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Davis-Bacon Overview



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
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A photograph of a construction site. In the foreground, there is a grid of steel rebar (reinforcing bars) laid out on a concrete slab. In the background, several workers are visible, some wearing hard hats and safety vests. One worker in an orange shirt and blue jeans is in the center, holding a tool. The background is slightly blurred, showing the skeletal structure of a building under construction.

Coverage

History of the Davis-Bacon Act

Enacted in 1931

- A depression-era statute to protect communities and workers from non-local contractors underbidding local wage levels. It was the first federal prevailing wage law applicable to non-government workers, and one of the first examples of federal involvement in social and labor legislations.

Amended in 1935 and 1964

- The 1964 amendments were to include the basic hour rate and any amount contributed by the contractor or subcontractor for certain fringe benefits.

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 Coverage: Contract for Construction

“Construction” includes all types of work done on a particular building or work at the site thereof, as defined in the regulations (29 CFR 5.2(j)(1))

A contract is “for construction” if “more than an incidental amount of construction-type activity is involved in the performance of the government contract.”

Can also include repair work/restoration of a facility.

- One time fix to something not functioning
- Restoration, alteration, or replacement of fixed components
- Examples: building structural repair, renovation, roof shingling, paving repairs, etc.

Davis-Bacon Coverage: Public Building or Work

A “public building” or “public work” includes “a building or work, the construction, prosecution, completion, or repair of which is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.” (29 CFR 5.2(k))

Davis-Bacon Related Acts

Davis-Bacon (DB) requirements extended to numerous “related Acts” that provide federal assistance by

- Grants
- Loans
- Loan guarantees
- Insurance

DBRA Coverage of Bipartisan Infrastructure Law Construction Projects

The Bipartisan Infrastructure Law (BIL) applies Davis-Bacon labor standards to federally funded or assisted construction projects in three different ways

- Adding funding to programs previously authorized by an existing Davis-Bacon Related Act
- Adding new programs under the umbrella of an existing Davis-Bacon Related Act
- Including provisions which expressly provide that Davis-Bacon labor standards apply to all construction projects receiving funding under particular programs created by or funded through BIL

Division D – Related Act Language

Section 41101 – “All laborers and mechanics employed by contractors or subcontractors in the performance of construction, alteration, or repair work on a project assisted in whole or in part by funding made available under this division or an amendment made by this division shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the “Davis-Bacon Act”).”

Davis-Bacon Labor Standards and Contract Stipulations

The term “labor standards” means the requirements of:

- The Davis-Bacon Act
- The Contract Work Hours and Safety Standards Act
- The Copeland Act
- Prevailing wage provisions of the Davis-Bacon and “related Acts”; and
- Regulations 29 C.F.R. 1, 3, and 5

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 Principles

Wages and Fringe Benefits

All laborers and mechanics employed or working upon the site of the work must be paid at least the applicable prevailing wage rate for the classification of work performed as listed in the applicable wage determination or a rate approved in accordance with the “conformance process” set forth at 29 CFR 5.5(a)(1)(ii), without regard to skill.

Laborers and Mechanics

- Workers whose duties are manual or physical in nature
- Includes apprentices, trainees, and helpers
 - For CWHSSA, includes guards and watchmen
- Does not include workers such as timekeepers, inspectors, architects, engineers, or bona fide executive, administrative, and professional employees as defined under the Fair Labor Standards Act
- Working foremen are generally non-exempt
 - Must be paid the Davis-Bacon prevailing wage rate for the classification of work performed if not 541 exempt

Davis-Bacon Site of Work

Davis-Bacon applies only to laborers and mechanics employed “directly on the site of the work.”

A three-part definition applies to determine the scope of the term “site of work”

Site of Work Definition: Paragraph 1

DBA only applies to workers “directly on the site of the work”

- The physical place or places where the construction called for in the contract will remain after work has been completed; and
- Any other site where a **significant** portion of the building or work is constructed, *provided that* such site is established specifically for the contract

Site of Work Definition: Paragraph 2

“Site of the work” also includes job headquarters, tool yards, batch plants, borrow pits, etc. *provided* they are:

- Located adjacent or virtually adjacent to the “site of work” described in paragraph 1; and
- Dedicated exclusively or nearly so to the performance of the contract or project
- Except if they are excluded (see next slide)

Site of Work Definition: Paragraph 3

“Site of work” does not include a contractor or subcontractor’s:

- Permanent home office, branch locations, fabrication plants, tool yards, etc.;
- Whose location and continuance in operation are determined without regard to a particular covered project.

Site of Work Definition: Paragraph 3 (cont.)

Also not included in the “site of work” are:

- Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials:
 - Before the opening of bids for a project; and
 - Not located on the actual site of the work
- Such permanent, previously established facilities, are not part of the “site of the work”, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of the contract.

Truck Drivers

Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:

- Spent working on the “site of the work”;
- Transporting materials and supplies between a facility that is part of the “site of the work” and the actual construction site; or
- Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain

Truck Drivers: Owner-Operators

DOL has an enforcement position with respect to *bona fide* owner-operators of trucks who are independent contractors (an owner-operator is a person who owns and drives a truck). Certified payrolls including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation “owner-operator”

This position does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.

Material Suppliers

- The manufacture and delivery to the work site of supply items such as sand, gravel, and ready-mixed concrete by bona fide material suppliers, are activities not covered by DBA/DBRA requirements (even though the materials are delivered directly into a contractor's work site mixing facilities)
- Bona fide material suppliers (including truck drivers) whose only contractual obligations for on-site work are to deliver materials are not considered contractors under the DBA/DBRA. Thus, their employees are not subject to the Davis-Bacon labor standards.

Material Suppliers (cont.)

However, Laborers and mechanic employed at the site of the work by a material supplier, manufacturer, or carrier that undertakes to perform a part of a construction contract as a subcontractor:

- Would be subject to Davis-Bacon labor standards in the same manner as those employed by any other contractor or subcontractor
- For enforcement purpose, if such a worker spends more than an incidental amount (20%) of their time in a workweek engaged in construction work on the site, they are covered for all time spent on the site during the workweek

Travel Time

- Ordinary home to work travel is *not* compensable work time
- Travel between job sites during normal work day *is* work time and thus compensable hours worked
- Special rules apply to travel away from employee's home community

Wage Determinations and Conformances

Davis-Bacon Wage Determinations (WDs) specify the prevailing wages, including fringe benefits, that prevail for the described classes of laborers and mechanics employed on construction projects of a similar character in the locality.

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

Conformance Requirements:

- The work to be performed by the proposed classification is not performed by a classification already in the 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.

Wages and Fringe Benefits-Classification

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

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.

Determining Worker Classifications

- There are no nationwide standard classification definitions under Davis-Bacon
- To determine proper classification for workers employed on a Davis-Bacon covered project, it may be necessary to examine **local area practice**
- Contracting agencies are responsible for advising contractors regarding the duties performed by various crafts in the WD

Determining Local Area Practice

- If, in the applicable WD, the rates listed for the classification(s) that may perform the work in question are union rates:
 - Any questions will be resolved by examining the practice(s) of union contractors in classifying workers who have been performing the duties in question in the area
- If, in the applicable WD, the rates listed for the classification(s) that may perform the work in question are non-union rates:
 - Any question will be resolved by examining the practice(s) of non-union contractors in classifying workers who have been performing the duties in question in the area.

Prevailing Wages

Under Davis-Bacon, the terms “wages” and “prevailing wages” include:

- The basic hourly rate (BHR)
- Contractor contributions *irrevocably* made to a trustee or third party pursuant to a bona fide fringe benefit fund, plan or program; and/or
- The rate of costs the contractor reasonably anticipates in providing bona fide fringe benefits where certain conditions are met.

Under Davis-Bacon, fringe benefits (FB) are a component of the “prevailing wage”

Satisfying Prevailing Wages

The prevailing wage obligation may be satisfied by:

- Paying the base hourly rate (BHR) and FB in cash (including negotiable instruments payable on demand);
- Contributing payments to a bona fide plan; or
- Any combination of the two.

Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation

Wages and Fringe Benefits-Pay Frequency

Prevailing wages must be paid weekly for all hours worked

- Unless the FBs are paid into a bona fide fringe benefit plan and the contributions must be paid no less often than quarterly

Cash wages paid in excess of the basic hourly rate may count to offset or satisfy the FB obligation

Deductions: 29 CFR 3.5

- 29 C.F.R. 3.5 lists deductions that an employer can make from the prevailing wage rate without the approval of the Secretary of Labor
- Examples include Social Security and federal or state taxes, certain court-ordered payments, bona fide pre-payment of wages, certain payments of union dues, and voluntary charitable donations

Deductions: 29 CFR 3.6

- 29 C.F.R. 3.6 generally provides that the Secretary may approve other deductions whenever all of the following conditions are met
 - The contractor does not profit 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 that the work was performed or the deduction is under the terms of a collective bargaining agreement
 - The deduction serves the convenience and interest of the employee

Apprentices

- Are laborers and mechanics; not listed on WDs.
- Only includes persons individually registered in a bona fide apprenticeship program registered with DOL's Employment Training Administration (ETA) Office of Apprenticeship (OA) or a State Apprenticeship Agency recognized by OA
- Apprentices must be employed within the allowable ratio specified in the approved program for the number of apprentices or trainees to journey worker
- Apprentices individually registered in an approved program and employed within the allowable ratio may be paid less than the journey worker wage

Overtime Pay

Contract Work Hours and Safety Standards Act (CWHSSA)

- Covers contracts over \$100,000 (\$150,000 for contracts procured under the Federal Acquisition Regulations) that require or involve the employment of laborers, mechanics, watchmen or guards on DBA or DBRA covered construction contracts
- Is self-executing (even if not stated in contract)
- Has no “site of work” limitation

Fair Labor Standards Act (FLSA) applies more broadly, with over 130 million workers subject to coverage.

Requirements of CWHSSA-General

Requires overtime pay for laborers, mechanics, guards, and watchmen at a rate of one and a half times the basic rate of pay for hours worked in excess of 40 in a workweek on covered contracts

- 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.

Requirements of CWHSSA

- 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.
- Amounts paid to fulfill the fringe benefit portion of the prevailing wages listed in the applicable wage determination are excluded in computing overtime obligations under CWHSSA

Application of CWHSSA

CWHSSA applies to laborers, mechanics, guards and watchmen for the time spent **on covered contract work only**

- Total up all the time each employee spent working on covered contracts (off-site as well as on-site on DBA/DBRA projects)
- Exclude all commercial, non-government, non-covered work.
- Liquidated damages can be assessed per day for each laborer, mechanic, guard, or watchman not paid proper overtime

Payroll and Basic Records

- Payrolls and related basic records shall be maintained by the contractor during the work and for three years thereafter for all laborers and mechanics working at the site of the work.
- Such records shall contain the name, address, and social security number of each such worker, their correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types describe in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. See 29 C.F.R. 5.5(a)(3)(i)

Certified Payrolls

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 all 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>

Common Compliance Problems

Common compliance issues include:

- Misclassification of laborers and mechanics;
- Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours);
- Not recording or counting all hours worked;
- Failure to keep a record of the bona fide apprenticeship program standards and individual registration documents and to comply with their requirements, and;
- Failure to submit accurate certified payrolls weekly.

The image shows three construction workers in silhouette against a bright, orange-hued sunset sky. They are wearing hard hats and safety vests. The worker on the left is pointing towards the right. The worker in the middle is holding a large sheet of paper, likely a blueprint. The worker on the right is holding a long tool, possibly a level or a measuring tape. The background is a blurred construction site with a crane hook visible in the upper left.

Investigations

Investigations

DOL Functions/Responsibilities:

- Determining “prevailing wages”;
- Issuing regulations and standards to be observed by contracting agencies; and
- Perform oversight function and has independent authority to conduct investigations (contracting agencies also have the authority to conduct investigations)

In addition to including the contract stipulations and correct wage determinations, contracting agencies also have the authority to conduct investigations

Investigative Process

- Initial conference with employer.
- Examine certified payrolls.
- Examine basic payroll records.
- Check for compliance with apprenticeship and/or trainee requirements.
- Interview employees
- Determine if a conformance is necessary.
- Compute back wages and liquidated damages, if any
- Final conference with employer to discuss results of the investigation.

Withholding

- DBA and CWHSSA provide for withholding of contract funds to satisfy alleged wage underpayments pending resolution of a wage dispute. (40 U.S.C. § 3142(c)(3); 40 U.S.C. § 3702(d).)
- Withholding of contract funds is an effective enforcement tool in DBA/DBRA/CWHSSA cases.
- It protects the rights of covered workers to wages due them.

Withholding of Contract Funds

FAR guidance in 48 CFR Part 22 instructs that if the contracting officer believes a violation exists, or upon request of the Department of Labor:

- The contracting officer must withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages due under the CWHSSA.
(48 CFR 22.406-9(a))

Debarment

Occurs when a contractor is declared *ineligible* for future contracts due to:

- Violations of the DBA in disregard of its obligations to employees or subcontractors.
- Aggravated or willful violations under the labor standards provisions of Related Acts.
- Period of ineligibility is 3 years for DBA and up to 3 years for DBRA.
- The debarment process is given at 29 CFR 5.12(b)

Debarment Criteria

Circumstances where debarment may be warranted include:

- Submitted falsified certified payrolls;
- Required “kickbacks” of wages or back wages;
- Committed repeat violations;
- Committed serious violations;
- Misclassified covered workers in clear disregard of proper classification norms; and/or
- As a prime contractor, failed to ensure compliance by subcontractors.

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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