



Prevailing Wage Seminars Davis-Bacon Q & A



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
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A construction worker in an orange shirt and blue jeans is working on a steel rebar grid at a construction site. The worker is in the background, slightly out of focus, holding a tool. The foreground shows a dense grid of steel rebar. The background is a blurred construction site with other workers and structures.

Coverage

Davis-Bacon Act Coverage

Applies to contracts in excess of \$2,000 to which the Federal Government or the District of Columbia is a party for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works.

Davis-Bacon Related Acts

Davis-Bacon (DB) requirements extended to numerous “related Acts” that provide federal assistance by:

- Grants
- Loans
- Loan guarantees
- Insurance



Wage Determinations

Wage Determinations (WDs)

- Davis-Bacon WDs specify the prevailing wages, including fringe benefits, which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character in the localities specified therein
- The **most current** WD for the **location** and **type of project** must be incorporated into the contract

Selecting the Correct WDs-Date

Incorporate most current WD:

- Negotiated contracts (“RFPs”) – Time of award.
- Competitively bid contracts: In effect 10 days or more before opening of bids.
- Exceptions.
- If the contract is not awarded within 90 days of bid opening, any modification to the WD must be incorporated unless the federal agency requests and obtains an extension of the 90 day period.

Selecting the Correct WDs-Type

Selecting and incorporating the appropriate general wage determination for the project type. Guidance provided in AAM 130.

- Building
- Residential
- Heavy
- Highway

Multiple wage determinations may apply where there are separate construction types, and the different type of construction is at least 20 percent of the project cost or exceeds \$2.5 million – guidance provided in AAM 131 and 236.

Contracting Agency Responsibilities

- Ensure proper wage determination (WD) is identified and applied;
- Advise contractors which schedule of rates applies to various construction items; and
- After consulting with WHD, advise contractors regarding the duties performed by various crafts in the WD.



Conformances

Conformance Requests

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

Conformance Requirements

- The work to be performed by the proposed classification is not performed by a classification already in the wage determination (WD);
- The proposed wage rate must bear a reasonable relationship to WD rates; and
- The proposed classification is utilized in the area by the construction industry.

A photograph of three construction workers on a rooftop at sunset. The workers are wearing hard hats and safety vests. One worker is pointing towards a large crane that is lifting a heavy object. The sky is a mix of orange and blue, and the rooftop is covered with rebar and construction materials.

Compliance Principles

Wages and Fringe Benefits

Laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed on the site of work, without regard to skill.

Wages and Fringe Benefits-Classification

Laborers and mechanics who perform work in more than one classification may be paid the different applicable rates for the work they actually perform if the employer keeps an accurate record of the time spent working in each classification and pays accordingly.

Wages and Fringe Benefits-Pay Frequency

- The laborers and mechanics working on the site of the work must be paid weekly, with the exception of fringe benefit contributions paid into a bona fide FB plan, which must be paid no less often than quarterly.
- Cash wages paid in excess of the base hourly rate may count to offset or satisfy the fringe benefit obligation.

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Apprentices

Apprentice Requirements

Apprentices may be paid less than the applicable prevailing wage rate when they are:

- Individually registered in an approved program;
- Employed within the allowable ratio specified in the program for the number of apprentices to journeyworkers

Apprentice Wage Rates

- Apprentices must be paid the correct percentage of the applicable prevailing wage rate as required by their progress in the program.
- Apprentices must also receive the FB's specified in approved program, or, if the program is silent, the full amount of FB's listed on the WD.



Overtime

Overtime Pay - CWHSSA

Contract Work Hours and Safety Standards Act (CWHSSA)

- Requires overtime pay for laborers, mechanics, guards, and watchmen at time and a half the regular basic rate of pay for hours worked over 40 in a workweek on covered contracts only
- No site of work limitation
- Applies to laborers, mechanics, guards and watchmen for the time spent on all covered contract work

Overtime Rate

- The basic rate of pay under CWHSSA is the straight time hourly rate
- The “basic rate” cannot be less than the basic hourly rate required in an applicable wage determination, not including any required fringe benefit amount.
- If an employee is paid a regular rate above the basic hourly rate (excluding fringe benefits or cash payments in lieu of fringe benefits), that regular rate will be considered the basic rate.

Overtime Pay - FLSA

- The **Fair Labor Standards Act (FLSA)** applies more broadly, with over 130 million workers subject to coverage.
- The FLSA similarly requires that employees receive not less than one and one-half times the regular rate for their hours worked over 40. 29 U.S.C. 207(a); see also 29 C.F.R. § 778.101.



Certified Payrolls

Certified Payroll Clauses

Two separate contract clause requirements apply to “certified payrolls” for a project:

- The contractor shall submit weekly for any week in which any contract work is performed a copy of all payrolls. 29 CFR 5.5(a)(3)(ii)(A).
- Each weekly payroll submitted must be accompanied by a “Statement of Compliance.” 29 CFR 5.5(a)(3)(ii)(B).

Certified Payrolls-Reporting

Weekly payrolls must include specific information as required by 29 CFR 5.5(a)(3).

Weekly payroll information may be submitted in any form desired.

Optional Form WH-347 is available, with instructions, at:
<https://www.dol.gov/agencies/whd/forms/wh347>

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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