

# Davis-Bacon & Related Acts



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

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# Coverage



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# Statutory Language

“Every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.”



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# Contracts for Construction

- “Construction” includes all types of work done on a particular building or work on the site of the work, as defined in the regulations (29 CFR 5.2)
- A contract is for construction as long as it requires more than an incidental amount of construction
- This means that the Davis-Bacon Act (DBA) can apply to a federal contract even if the primary purpose of the contract is not construction



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# 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



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# Other Coverage Provisions

- Demolition
- Green energy projects
- Survey crews



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# Hybrid Contracts

- Because the DBA applies to any contract with more than an incidental amount of construction, it is possible for work on other types of contracts, such as supply or service contracts, to be covered under the DBA
- Construction work on a service or supply contract will be covered under the DBA when the contract requires a substantial and segregable amount of construction



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# Public Building or Public Work

- Includes any building or work, when its construction:
  - Is carried on directly by authority of or with funds of a federal agency
  - To serve the general public interest
- A building or work does not have to be owned or operated by the federal government to serve the general public interest, so long as it fulfills a significant need or a goal of the relevant federal agency



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# Portion of a Building or Work

*Building or work* includes not only construction involving an entire building, structure, or improvement, but also construction activity involving just a portion of a building, structure, or improvement, including the installation of equipment or components



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# What is a Related Act?

- Many federal statutes authorize federal assistance for state or local construction work
- Where such federal statutes specifically include a statutory provision applying the Davis-Bacon prevailing wage requirements to the assisted work, the statute is considered a Davis-Bacon Related Act (DBRA)



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# Davis-Bacon Related Acts

Davis-Bacon (DB) requirements extend to numerous “Related Acts” that provide federal assistance by, for example:

- Grants
- Loans
- Loan guarantees
- Insurance



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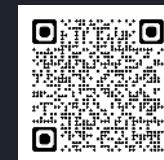
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# Identifying Related Acts

- Many, but not all, statutes providing federal assistance for construction are Related Acts
- Funding agencies will inform funding recipients whether their funding is subject to Davis-Bacon requirements, and funding recipients are required to inform their contractors
- A listing of Related Acts can be found at  
<https://www.dol.gov/agencies/whd/government-contracts>



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# Funded In Whole Or In Part

- Davis-Bacon prevailing wage requirements generally apply to construction funded or assisted in whole or in part under a Related Act, regardless of how the recipient allocates the funding
- Even if funding is allocated only to a portion of the construction of a project, prevailing wage requirements generally will still apply to all construction work on the project



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# Geographic Scope

- The DBA only applies to construction work performed within the fifty states, the District of Columbia, and the Commonwealth of the Northern Mariana Islands
- The DBA does not apply to construction work performed in Guam, Puerto Rico, the U.S. Virgin Islands, or other U.S. territories; however, some Related Acts do apply to construction in the territories



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# Labor Standards Clauses

- Contracting agencies must ensure that the Davis-Bacon labor standards clauses in 29 CFR 5.5 and the applicable wage determination(s) are included in all construction contracts for projects assisted in whole or in part under a Related Act
- Contracting agencies must also advise prime contractor(s) that they must include Davis-Bacon labor standards clauses and applicable wage determination(s) in all subcontracts

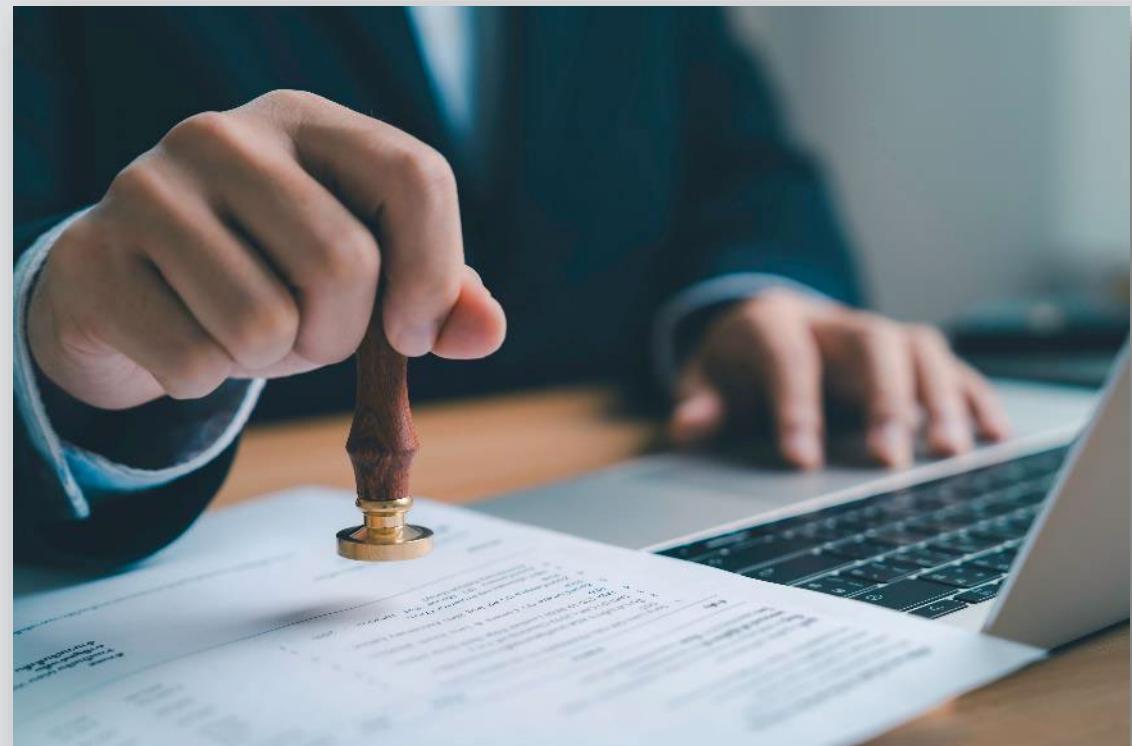


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# Incorporation by Reference

Contract clauses and wage determinations are equally effective if they are incorporated by reference, although agencies are still required to insert the contract clauses in full for any contract not subject to the Federal Acquisition Regulations (FAR)



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# Day-to-Day Oversight

Contracting agencies should also engage in day-to-day oversight, including:

- Ensuring that the contractor(s) have posted the Davis-Bacon Employee Rights poster (WH-1321), the applicable wage determination(s), and any approved conformances on the site of work
- Reviewing certified payroll and related documents
- Interviewing workers to confirm compliance in accordance with any enforcement procedures established by the federal funding agency



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# Wage Determinations



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# Wage Determination Types

Davis-Bacon Wage Determinations (WDs) specify the prevailing wages, including fringe benefits, that prevail for the described classes of laborers and mechanics employed on construction projects of a similar character in the locality. There are two types:

General Wage Determinations	Project Wage Determinations
<ul style="list-style-type: none"><li>General WDs are usually available on sam.gov and should be used in bid solicitations and contracts on which DB labor standards apply</li></ul>	<ul style="list-style-type: none"><li>Project WDs should be requested only under certain circumstances</li></ul>



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# “Project” Wage Determinations

- Issued at request of funding agency through Standard Form (SF) 308
  - No “General” WD in effect
  - Virtually all work (100%) on contract performed by a classification not listed on General WD, or
  - Where a project requires work in multiple counties
- Agency to provide wage data
- Application to a specific project only
- Effective for 180 days



[SF-308](#)



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# Selecting Correct WD Type



- Selecting and incorporating the appropriate general wage determination for the project type
- Guidance provided in AAM 130
- Four categories:
  - Building
  - Residential
  - Highway
  - Heavy



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# Application of Multiple WDs

- When a project has construction work in more than one category of construction, the wage determination from each category will apply if the cost of the work involved in the category is substantial
- The cost is generally considered substantial if it exceeds 20% of the overall cost of the project or is over \$2.5 million



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# Selecting Correct WD Date

## Incorporate most current WD:

- Negotiated contracts (“RFPs”) – Time of award
- Sealed 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



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# Updating WDs in Revised Contracts

After contract award, the contracting agency must include the most recent applicable wage determination modification(s) when:

- a contract or order is changed to include additional and substantial work not within the scope of work of the original contract, or to require the contractor to perform work for an additional time period
- an option to extend the term of a contract is exercised

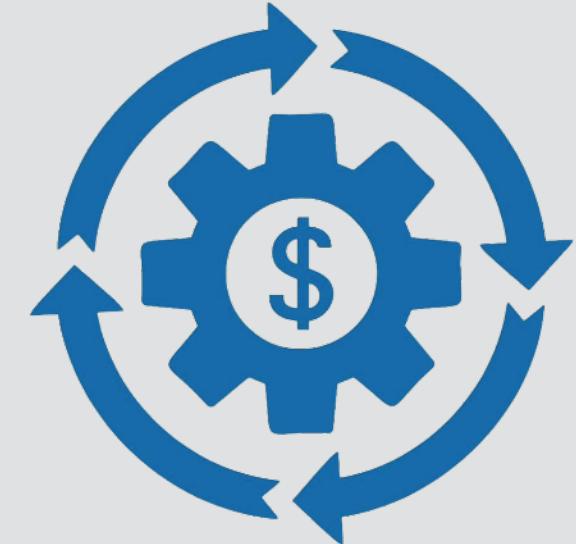


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# Updating WDs in Ongoing Contracts

Where contracts require a general commitment to perform necessary construction as the need arises, over a time period not tied to the completion of any particular project, the contracting agency must incorporate the most recent applicable WD modification(s) on each anniversary date of the contract's award



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# Important Dates

Effective Date - October 23, 2023

## Applicability Dates

- Part 1 provisions relating to wage determination methodologies apply to wage determinations completed and published after October 23, 2023
- 29 CFR 1.6(c)(2)(iii) provisions relating to updating wage determinations after contract award apply to new and existing contracts as of October 23, 2023
- All other provisions apply to contracts awarded after October 23, 2023



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# Contracting Agency Responsibilities



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



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# Conformances



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# Criteria for Conformance Actions

Conformance of an additional classification and wage rate and fringe benefits is appropriate only when all the following criteria have been met:

- The work to be performed by the proposed classification is not performed by a classification already in the WD
- The proposed classification is used in the area by the construction industry
- The proposed wage rate bears a reasonable relationship to WD rates



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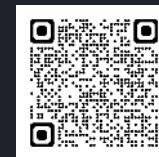
# “Reasonable Relationship”

When determining whether a proposed rate bears a “reasonable relationship” to wage rates in the wage determination:

- Determine the category of the classification in question (skilled craft, laborer, equipment operator, or truck driver)
- Determine whether the rates in that category are predominantly CBA or survey rates
- Consider the rates that category (or all the rates in that category, if neither CBA nor survey rates predominate) and determine whether the proposed rate is reasonable in light of those rates
- Do not automatically use the lowest rate in the category



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# Conformances: Pre-Award Actions

## Pre-Bid / Pre-Award

Review the WD

Compare the WD with the project work

Anticipate needed classifications

Apply key criteria



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# Conformances: Post-Award Actions

## After Award

### Identify needed classes

- At the pre-construction conference
- From certified payrolls

### Advise agency of the needed classification

### Complete Contractor Part of SF-Form 1444

- Apply Conformance Key Criteria

### Forward SF-Form 1444 to agency for submission to DOL



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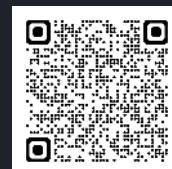
# Submitting SF-1444

Contracting Officers may submit completed SF-1444 requests to the Department of Labor via email:

- [DBAConformance@dol.gov](mailto:DBAConformance@dol.gov): Create PDF file with completed form and all supporting documents; attach PDF to the email. Include Contracting Officer's name, address, telephone, and email address
- <https://sam.gov/content/wage-determinations/resources/dba-conformances>



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# Compliance Principles



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# Prime Contractor

- Broadly defined as any person or entity that enters into a covered contract with an agency, including non-profit organizations, owners/developers, borrowers or recipients, project managers, or single-purpose entities
- Also includes the controlling shareholder or member of any entity holding a prime contract, the joint venturers or partners in any entity holding a prime contract, and any contractor that has been delegated the responsibility for overseeing all or substantially all of the construction anticipated by the prime contract



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# Flow-Down of Clauses: Prime Contractors

- Prime contractors are responsible for flowing down both the contract clauses and the applicable wage determinations to their subcontracts
- The prime contractor must cover any unpaid wages or other liability for any subcontractor violations
- Prime contractors may be debarred for disregarding their obligations



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# Flow-Down: Upper Tier Contractors



- Upper-tier subcontractors may also be held liable for back wages owed to the workers
- Upper-tier subcontractors may also be debarred for disregarding their obligations



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# Laborers and Mechanics

- Workers whose duties are manual or physical in nature
- Applies to any individual who performs laborer or mechanic duties, regardless of any alleged contractual relationship
- No employment relationship required – independent contractors usually should receive prevailing wages



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# Exempt Workers

- Business owners are excluded from the term “laborers and mechanics” when they:
  - Own at least a 20% equity interest in the company in which they are employed, **and**
  - Are actively engaged in its management
- A working supervisor is generally not an exempt employee under the FLSA and 29 CFR part 541



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# Prevailing Wage Requirements

- All laborers and mechanics employed or working upon the site of the work must be paid at least the applicable prevailing wage rate for the classification of work performed as listed in the applicable wage determination or a rate approved in accordance with the “conformance process” set forth at 29 CFR 5.5(a)(1)(ii), without regard to skill
- 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



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# Site of Work Types

- Primary construction site
- Secondary construction site
- Adjacent or virtually adjacent dedicated support sites



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# Site of Work: Secondary Sites

- Any site where a significant portion of a building or work is constructed for specific use in that building or work, as long as the site is either:
  - established specifically for the performance of the contract or project, or
  - is dedicated exclusively, or nearly so, to the performance of the contract or project for a specific period of time



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# Site of Work: Flaggers

Workers engaged in traffic control and related activities adjacent or virtually adjacent to the primary construction site are working on the site of the work



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# Fringe Benefits



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# Fringe Benefits Examples

**Life  
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**Health  
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**Pension**

**Vacation**

**Holiday**

**Sick leave**



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# Wages and Fringe Benefits Payment

- Fringe benefits are a component of the DBA “prevailing wage”
- The prevailing wage obligation may be satisfied by:
  - Paying the base hourly rate (BHR) and FB in cash (including negotiable instruments payable on demand)
  - Contributing payments to a bona fide plan, or
  - Any combination of the two
- Prevailing wages due must be paid weekly, with the exception of FB contributions paid into a bona fide FB plan, which must be paid no less often than quarterly



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# 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
  - 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



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# Unfunded Fringe Benefit Plan

Costs for an “unfunded” FB plan may count towards a contractor’s prevailing wage obligation if specific criteria are met:

- Contributions reasonably anticipate the cost to provide a bona fide FB
- Contributions are made pursuant to an enforceable commitment
- Plan or program is financially responsible
- Plan has been communicated in writing to the affected workers
- Plan has been approved by the Wage & Hour Division (WHD)



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# 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)



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# Creditable Administrative Expenses

- 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



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# Not Creditable Administrative Expenses

A contractor's own administrative expenses incurred in connection with the provision of fringe benefits are considered business expenses of the firm, and 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



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# 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



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# Annualization

- The annualization requirement is now included in the regulations
- Exceptions will be granted for benefits not continuous in nature and that do not compensate both private and DBRA-covered work
- Defined contribution pension plans are not required to seek an exception if they meet the required criteria and provide for immediate participation and essentially immediate vesting



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# 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 for the worker (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) by the worker during the time period to which the cost is attributable



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# 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



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# 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



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# 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 ( $\$18.50 - \$1.25 = \$17.25$ )**



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# 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 hours = \$.82 cash equivalent per hour, or**

Total hours worked in same month in previous year = 160

**\$150/160 hours = \$.94 cash equivalent per hour**



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# 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



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# 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)



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# Apprentices

## An apprentice is a person who is

- Individually registered in a bona fide apprenticeship program registered with DOL's Employment Training Administration (ETA), Office of Apprenticeship (OA), or a State Apprenticeship Agency recognized by OA, **or**
- An individual in their first 90 days of probationary employment as an apprentice in such a program, provided certain requirements are met



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# Apprentice Requirements

- Bona fide apprentices are permitted to work on DB covered projects and be paid less than the journey level WD rate for the classification of work performed when they are employed in accordance with the terms of the applicable apprenticeship program
- However, apprentices must be paid the full prevailing wage rate for the classification of work performed if they are not individually registered in and employed pursuant to the terms of a bona fide apprenticeship program



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# Hourly Rate to Pay Apprentices

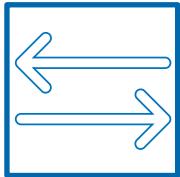
- Apprenticeship programs typically specify the percentage of the hourly rate required for each level of progression within the program
- To determine the minimum hourly wage rate for an apprentice, the percentage specified in the program for the level of progression is applied to the journeyworker basic hourly rate listed in the applicable wage determination



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# Reciprocity and Apprentices



Reciprocity of ratios and rates are required when a contractor is working in a locality other than the locality in which its apprentices' program(s) is registered



If there is no approved program in the locality, the ratio and wage rate specified in the contractor's registered program must be observed



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# Fringe Benefits for Apprentices



- Apprentices must be paid the fringe benefits (FBs) specified in the approved program
- If the program does not specify FB amounts, apprentices must be paid the full amount of FBs listed on the WD for the classification of work performed



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# Ratio Requirements

- Apprentices must be employed within the allowable ratio specified by the approved program
  - “The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program”
  - Compliance with the ratio is determined on a daily, not a weekly, basis
- The use of fractions in computing the ratio is not permitted unless specified in the approved apprenticeship agreement



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# Contract Work Hours and Safety Standards Act



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# Is Overtime Required?



Federal laws that require overtime pay:

- The Contract Work Hours and Safety Standards Act (CWHSSA)
- The Fair Labor Standards Act (FLSA)



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# Overtime Pay

## CWHSSA

- Covers contracts over \$100,000 (\$150,000 for contracts procured under the Federal Acquisition Regulations) that require or involve employment of laborers, mechanics, watchmen, or guards on DBA or DBRA covered construction contracts
- Self-executing (even if not stated in contract)
- Has no “site of work” limitation

## FLSA

- Applies more broadly
- Over 155 million workers subject to coverage



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# What Does CWHSSA Require?

- Overtime pay for laborers, mechanics, guards, and watchpersons at a rate not less than one and one-half times the basic rate of pay for hours worked over 40 in a workweek on covered contracts
- Liquidated damages can be assessed per day for each laborer, mechanic, guard, or watchperson not paid required overtime



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# Basic Rate of Pay Under CWHSSA

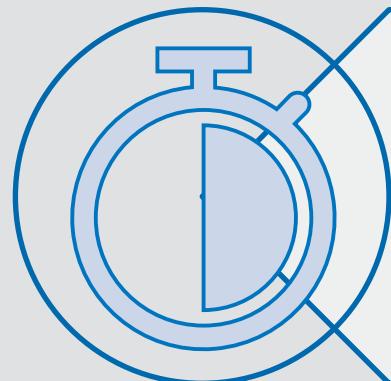
- CWHSSA requires the payment of not less than one and one-half the “basic rate” of pay for all hours worked over 40 hours in a workweek
- The basic rate of pay under CWHSSA is the straight time hourly rate, which cannot be less than the basic hourly rate required in an applicable wage determination, not including any required fringe benefit amount
- However, if a worker is paid a regular rate above the basic hourly rate (excluding fringe benefits or cash in lieu of fringe benefits), that regular rate will be considered the basic rate



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# Fringe Benefits and CWHSSA



Although FBs must be paid for all hours worked, additional half-time premiums do not need to be computed for amounts paid to fulfill the FB rate listed in the applicable wage determination under CWHSSA



This applies to both cash payments made to comply with the FB portion of the prevailing wage requirement and contractor contributions to bona fide benefit plans made to comply with that requirement



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# Records and Certified Payrolls



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# Certified Payrolls

- When contractors enter a contract covered by the Davis-Bacon labor standards, there are two separate contract clause requirements that apply to certified payrolls (CPR) :
  - Each contractor shall submit weekly for any week in which any contract work is performed a copy of all payrolls containing all the information required in 29 CFR 5.5(a)(3)(ii)(A)
  - Each weekly payroll submitted must be accompanied by a signed “Statement of Compliance”



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# Submission of Certified Payrolls

- CPR must be submitted weekly within seven days of the regular payroll date for that weekly pay period
- Optional form WH-347 may be used, but if another format is used, it must still include the signed statement of compliance
- Failure to submit CPR or to provide the required records underlying the CPR at the request of the contracting agency or DOL may be grounds for withholding of contract funds or debarment



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# CPR Submission Methods

- Contracting agencies and prime contractors can permit or require contractors to submit their certified payrolls through an electronic system, if:
  - the electronic system requires a legally valid electronic signature
  - other methods are permitted where a contractor may not be able to use or access the electronic system
  - the electronic system allows the contractor, the contracting agency, and the Department to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed



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# Signing Certified Payrolls

- Certified payrolls must be signed with an original handwritten signature or a legally valid electronic signature
- Valid electronic signatures include any electronic process that indicates acceptance of the certified payroll record and includes an electronic method of verifying the signer's identity



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# Common Red Flags

- 🚩 Too few workers on the CPR for the work performed
- 🚩 Workers always shown with short workdays
- 🚩 Too many common or general laborers for the work performed
- 🚩 Workers always work the same split hours among two classifications
- 🚩 Apprentices outnumber journeymen
- 🚩 No fringe benefits paid for overtime hours



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# Basic Record Requirements

- Contractors must maintain basic time and payroll records and last known phone numbers and email addresses for each worker
- Contractors must also maintain records relating to apprenticeship programs or fringe benefit plans, if the contractor uses such programs or plans
- In addition, contractors must maintain copies of their contract and any subcontracts, and related documents such as solicitations, bids, amendments, modifications, and extensions



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# Maintaining Records

- Contractors must maintain all of these records required at 29 CFR 5.5(a)(3) for at least 3 years after all work on the prime contract has been completed
- This requirement also applies to subcontractors, even though the subcontractor's work may be finished prior to the completion of the prime contract
- A contractor's failure to make the required records available to WHD within the requested timeframe will prevent that contractor from using those records as evidence in a hearing under 29 CFR part 6



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# Enforcement



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# Investigations

## DOL Functions and Responsibilities:

- Determine “prevailing wages”
- Issue regulations and standards to be observed by contracting agencies
- Perform oversight function along with independent authority to conduct investigations



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# Anti-Retaliation Provisions

It is unlawful to commit the below actions, or to *cause* any person to commit these actions, against any worker or job applicant for engaging in protected activities:

Discharge

Demote

Intimidate

Threaten

Restrain

Coerce

Blacklist

Harass

Discriminate



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# Protected Activities

- Workers or job applicants are protected from being retaliated against for the following activities:
  - Making a contractor aware of any conduct the worker reasonably believes is a violation
  - Asserting DBRA rights on behalf of themselves or others, such as filing a complaint
  - Cooperating in an investigation or other compliance action
  - Informing another person of their rights under the DBRA



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# Retaliation Remedies

## WHD may require contractors to:

- Provide appropriate relief to affected worker(s) and job applicant(s)
- Take appropriate remedial action, or
- Both



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# Withholding

- DBA and CWHSSA provide for withholding of contract funds to satisfy alleged wage underpayments pending resolution of a wage dispute (40 U.S.C. § 3142(c)(3); 40 U.S.C. § 3702(d))
- Withholding of contract funds is an effective enforcement tool in DBA/DBRA/CWHSSA cases
- It protects the rights of covered workers to wages due them



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# Withholding: DBRA Contract Language

- The federal agency/funding recipient must withhold or cause to be withheld so much of the accrued payments or advances as necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief due including interest
- Funds may also be withheld when a contractor has refused to submit certified payrolls or provide the required records as set forth at 29 CFR 5.5(a)(3)
- Withholding must be done upon written request from the DOL or may be done at the agency's own action



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# Cross-Withholding

- Cross-withholding may be accomplished on contracts held by agencies other than the agency that awarded the contract
- Withholding from another federal contract with the same prime contractor is called “cross-withholding”
- Withholding can be done on the contract in question or any other federal contract or federally assisted contract subject to Davis-Bacon prevailing wage and other labor standards requirements with the same prime contractor
- Funds withheld for DBRA wage underpayments have priority over other competing claims



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# Priority of Withheld Funds

- In order to ensure that underpaid workers receive the money to which they are entitled, the Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) and/or 29 CFR 5.5 (b)(3)(i)
- Withheld funds may not be used or set aside for other purposes until the prevailing wage issues are resolved



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# Debarment

- Occurs when a contractor is declared *ineligible* for future contracts due to:
  - Violations of the Davis-Bacon and Related Acts (DBRA) involving disregard of its obligations to workers or subcontractors
- Period of ineligibility is 3 years with no early removal from the exclusion list for both DBA and Related Act



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# Debarment Criteria

**Debarment is considered when a contractor has:**



Submitted falsified certified payrolls



Required "kickbacks" of wages or back wages



Committed repeat violations



Committed serious violations



Misclassified covered workers in clear disregard of proper classification norms



As a prime contractor, failed to ensure compliance by subcontractors



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# Prime Contractor Debarment

- Prime contractors can be debarred for subcontractor violations where such violations reflect a disregard of the prime contractor's obligations
- For example, debarment could be appropriate if a prime contractor and many of its subcontractors violated provisions of the DBRA and CWHSSA, the prime contractor failed to flow down the DBRA labor standards clauses and to take steps to ensure its subcontractors complied with the DBRA



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# Determining Applicable Prevailing Wage Rates



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# Definition of Prevailing Wage Rate

- Wage paid to the majority (at least 50%)
- If the majority wage is not paid, then prevailing wage will be the wage paid to the greatest number, *provided* at least 30%, or
- If no wage rate is paid to 30%, the prevailing wage will be the average



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# Functionally Equivalent Rate

Variable wage rates paid by contractor(s) may be treated as the same wage rate where the rates are functionally equivalent, as explained by:

One or more  
collective  
bargaining  
agreements, or

Written policies  
maintained by  
contractor(s)



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# Scope of Consideration, Area

- Typically, the county is the *area* from which wage data will be drawn
- If data is insufficient at the county level, data from groups of counties can be used to determine craft sufficiency in the following progression:
  - Surrounding counties may be considered
  - Comparable counties or groups of counties may be considered
  - All counties statewide may be considered



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# Frequently Conformed Rates

- If there is insufficient wage survey data to determine the prevailing wage for a classification for which conformance requests are regularly submitted, the Administrator may list the classification, wage rate, and fringe benefit rate for the classification on the wage determination, provided certain criteria are met



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# Frequently Conformed Rates Criteria

1. The work performed by the classification is not performed by a classification in the wage determination
2. The classification is used in the area by the construction industry
3. The wage rate for the classification bears a reasonable relationship to the wage rates contained in the wage determination



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# Adoption of State or Local Rates

- Wage rates determined for public construction by State and/or local officials may be adopted, with or without modification, provided that certain conditions are met
- Methods and criteria used by State or local officials may differ from those otherwise used by the Administrator



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# Adoption of State or Local Rates Process

To submit state or local wage rates for adoption, prevailing wage rates, relevant supporting documentation and data, may be submitted to:

- [dba.statelocalwagerates@dol.gov](mailto:dba.statelocalwagerates@dol.gov), or
- U.S. Department of Labor  
Wage and Hour Division  
Branch of Wage Surveys  
200 Constitution Avenue NW  
Washington, DC 20210



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# Adoption of State or Local Rates Criteria

- State or local government survey or other process is open to full participation by all interested parties
- Wage rate reflects a basic hourly rate and prevailing fringe benefits which each can be calculated separately
- Laborers and mechanics are classified in a recognized manner within the construction field
- Criteria for setting prevailing wage rates are substantially similar to DOL's criteria



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# Periodic Rate Adjustments

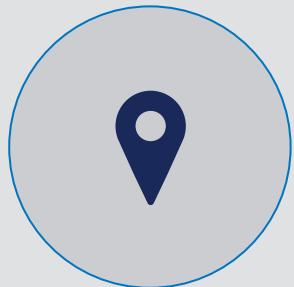
- Adjustments to non-collectively bargained prevailing wage and fringe benefit rates on general wage determinations based on U.S. Bureau of Labor Statistics Employment Cost Index (ECI) data or its successor data
- Such rates may be adjusted based on ECI data no more frequently than once every 3 years, and no sooner than 3 years after the date of the rate's publication
- WHD will issue modifications to general wage determinations with such adjusted rates



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# Other Wage Determination Provisions



Use of state highway districts



Multicounty project wage determinations



Type of construction



Multiple wage determinations



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# Resources



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# Useful Resources

- 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/prevailing-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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# Thank you!

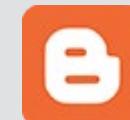
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