



# Davis-Bacon and Related Acts

## When Can I Claim a Credit for Providing Fringe Benefits to Workers?



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

[dol.gov/agencies/whd](https://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.

# Davis-Bacon Fringe Benefits

- What are fringe benefits under the Davis-Bacon and Related Acts (DBRA)?
- When may a contractor or subcontractor claim a credit towards their prevailing wage obligation for providing bona fide fringe benefits to covered workers?

# What are Fringe Benefits?

Examples of fringe benefits:

- Life Insurance
- Health Insurance
- Pension
- Vacation
- Holiday
- Sick Leave

# What is a Funded Fringe Benefit Plan?

- Contractors may take credit (without prior approval from DOL) for bona fide FB fund contributions made to third-party trustees or insurers that:
  - Are irrevocably paid, and
  - Are made regularly, not less often than quarterly
- The allowable credit that may be taken is for payments made for individual workers eligible to participate in the plan, program, or fund.

# What is an Unfunded Fringe Benefit Plan?

- Costs for an “unfunded” FB plan may count towards a contractor’s prevailing wage obligation if specific criteria are met:
  - The contributions reasonably anticipate the cost to provide a bona fide FB
  - The contributions are made pursuant to an enforceable commitment
  - The plan or program is financially responsible
  - The plan has been communicated in writing to the affected workers
  - The plan has been approved by the Wage & Hour Division (WHD)

# Eligibility, Participation, and Credit

- Contractors may not take credit for contributions for workers who are not eligible to participate in the fringe benefit plan.
- Contractors may take credit for contributions made on behalf of workers who are participants in a plan but are not yet eligible to receive benefits (for example, a health insurance plan with a 30-day waiting period for new participants).



# Which Administrative Expenses Are Creditable?

- Fees charged by a third-party administrator may be creditable, depending on the facts and circumstances.
- The costs incurred by a contractor's insurance carrier, third-party trust fund, or other third-party administrator that are directly related to the administration and delivery of bona fide fringe benefits to the contractor's laborers and mechanics can be credited towards the contractor's obligations under a Davis-Bacon wage determination.

# Which Administrative Expenses Are Not Creditable?

- A contractor's own administrative expenses incurred in connection with the provision of fringe benefits are considered business expenses of the firm and are therefore not creditable towards the contractor's prevailing wage obligations, including when the contractor pays a third party to perform such tasks in whole or in part.

# What is Annualization?

- Davis-Bacon credit for fringe benefit contributions is based on the effective annual rate of contributions for all hours worked in a year (both Davis-Bacon and non-Davis-Bacon work).
  - If a contractor makes contributions in advance of the time period in which they are earned, an estimate of hours worked can be used, if it is based on a representative period.
- Davis-Bacon work may not be used as the exclusive or disproportionate source of funding for a benefit in effect during both covered and non-covered work.

# How Do I Compute the Hourly Credit?

- To determine the hourly rate of contribution that is creditable, divide the cost of the fringe benefit contributions (or the reasonably anticipated cost of an unfunded plan benefit) by the total number of hours worked (both Davis-Bacon and non-Davis-Bacon work) during the time period to which the cost is attributable.

# Computations Based on Individual Workers

- If the amount of contribution varies per worker, the credit must be determined separately for the amount contributed for each worker.

# Annualization – Exception

- An exception to the annualization requirement may be granted when it is demonstrated that all the following are met:
  - The benefit is not continuous in nature
  - The benefit does not compensate for both private and public work
- Requests for an exception must be submitted in writing to the Wage & Hour Division Administrator.

# Defined Contribution Pension Plans

- Contributions to defined contribution pension plans (DCPPs) are excepted from the annualization requirement without the necessity to submit an exception request if, in addition to meeting the general requirements, the DCPP also provides for immediate participation and essentially immediate vesting (i.e., the benefit vests within the first 500 hours worked).

# Annualization – Example 1

## Monthly Fringe Benefit Contributions:

- Contractor provides medical insurance at \$200 per month to an electrician on a Davis-Bacon project
- The WD requires \$16.00/hour plus \$2.50/hour in FBs (\$18.50/hour), electrician works 160 hours a month
  - Allowable Credit:  $\$200/160 \text{ hours} = \$1.25/\text{hour}$
- No other fringe benefit provided
- Electrician is due: \$17.25 in cash wages per hour ( $\$18.50 - \$1.25 = \$17.25$ )



# Annualization – Representative Period

## Fringe Benefit Payments in Advance:

- Where the contractor makes fringe benefit contributions in advance, the total hours worked in the period the contributions cover may be estimated. Any representative period may be used, provided the period selected is reasonable.

# Annualization – Example 2

## Fringe Benefit Payments in Advance:

- Assume total monthly cost of fringe benefit is \$150, and contractor makes the contribution at the beginning of the month before total hours worked are known.
- Representative period used to compute the allowable credit could be total hours worked in the previous month, or total hours worked in the same month in the previous year.
  - Total hours worked in previous month = 184  
 $\$150/184 \text{ hours} = \$.82 \text{ cash equivalent per hour, or}$
  - Total hours worked in same month in previous year = 160  
 $\$150/160 \text{ hours} = \$.94 \text{ cash equivalent per hour}$

# 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>
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