or improvement of a facility by modifications to the facility's components, systems, or materials is considered to be alteration or repair.
- Alterations or repairs will generally improve the building or work, either by fixing something that is broken or by improving upon the building or work's existing condition.
- In contrast, maintenance work that is routinely and regularly performed to keep the building or work functioning in the same condition is not considered construction.



Repair versus Maintenance

Factors Indicating Work Is Alteration or Repair	Factors Indicating Work Is Maintenance Work
Correction of individual problems or defects as separate and segregable incidents	Work is performed continuously/repetitively over time
Items of work require more time to complete	Items of work are completed comparatively quickly
The work improves the facility's structural strength, stability, safety, capacity, efficiency, or usefulness	Work does not affect an integral component or system of the facility, but merely maintains it in its existing condition
Skills necessary for the work are typical of one or more construction trades	Skills necessary for the work are not typical of the construction trades 

Activities Performed Prior To Acceptance

- Some activities are considered construction when performed during the construction of a building or work, prior to final acceptance by the contracting agency, even if they would be considered maintenance in other contexts.
- Examples of such activities include:
 - Cleaning work, such as window scraping and washing, removal of excess paint, and sweeping
 - Landscaping
 - Carpet laying and hanging curtains



Installation

- Installation of structural elements, systems, equipment, or other similar items is typically considered to be construction, alteration, or repair.
- Where installation occurs on a hybrid contract that is also for supply or services, it will still be considered covered construction so long as the contract requires more than an incidental amount of construction.



Demolition

- Demolition and/or removal activities alone can be construction, alteration, and/or repair.
 - Removal of asbestos, paint, components, systems, or parts from a facility that will not be demolished
 - Substantial earth-moving to remove contaminated soil and re-contour surfaces
- Demolition and/or removal activities will also be construction, alteration, and/or repair when subsequent Davis-Bacon construction is contemplated at the site of the demolition or removal.



Drilling

- Drilling will generally be covered construction if:
 - The drilling is directly related and incidental to, or an integral part of, a construction project, or
 - The drilling itself is a building or work (such as a water or oil and gas well)
- Drilling will generally not be covered if done to obtain data for planning a project, where further construction is not contemplated.



Transportation

- Construction work includes:
 - Transportation entirely within a site of the work;
 - Transportation of one or more significant portions of a building or work between a primary and secondary construction site;
 - Transportation between an adjacent or virtually adjacent dedicated support site and a primary construction site or secondary construction site, and;
 - Onsite activities essential or incidental to offsite transportation, where the driver or driver's assistant(s) spend more than a de minimis amount of time on site.



Internet Sites

- Wage Determinations: <https://sam.gov>
- Wage and Hour Division: <http://www.dol.gov/agencies/whd/government-contracts>
- WHD Protections for Workers in Construction under the Bipartisan Infrastructure Law: <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>
- Resource Book: <http://www.dol.gov/agencies/whd/prevaling-wage-resource-book>
- Office of the Administrative Law Judges Law Library: <https://www.dol.gov/agencies/oalj/topics/libraries/LIBDBA>
- Prevailing Wage Topic videos: <https://www.dol.gov/agencies/whd/government-contracts/construction/presentations>



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