

Fact Sheet #66A: Bipartisan Infrastructure Law

This fact sheet provides general information relating to Davis-Bacon requirements for construction projects funded by the Bipartisan Infrastructure Law (BIL). The Wage and Hour Division (WHD) administers and enforces Davis-Bacon labor standards on federally-funded and assisted construction projects, and, as such, is responsible for determining locally prevailing wage rates and ensuring those prevailing wages are paid to construction workers on covered projects.

Davis-Bacon Related Act Coverage of Bipartisan Infrastructure Law Construction Projects

The Davis-Bacon Act requires contractors and subcontractors to pay laborers and mechanics employed on federal construction contracts no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. Many federal laws that authorize federal assistance for construction projects, such as through grants, loans, loan guarantees, or other similar funding mechanisms, require funding recipients to comply with the prevailing wage and labor standards requirements of the Davis-Bacon Act. Such laws are generally known as Davis-Bacon “Related Acts,” or Davis-Bacon Related Acts.

The BIL, which President Biden signed on November 15, 2021, focuses on rebuilding and improving our nation’s aging infrastructure through a historic investment of federal funds in state and local infrastructure construction. A vast majority of the federal funding authorized by the BIL requires the payment of Davis-Bacon prevailing wages on covered construction projects. The BIL applies Davis-Bacon labor standards to federally-funded or assisted construction projects in three different ways:

- (1) by adding funding to programs previously authorized by an existing Davis-Bacon Related Act (such as the Infrastructure for Rebuilding America program and the Drinking Water/Clean Water state revolving loan funds);
- (2) by adding new programs under the umbrella of an existing Davis-Bacon Related Act (such as the new Bridge Investment program and the new Airport Terminal Improvement program); or
- (3) by including provisions which expressly provide that Davis-Bacon labor standards apply to all construction projects receiving funding under particular programs created by or funded through the BIL. For example, construction projects assisted by funding made available under Division D or an amendment made by Division D of the BIL (Energy) are subject to Davis-Bacon requirements

Finally, while the broadband assistance programs under Division F of the BIL do not generally require the payment of Davis-Bacon prevailing wages, the agencies administering those programs may consider the payment of prevailing wages as a positive factor when allocating funding. WHD will be available to provide guidance to funding applicants and funding agencies who are considering the payment of Davis-Bacon prevailing wages as a factor in connection with funding awards under the BIL’s broadband assistance programs.

Basic Provisions/Requirements of Davis-Bacon Related Acts

Funding for construction projects authorized by the BIL requires certain actions on the part of federal funding agencies, funding recipients (such as state or local agencies), and construction contractors in order to ensure compliance with Davis-Bacon Related Acts.

Federal Funding Agencies

Among other requirements, the federal funding agency must:

- notify potential funding recipients that the Davis-Bacon labor standards are applicable to any construction projects that receive the relevant BIL funding;
- ensure that the funding recipients require the Davis-Bacon contract clauses, as set forth at 29 CFR 5.5, and applicable wage determinations be inserted into all contracts for construction projects receiving the federal funding (a wage determination is a schedule of prevailing wage rates determined by the Secretary of Labor that applies to construction subject to Davis-Bacon requirements in a particular geographic area);
- provide guidance to funding recipients as to which construction projects are covered by Davis-Bacon requirements and which wage determinations apply to those projects; and
- take steps to ensure that the Davis-Bacon requirements are met on their funded projects, including receiving and reviewing certified payrolls submitted by contractors (except to the extent that the federal agency has delegated the receipt and review of certified payrolls to the funding recipient).

Funding Recipients

Among other requirements, the funding recipients must:

- ensure that the Davis-Bacon contract clauses and applicable wage determinations are inserted into any construction contracts entered into by themselves or their sub-recipients for projects receiving any federal funding subject to Davis-Bacon labor standards (the required contract clauses are set forth at 29 CFR 5.5, and general wage determinations and guidance on their application can be found at alpha.sam.gov);
- provide guidance to sub-recipients and contractors as to Related Act coverage, wage determination applicability, and the classifications of work performed on the contract;
- conduct sufficient monitoring of sub-recipients and contractors to ensure that laborers and mechanics are being paid the applicable prevailing wages and fringe benefits;
- receive and review certified payrolls, and, where applicable, forward certified payrolls to the federal funding agency; and
- upon the written request of the Department of Labor, or on their own initiative, both the federal funding agencies and the funding recipients must withhold payments to the prime contractors in an amount sufficient to cover any unpaid prevailing wages owed to workers, or suspend any further payments until violations of the Davis-Bacon labor standards have ceased.

Failure to take these actions may result in the loss of the federal funding, in accordance with 29 CFR 5.6.

Contractors and Subcontractors

Among other requirements, contractors and subcontractors must:

- pay at least the Davis-Bacon prevailing wages listed in the applicable wage determinations included in the contract to laborers and mechanics who work on the site of work—
 - the Davis-Bacon prevailing wage is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination;
 - contractors can meet this obligation by paying each laborer and mechanic the applicable prevailing wage for the classification of work they perform entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits;
 - contractors must pay laborers and mechanics the applicable prevailing wages for all hours worked on the site of the work on a weekly basis (except for contributions to bona fide fringe benefit plans, which must be made at least quarterly);
- maintain an accurate record of hours worked and wages paid, including fringe benefit contributions;
- submit certified payrolls to the contracting agency/funding recipient each week, within seven days of the payroll date for that workweek; and
- ensure that the required contract clauses and applicable wage determinations are incorporated into any lower-tier subcontracts.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division website: www.dol.gov/agencies/whd or call our toll-free information and helpline, 1-866-4-USWAGE (1-866-487-9243), available 8 a.m. to 5 p.m. in your time zone. This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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