

American Recovery and Reinvestment Act (ARRA) Workshop



DAVIS-BACON ACT REQUIREMENTS

STATE REVOLVING FUND

Disclaimer



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Agenda



- Background and Overview
- Compliance with Davis-Bacon
- Common Problems and Concerns
- Common Questions
- Additional Resources
- Questions

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Davis-Bacon and Related Acts: Background & Overview



**AMERICAN RECOVERY & REINVESTMENT ACT
(ARRA)**

Overview



- **Section 1606 - Prevailing Wage Requirement**
 - New to the SRF program
 - ✦ Incorporates federal prevailing wage under Davis-Bacon Act

- **EPA issued “Terms and Conditions”**
 - Incorporates provisions of Davis-Bacon Act
 - ✦ 29 CFR parts 1, 3, and 5

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Overview



- **Prevailing wage requirement applies to:**
 - All laborers and mechanics employed by contractors, subcontractors, or vendors
 - Agreements/contracts/subcontracts over \$2,000 for:
 - ✦ Construction
 - ✦ Alteration (including painting and decorating)
 - OR
 - ✦ Repair
 - Projects funded directly by or assisted in whole or in part by ARRA

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Overview



- **Associated statutes**
 - Davis-Bacon and “Related Acts” (DBA)
 - Copeland “Anti-Kickback” Act
 - Contract Work Hours and Safety Standard Act (CWHSSA)
- **Reorganization Plan No. 14 of 1950**
 - EPA and States responsible for ensuring compliance with DBA and that contractors and subcontractors pay laborers and mechanics at least prevailing wages

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Overview: Davis-Bacon Act



- **Applies to certain workers employed by contractors, subcontractors, and vendors**
 - Laborers/Mechanics
 - ✦ Job duties are physical and manual in nature
 - Watchmen or guards (under certain conditions)
 - Working foremen (under certain conditions)
- **Definitions at 29 CFR 5.2(m) -**
http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_5/29CFR5.2.htm

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Overview: Davis-Bacon Act



- All laborers and mechanics (and others as applicable) shall be paid weekly
 - 29 CFR 5.5(a)(1)



Photo source: <http://www.portal.state.pa.us/portal/server.pt/community/pennvest/9242>

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Overview: Davis-Bacon Act



- Prevailing wage requirement does not apply to:
 - Supervisory positions at the job site
 - Professionals (design engineers)
 - Clerical staff and inspectors
 - Off-site work
- Force account workers and prisoners are generally exempt

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Contract Work Hours and Safety Standards Act



- **Contractors and subcontractors in covered contracts must pay laborers and mechanics for overtime**
 - One and one-half times basic rate of pay
- **Applies to all federally funded and assisted construction contracts over \$100,000**
 - Includes contracts subject to DBA that are funded indirectly by the federal government (e.g., SRF-ARRA)
 - No site of work limitation

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Overview: Responsibilities



Entity	Responsible for
Contractor	Paying prevailing wages, completing Statement of Compliance, allowing access to employees for interviews
System	Inserting DB language and wage determination into all solicitations and subsequent contracts
	Collecting and maintaining payroll records
	Verifying compliance
State SRF Program	Ensuring prevailing wages are being paid
	Monitoring system's compliance
EPA	Ensuring prevailing wages are being paid

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Overview: Responsibilities



- If State prevailing wage law already ensures that wages meet Davis-Bacon standards, system must still comply with reporting and recordkeeping requirements

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Compliance With Davis-Bacon



**AMERICAN RECOVERY & REINVESTMENT ACT
(ARRA)**

What Does The System Have To Do?



- **Completed before February 17th**
 - Obtain wage determinations
 - Review all contracts
 - ✦ Prime and subcontractors

- **Ongoing**
 - Compliance verification
 - ✦ Ensure contractor and subcontractor are following wage rate requirements and contract provisions

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Wage Determinations



- **Incorporate into bid solicitations and subsequent contracts**
 - Ensure correct wage determination selected

- **Based on:**
 - County in which activity will take place
 - Type of construction
 - Labor classification

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Wage Determinations



- **Wage determinations are frequently modified**
 - Ensure correct modification is included in bid solicitations and contracts
 - ✦ 10-day Rule (based on bid opening)
 - ✦ 90-day Rule (based on contract award)

- **Contract modification may be required if the contract:**
 - Does not include a wage determination, or
 - Includes an incorrect wage determination

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Wage Determination

- Confirm modification date
- Confirm project type matches work being conducted
 - May fall under different construction type
 - Multiple determinations may apply

General Decision Number: AL080121 12/04/2009
 Superseded General Decision Number: AL20070170

State: Alabama
 Construction Type: Heavy
 Including Water and Sewer Line Construction
 County: Baldwin County in Alabama.

Modification Number	Publication Date
0	02/08/2008
1	01/16/2009
2	12/04/2009

* ENGI0653-004 10/01/2009

	Rates	Fringes
Operating Engineers:		
Crane (Conventional & Hydraulic up to 100 Tons), and Derrick (Stationary Crane with 2 or more drums).....	\$ 23.30	10.63
Cranes (Conventional & Hydraulic 100 to 400 Tons), and Tower Cranes.....	\$ 24.30	10.63
Cranes with 350 feet or more boom and/or 400 to 600 ton capacity.....	\$ 25.40	10.63
Cranes with 500 feet boom and/or 600 ton capacity.....	\$ 25.75	10.63
Oiler.....	\$ 21.85	10.63

SUAL2007-147 11/28/2007

	Rates	Fringes
BOILERMAKER.....	\$ 21.85	9.24
ELECTRICIAN.....	\$ 15.24	2.50
LABORER: Common or General.....	\$ 7.59	0.00
LABORER: Pipelayer.....	\$ 9.83	0.00
OPERATOR: Backhoe.....	\$ 12.00	0.00
OPERATOR: Bulldozer.....	\$ 18.89	0.00

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Prevailing Wages



- Prevailing wage = \$33.93 (includes base rate + fringes)
- Can be paid in any combination
- If State wage is higher, use State wage

	Rates	Fringes
Operating Engineers:		
Crane (Conventional & Hydraulic up to 100 Tons), and Derrick (Stationary Crane with 2 or more drums)	\$ 23.30	10.63
Cranes (Conventional & Hydraulic 100 to 400 Tons), and Tower Cranes.....	\$ 24.30	10.63
Cranes with 350 feet or more boom and/or 400 to 600 ton capacity.....	\$ 25.40	10.63
Cranes with 500 feet Boom and/or 600 ton capacity.....	\$ 25.75	10.63
Oilier.....	\$ 21.65	10.63

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Paying Prevailing Wages



- Can be paid in any combination
 - Example prevailing wage of \$45.03 per hour

Base Rate	+	Fringes	=	Prevailing Wage
\$45.03	+	\$0.00	=	\$45.03
\$34.95	+	\$10.08	=	\$45.03
\$15.00	+	\$30.03	=	\$45.03
\$7.25	+	\$37.78	=	\$45.03

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Fringe Benefits



- Can be paid in cash or through bona fide plan
 - Must be paid for all hours worked
 - Applies to benefits of a continuous nature
 - ✦ e.g. health insurance, pension plans
- Request details from contractor/subcontractor on their bona fide plans and payments for each employee working on the ARRA project

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Fringe Benefit Calculation Example



- Carpenter working on ARRA project
 - Wage Determination requires prevailing wage of \$45.03
 - ✦ \$33.00 base plus \$12.03 fringe benefits per hour
 - ✦ Employer provides medical insurance at \$600 per month
 - Employee works 160 hours a month
 - ✦ $600/160 \text{ hours} = \3.75 (credit per hour)
 - ✦ No other benefit provided
 - ✦ Employee is due: \$41.28 an hour in base rate
 - $\$45.03 - \$3.75 = \$41.28$ is remaining balance of applicable prevailing wage

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Contract Provisions



- **Wage Determinations and DBA Contract Clause**
 - Bid documents and solicitations
 - Contract documents



- **GSA debarment list**

- Contractor and subcontractor must certify eligibility to be awarded government contracts
- System and state responsible to verify eligibility

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Contract Provisions



- **Minimum wages (prevailing wage)**
- **Withholdings**
- **Payroll and basic records**
- **Apprentice and trainee requirements**
- **Compliance with Copeland Act**
- **Certifications of eligibility**
- **CWHSSA as applicable**

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Compliance Verification



- System's role in compliance includes :
 - Verifying weekly payroll
 - Conducting employee interviews and spot checks
 - Verifying signage at the job site



<http://www.ci.sanford.fl.us/departments/utilities/rehab/rehab.html>

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Weekly Payroll Reporting



- Payroll and Prevailing Wages
 - Weekly payroll data and Statement of Compliance submitted to system
 - ✦ Contractor and subcontractors required to provide weekly records to the system
 - ✦ Can use form WH347 for both payroll and statement of compliance
 - ✦ Payroll must accurately set forth the time the employee spent in each classification in which work is performed

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Davis Bacon Assurance Certification



- **Per the EPA Terms and Conditions**
 - Systems are required to provide written confirmation to the State regarding whether or not the project is compliant with weekly payroll pursuant to 29 CFR 5.5(a)(1)

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Employee Interviews



- **Employee interviews and spot checks**
 - Conducted by system
 - Some States are conducting interviews
- **Schedule**
 - Within 2 weeks of submission of initial payroll data and 2 weeks prior to estimated completion date
 - Applies to all prime and subcontractors

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Employee Interviews Cont'd



- Interviews

- Conduct additional interviews on a frequency based on risk
- Include “sufficient” number of employees
- Cover all contractors and subcontractors
- If an interpreter is required, avoid using interpreters employed by the contractor

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Employee Interview Form

Standard Form 1445 (or equivalent)

Way to verify employee is being paid appropriate wage and is classified correctly

Interviews must be conducted in confidence

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LABOR STANDARDS INTERVIEW			
CONTRACT NUMBER #111-111		EMPLOYEE INFORMATION	
NAME OF WORK CONTRACTOR Contractor AAA		JOB NAME Doe	EMPLOYEE John
NAME OF EMPLOYER Contractor AAA		STREET ADDRESS 112233 Main Street	
SUPERVISOR'S NAME John		CITY Any City	STATE US
LAST NAME Johnson		WAGE RATE 12.00	HW CODE 00000
MIDST NAME		WORK CLASSIFICATION Major Project	
ACTION			CHECK BELOW
Do you work over 8 hours per day?			YES NO
Do you work over 40 hours per week?			<input checked="" type="checkbox"/> <input type="checkbox"/>
Are you paid at least time and a half for overtime hours?			<input checked="" type="checkbox"/> <input type="checkbox"/>
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?			<input checked="" type="checkbox"/> <input type="checkbox"/>
DEPOSIT OF \$20.00 PER WEEK INTO SAVING PLAN			
HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW? 9		TOOLS YOU USE General construction tools, nail gun, drill, saw, wrench	
DATE OF LAST WORK DAY BEFORE INTERVIEW (YYYYMMDD) 100219			
DATE YOU BEGAN WORK ON THIS PROJECT (YYYYMMDD) 100201			
THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE			
EMPLOYEE'S SIGNATURE		DATE (YYYYMMDD) 100222	
INTERVIEWER	SIGNATURE John Doe	TYPED OR PRINTED NAME John Doe	DATE (YYYYMMDD) 100222
WORKER'S COMMENTS General construction labor		INTERVIEWER'S COMMENTS	
		ACTION (If applicable, it should use semantic phrases): <input checked="" type="checkbox"/> EMPLOYEE PROPERLY CLASSIFIED AND PAID <input checked="" type="checkbox"/> ARE WAGE RATES AND POSTERS DISPLAYED	
FOR USE BY PAYROLL CHECKER			
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO PAYROLL REFLECTS THE \$20.00 PER WEEK AS "OTHER" DEDUCTIONS			
CHECKER			
LAST NAME Jane	MIDST NAME Jones	JOB TITLE Payroll Admin	DATE (YYYYMMDD) 100224
SIGNATURE			
AUTHORIZED FOR LEGAL REPRODUCTION PROVIDED BY: GSA - GPO #25-707-000-9048-9048			
STANDARD FORM 1445 (REV. 12-20) PROVIDED BY: GSA - GPO #25-707-000-9048-9048			

Employee Interview Form



- **Employee details**

- Work classification important to compare to wage determination
- Best not to list full social security number or full home address

LABOR STANDARDS INTERVIEW

CONTRACT NUMBER		EMPLOYEE INFORMATION			
#111-111		LAST NAME	FIRST NAME	MI	
NAME OF PRIME CONTRACTOR		Doe	John		
Contractor AAA		STREET ADDRESS			
NAME OF EMPLOYER		112233 Main Street			
Contractor AAA		CITY	STATE	ZIP CODE	
SUPERVISOR'S NAME		Any City	US	00000	
LAST NAME	FIRST NAME	MI	WORK CLASSIFICATION	WAGE RATE	
Johnson	John		Water Project	12.00	

Employee Interview Form



- Number of hours worked per day?
- Work over 40 hours per week?
- Paid at least time and a half for overtime?
- How are fringe benefits received? – Cash or bona fide plan?

ACTION	CHECK BELOW	
	YES	NO
Do you work over 8 hours per day?	✓	
Do you work over 40 hours per week?	✓	
Are you paid at least time and a half for overtime hours?	✓	
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?		✓

Employee Interview Form



- Ask about the type of deductions made from pay
 - Last day of work before interview
 - Date started work on project
- Ask about the type of work performed and the type of tools used
 - Way to confirm job classification

WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?

Deposit of \$20.00 per week into saving plan

HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW? 9	TOOLS YOU USE	
DATE OF LAST WORK DAY BEFORE INTERVIEW (YYMMDD) 100219	General construction tools	nail gun, drill, saw, wrench
DATE YOU BEGAN WORK ON THIS PROJECT (YYMMDD) 100201		

Employee Interview Form



- Make sure to write down notes
- Retain interview records – State may not need actual copies

THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE

EMPLOYEE'S SIGNATURE		DATE (YYMMDD)	
		100222	
INTERVIEWER	SIGNATURE	TYPED OR PRINTED NAME	DATE (YYMMDD)
		John Doe	100222
INTERVIEWER'S COMMENTS			
WORK EMPLOYEE WAS DOING WHEN INTERVIEWED	ACTION (If explanation is needed, use comments section)	YES	NO
General construction labor	IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?	✓	
	ARE WAGE RATES AND POSTERS DISPLAYED?	✓	
FOR USE BY PAYROLL CHECKER			
IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?			
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
COMMENTS			
Payroll reflects the \$20.00 per week as "other" deductions			

Spot Checks and Interview Verification



- Confirm interview information against payroll records
- Spot check and review representative sample of weekly payroll data
 - Verify fringe benefit plans and payments
 - Verify apprentice and trainee registration and certification and confirm adherence to established ratios
 - Perform at same frequency as interviews
 - ✦ At least twice per contractor/subcontractor

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Apprentice/Trainee Ratios



- Journeymen is a craftsman who has completed an apprenticeship
- Apprentice ratios
 - Ratio to journeymen on job site must not exceed ratio permitted to the contractor under the registered program
- Trainee ratios
 - Ratio to journeymen on job site must not exceed ratio permitted under the plan approved by the Employment and Training Administration
 - ✦ Count trainees together with apprentices when determining compliance

Example	
No. of Journeymen	No. of Apprentices
0-2	0
3-5	1
6-8	2
9-11	3

- Example: Permitted ratio is 1 apprentice to every 3 journeymen

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DBA Documentation at Site



- Post DBA poster
 - Notice to All Employees (WH1321)
- Post wage rates
- Must be prominent, protected, and accessible

<http://www.dol.gov/esa/whd/regs/compliance/posters/fedprojc.pdf>

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT Contract payments can be withheld to assure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or includes wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES Apprentices rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.

For additional information:
1-866-4-USWAGE
(1-866-427-5627) TDD: 1-877-588-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

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Recordkeeping



- Retain payroll records for at least 3 years
 - Required of systems, contractors, subcontractors, and vendors
- Good practice for State
 - States may have longer retention policies due to length of the loans/financial assistance



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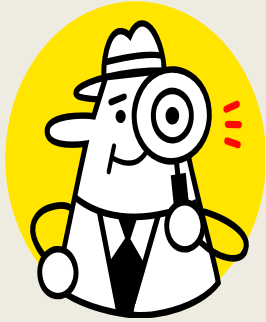
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What Will the State Look For?



- Documentation of compliance
- Project files
 - Bid documents and contracts
 - Davis-Bacon Act compliance certification
 - Methodology of interviews
 - Methodology of verifying apprentice ratios

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What Will the State Look For?



- Site visits and random requests
 - Employee interviews
 - Apprentice and trainee records and ratios
 - Proper documentation at work site:
 - ✦ DBA poster
 - ✦ Wage rates
- State must ensure prevailing wages are being paid

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Good Practice



- **Maintain project file checklist and onsite inspection (site visit) checklist to document compliance with DBA requirements**

Why Important?



- **EPA and State must ensure contractors and subcontractors are complying with Davis-Bacon and prevailing wages are being paid**



Why Important? – Debarment/Enforcement



- DOL has reasonable cause to believe:
 - A willful or aggravated violation of a labor standards provision or
 - Violation of the DBA
- Up to 3 years
- www.epls.gov
- Under DBA, applies to:
 - Contractors
 - Subcontractors
 - Vendors
 - Responsible officers
- Any firms in which the contractors or subcontractors are known to have an interest

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Common Problems and Concerns



**AMERICAN RECOVERY & REINVESTMENT ACT
(ARRA)**

System's Review of Payroll Records



- **Systems are responsible for ensuring that DBA requirements are being met**
 - Certification includes “reviewing” payroll
 - ✦ Don't need to “scrutinize” each and every payroll
 - Focus on discrepancies and conflicting information
 - Look for items that stand out and oddities
 - Job classification should be listed on payroll so it's easy to determine if prevailing wage is being paid or if employee is working two or more “job” classifications

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Common Payroll Issues



- **Excessive use of laborer over mechanics – commonly 1:1 ratio or similar**
 - Mechanics are misclassified as laborers
 - ✦ Mechanics generally perform the work of a “trade”
 - ✦ Laborer generally performs digging, carrying, pulling, etc.
- **Hours reported in tenths or hundredths**
 - Employees usually track hours by whole, half, or quarter hours
 - ✦ Review payroll to determine if other employees also reporting in tenth or hundredths
 - ✦ Verify with contractor that it is a common practice

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Common Payroll Issues



H DAY	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS						(9) NET WAGES PAID FOR WEEK
				FICA	WITH-HOLDING TAX	State	MEDI	OTHER	TOTAL DEDUCTIONS	
	0.75	\$18.00	\$493.50							
	40.00	\$12.00		\$21.00	\$30.00	\$15.50	\$7.00	\$20.00	\$93.50	\$400.00
	0.15	\$15.00	\$402.25							
	40.00	\$30.00		\$24.80	\$9.71	\$5.00	\$5.80	\$0.00	\$45.31	\$356.94
			\$625.60							
	36.80	\$17.00		\$39.66	\$42.15	\$18.00	\$9.28	\$200.00	\$309.09	\$316.51

Other Common Problems



- Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours)
- Inadequate recordkeeping
 - Not counting all hours worked
 - OR
 - Not recording hours worked by an individual in two or more classifications during a day

Other Common Problems, cont.



- Failure to maintain copy of apprenticeship program and individual registration documents for apprentices
- Failure to submit certified payroll summaries weekly
- Failure to post DBA poster and applicable wage determination

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Common Questions



**AMERICAN RECOVERY & REINVESTMENT ACT
(ARRA)**

What If...



- I notice a discrepancy in payroll or other documentation?
- I miss conducting an employee interview?
- A contract is executed without the DBA clause or wage determination?
- I discover that a contractor is on the debarment list?

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Common Questions



- Do I pay system employees prevailing wages?
- When should contractors begin submitting weekly payroll - after contract is executed or when contractor mobilizes?
- How do I verify prevailing wages for an employee who is working, during the same week, on the ARRA project and a non-ARRA project?

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Common Questions



- Do I apply the wage determination to projects that involve only equipment purchases?
 - Do I need to verify compliance at equipment manufacturing facilities?
- How do I determine wage determinations for projects that cross multiple counties?

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Additional Resources



**AMERICAN RECOVERY & REINVESTMENT ACT
(ARRA)**

Reference Links



- DOL Davis-Bacon Act Fact Sheet: <http://www.dol.gov/esa/whd/regs/compliance/whdfs66.pdf>
- Wage determinations: <http://www.wdol.gov>
- Wage determination by state/county: <http://www.gpo.gov/davisbacon/davbacsearch.html> or <http://www.wdol.gov/dba.aspx>
 - Wage and Hour Division: <http://www.dol.gov/esa/whd> and <http://www.dol.gov/esa/whd/recovery/>
- DBA wage determination reference material: <http://www.gpo.gov/davisbacon/referencemat.html>
- Prevailing Wage Resource Book: <http://www.dol.gov/esa/whd/recovery/pwrp/toc.htm>
- Performing a review of certified payrolls: <http://www.dol.gov/esa/whd/forms/wh347.pdf/>
- Conducting labor interviews:
[http://contacts.gsa.gov/webforms.nsf/0/12BF5D0E2DC4484685256CBC0062F375/\\$file/sf1445.pdf](http://contacts.gsa.gov/webforms.nsf/0/12BF5D0E2DC4484685256CBC0062F375/$file/sf1445.pdf)
- Administrative Review Board: <http://www.dol.gov/arb>
- Debarred Bidders List: <http://www.epls.gov>

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Questions?



THE CADMUS GROUP SRF PROGRAM SUPPORT

KIMBERLY MARSH

KIMBERLY.MARSH@CADMUSGROUP.COM

303.389.2532

MIKE GRIMM

MICHAEL.GRIMM@CADMUSGROUP.COM

503.760.1855