



Davis-Bacon and Related Acts

Prevailing Wage Seminar Q & A



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
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Introduction

- The Wage and Hour Division (WHD) is responsible for administering and enforcing several federal laws involving labor standards including:
 - The Davis-Bacon and Related Acts (DBRA);
 - The McNamara – O’Hara Service Contract Act (SCA);
 - Executive Orders applicable to federal contractors;
 - The Fair Labor Standards Act (FLSA);
 - Family Medical Leave Act (FMLA).

Davis-Bacon and Related Acts

- The DBRA applies to contractors and subcontractors performing on federal or federally assisted contracts in excess of \$2,000 for construction, alteration, or repair.
- Covered contractors and subcontractors must pay their laborers and mechanics working on the site of work no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

A construction site with rebar in the foreground and workers in the background. The word "Coverage" is overlaid in a dark blue box with yellow text.

Coverage

Davis-Bacon Act Coverage

Applies to contracts in excess of \$2,000 to which the Federal Government or the District of Columbia is a party for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works.

Davis-Bacon Related Acts

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

- Grants
- Loans
- Loan guarantees
- Insurance



Coverage Questions



Wage Determinations

Wage Determinations (WDs)

- Davis-Bacon WDs specify the prevailing wages, including fringe benefits, which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character in the localities specified therein
- The most current WD for the location and type of project must be incorporated into the contract

Selecting the Correct WDs-Type

Selecting and incorporating the appropriate general wage determination for the project type. Guidance provided in AAM 130.

- Building
- Residential
- Heavy
- Highway

Multiple wage determinations may apply where there are separate construction types and the different type of construction is at least 20 percent of the project cost or exceeds \$2.5 million – guidance provided in AAM 131 and 236

Selecting the Correct WDs-Date

Incorporate most current WD:

- Negotiated contracts (“RFPs”) – Time of award.
- Sealed bid contracts: In effect 10 days or more before opening of bids.
- Exceptions.
- If the contract is not awarded within 90 days of bid opening, any modification to the WD must be incorporated unless the federal agency requests and obtains an extension of the 90 day period.

Contracting Agency Responsibilities

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

Conformance Requests

Unlisted classifications may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

Conformance Requirements

- 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.



Wage Determination Questions

A photograph of three construction workers on a rooftop at sunset. They are wearing hard hats and safety vests, looking at blueprints. A large crane is visible in the background, and the sky is a mix of orange and blue. The workers are standing on a grid of rebar. A blue banner with yellow text is overlaid on the image.

Compliance Principles

Wages and Fringe Benefits

Laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed on the site of work, without regard to skill.

Wages and Fringe Benefits-Classification

Laborers and mechanics who perform work in more than one classification may be paid the different applicable rates for the work they actually perform if the employer keeps an accurate record of the time spent working in each classification and pays accordingly.

Wages and Fringe Benefits-Pay Frequency

The laborers and mechanics working on the site of the work must be paid weekly, with the exception of fringe benefit contributions paid into a bona fide FB plan, which must be paid no less often than quarterly.

Cash wages paid in excess of the base hourly rate may count to offset or satisfy the fringe benefit obligation.

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 made not less often than quarterly.
- With prior approval from DOL, contractors may also take credit for their reasonably anticipated costs of providing fringe benefits to workers, if all of the requirements in 29 CFR 5.28 are met.

A photograph of three construction workers on a rooftop at sunset. They are wearing hard hats and safety vests, looking at blueprints. A large crane is visible in the background against the orange and yellow sky. The foreground shows rebar and construction materials.

Compliance Questions

A construction site with rebar in the foreground and workers in the background. The word "Apprentices" is overlaid in a dark blue box with yellow text.

Apprentices

Apprentice Requirements

Apprentices may be paid less than the applicable prevailing wage rate when they are:

- Individually registered in an approved program;
- Employed within the allowable ratio specified in the program for the number of apprentices to journeyworkers

Apprentice Wage Rates

- Apprentices must be paid the correct percentage of the applicable prevailing wage rate as required by their progress in the program
- Apprentices must also receive the FBs specified in the approved program, or, if the program is silent, the full amount of FB's listed on the WD.



Apprentice Questions



Overtime

Overtime Pay - CWHSSA

Contract Work Hours and Safety Standards Act (CWHSSA)

- Requires overtime pay for laborers and mechanics, including guards and watchmen, at time and a half the regular basic rate of pay for hours worked over 40 in a workweek on covered contracts only
- No site of work limitation
- Applies to laborers, mechanics, guards and watchmen for the time spent on all covered contract work

Overtime Rate

- The basic rate of pay under CWHSSA is the straight time hourly rate
- The “basic rate” cannot be less than the basic hourly rate required in an applicable wage determination, not including any required fringe benefit amount.
- If an employee is paid a regular rate above the basic hourly rate (excluding fringe benefits or cash payments in lieu of fringe benefits), that regular rate will be considered the basic rate.

Overtime Pay - FLSA

- The **Fair Labor Standards Act (FLSA)** applies more broadly, with over 130 million workers subject to coverage.
- The FLSA similarly requires that employees receive not less than one and one-half times the regular rate for their hours worked over 40 in a workweek. 29 U.S.C. 207(a); *see also* 29 C.F.R. § 778.101.



Overtime Questions



Certified Payrolls

Certified Payroll Clauses

Two separate contract clause requirements 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 payrolls.
29 CFR 5.5(a)(3)(ii)(A).
- Each weekly payroll submitted must be accompanied by a “Statement of Compliance.”
29 CFR 5.5(a)(3)(ii)(B).

Certified Payrolls-Reporting

Weekly payrolls must include specific information as required by 29 CFR 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:

<https://www.dol.gov/agencies/whd/forms/wh347>



Certified Payroll Questions



Anti-Retaliation

Protected Activities

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

Prohibited Actions

- It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for engaging in protected activities.



Resources

WHD Resources

- Wage Determinations: <https://sam.gov>
- Wage and Hour Division: <http://www.dol.gov/agencies/whd/government-contracts>
- WHD Protections for Workers in Construction under the Bipartisan Infrastructure Law: <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>
- Resource Book: <http://www.dol.gov/agencies/whd/prevaling-wage-resource-book>
- Office of the Administrative Law Judges Law Library: <https://www.dol.gov/agencies/oalj/topics/libraries/LIBDBA>
- Prevailing Wage Topic videos: <https://www.dol.gov/agencies/whd/government-contracts/construction/presentations>

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OFCCP Resources

- OFCCP holds those who do business with the federal government (contractors and subcontractors) responsible for complying with the legal requirement to take affirmative action and not discriminate on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or status as a protected veteran. In addition, contractors and subcontractors are prohibited from discharging or otherwise discriminating against applicants or employees who inquire about, discuss or disclose their compensation or that of others, subject to certain limitations.
- Further information on OFCCP is available at https://www.dol.gov/sites/dolgov/files/ofccp/regs/compliance/factsheets/FACT_Workplace_Aug2016_ENGESQA508c.pdf.

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