



Davis-Bacon and Related Acts

Why Are Contract Payments Being Withheld?



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR



dol.gov/agencies/whd
1-866-4-US-WAGE

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).



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

Withholding of Contract Funds

- The Davis-Bacon and Related Acts (DBRA) and Contract Work Hours and Safety Standards Act (CWHSSA) provide for withholding of contract funds to satisfy alleged wage underpayments pending resolution of a wage dispute
- Withholding of contract funds is an effective enforcement tool in DBRA/CWHSSA cases

DBRA/CWHSSA Contract Clauses - Withholding

- DBRA and CWHSSA contract clauses provide for withholding to ensure the availability of contract funds needed for the payment of:
 - Unpaid back wages found to be due to covered workers under DBRA and CWHSSA
 - CWHSSA liquidated damages

DBRA Contract Language - Withholding

- The federal agency/funding recipient must withhold or cause to be withheld so much of the accrued payments or advances as necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, due.
- Funds may also be withheld when a contractor has refused to submit certified payrolls or provide the required records as set forth at 29 CFR 5.5(a)(3).
- Withholding must be done upon written request from the DOL or may be done at the agency's own action.

Cross-Withholding

- Cross-withholding may be accomplished on contracts held by agencies other than the agency that awarded the contract
- Withholding from another federal contract with the same prime contractor is called “cross-withholding”
- Withholding can be done on the contract in question or any other federal contract or federally assisted contract subject to Davis-Bacon prevailing wage and other labor standards requirements with the same prime contractor

Confirmation of Violations

- It is sometimes necessary for withholding to be requested before the completion of the investigation. Upon completion of the investigation, it may be necessary for the contracting officer to adjust the withholding as necessary.
- If DOL requested the withholding, the contracting officer must not reduce or release the withheld funds without written approval by DOL
- The withheld funds are to be used to satisfy:
 - Assessed liquidated damages, and
 - Unless the contractor makes restitution, wage underpayments

Use of Withheld Funds

- The withheld funds may be used to satisfy:
 - Wage underpayments, unless the contractor makes restitution;
 - Compensatory damages to make a worker whole from retaliation, and;
 - Assessed liquidated damages.

Priority of Withheld Funds

- In order to ensure that underpaid workers receive the money to which they are entitled, the Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) and/or 29 CFR 5.5 (b)(3)(i).
- Withheld funds may not be used or set aside for other purposes until the prevailing wage issues are resolved.

Disposition of Withheld Funds - DBRA

- WHD handles the disbursement process for back wages due under the DBA and Related Act contracts, even when the withholding was initiated by the contracting agency.
- DOL also handles CWHSSA and SCA disbursements.
- WHD Regional Offices (ROs) are responsible for directing the processing of back wage disbursements.

Disposition of Withheld Funds

- The WHD RO will request the contracting agency to transfer the withheld funds:
 - When a contractor agrees to distribution of contract funds to the covered workers (whether or not they have been subject to a formal withholding process)
 - When a contractor (prime contractor or subcontractor) does not timely request a hearing pursuant to 29 CFR 5.11(b) or 5.12(b)
 - Following the issuance of ALJ decisions, including decisions approving settlement agreements
 - Following issuance of ARB decisions
 - Subsequent to final resolution of further litigation

Sending Funds to WHD for Disbursement

- WHD will accept the transfer of withheld funds through wire deposit or paper check.
 - Additional details on the transfer and disbursement of withheld funds can be found in AAM 215
 - Questions about a particular transfer/disbursement should be directed to the Regional Enforcement Coordinators, Government Contracts in the appropriate region
 - <https://www.dol.gov/agencies/whd/government-contracts/contacts>

Withholding – Hearing Process

- Refusal to pay cases are resolved pursuant to 29 CFR 5.11
 - If factual issues are in dispute, WHD notifies the contractor of findings and offers an opportunity to request a hearing before an Administrative Law Judge (ALJ)
 - If only questions of law are in dispute, WHD issues a ruling letter that may be appealed to DOL's Administrative Review Board (ARB)
 - If WHD is also seeking debarment, cases are resolved pursuant to 29 CFR 5.12 in which they have an opportunity to request an ALJ hearing and to appeal adverse decisions to the ARB.

Administrative Review Board

- Members appointed by the Secretary of Labor
- Hears appeals of ALJ decisions
- Acts on petitions to review rulings of WHD Administrator on coverage interpretations and wage determination matters
- Issues decisions based on the briefs and appellate record in the case

Internet Sites

- 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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