

Welcome to the Prevailing Wage Seminar.

My name is Daryl Davis-Ferra and I am a Senior Investigative Advisor with the Western Region and I am here to present on certified payrolls.

There are two separate contract clause requirements that apply to “certified payrolls” for a project:

The contractor shall submit weekly for any week in which any contract work is performed a copy of all payrolls. And each weekly payroll submitted must be accompanied by a “Statement of Compliance.”

The contractor shall submit weekly for each week to the appropriate federal agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, such as a state or local agency. Apart from the requirement stated in subsection 5.5(a)(3)(ii)(A), requirements stipulates that each weekly payroll submitted must be accompanied by a “Statement of Compliance.” The provisions requires that: “Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract.

Weekly payrolls must include specific information as required by 29 C.F.R. § 5.5(a)(3).

The payrolls submitted are required to “set out accurately and completely” the name of each worker, his or her correct classification that they are performing work in, 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 the Act (see the previous slide please), daily and weekly number of hours worked, deductions made and actual wages paid.

Full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee such as the last four digits of the employee's social security number.

Contractors employing apprentices or trainees under the approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and the wages and the wage rates prescribed in the applicable programs. Form WH347 is available for this purpose and you can also find the instructions on the web site listed on this slide.

Weekly, the contractor must submit “a copy of all payrolls” to the federal agency; or to the contract, to the applicant, sponsor, or owner for transmission to the federal agency. If a state or local government agency that receives the certified payrolls is authorized by the federal agency to hold them for the federal agency responsible for the federal assistance that carries Davis-Bacon labor standards, these records are considered federal records and they may be subject to FOIA requirements.

The "Statement of Compliance" must be attached to each weekly payroll submitted and must be signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract. The statement certifies the following: (1) that the payroll for the payroll period contains the information that is required to be provided and all appropriate information is being maintained and is correct and complete; (2) That each laborer or mechanic has been paid the full weekly wages earned; (3) That each laborer or mechanic has not been paid not less than the applicable wages as specified in the applicable wage determination incorporated into the contract. This form is optional for use. Any other form will be acceptable as long as it contains identical wording contained in the WH-347 form.

This slide shows the regulatory requirements and reflects the language of the WH-347. "Statements of Compliance" submitted or transmitted to the appropriate federal agency certifies the requirements listed on the slide and reviewed in the previous slide. The five points here on this slide are the ones that we went over on the previous slides.

In addition to basic hourly rates paid to each labor and mechanic listed in the above referenced payroll, payment of fringe benefits as listed in the contract have been made or will be made to appropriate programs for the benefit of such employees. The exception is for workers who are paid in cash as indicated on the payroll an amount not less than the sum required on the applicable wage determination and will be noted in section 4 of the WH 347 form.

The statement of compliance must be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. When we do an investigation, the first person we interview is the person who signed the certified payroll. The statement of compliance is important and the representative who certified it should have the knowledge needed to be able to tell us who performed the work, the classification of each worker, and the wages paid according to the applicable WD

Each weekly statement must be delivered or mailed by the contractor, or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency contracting for or financing the building or work.

The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the contracting agency or the Department of Labor. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to suspend further payment, advance, or guarantee of funds, Furthermore, failure to submit the required records upon request or to make records available may be grounds for debarment action.

The signature on each weekly "Statement of Compliance" may be either an original handwritten or an electronic signature. A contracting agency or prime contractor may permit or require contractors to submit the weekly payrolls, each with the accompanying "Statement of Compliance," through an electronic system. We are going to talk in more depth about electronic payroll in the upcoming slides.

Photocopies or "pdf" copies of the "Statement of Compliance," faxed "Statements of Compliance," or an electronically scanned "Statement of Compliance" e-mailed to an agency do not satisfy the requirement that each "Statement of Compliance" be "signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract. It has to be through an approved web based system. This fact is particularly important in the context of 29 C.F.R.

5.5(a)(3)(ii)(D) which emphasizes the fact that: "The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code."

Under pertinent provisions of the Copeland Act and the Government Paperwork Elimination Act, Wage Hour affirms that the use of electronic signatures is sufficient for compliance purposes under the Copeland Act. The use of electronic signatures to satisfy requirements of the Copeland Act and its regulations by the use of an "agency approved limited access Web-based portal" should include the legally valid electronic signature of the "contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract." Web-based certified payroll compliance solutions exist and some agencies and contractors have set up systems to comply electronically.

Wage Hour Division encourages all government agencies to permit contractors to submit certified payrolls electronically or through allowing access to appropriate agency approved limited access Web-based portals providing the required information and certification. This relates to both the federal agencies and non-federal agencies that have federal assistance under DBRA requirements. Some agencies have made this mandatory under the terms of their contracts.

Please note contracting agencies determine electronic submission options.

Web-based systems for the electronic submission of certified payrolls often include compliance monitoring tools, are valuable, for example, in flagging discrepancies between the required rates and those shown on the payrolls. They can improve efficiency in the review of data reported, as well as reduce recordkeeping burdens and storage expenses.

The importance of the "Statement of Compliance" requirement is clear in that;

“The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.” Criminal penalty for falsification of certified payrolls may include jail time and/or fines.

Now the next PowerPoint is going to be a certified payroll exercise, and the following slides contain a sample certified payroll to review and discuss. This sample certified payroll contains several omissions and indications of potential violations.

The following information from the wage determination may be helpful in reviewing the certified payroll.

Hopefully everyone has had a chance to review the CPR exercise:

This is an important exercise because the review is important for compliance, we review certify payroll to find red flags that lead us to take further action, such as interviewing the EES or questioning the contractor, or asking for additional records. So we are going to go through the answers and some of things that should have been noted on the certified payroll. On the 1st slide you have the wage determination, this is what we use to perform the exercise.

This is a copy of the Certified payroll that all you all are looking at, this is the 1st page, this is 2nd page. List names of EES and classification, wages and deductions. This is the important statement of compliance that the contractor must sign and submit.

So let's go through on page 1, answer 1. We are looking at, there are three Carpenters (Joseph Anderson, Thomas Bedwell, and Todd Larson). Two of them (Bedwell & Larson) have been underpaid for their overtime work. Remember that laborers and mechanics must be paid for all hours worked including fringes. So your basic hourly rate on the wage determination is \$13.35, your fringe benefit rate was \$4.63, your total package is \$17.98. So the basic rate is 1 ½ times, \$20.02 is your overtime rate. But remember that fringes have to be paid for every hour worked as well. So that's important to note, when you see overtime is to make sure that fringes were paid for all hours worked.

Let's get to the next slide. So the next slide here, we also note that we have apprentice and we have trainees. So contractors have to provide evidence of a bona fide registered apprenticeship and trainee program with the U.S. Department of Labor. Individual registration should be verified and the ratios and levels of progression per individual should be confirmed. If a contractor has both an apprentice and a trainee program, the trainees must be counted together with the apprentices in determining compliance with the allowable ratio. The apprentice program should also be reviewed for the fringe benefit requirements. In this case, the apprentices have been paid 60% of the journeyman rate plus the

full amount of the fringe benefits. So whenever you see apprentice or trainees on certified payroll, it is really important to make sure they have a bona fide program in place and every contractor should have a copy of that to provide to you.

So on #3, we have unskilled laborers (James P. Burke and John Bums) are listed as working only 4 hours each day within a work week; fewer hours as the other employees. This could be an indication that the laborers are being paid only $\frac{1}{2}$ the applicable wage determination rate. So it also important to look at hour and make sure hours are consistent among workers.

Arnold Peterson's exact classification should be confirmed by interviews. The firm's method of paying the employee $\frac{1}{2}$ his hours as a laborer and $\frac{1}{2}$ as a plumber may be a method used to pay Peterson less than the full plumber's rate. So interviewing Arnold Peterson would be important.

James Nulty is listed on the certified payroll as a "Sheet Metal Worker helper", but there are no helpers listed on the WD. Therefore, James Nulty must be paid the rate for the classification of work he is performing. He must be paid as a journeyman sheet metal worker at a rate of \$15.24 + \$3.78.

Slide

Thomas Bedwell is due an additional \$100 as a result of a payroll error in adding the individual payroll deductions. Numerous errors of this nature could be an indication of payroll falsification. So it's important when you see deductions to make sure deductions are valid.

The repayment of a bank loan for Clements should be verified to make certain it was authorized by the employee or ordered by a court. Again, paying attention to advances, loans, deductions, we want to make sure they are bona fide.

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The overtime rates should always be carefully checked. In the case of Anderson, the firm is showing that it pays double time wages for the overtime hours. They are calculating 5 hours times \$35.96. It may mean that the contractor is merely reducing the overtime hours by $\frac{1}{2}$ in order to simulate CWHSSA compliance. The employee should be interviewed to determine compliance to make sure his hours are accurately reported on the certified payroll.

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There is no identifying number for any worker. The last four digits of the social security number is one possible identifying number that could have been used. It is important to remember that there has to be some type of identifying number for workers on certified payroll. The contractor can create an identifying number and use that. Using the last 4 of the social security number if just a possible way to do that.

On the certification page, the title of the signatory party is not provided at the top of the form. That should always be provided and something that should be noted.

On the certification page, item number 4 (a) or (b)'s box, 'Where Fringe Benefits Are Paid In Cash' is not checked when it should have been. Anytime the contractor is paying fringes in cash then they should check this box as indication that you know fringes were paid in cash.

On the certification page, the signature box is not signed by Mr. Hale Hardee. That is simply a typed in signature which is not acceptable. So he needs to sign and certify that the information he has submitted is accurate and reflects all the required information required by the Act.

Here is the answer sheet that was provided for you to review that we just went through. This contains the answers for 1 through 12.

That is the end of our certified payroll training. I hope you all found that helpful and it provides guidance when looking at certified payroll and understanding the requirements of the regulations. Thank you.