



# PREVAILING WAGE SEMINARS



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



# **DBA/DBRA Compliance Principles**

# DBA/DBRA Compliance Principles

- Laborers and mechanics
- Site of the work
- Classification of Work
- Fringe Benefits
- Deductions
- Certified Payrolls

# Laborers and Mechanics

- Workers whose duties are manual or physical in nature;
- Includes apprentices, trainees and helpers; and
- For CWHSSA, includes guards and watchmen.

# Apprentices

- Persons 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.
- Individuals in their first 90 days of probationary employment as an apprentice in such a program.
- Regulations: 29 C.F.R. §§ 5.2(n)(1) and 5.5(a)(4)(i).

# Trainees

- Persons registered and receiving on-the-job training in a construction occupation under a program approved in advance by DOL's Employment Training Administration (ETA).
- Regulations: 29 C.F.R. §§ 5.2(n)(2) and 5.5(a)(4)(ii).

# Apprentices and Trainees

- Are laborers and mechanics; not listed on WDs.
- Permitted to work on covered projects and be paid less than the journey level WD rate when:
  - Individually registered in an approved apprenticeship or training program;
  - Paid the percentage of hourly rate required by the apprenticeship or training program;

# Apprentices and Trainees

- Paid the FB's specified in approved program; if the program is silent, the full amount of FB's listed on the WD; and
- Are employed within the allowable ratio specified in approved program for the number of apprentices or trainees to journeymen.
  - Note: ETA apprenticeship regulations were revised in 2008; questions about portability of wages and ratios on DBA/DBRA covered projects may require careful consideration by WHD. See 29 C.F.R. § 29.13(b)(7).



# Ratios

- “The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program.” 29 CFR 5.5(a)(4)(i)
- 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.

# Laborers and Mechanics

- Does not include:
  - Timekeepers, inspectors, architects, engineers; or
  - Bona fide executive, administrative, and professional employees as defined under FLSA.
- Working foremen are generally non-exempt:
  - must be paid the Davis Bacon (DB) rate for the classification of work performed if not 541 exempt.

# Site of the Work

- Davis-Bacon applies only to laborers and mechanics employed “directly on the site of the work.”
- A three-part definition applies to determine the scope of the term “site of the work.”

# Site of the Work Definition ¶1

- DBA applies only to workers “directly on the site of the work:”
  - The physical place or places where the construction called for in the contract will remain after work has been completed; and
  - Any other site where a **significant** portion of the building or work is constructed, *provided that* such site is established specifically for the contract.

# Site of the Work Definition ¶2

- “Site of the work” also includes job headquarters, tool yards, batch plants, borrow pits, etc., *provided* they are:
  - Located adjacent or virtually adjacent to the “site of the work” described in paragraph 1; and
  - Dedicated exclusively or nearly so to the performance of the contract or project.
  - Except if they are excluded – see next slide

# Site of the Work Definition ¶3

- “Site of the work” does not include a contractor’s or subcontractor’s:
  - permanent home office, branch locations, fabrication plants, tool yards, etc.;
  - whose location and continuance in operation are determined without regard to a particular covered project.

# Definition ¶3 (Cont'd.)

- Also not included in the “site of the work” are:
  - Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials:
    - Before the opening of bids for a project; and
    - Not located on the actual site of the work.
  - Such permanent, previously established facilities, are not part of the “site of the work,” even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

# Truck Drivers

- Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:
  - Spent working on the “site of the work;”
  - Transporting materials and supplies between a facility that is part of the “site of the work” and the actual construction site; or
  - Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain.



# Wages & Fringe Benefits

- All laborers and mechanics employed or working upon the site of work must be paid at least the applicable prevailing wage rate for the classification of work performed, without regard to skill.

# Wages & Fringe Benefits

- Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed.” 29 CFR 5.5(a)(1)

# Wages & Fringe Benefits

- DBA: the terms “wages” and “prevailing wages” include:
  - The basic hourly rate (BHR);
  - Contractor contributions *irrevocably* made to a trustee or third party pursuant to a bona fide fringe benefit (FB) fund, plan, or program; and/or
  - The rate of costs the contractor reasonably anticipates in providing bona fide FB’s where certain conditions are met.

# Wage & Fringe Benefits

- Under DBA, FB's are a component of the DBA “prevailing wage.”
- The prevailing wage obligation may be satisfied by:
  - Paying the BHR and FB in cash (including negotiable instruments payable on demand);
  - Contributing payments to a bona fide plan; or
  - Any combination of the two.

# Wages & Fringe Benefits

- Must be paid weekly for all hours worked:
  - Unless the fringe benefits are paid into a bona fide FB plan and then contributions must be paid no less often than quarterly.
- Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation (unlike under SCA).

# Prevailing Wage Example

- **BHR** **\$14.00**
- **FB** **\$ 1.00**
- **Total prevailing wage** **\$15.00**
  
- **The contractor may comply by paying:**
  - **\$15.00 in cash wages**
  - **\$14.00 in cash wages plus \$1.00 for FB**
  - **\$12.00 in cash wages plus \$3.00 for FB**

# Prevailing Wage Example

- An employee spent 32 hours working as an electrician, with a BHR of \$22.00 and an FBR of \$3.00, and 8 hours working as a laborer, with a BHR of \$14.00 and a FBR of \$1.00.
- The employee is due \$800.00 for his electrician work (32 hours X (\$22.00 + \$3.00)) and \$120.00 for his laborer work (8 hours X (\$14.00 + \$1.00)), for a total of \$920.00.
- The \$920.00 can be paid in any combination of cash wages and fringe benefit contributions.

# Examples of Fringe Benefits

- Life Insurance;
- Health Insurance;
- Pension;
- Vacation;
- Holiday; and
- Sick Leave.



# Funded Fringe Benefit Plans

- 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*.
- Credit is for payments made for individual workers eligible to participate in the plan, program, or fund.

# Unfunded Fringe Benefit Plans

- Costs for an “unfunded” FB plan count towards WD obligation if specific criteria are met:
  - The contributions reasonably anticipate the cost to provide a bona fide FB;
  - Contributions are made pursuant to an enforceable commitment;
  - That is carried out under a financially responsible plan; and
  - The plan has been communicated in writing to affected workers.
  - The plan has been approved by WHD

# Eligibility and Participation

- Employers may not take credit for contributions for employees who are not eligible to participate in the fringe benefit plan.
- Employers may take credit for contributions made on behalf of employees 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)

# Administrative Expenses

- The administrative expenses incurred by a contractor or subcontractor in connection with the administration of a bona fide fringe benefit plan are not creditable towards the prevailing wage under the DBA.

# Annualization Principle

- Davis-Bacon credit is based on the effective annual rate of contributions for all hours worked in a year (both Davis-Bacon and non-Davis-Bacon work).
- 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.

# Annualization –

## Computing the creditable hourly rate

- Determine the hourly rate of contribution that is creditable towards a contractor's Davis-Bacon prevailing wage obligation by:
  - Dividing the total annual contributions by the total annual hours worked (both Davis-Bacon and non-Davis-Bacon work).

# Annualization – Exception

## Certain Defined Contribution Pension Plans

- An exception to annualization applies to:
  - Defined contribution pension plans that provide:
    - immediate participation; and
    - essentially immediate vesting (100% vesting after an employee works 500 or fewer hours).
- This exception allows full credit for the amount of contributions made on Davis-Bacon work.

# Annualization — Example

- A firm's contribution for an employee's pension plan that does not provide for immediate vesting was computed at \$2,000 a year.
  - The employee worked 1,500 hours on a Davis-Bacon project and 500 hours on other jobs not Davis-Bacon covered.

Credit per hour:  $\$2,000 / 2000 \text{ (hours)} = \$1.00$



## Computing hourly fringe benefit equivalents creditable for contributions made weekly, monthly, quarterly, etc.

- In determining cash equivalent credit for fringe benefit payments, the period of time to be used is the period covered by the contribution.
  - If contributions are made weekly, cash equivalents should be computed weekly.
  - If contributions are made quarterly, cash equivalents should be computed quarterly, etc.

# Computing the Hourly Equivalent Fringe Benefit Credit – Medical Insurance

- Employer provides medical insurance at \$200 per month to an electrician on a Davis-Bacon project. The WD requires \$16.00 plus \$2.50 in FB's, or \$18.50 an hour. Employee works 160 hours a month
  - $\$200/160 \text{ hours} = \$1.25$  credit per hour for the FB
  - No other benefit provided
  - Electrician is due: \$17.25 in cash wages per hour  
( $\$18.50 - \$1.25 = \$17.25$ )

# Fringe Benefit Payments in Advance – converting to hourly cash equivalents

- On occasion, a contractor may offset the annual cost of a particular fringe benefit by converting such costs to an hourly cash equivalent
  - Since construction workers often do not work a full year (2,080 hours), if a contractor makes annual payments in advance to cover the coming year cost, and actual hours worked will not be determinable until year-end, total hours worked by DB-covered workers in the preceding year (or plan year) can be considered representative of a normal work year in the computation.
  - Example: Assume total annual cost of pension program is \$15,000, and that the total working hours (DB and non-DB) for the workers on whose behalf the employer made contributions in the previous year was 15,000.  
 $\$15,000 / 15,000 \text{ hours} = \$1.00 \text{ per hour cash equivalent}$

# Fringe Benefit Payments in Advance – converting to hourly cash equivalents

- Where the contractor pays monthly health insurance premiums in advance on a lump sum basis, the total hours worked in the previous month or in the same month in the previous year may be used to determine (i.e. estimate) the hourly equivalent credit per employee during the current month.
  - Any representative period may be used, provided the period selected is reasonable.
  - However, keep in mind that If the employer contributes at different rates, such as under a health insurance plan for single and family plan members, credit cannot be taken based on an across the board average, but rather must be computed to reflect the cash equivalent to be credited for each individual employee.

# Deductions

- 29 CFR 3.5 lists deductions that an employer can make from the prevailing wage rate without the approval of the Secretary of Labor.
- Examples include Social Security and federal or state taxes, certain court-ordered payments, bona fide pre-payments of wages, certain payments of union dues, and voluntary charitable donations.

# Deductions

- 29 CFR 3.6 generally provides that the Secretary may approve other deductions whenever all of the following conditions are met:
  - The contractor does not profit directly or indirectly from the deduction
  - The deduction is not otherwise prohibited by law
  - Either the employee voluntarily consented to the deduction in writing in advance of the time that the work was performed or the deduction is under the terms of a collective bargaining agreement
  - The deduction serves the convenience and interest of the employee

# Payroll and Basic Records

- Payrolls and related basic records shall be maintained by the contractor during the course of the work and for three years thereafter for all laborers and mechanics working at the site of the work.
- Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. 29 CFR 5.5(a)(3)

# Certified Payrolls - Continue

- Weekly payrolls must include specific information as required by 29 C.F.R. § 5.5(a)(3).
- Weekly payroll information may be submitted in any form desired.
  - Optional Form WH-347 is available for this purpose
  - The WH-347 form, with instructions, is at:

*<http://www.dol.gov/whd/forms/wh347instr.htm>*



# WHD Internet Sites

- Wage Determinations – <https://beta.sam.gov/>
- Wage and Hour Division - <http://www.dol.gov/whd/index.htm>
- Resource Book - <https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book>
- Office of the Administrative Law Judges Law Library - <http://www.oalj.dol.gov>
- Administrative Review Board - <http://www.dol.gov/arb>

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