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Thank you all for participating in the 2020 Virtual Prevailing Wage Seminars. My name is Natalie Collins, a Senior Advisor for Government Contracts Enforcement at our National Office, and I am here with my colleague, Matt Visnick, the Regional Enforcement Coordinator for the Mid-West Region. In these recorded presentations, the Wage and Hour Division will provide you with detailed information on compliance with the labor standards provisions of the Davis-Bacon Act, the Contract Work Hours Safety Standards Act, or CWHSSA, and the Service Contract Act. As a quick reminder before we get started, if you have any questions after viewing this or any of the other virtual seminar presentations that you would like us to address at the Question and Answer Sessions in September, you don't have to hold onto your questions until then. You can email those questions to us in advance through your EventBrite registration site, or by sending an email directly to collins.natalie@dol.gov.

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In this presentation, we will provide information about the Davis-Bacon labor standards, and how these labor standards should be applied to ensure that prevailing wage requirements are met. The source of these requirements is the Davis-Bacon Act itself, as well as the regulations at 29 CFR Parts 1, 3, and 5.

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In particular, this presentation will delve into the details of Davis-Bacon compliance, starting with a discussion of which workers are subject to Davis-Bacon labor standards, as well as the location-specific limitations on the prevailing wage requirements. The presentation will also discuss how to ensure that covered workers receive the correct prevailing wage rate for the classifications of work they perform, and how contractors can claim a credit towards their prevailing wage obligations for the fringe benefits that they provide to their workers. We'll also cover when contractors can take deductions from Davis-Bacon prevailing wages, and the requirement for contractors to submit certified payrolls to their contracting agency, affirming that prevailing wages have been paid to the covered workers.

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The Davis-Bacon Act does not require prevailing wages to be paid to all workers who perform work connected to the covered contract. Prevailing wages must only be paid to laborers and mechanics.

These terms include workers who perform primarily manual or physical work, who use tools or who are performing the work of a trade, such as Plumbers, Pipefitters, Electricians, Carpenters, Laborers, Equipment Operators, Truck Drivers, and so on. These occupations are normally listed on our wage determinations. Apprentices and Trainees, although not listed on the Wage Determination, are also included in the definition of laborer or mechanic. Helpers are also considered laborers and mechanics, when listed on the wage determination or the subject of an approved conformance.

The Contract Work Hours & Safety Standards Act, or CWHSSA, is a statute that requires payment of overtime at time and one half for all hours over 40 in a week on a Davis Bacon covered contract. CWHSSA applies to guards and watchmen as well as laborers and mechanics.

Although the Davis-Bacon Act only requires payment of prevailing wages to laborers and mechanics, prevailing wages must be paid to those laborers and mechanics "regardless of any contractual relationship that may be alleged to exist." In other words, laborers and mechanics must be paid

prevailing wages even if they are not employees of the contractor or sub-contractor, such as independent contractors or workers obtained through temporary staffing agencies.

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As we just mentioned, apprentices are also laborers or mechanics but don't appear on a wage determination. So how do we know when someone is actually an apprentice?

Apprentices must be individually registered in a program with the Department of Labor's Employment Training Administration, Office of Apprenticeship, or a state agency recognized by the Department of Labor's Office of Apprenticeship. This also includes individuals in their first 90 days of probation under such a program. Contractors should maintain a copy of the relevant apprenticeship agreement, setting forth the terms of the apprenticeship, as well as the worker's registration in that program.

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Trainees are similar to Apprentices. A worker will be considered a bona fide trainee if they are receiving on the job training in a construction occupation under a program which has received prior approval from the Department of Labor's Employment and Training Administration, or, for some programs, the Federal Highway Administration. Unlike Apprentices, state apprenticeship agencies have no authority to approve training programs for recognition on Davis Bacon covered contract work.

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Once you have determined that someone is a bona fide apprentice, how do you know what rates they should be paid, since they are not listed in the wage determination? As we just discussed, bona fide apprentices will be registered in an approved apprenticeship program, with an apprenticeship agreement stating the terms of the apprenticeship. That apprenticeship agreement will provide information on how apprentices should be paid. Typically, the agreement will state that for each level of apprenticeship that the apprentice passes through as they gain experience, the apprentice should be paid a gradually increasing percentage of the journeyworker rate. That percentage would be applied to the base hourly rate listed on the wage determination to find out how much an apprentice must be paid on a particular Davis- Bacon project. For example, if a 2nd year Electrician apprentice's agreement indicates they are to receive 65% of the journeyworker wages, then we would look at the wage determination to find the Electrician classification and calculate the apprentice's wages based on 65% of the listed journeyworker base hourly rate.

Note that although many apprenticeship agreements specifically list the percentage applicable to an apprentice at different levels of apprenticeship, some agreements instead state a journeyworker rate and a specific wage rate for each level of apprenticeship instead. For such agreements, the contractor cannot just pay the flat apprentice rate listed in the wage determination for work on Davis-Bacon contracts. Instead, the contractor would convert that rate to a percentage, by dividing the stated apprentice rate by the stated journey worker rate, and apply that percentage to the wage rate listed in the applicable wage determination to determine the prevailing wage rate for that apprentice.

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Once the percentage of the base hourly wage rate due to an apprentice has been determined, however, that percentage does not necessarily apply to the fringe benefits listed on the wage determination for

that classification. If the apprenticeship agreement explicitly states that a percentage applies to fringe benefits, then the contractor may apply that percentage to the fringe benefits listed in the wage determination, but if the apprenticeship agreement is silent as to fringe benefits, the full fringe benefit amount must be paid to the apprentice.

Contractors are also limited in the number of apprentices and trainees permitted on a covered project based on the allowable ratio of apprentices and trainees to journeyworkers. This ratio is specified in the approved apprenticeship agreement. For example, an apprenticeship agreement for Electricians may require a 3:1 apprentice ratio. This means that the contractor must have at least three journey level electricians on the worksite before they can have one apprentice and pay that apprentice at the apprentice rates.

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In determining whether apprentices are employed within their permitted ratio, it is important to keep in mind that the ratio that applies to the contractor's workforce as a whole must also be met on each of the contractor's worksites. In other words, if the apprenticeship agreement has a 3:1 ratio, the contractor must have 3 journeyworkers on each jobsite where one apprentice is working to be able to pay those apprentices the lower apprentice rate. The contractor could not merely have three journeyworkers for each apprentice employed by the company, but not all working at the sites with the apprentices, because the basis for the apprenticeship is that the apprentice is still learning and needs in person supervision and training.

Similarly, the apprenticeship ratio is determined on a daily basis, not a weekly basis. This means that if a contractor has one apprentice working Monday through Friday at one site, and another apprentice working Monday through Friday at a different site, and the apprentices have a 3:1 ratio, the contractor could not have three journeyworkers at the first site on Monday and Tuesday, and then move those same three journeyworkers to the second site on Wednesday through Friday, and consider the ratios met, because contractors can't use a "fraction" of a journeyworker to meet a ratio, unless the agreement specifically says otherwise. Three journeyworkers must be on the same site with each apprentice for each day that the apprentice is on site. For any day that one of these apprentices is on site without having three journeyworkers onsite as well, that apprentice would have to be paid the journeyworker rate.

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Now that we've talked about who Laborers & Mechanics are, let's talk about who laborers and mechanics are not. They are not timekeepers, inspectors, architects or engineers, or anyone exempt under the 541 regulations under the Fair Labor Standards Act. Those employees are not generally working with their hands, using the tools of the trade, and those other laborer and mechanic characteristics we discussed earlier.

However, working foremen or crew leads are generally non-exempt and must be paid prevailing wages. Working foremen are generally workers who have a lot of experience and skill in a particular trade, and may therefore check other workers to make sure they're doing the work correctly, make sure that plans are being followed, and so on, but they normally work right alongside the rest of the crew, performing

the same type of work. Because their primary duty is to perform that laborer and mechanic work, they would still be considered laborers and mechanics, not exempt supervisors.

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Understanding who is considered to be a laborer or mechanic is an important step in determining when prevailing wages must be paid to a worker on a covered contract, but that's only the 1st step.

In addition to limiting payment of prevailing wages to laborers and mechanics, the statutory language of the Davis-Bacon Act also states that prevailing wages are only required when those laborers and mechanics are employed “directly on the site of work.” Even if the work those laborers and mechanics are performing is related to a Davis-Bacon contract, if it is not performed on the site of work, those laborers and mechanics are not entitled to prevailing wages.

For example, a painter who paints cabinets and trim on the site of work has to be paid prevailing wages for that work, but if that same painter instead paints cabinet and trim back at the contractor’s permanent shop location, away from the construction site, the painter is not entitled to the payment of prevailing wages, even when those cabinets and trim are then going to be installed as part of the Davis-Bacon project. Similarly, construction of pre-fabricated modular units at a permanent manufacturing facility is not subject to Davis-Bacon prevailing wages, while construction of those same units on the site of work would require payment of prevailing wages.

So how do you know if a labor or mechanic is working on the site of work? Site of work is defined at 29 CFR 5.2(l), a three-part definition. Because understanding the site of work is such a necessary component of prevailing wage requirements, we are going to discuss each part of the definition in detail.

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The first part of the definition of site of work is generally the location that most people think of when they hear the term “site of work.” It’s the physical location where the building or work will remain after the construction work called for in the contract has been completed. It is where the construction will stay after the project is done.

This primary site of work can still depend somewhat on the type of project. For the construction of an office building, this primary site of work will normally only include the building itself and its immediate grounds. If the contract calls for a long stretch of highway to be repaired, this site of work will include the entire stretch of highway that is subject to repair. More complex projects will have a more extensive site of work that will generally include a large area where various kinds of construction may take place. The construction of an airport, for instance, would include in its site of work the terminals, runways, and all associated structures.

The definition of site of work also includes any other site where a significant portion of the building or work is constructed, so long as that site was established specifically for that that project. This does not include permanent locations where a portion of the construction takes place, such as the permanent manufacturing plant for pre-fabricated modular units that we mentioned on the previous slide, even if such a permanent facility is almost entirely being used for project-related construction for the duration of the contract. This only includes sites established solely to do that portion of the construction of a

building or work that cannot be performed at the site of the building or work. For example, where a segment of a dam is constructed at a site up-river and floated down to be fixed in place on the support structure across the river itself, where the dam will remain, the temporary site set up for the construction of dam segments up-river would be considered a site of work.

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The definition of site of work also includes other types of sites, such as job headquarters, tool yards, batch plants, borrow plants, and so on, if these sites are located adjacent or virtually adjacent to the primary site of work, that site of work where the building or work will remain, and that site is dedicated exclusively or nearly exclusively to the work needed for the project, with certain exceptions that we will discuss on the next slide.

Whether a site is “virtually adjacent” to the primary site of work does depend somewhat on the nature and location of the primary site of work. To use our earlier example of a dam, if a dam is being repaired, the nearest possible location for a toolyard dedicated to those repairs may necessarily be a short distance from the dam itself. However, “virtually adjacent” must generally be quite close to the primary site of work, and court cases have found distances of 2 to 3 miles to be too far away to be considered virtually adjacent.

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As mentioned on the previous slide, there are certain exceptions to the definition of site of work. A contractor or sub-contractor’s permanent office, shop, fabrication plant, and so on, will not be considered a site of work, even if it happens to be located quite close to the primary site of work and is only being used for that project while the contractor is working on the project, as long as its location and on-going business operations are not just to meet the needs of a particular Davis-Bacon project. For example, if a contractor has a toolyard, and the contractor established the toolyard for its work generally and has used it for various projects, that toolyard will not be considered a site of work.

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Similarly, fabrication plants, batch plants, gravel pits, quarries, and so on, established by a material supplier are not considered a Davis-Bacon site of work, even if they’re located adjacent to the primary site of work, so long as it was established before that particular project began, even if all of its operations or output are dedicated to that project for the duration of the construction work. In other words, if a material supplier has a gravel pit established and selling gravel before a Davis-Bacon project has been awarded, it is not going to be a site of work just because the gravel pit is, for a period of time, selling nearly all of its gravel for use on the Davis-Bacon project, even if the gravel pit happens to be close to the Davis-Bacon project.

Such a plant, yard, pit, etc. that is actually located on the primary site of work will, of course, generally not be able to show that it was established prior to the start of construction for general business purposes and not for that particular project.

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Because of the site of work limitations to Davis-Bacon coverage, determining when truck drivers should be paid prevailing wages can require careful consideration.

Truck drivers employed by the contractor or sub-contractor must be paid prevailing wages for all time spent performing actual construction work on the site of work, and must also be paid for time spent on the site of work making deliveries, if that delivery time is more than de minimis.

Truck drivers employed by the contractor or sub-contractor must also be paid prevailing wages when transporting supplies and materials between two sites of work. For example, a truck driver must receive prevailing wages for all time spent transporting supplies to and from the primary site of work and an adjacent batch plant established particularly for that project.

Similarly, prevailing wages must be paid to truck drivers who are transporting a portion of the building or work from the secondary site established to construct a portion of the building or work to the primary site where the building or work will remain.

However, Davis-Bacon prevailing wages do not apply to drivers employed by bona fide material suppliers when those drivers are merely making deliveries, even if they spend more than a de minimis amount of time on site making deliveries, so long as that's all they do. If the drivers for the material supply company actually do construction work onsite, however, they must be paid prevailing wages for that time.

For example, a driver employed by a material supplier of exterior siding would not be covered for time spent merely delivering the siding, but the driver would have to be paid prevailing wages for time they spend onsite installing the siding.

If a material supplier spends over 20% of their workweek doing onsite construction, all of their onsite time is considered to be for construction work.

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The wages set forth in the wage determination are the minimum wages that must be paid to workers performing work in those classifications. It does not matter the skill level of the worker or if they are licensed or unlicensed. If for example they are performing the work of an electrician, such as pulling wire through conduit, then they must be paid as an electrician.

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If a contractor has a worker that works in more than one classification it is up to the contractor to keep appropriate time records to reflect the time worked in each classification. As an example of this, small non-union contractor had a worker performing the work of a painter for 4 hours in the morning and then finishing the workday performing the work of an Electrician. They must be the appropriate rate time spent in each classification, four hours as an electrician and four hours as a painter.

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Prevailing wage is composed of two parts: the basic hourly rate of pay and a fringe benefit amount. Contractors are required to pay the prevailing wage, so to meet this obligation the contractor has the option to pay an hourly rate with no fringe benefits, or a combination of an hourly rate and some fringe benefits.

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A contractor is allowed to take credit for funding a bona fide fringe benefit in two ways. Periodic payments to a third party, such as a pension plan trustee or insurance company to fund a retirement plan or health benefits for the workers. These are payments irrevocably made and are deemed to have been paid weekly under the regulations.

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Wages under the Davis Bacon Act have to be paid weekly. When fringe benefits are paid into a program then the payments for the fringe benefits must be at least quarterly and under the regulations they're deemed to have been paid weekly.

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Here is an example that shows how a contractor may comply when the base hourly rate of pay is \$14 an hour and the fringe benefit is \$1 an hour, for a total prevailing wage of \$15 an hour. They can comply paying \$15 in hourly wages, \$14 in wages and \$1 in benefits, or a lesser base hourly rate of \$12 and more generous fringe benefits of \$3 an hour. Overtime is always computed on at least the base hourly rate of pay of \$14.

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This example shows a calculation when an employee works in more than one classification. We are determining the time spent in each classification and adding accordingly, so we have a prevailing wage as an electrician of \$25 and a prevailing wage as a Laborer of \$15. Then we have to add. We have 32 hours at \$25 for a total of \$800 gross wages and 8 hours at \$15 for \$120 gross wages, with a total prevailing value of \$920.

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Previous slides have indicated that contractors can meet their prevailing wage requirements by making fringe benefit contributions. This means that it is important to understand what constitutes a bona fide fringe benefit plan, and how the credit for those fringe benefit contributions should be calculated.

This slide lists types of fringe benefits that are common in the construction industry and recognized by the Davis-Bacon Act, but it's not a comprehensive list. If a bona fide fringe benefit plan is prevailing in the local area and is designed to provide benefits to employees on account of death, disability, illness, hospitalization, old age, and similar conditions, the costs of providing that fringe benefit plan will be included when determining the fringe benefit portion of the Davis-Bacon prevailing wage rates listed on the wage determination, and contractors may claim a credit for their contributions towards or costs for these benefit plans.

However, contractors may not claim a credit for contributions to or costs of benefits that they are required to provide by another federal, state, or local law, such as Social Security contributions, State Workers Compensation taxes, or State Unemployment Compensation Fund contributions.

Christmas bonuses, birthday gifts, use of a company vehicle, and other similar payments are also not considered to be bona fide fringe benefits.

It is also important to note that although contractors can take credit for their own contributions towards a fringe benefit plan, they may not take a credit for employee's contributions towards their own fringe benefits, even when the employee contributions are funded through payroll deductions.

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There are two kind of fringe benefit plans commonly referred to as funded fringe benefit plans and unfunded fringe benefit plans.

For funded fringe benefit plans, contractors may take credit, without prior approval from the Department of Labor, for bona fide fringe benefit plan contributions made to third-party trustees or insurers when those contributions are irrevocably paid and are made on at least a quarterly basis. In other words, for a funded fringe benefit plan, the contractor makes regular payments to a third party, such as a monthly premium, and then that third party is responsible for paying out any legitimate benefit claims, not the contractor.

Contractors can take credit for the contributions they make towards the funded fringe benefit plan, but only on the basis of the contributions made for each individual worker, not on the basis of the average contribution for all employees or categories of employees. For example, if a contractor contributes to a health insurance plan that offers both individual and family coverage, so that the contractor only needs to make a smaller premium payment for a worker who chooses individual coverage, the contractor can only take a credit towards that worker's prevailing wages based on that smaller contribution amount. The contractor cannot take a credit for that worker based on the average cost of premiums paid for all workers, or an average of the individual and the family premium, or any other basis than the actual contributions made for that particular worker.

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For the other type of fringe benefit plan, unfunded fringe benefit plans, rather than paying contributions to a third party who is responsible for paying out the benefit claims, the contractor provides fringe benefits directly to workers, paying the benefit claims themselves out of their own assets. Examples of unfunded fringe benefit plans include self-funded medical insurance, self-funded pension plans, or even paid time off or paid sick leave plans.

A contractor can claim a credit towards their prevailing wage obligations for the reasonably anticipated costs of providing benefits under an unfunded plan if certain criteria are met:

The contractor should be able to show that the contributions for which the contractor is claiming a credit, are the reasonably anticipated costs of actually providing benefits. The contractor can show this by demonstrating that the anticipated costs were calculated using established actuarial methods, using reasonable data for the basis of the calculations, such as the costs of the prior year's claims, or also information on the industry average costs for providing similar benefits. As with funded fringe benefit plans, the contractor's calculation of the reasonably anticipated costs must be based on the costs of providing benefits to the individual workers. As with the funded plans, if the contractor's unfunded plan provides different levels of benefits to workers, and those different levels of benefits result in different levels of costs, when calculating the contribution and credit for the individual worker, the contractor must calculate that credit based on the level of benefits and cost of benefits for that particular employee.

The contractor must be making contributions pursuant to an enforceable commitment. For example, many fringe benefit plan provisions are enforceable under the Employee Retirement Income Security Act (ERISA), or a similar state law.

The contractor must also be able to show that the fringe benefits are being provided under a financially responsible plan, so that the employer will be able to pay legitimate benefit claims throughout the plan year, whenever those claims may be made. The contractor can demonstrate that their unfunded plan is financially responsible by showing that on at least a quarterly basis, they either set aside an amount of money equivalent to the amount of fringe benefit credit claimed for that quarter, or if they don't set the money aside in a separate account, they at least separately account for the money during the budgeting or payroll reconciliation process, to make sure those funds are allocated solely for plan benefit claims, and will not be used for other purposes. Additional evidence of financial planning, such as stop-loss insurance, will also be considered.

The plan must also have been communicated in writing to affected workers.

And finally, the plan must have been approved by the Wage and Hour Division. So before taking a credit for the costs of providing benefits through an unfunded benefit plan, the contractor should have a letter from us saying that we have reviewed the structure of the proposed plan to determine whether all of the required criteria are met, and have approved the plan.

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Under either funded or unfunded fringe benefit plans, contractors cannot take a fringe benefit credit for workers who are not yet eligible to participate in the plan. For example, if a contractor's health insurance plan excludes part-time workers, the contractor cannot claim a fringe benefit credit for health insurance for part-time workers, since they are not eligible to participate in the plan and the employer is not making contributions on their behalf. Similarly, some plans state that plan contributions and allocations are only made for plan participants who are still employed on the last day of the plan year, so no credit could be claimed for workers who leave before the end of the plan year, for whom no contributions are made.

However, although a worker must be eligible to participate in the plan for the contractor to claim a fringe benefit credit towards that worker's prevailing wages, the worker need not be able to receive benefits under the plan for the contractor to be able to claim a credit. For example, many health insurance plans have a requirement that participants be enrolled in the plan for a minimum number of days before the insurance company will pay a benefit claim. Pension or retirement plans also generally require that a worker be employed for a certain period of time before their retirement benefits are vested, or no longer subject to being forfeited. Contractors may still take credit for their contributions to these plans, assuming that other requirements are met, because the contractor is incurring the costs of making contributions for such workers who are participating in the plans, even though those workers are not yet able to receive their benefits.

However, if a contractor makes contributions to a fringe benefit plan for a worker who is eligible to participate but who is not yet entitled to benefits, and the worker ends up forfeiting those benefits, those contributions cannot revert back to the contractor if the contractor wishes to claim a fringe benefit credit. For example, if a worker leaves before their pension rights have vested, so that the

worker forfeits their entitlement to the contractor's contributions for that worker, the plan must ensure that those contributions do not return to the contractor, but are distributed to other plan participants.

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A contractor cannot take a fringe benefit credit towards Davis-Bacon prevailing wage requirements for the contractor's own administrative expenses related to a bona fide fringe benefit plan. This is true even if the contractor hires another company to deal with their administrative issues relating to these plans, rather than having their own employees handle these issues. For example, a contractor may hire a bookkeeper to track the amount of the contractor's fringe benefit contributions, make sure that those contributions cover the fringe benefit credit claimed for workers participating in the fringe benefit plans and notify the contractor that additional wages are due to any worker, track invoices from third party plan administrators, ensure such invoices are paid on time, and send lists of new hires to the plan administrators. These tasks are the administrative responsibilities of the contractor, even though they have contracted the work out, so the fee that the contractor pays the bookkeeper cannot be claimed as a fringe benefit credit.

Note that the contractor's own administrative expenses are different from the fees charged by a third party for the actual administration and delivery of plan benefits, which the contractor can take credit for. For example, the contractor can take credit for the fees paid to a medical insurance plan administrator who evaluates benefit claims and decides whether they should be paid, pays benefit claims to providers, approves referrals to specialists, and so on.

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When determining the credit that a contractor can claim for fringe benefit contributions, it's important to keep in mind the workers earn their benefits over all of their hours worked, not only the hours that they work on Davis-Bacon projects. So when a contractor is calculating the fringe benefit credit for a worker, the contractor must base their calculation on the total hours worked by that worker. This principle is called annualization, and prevents Davis-Bacon work from being used as the exclusive or disproportionate source of funding for fringe benefits that are in effect for both covered and non-covered work. The annualization principle has been applied since the 1970s, and was upheld in *Miree Construction Corporation versus Dole*.

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A contractor must determine the hourly rate of fringe benefit credit by dividing the total annual fringe benefit contributions made for a worker by the total annual hours worked by that worker, both Davis-Bacon and non-Davis-Bacon hours. The contractor should not calculate the fringe benefit credit by dividing the fringe benefit contribution only by the hours worked by that worker on Davis-Bacon projects.

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There is one exception to the annualization. This involves defined contribution pensions that provide immediate and essentially immediate vesting. This can mean that someone becomes fully vested in the plan with less than 500 hours of actual work. A contractor may take Davis-Bacon credit at the hourly

rate specified by the plan, regardless of whether the contractor makes contributions to the plan when working on non-Davis-Bacon projects.

Under such plans, contributions are irrevocably made by the contractor. Most, if not all, of the workers will become fully vested in the plan, and the higher contributions made during Davis-Bacon work result in an increase in the value of the individual employee's account.

Pursuant to this exception, the contractor may take full credit for the amount of contributions made to such a plan during periods of Davis Bacon covered work without annualizing the credit claimed even if the contractor makes no contributions to the plan during periods of non-Davis-Bacon work.

The amount of contributions to such plans should be in conformance with any limitations imposed by the Internal Revenue code or the ERISA law.

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Assume that a firm's contributions for the pension benefit were computed to be \$2,000.00 a year for a particular employee. If that employee worked 1,500 hours of the year on a Davis Bacon covered project and 500 hours of the year on a private non-Davis-Bacon jobs, \$1.00 per hour ($\$2,000 \div 2,000$ hours) would be creditable towards meeting the firm's obligation to pay the prevailing wage on the covered project

This method for determining the allowable Davis-Bacon credit for fringe benefit payments illustrates employers are normally prohibited from using contributions made for covered work to fund the plan for periods of non-covered work.

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In determining a cash equivalent credit for fringe benefits the period of time to be used is the period covered by the contribution so if you have employer provided health insurance, and those contributions were paid on a monthly basis pursuant to something like Anthem or Bule Cross Blue Shield, then the annualization credits should also be determined on a monthly basis.

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Here is an example of how the fringe benefit would be calculated and prevailing wages should be paid when the contractor makes monthly fringe benefit contributions.

Assume the contractor provides medical insurance that requires a contribution of \$200 per month on behalf of an electrician working on a Davis-Bacon project. The prevailing wage rate applicable to electricians is a \$16 per hour base hourly wage rate plus a \$2.50 hourly fringe benefit amount, for a total prevailing wage of \$18.50 per hour. In one month, the electrician worked 160 total hours. To determine the fringe benefit credit that can be claimed, the contractor must divide the \$200 monthly contribution by the total hours worked that month, 160 hours, resulting in a fringe benefit credit of \$1.25 that the contractor can claim towards the hourly prevailing wages due to the electrician that month. If no other benefit is provided, the electrician will be due \$17.25 in cash wages per hour, the \$18.50 total prevailing wage rate due minus the allowable \$1.25 per hour fringe benefit credit.

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Sometimes a contractor makes fringe benefit contributions in advance, before the contractor knows what hours the workers will actually work during that time period. For example, a contractor may pay the fringe benefits due over the course of the year upfront at the beginning of that year. However, construction workers frequently don't work regular hours or might not for the entire year. So to estimate the hours that a worker would be likely to work over the course of the upcoming year, for the purpose of determining the hourly fringe benefit credit that can be claimed for that advance fringe benefit payment, the contractor can use the hours worked by Davis-Bacon workers in the preceding calendar year, or the preceding plan year, for that estimate.

For example, assume that the total annual cost of a pension program is \$15,000, and that the total working hours, including both Davis-Bacon and non-Davis-Bacon hours, for the workers for whom contributions were made totaled 15,000 in the previous year. This total could be used to determine the allowable fringe benefit credit, by dividing the \$15,000 total contributions by the 15,000 total hours worked in the previous year, for an fringe benefit credit of \$1.00 per hour.

However, as previously noted, if contributions are made at different levels for different workers, the employer could not use an average credit for all employees, but would have to calculate this credit on the basis of the contributions for individual workers and their total hours worked in the previous year, or by different groups of workers for whom the same level of contributions are made, and those total hours.

It's also important to keep in mind that if the total contribution includes contributions for workers other than laborers and mechanics, such as office workers, the contractor must either ensure that those workers' hours are included in the estimate of total hours used for the calculation, or the contractor must deduct the contributions for those office workers from the total contribution before making the calculation.

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This method of computing the fringe benefit credit allowable when fringe benefit contributions are made in advance works the same way for other time periods too.

For example, if a contractor pays monthly health insurance premiums for the upcoming month in advance, the contractor can use the total hours worked in the previous month, or in that same month during the previous year, to calculate the fringe benefit credit. Any representative period can be used, as long as it is reasonable representative period.

But again, if the employer contributes for employees at different rates, such as for single coverage and family plans, the employer cannot take the same across the board average credit for all workers, but will have to adjust their calculations to reflect the actual premiums paid for those workers.

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Permitted deductions under the Davis Bacon Act. 29 CFR 3.5 lists the deductions that an employer can make without having to receive approval from the Department of Labor. These are your standard deductions like State/Federal/local taxes, Social Security, some Court Ordered Wage Garnishments, union dues, charities, and similar things are all allowable without approval from the Department of Labor.

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Pursuant to 29 CFR Part 3.6, any contractor may apply to the Secretary for permission to make any deductions not permitted under 29 CFR 3.5. The Secretary may approve payroll deductions whenever all of the following conditions are met: The contractor does not make a profit or benefit 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 the work is performed or the deduction is provided under the terms of a bona fide collective bargaining agreement, and the deduction serves the convenience and interest of the employee. One example of this might be an employer offered cell phone plan. The employer provides cell phones to their employees for personal use as well as business use. They would need to seek permission of the Department of Labor for those types of deductions if they're made from wages.

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To demonstrate compliance with the Davis-Bacon Labor Standards, the regulations also require contractors to keep certain records to show that prevailing wage obligations have been met. These records have to be kept for all laborers and mechanics on the site of work throughout the performance of the contract and for three years after the contract has been completed. Contractors are required to provide these records to the federal contracting or funding agency or to the Department of Labor for inspection and copying upon request.

The required records must include worker information, such as the name, address, and social security number of each laborer and mechanic, his or her classifications, hourly rates of pay, including fringe benefits, the daily and weekly number of hours worked, deductions taken from wages, and the total wages paid. Where applicable, the contractor must also keep a record of apprenticeship registration, the apprentices' ratios, and wage rate percentages. The required records that must be kept are listed at 29 CFR 5.5(a)(3)(a).

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There is a presentation specifically about the certified payrolls under the Davis-Bacon Act that discusses these requirements in detail, so we're only going to briefly touch on those requirements here. Contractors must submit copies of payroll to their federal contracting or funding agency weekly. Those payrolls must contain the information listed at 29 CFR 5.5(a)(3), discussed on the previous slide, and must be accompanied by a statement of compliance, signed by a person responsible for the payment or supervision of the laborers and mechanics, certifying that all the information in the certified payrolls is accurate. The prime contractor is responsible for ensuring that all certified payrolls are submitted, but may require sub-contractors to submit certified payrolls directly to the contracting agency.

Optional Form WH-347 is available for contractors to use for their certified payrolls, but any form may be used, including electronic submissions. However, if an alternate form is used, it must still include the signed statement of compliance. Signatures must either be original or electronically verified.

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This slide contains several useful websites for your reference.

Beta.sam.gov is now the site where general category wage determinations are published, as well as the listing of contractors that have been debarred from bidding on federal contracts. It also has other useful information, such as the All Agency Memoranda, and information on how to request project wage determinations and conformances.

The Wage and Hour Division website has compliance assistance information on the Davis-Bacon Act and other potentially applicable wage laws, including the Field Operations Handbook, compliance guides, fact sheets and other helpful tools.

The Prevailing Wage Resource Book contains detailed information about compliance with the Davis-Bacon Act, CWHSSA, and the SCA. A link to the Prevailing Wage Resource Book is also available in your Online Event page in your EventBrite Registration.

The Administrative Law Judge and Administrative Review Board websites have a library of prior administrative decisions on Davis-Bacon and SCA issues, as well as information on the process for hearings.

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This concludes the Davis-Bacon Compliance Principles presentation. Again, if you have any questions about the information in this presentation, you are welcome to contact us either through your EventBrite registration email or directly by emailing to Collins.natalie@dol.gov. Thank you for attending our presentation.