



# PREVAILLING WAGE SEMINARS



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



# Davis-Bacon Wage Determinations, Conformances, and Application of Multiple Wage Determinations

# Davis-Bacon

## Wage Determinations

- 1. Federal agency responsibility to identify.**
- 2. General wage determinations (WDs).**
- 3. Project WDs.**
- 4. Selecting proper WD.**
- 5. Interpreting wage determinations.**

# Federal or Funding Agency Responsibilities

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

# Wage Determinations

- **General wage determinations.**
- **Project wage determinations.**

# “General” WDs

- **Issued for most counties for each major type of construction (building, heavy, highway and residential) nationwide.**
- **Official site for General Wage Determinations – [www.beta.sam.gov](http://www.beta.sam.gov).**
- **May be used by Federal agencies without notifying the WHD.**

# “Project” WDs

- **Issued at request of federal agency;**
- **No “General” WD in effect;**
- **Standard Form (SF) 308 used to request;**
- **Application to a specific project only;**
- **Effective for 180 days; and**
- **Virtually all work (100%) on contract performed by a classification not listed on General WD.**

# Selecting & Incorporating Proper WD (Construction Type - AAM 130)

- **Building;**
- **Residential;**
- **Highway; and/or**
- **Heavy.**

# Selecting & Incorporating Proper WD (Construction Types - AAM 131)

- **Application of Multiple Wage Schedules**
  - **(AAM 131)**
  
- **Separate construction types and:**
  - **At least 20% of the total project is a different type of construction; and/or**
  - **The different type of construction is at least \$1,000,000 in cost.**

# Categories of Construction Projects

- “The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on *projects of a character similar* to the contract work” in the locality where the work is performed.” 40 USC 3142(b).
- WHD has identified four general categories of construction: Building, Residential, Highway and Heavy.

# Building Construction

- Construction, alteration, or repair of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies.
- Includes all construction of such structures, the installation of utilities, and the installation of equipment both above and below grade.
- Structures need not be “habitable” to be building construction.
- Installation of machinery or equipment does not generally change the project’s character from building.

# Residential Construction

- Construction, alteration, or repair of single family homes or apartment buildings of no more than four stories in height.
- Includes items such as site work, utilities, etc.

# Residential Construction

## Determining Height

- The lowermost floor counts as the first story when:
  - it contains the main entrance to the building.
  - it is used for apartment space in a way substantially similar to the upper floors.
  - it is primarily above ground on two or more sides.
  - It is primarily above exterior grade on one or more sides and contains at least 50% living accommodations or related non-residential uses.
- Stories below grade used for storage, parking, mechanical systems or equipment, etc., are considered basement stories which are not used in determining a building's height.

# Residential Construction

## Determining Height

- The top story, not finished for living accommodations, between the uppermost floor and the ceiling or the roof above, with floor space as large as the story below, is considered a story for purposes of determining a building's height.
- A half-story finished as living accommodations located wholly or partially within the roof frame with floor space at least half as large as the story below would bring the building above four stories.
- An attic is unfinished space located immediately below the roof. Such space is not used in determining a building's height even if used for storage purposes.

# Highway Construction

- Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects.

# Heavy Construction

- The “other” category - projects that are not properly classified as either “building,” “highway,” or “residential.”
- Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued, such as for dredging, water and sewer lines, dams, major bridges and flood control.

# Applying Multiple Wage Determinations

- Only arises when a project includes construction items that *in and of themselves would be in a separate category of construction.*
- In determining whether a construction item would be in and of itself a separate category of construction, the nature of the construction item/project itself is considered.

# Applying Multiple Wage Determinations

- Once it has been determined that a project has construction work that is and of itself is in a separate category of construction, the next point to consider is whether the cost of the work involved is substantial.
- The cost is generally considered substantial if it exceeds 20% of the overall cost of the project or is over \$1 million.
- If there is a substantial amount of construction in a separate category, multiple wage determinations will be applicable.

# Applying Multiple Wage Determinations

- If the cost is not substantial, it must then be determined whether the work is incidental in function to the overall project.
- If the construction that in and of itself is within a separate category *is not* substantial in cost and *is* incidental in function, one wage determination applies.
- If the construction is neither substantial in cost nor incidental in function (i.e., a small separate project included in the same contract for convenience), two wage determinations would still be issued.

# Referring Questions to WHD

- When referring a question about wage determination applicability to WHD, contracting agencies should provide the following information:
  - a complete and accurate description of the project;
  - where multiple schedules may apply, the major segments of the project and a cost break-down for the construction items involved;
  - evidence of area practice regarding wages paid on similar projects (if available);
  - comments or other information submitted to the agency by interested parties; and
  - the agency's recommendation as to applicability.

# Selecting & Incorporating Proper WD (Current WD)

## **Incorporate most current WD:**

- **Negotiated contracts (“RFPs”) – Time of award.**
- **Competitively bids contracts: In effect 10 days or more before opening of bids.**
- **Exceptions.**

# Selecting & Incorporating Proper WD (Current WD)

## **Extension of General WD:**

- Contract not awarded within 90 days of bid opening.
  - Any modification to the WD must be incorporated into the contract up to award unless the Federal agency requests and obtains an extension of the 90-day period.

# Selecting & Incorporating Proper WD (Current WD)

## **Issuance of WD After Contract Award or Start of Construction:**

- **Failure to incorporate a WD into contract;**
- **Use of a WD that did not apply to the contract;**
- **Incorporation of wrong WD into the contract;**

# Selecting & Incorporating Proper WD (Current WD)

- **Clerical error in WD.**
- **Letter of Inadvertence correcting the error will be issued by DOL.**
- **Corrected WD to be included in contract retroactively.**

# Interpreting “General” WDs

- **Cover Sheet;**
- **Body of WD (classifications, rates & fringe benefits);**
- **Conformance process;**
- **Explanation of rate identifiers; and**
- **Appeals process.**

# Interpreting “General” WDs Cover Sheet

- Decision Number (Supersedeas);
- State;
- County(ies) or City(ies) Covered;
- Type of Construction;
- Description of Construction; and
- Record of Modifications.

# Interpreting “General” WDs Cover Sheet

## **Decision Number (Supersedes):**

- **Annual publication-General WDs.**
- **Replace prior wage decisions.**
- **WD numbers reflect new year.**

# Interpreting “General” WDs Cover Sheet

- **State**
- **County**

# Interpreting “General” WDs Cover Sheet

- **Type of construction.**
- **Description of construction;**
  - **Include and exclude language.**

# Interpreting “General” WDs Cover Sheet

- **HIGHWAY CONSTRUCTION PROJECTS** (Does not include building structures in rest area projects)
- **HEAVY CONSTRUCTION PROJECTS** (includes flood control, water & sewer lines, and water wells; excludes elevated storage tanks, industrial construction-chemical processing, power plants, and refineries)
- **BUILDING CONSTRUCTION PROJECTS** (Does not include single family homes & apartments up to and including 4 stories)

# Interpreting “General” WDs Cover Sheet

## **Record of Modifications:**

- **List of all modifications of the WD:**
  - **Results of new survey; and**
  - **Update union rates.**

# Interpreting “General” WDs Cover Sheet

General Decision Number: LA170002 01/20/2017 LA2

Superseded General Decision Number: LA20160002

State: Louisiana

Construction Type: Heavy

Counties: Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, Lafourche, Livingston, Ouachita, Rapides, St Landry, St Martin, Terrebonne, Webster and West Baton Rouge Counties in Louisiana.

HEAVY CONSTRUCTION PROJECTS (includes flood control, water & sewer lines, and water wells; excludes elevated storage tanks, industrial construction-chemical processing, power plants, and refineries)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/06/2017
1	01/13/2017
2	01/20/2017

# Interpreting “General” WDs

## Body of WD

**List of classifications and rates.**

**Basis for rates – Identifiers:**

- **Union Identifiers; and**
- **SU Identifiers.**

# Interpreting “General” WDs

## Body of WD

### Union Identifiers

**ELEV0101-001 10/01/2017**

**ELEV**ator Constructors: International Union

**Local 101:** Local union Number

**001:** Internal Processing Number

**10/01/2017:** Date the rate became effective on the CBA

# Interpreting “General” WDs

## Body of WD

CARP0055-001

11/01/2016

	<b>Rates</b>	<b>Fringes</b>
CARPENTER (Acoustical Ceiling Installation and Drywall Hanging Only)	\$26.25	\$8.64

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CBA rates are updated when CBA rates are changed

# Interpreting “General” WDs

## Body of WD

### **SU (Non-Union) Identifiers**

**SUCO2015-015**

**07/31/2015**

<b>SU:</b>	<b>SUR</b> vey – Basis of Rate(s)
<b>CO:</b>	Colorado
<b>2015:</b>	Date of Survey
<b>015:</b>	Internal numbering
<b>7/31/2015:</b>	Date submitted for publication

**\* SU rates remain unchanged until new survey**

# Interpreting "General" WDs

## Body of WD

**SUCO2015-015 07/31/2015**

	<b>Rates</b>	<b>Fringes</b>
<b>Bricklayer.....</b>	<b>\$ 21.96</b>	<b>0.00</b>
<b>Carpenter.....</b>	<b>\$ 18.22</b>	<b>0.00</b>

# Interpreting General WD

- **UAVG- Union Weighted Average Identifiers**

- **UAVG-CO-0016 01/01/2016**

- |                          | Rates    | Fringes |
|--------------------------|----------|---------|
| OPERATOR: Bulldozer..... | \$ 37.85 | 22.72   |

- A UAVG rate prevails where 100% of the data reported for the classification is union data but because more than one union performed work in the classification in the locality, no single majority prevailed

- \* UAVG rates are updated annually

# Interpreting “General” WDs Conformance Process

- **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 (29CFR 5.5 (a) (1) (ii)).**

# Criteria for Conformance Actions

- **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.**

# “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 majority of the rates in that category are union or non-union rates
  - Consider the entirety of those rates and determine whether the proposed rate is reasonable in light of those rates
  - Do not automatically use the lowest rate in the category

# “Reasonable Relationship”

- Based on the following, does the proposed hourly rate of \$20.99 plus \$10.04 in fringe benefits (\$31.03 in total) for a skilled craft bear a reasonable relationship to the rates on the WD?

Classification	Sector	Hourly Wage	FB	Total
Carpenter	Union	\$26.06	\$10.56	\$36.62
Cable Splicer	Union	28.62	3% + \$12.98	\$42.46
Electrician	Union	28.37	13.98	\$42.35
Ironworkers	Union	31.09	19.60	50.69
Cement Mason/Finisher	Survey	20.22	7.98	28.20
General Laborer	Union	\$21.04	\$9.65	\$30.69

# Unnecessary Conformance Actions

**Conformance requests are not  
needed for bona fide:**

- **Apprentices;**
- **Trainees; or**
- **Welders.**

# Conformance Process

## Contracting Agency & Contractor

### **Pre-Bid/Pre-Award**

- **Review the WD;**
- **Compare the WD with the project work;**
- **Anticipate needed classifications; and**
- **Apply key criteria.**

# Conformance Process Contractor

## **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 review, signature, and submission to DOL.**

# Conformance Process: Submitting the SF-1444

- <https://beta.sam.gov/help/wage-determination-resources>

# How to Appeal Wage Determinations and Conrformances?

**Has an initial determination been made on a:**

- **Published wage determination (WD);**
- **Wage survey;**
- **Letter setting forth a position; or**
- **A conformance determination.**

# Initial Contact - Appeal Survey

**Initial contact on survey related matters should be directed to the Branch of Wage Surveys.**

# Initial Contact - Appeal WD & Conformance Actions

**Initial contact on WD and conformance actions should be directed to the National Office, Branch of Construction Wage Determinations.**

<http://www.dol.gov/whd/govcontracts/stateassignments.htm>

# Review & Reconsideration

## **Request to the Administrator, WHD:**

- **In writing; and**
- **Include supporting data.**
- **Response or notification of needed additional time within 30 days**

# Final Rulings

**A final ruling will be issued by the WHD Administrator.**

**A final ruling may be appealed to the Administrative Review Board (ARB).**

# Administrative Review Board (ARB)

- **The ARB issues final agency decisions on behalf of the Secretary of Labor:**
  - **Requests for review of WDs must be timely (29 CFR 7.4(a))**
  - **The ARB will not request that a contracting agency postpone contract action (29 CFR 7.4(b))**

# Applicable Regulations

- Title 41 CFR (FAR);
- Federal Register;
- Title 29 CFR (DOL Regulations); and
- Engineer Pamphlet on SCA Labor Relations.

# Sites Relating to Labor Standards & Compliance Requirements

- All Agency Memos Issued by DOL;
- DBA & SCA;
- Office of DOL-Administrative Law Judge-Wage Appeal Board & Administrative Review Board; Decisions-Library;
- DBA-Apprentice & Trainee Info; and
- DOL Prevailing Wage Resource Book.

# All Agency Memos Issued by DOL

## Significant All Agency Memos Issued by DOL

**NOTE: Some of the following links are PDF documents and require the free Adobe Acrobat Reader Ver 5.0 or higher for viewing purposes.**



<a href="#">224</a>	Report of Proposed Construction Programs	<b>17 Jan 17</b>	provides background and context regarding the Davis Bacon Act regulations requiring agencies, at the beginning of each fiscal year and to the extent practicable, to provide the Administrator of the Wage and Hour Division with information regarding their proposed construction programs for the coming year.
<a href="#">223</a>	Fiscal Year 2017 Davis-Bacon Survey Plan & Proposed Fiscal Year 2018 Survey Plan Under Consideration	<b>13 Jan 17</b>	Provides Notification of the FY 2017 Davis-Bacon Wage Survey Plan. The Memorandum also seeks input from stakeholders concerning the FY 2018 Davis-Bacon Wage Survey Plan currently in development.
<a href="#">222</a>	Scope of Davis-Bacon Act Coverage in Light of the D.C. Circuit's Opinion in CityCenterDC	<b>11 Jan 17</b>	provides background and context regarding the Davis Bacon Act and its coverage provisions, summarizes the CityCenterDC opinion, and provides guidance regarding the opinion's significance.
<a href="#">221</a>	2016 Service Contract Act Health and Welfare Fringe Benefit	<b>28 July 16</b>	The benefit rate will continue to be reflected on the wage determinations available at the Wage Determination On-Line website. Please note that due to the retention of the benefit rate there will not be a delay in obtaining wage determinations reflecting the rate of \$4.27
<a href="#">220</a>	Certain Provisions of the Affordable Care Act and Compliance With the Fringe Benefit Requirements	<b>30 March 16</b>	DOL provides guidance regarding the interaction of the Affordable Care Act and the fringe benefit requirements of the McNamara-O'Hara Service Contract, Davis-Bacon Act, and Davis-Bacon Related Acts
<a href="#">219</a>	2016 Davis-Bacon Wage Survey Plan	<b>23 March 16</b>	Notification of the 2016 Davis-Bacon Wage Survey Plan. The memorandum also seeks input from stakeholders concerning the FY 2017 Davis-Bacon Wage Survey Plan that is currently in development
<a href="#">218</a>	Update to SCA Methodology	<b>08 Dec 15</b>	Updates to Wage Determinations Issued Under the SCA
<a href="#">217</a>	Annual Updating of SCA Health & Welfare benefits	<b>30 June 15</b>	DOL announced SCA Health and Welfare Fringe Benefit Changes
<a href="#">216</a>	Annual Updating of SCA Health & Welfare benefits	<b>22 July 14</b>	DOL announced SCA Health and Welfare Fringe Benefit Changes
<a href="#">215</a>	Streamlining Claims for Federal Contractor Employees Act	<b>10 March 14</b>	DOL issues guidance on implementing Streamlining Claims for Federal Contractor Employees Act (Pub L.113-50)
<a href="#">214</a>	Annual Updating of SCA Health & Welfare benefits	<b>18 June 13</b>	DOL announced SCA Health and Welfare Fringe Benefit Changes
<a href="#">213</a>	Application of the Davis-Bacon and Related Acts requirement that wage rates for additional classification, when "conformed" to an existing wage determination, bear a "reasonable relationship" to the wage rates in that wage determination	<b>22 March 13</b>	DOL issues guidance on the "conformance" process and application of the Davis-Bacon Act (DBA)
<a href="#">212</a>	Applicability of Davis-Bacon labor standards to members of survey crews	<b>22 March 13</b>	DOL issues guidance on the application of the Davis-Bacon Act (DBA) to survey crew members
<a href="#">211</a>	Annual Updating of SCA Health & Welfare benefits	<b>11 June 12</b>	DOL announced SCA Health and Welfare Fringe Benefit Changes
<a href="#">210</a>	Annual Updating of SCA Health & Welfare benefits	<b>17 June 11</b>	DOL announced SCA Health and Welfare Fringe Benefit Changes
<a href="#">209</a>	Annual Updating of SCA Health & Welfare benefits	<b>9 June 10</b>	DOL announced SCA Health and Welfare Fringe Benefit Changes
<a href="#">208</a>	ARRA and Davis-Bacon Act Applicability	<b>5 May 10</b>	DOL issued guidance on Applicability of Davis-Bacon labor standards to construction financed with the proceeds of certain tax-favored bonds under section 1601 of Division B of the American Recovery and Reinvestment Act of 2009
<a href="#">207</a>	ARRA and Davis-Bacon Act Applicability	<b>29 May 09</b>	DOL issued guidance on Applicability of Davis-Bacon labor standards to Federal and federally-assisted construction work funded in whole or in part under provisions of the American Recovery and Reinvestment Act of 2009 (ARRA)

# Prevailing Wage Resource Book



UNITED STATES  
DEPARTMENT OF LABOR

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## Wage and Hour Division (WHD)

### Prevailing Wage Resource Book

May 2015

#### Resource Book - Table of Contents

(By Tab Number & Section Title)

1. [Title Page, Legal Disclaimer, Table of Contents](#) (PDF)
2. [Acronyms Used in This Resource Book & Useful Web links](#) (PDF)
3. [Introduction to the Labor Standards Statutes Coverage](#) (PDF)
4. [Interaction PCA & SCA & DBA on Federal Contracts](#) (PDF)
5. [Davis-Bacon Surveys](#) (PDF)
6. [Davis-Bacon Wage Determinations](#) (PDF)
7. [Davis-Bacon Additional Classifications Process \(Conformances\)](#) (PDF)
8. [Appeals Regarding Davis-Bacon Wage Determinations & Conformance Actions](#) (PDF)
9. [DBA/DBRA Compliance Principles](#) (PDF)
10. [Overtime Pay on DBA/DBRA Contracts](#) (PDF)
11. [Investigative Procedures under DBA/DBRA/CWHSSA](#) (PDF)
12. [DBA/DBRA/CWHSSA Withholding and Disbursement](#) (PDF)
13. [SCA Administrative Variances & Exemptions](#) (PDF)
14. [SCA Wage Determinations](#) (PDF)
15. [SCA Conformance Process](#) (PDF)

# Sites Relating to Contracting Agency Pre-Award Activities

- Debarred, Ineligible Contractors Listing;
- VETS;
- OFCCP National Pre-Award Registry;
- OFCCP Construction Industry Goals; and
- OFCCP Regional Offices.

# Related Documents/Links

- Wage Grade Rates;
- General Schedule Rates;
- Acquisition Network;
- Federal Acquisition Council;
- First Gov;
- FedBizOpps; and
- National Technical Information Service.

# Related Documents/Links

- Office of Labor Relations, HUD;
- Questions for Agency Labor Advisors;
- Federal Procurement Dollars: A Federal Procurement Data System Snapshot of Actions Subject to SCA and DBA (PP Presentation); and
- SF 308 (Request for Project DBA WD) per FAR 22.404-3 and Title 29 CFR Part 1.5.

# Cross Walk from Title 29 CFR to Title 48 CFR

- Cross Reference - Index between the DOL regulations and the FAR Regulations.

# Cross Walk – FAR – DOL

Wage Determinations - Microsoft Internet Explorer provided by US Department of Lab

Address: <http://www.wdol.gov/crossindex.html>

LABOR STANDARDS / CONSTRUCTION	FAR	CFR
<b><i>Additional Classifications</i></b>		
1. SF 1444	22.406-3(a)	5.5a(1)ii(A)
2. Criteria	22.406-3(b)	5.5a(1)ii(A)
<b><i>Administration</i></b>		
1. General Wage Determinations	22.404-1(a)	1.6(a)
2. Project Wage Determinations	22.404-1(b)	1.6(a)1
3. Prevailing Wages		1.2(a)1
<b><i>Applicability</i></b>		
1. Batch Plants	22.401(b)	5.2(L)2
2. Construction, Alteration, Remodeling Nonconstruction w/ some construction	22.402(a)(i)22.402(b)1	5.2(j)1(L)4.116 (c)2
3. Demolition (follow on construction)	22.402(a)(ii)	4.116(b)
4. On Site Fabrication	22.402(a)(iii)	5.2(j)1(iii)
5. Painting & Decorating	22.402(a)(iv)	5.2(j)1(ii)
6. Transportation (Related)	22.401	5.2(j)1(B)
<b><i>Contracts with options to extend the term of the contract</i></b>		

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# Other Internet Sites

Wage and Hour Division:

<http://www.dol.gov/whd/index.htm>

Office of the Administrative Law Judges Law Library:

<http://www.oalj.dol.gov>

Administrative Review Board:

<http://www.dol.gov/arb>

Debarred Bidders List: <http://www.sam.gov>

# Disclaimer

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