

Davis Bacon and Related Acts

EPA ARRA Grant Requirements



Background

Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of title 40, United States Code.

Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alternation or repair.

Reorganization Plan Number 14 of 1950 and 40 U.S.C. 3145

- Federal contracting or assistance-administering agencies have the primary responsibility for the enforcement of DBA.
- DOL has coordination and oversight responsibilities, including the authority to establish regulations and investigate labor standards compliance

Labor Standards

Three Key Federal Statutes

- Davis-Bacon Act/Davis-Bacon Related Acts
- Contract Work Hours and Safety Standards Act
- Copeland Act

Davis-Bacon Act

(29 CFR parts 1, 3, and 5)

- Enacted 1931, amended 1935 & 1964
- Protects workers from nonlocal contractors underbidding local wage levels
- Federal construction contracts over \$2,000
- The Act is “site-based”
- Includes alteration, repair, painting & decorating
- Applies to all laborers & mechanics
- Requires payment of prevailing wages
- Requires weekly payment of wages

Contract Work Hours and Safety Standards Act (CWHSSA)

- Enacted 1962
- Overtime for all contract work > 40 hrs/week (No longer applies after 8+ hours/day)
- Applies to contracts > \$100,000
- Liquidated damages apply to violations (\$10/day/violation)
- Paid at 1½ times the regular rate of basic pay plus the straight-time rate of fringe benefits
 - Straight time: Straight time: \$20 + \$5
 - Overtime: Overtime: \$30 + \$5

Copeland Act

- Enacted in 1934
- Prohibits “kickback” of wages and/or back wages
- Requires contractors on Davis Bacon/Davis Bacon Related Acts covered projects to submit a certified payroll with a signed “statement of compliance” each week
- Regulates payroll deductions from wages:
 - FICA, federal and state income tax withholding
 - Bona fide prepayment of wages
 - Court ordered payments, fringe benefit plans, etc.

EPA Applicability

Davis Bacon Related Acts (DBRA)

DBRA

- Davis-Bacon requirements extent to numerous “related Acts” that provide federal assistance by:
 - Grants
 - Loans
 - Loan guarantees
 - Insurance

CWSRF and DWSRF

- DBRA applies to all CWSRF and DWSRF construction, alternation, and repair of infrastructure.

Davis-Bacon Process

Davis-Bacon Process

- Planning - Understand the issues and plan to avoid labor problems and budget problems later in the process.
- Preconstruction - Undertake proper steps to make sure labor regulations and procedures are in place to ensure compliance during the construction process.
- Construction Period - Follow through on the procedures to ensure proper posting, payroll, monitoring and compliance procedures are followed.
- Construction Completion and Post Construction Completion - Gather payroll, certifications, and documentation and records retention requirements.

Planning Step #1

- Determine if your project may be subject to Federal Labor Standards, particularly Federal Davis Bacon Wage Scale.
- Refer to your Grant Term and Condition
- The Act is "site-based"
- If any portion of the construction contract is receiving funding subject to Davis-Bacon, the entire contract is subject to Davis-Bacon.

Planning Step #2

Determine the type of construction (serves as the basis for prevailing wage classification)

- **Heavy** - those projects, generally public works, which cannot be classified as Building, Residential, or Highway Construction
 - Often distinguished on the basis of the characteristics of particular projects such as dredging, water and sewer lines, parks and playgrounds, dams, major bridges, and flood control.
- **Highway** - roads, streets, highways, sidewalks, runways, parking areas, and other paving work not incidental to other construction
- **Residential** - single family houses, townhouses, and apartment buildings up to four stories
- **Building** - sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. Also apartment buildings greater than 4 stories, parking garages, service stations, office buildings, fire stations, etc.

Common Types of Construction per EPA Programs

- CWSRF and DWSRF
 - Building, Heavy, or Residential

Planning Step #3

- Obtain Wage Determinations:
<http://www.wdol.gov> Wage Determinations online
- If work not performed by classification in Wage Determination initiate Conformance Process (SF-Form 1444)
- Non-Government recipients/subrecipients must have wage determination concurrence by governmental award official
- Davis-Bacon Wage Determinations
 - Established by geographic area (usually a county or a group of counties)
 - Published for the 4 types of construction: Residential, Building, Highway, Heavy (classifications may be combined in many areas)
 - May be modified periodically
 - Must be included in bid documents and contract for construction with appropriate Federal labor standards provisions

Planning Step #4

- Verify prime contractor and all subcontractor eligibility against GSA Debarment List
- On-line access at:
<http://epls.arnet.gov>
- Make record of verification to contract file
- Bid/contract documents (including RFPs) must contain:
 - Applicable Davis-Bacon Wage Determination (WD)
 - Federal labor standards clauses

Responsibilities and Relationships

Responsibilities/Relationship

- The Davis-Bacon relationship is between the local funding agency's local contracting officer and the General Contractor.

Contracting Officer Responsibilities

Governmental Recipient/Subrecipient

- Obtain Wage Determinations
- Ensure all bid/contract documents contain applicable wage determination and labor provisions (prime and subcontractors)
- Ensure no contracts are awarded to ineligible contractors
- Ensure submission of certified payrolls
- Conduct onsite interviews with laborers and mechanics
 - Minimum once within 2 weeks of initial payroll and once within 2 week of final payroll per contractor
- Spot-check payrolls/related records
 - Minimum once within 2 weeks of initial payroll and once within 2 week of final payroll per contractor
- Periodically review use of apprentices and trainees
- Report potential violations to EPA DB contact and DOL Wages and Hours District Office
- Maintain full documentation
- Maintain records 3 years after completion

Responsibilities

Prime and Subcontractor

- Each contract subject to Davis-Bacon must contain labor standards (LS) provisions and the applicable wage determination
- LS provisions describe contractor responsibilities
- LS provisions provide remedies for noncompliance
- These LS provisions are included as a Term and Condition of the ARRA Grant Award

Responsibilities - *Prime Contractor*

- Prepares and submits certified payrolls for its own employees.
- Submits certified payrolls for all subcontractor employees.
- Reviews wage determination, requests additional classifications when needed.
- Provides subcontractors with forms and guidance concerning DB requirements.
- Ensures interviewer access to employees on site.

Responsibilities - *Subcontractor*

- Prepares & submits certified payrolls each week for its own employees.
- Instructs any lower-tier subcontractors of responsibilities.
- Reviews wage determination, requests additional classifications if needed.
- Ensures interviewer access to employees on-site.

If Federal and State Wage Rates Apply

- Contract must contain both Federal and State wage decisions/contract standards
- Employers must pay higher of two rates
- Payrolls must carry Federal statement of compliance (reverse of payroll form WH-347)

Wage Determination "Lock-In" Rules

- Competitive bidding: Modifications published < 10 days before bid opening may be disregarded if found there is not sufficient time to notify bidders, and a report is made to contract file
- Lock-in at bid opening provided contract is awarded within 90 days
- Must update wage determination if contract award is > 90 days
- Once a Davis-Bacon wage rate has been "locked," it stays in effect for the duration of the project.

Compliance Principles

DBA/DBRA Compliance Principles

- Laborers and mechanics
- Site of the work
- Truck drivers
- Apprentices, Trainees, and Helpers
- Fringe Benefits
- Computing overtime pay – contracts > \$100,000

Laborers and Mechanics

- Workers whose duties are manual or physical in nature
- Includes apprentices, trainees and helpers
- Exemptions:
 - As a general rule, an employee who spends the majority of time in a supervisory position at the job site, and who spends less than 20% of the work week engaged in skilled labor, is exempt from Davis-Bacon requirements for the percentage of time spent in that skilled time.
 - Clerical staff such as timekeepers; professionals such as architects, engineers; and inspectors and certain utility installers are also exempt.
 - Force Account workers, prisoners, volunteers

Site of Work

Davis-Bacon applies only to laborers and mechanics employed "directly upon the site of the work."

- Site of work is:
 - 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 construction, provided that such site is established specifically for the contract.
 - Also includes job headquarters, tool yards, batch plants, borrow pits, etc., provided they are:
 - Located adjacent or virtually adjacent to the "site of work" and dedicated exclusively or nearly so to the performance of the contract or project

Site of Work Exceptions

- "Site of work" does not include a contractor's 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 cover project.
- "Site of work" does not include fabrication plants, batch plants, job headquarters, 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 even where the operations may be dedicated exclusively to the performance of the contract for a period of time.

Truck Drivers

- Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:
 - Spent driving on the “site of work,” and
 - Spent loading or unloading materials and supplies on the “site of work,” if such time is more than *de minimus*.
 - Transporting material and supplies between a facility that is part of the “site of work” and the actual construction site
 - 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

Apprentices

Persons individually registered in a bona fide apprenticeship program registered with DOL or a DOL approved State apprenticeship agency

- May be paid less than the journeyman rate
- Includes individuals in their first 90 days of probationary employment as an apprentice
- DOL regulations: 29 CFR 5.2(n)(1) and 5.5(a)(4)(i)

Trainees

- Persons registered and receiving on-the-job training in a construction occupation under a program that has been approved in advanced by DOL's Employment Training Administration (ETA)
- May be paid less than the journeyman rate
- DOL regulations: 29CFR 5.2(n)(2) and 5.5(a)(4)(ii)

Helpers

- Helpers are only allowed when:
- Helper duties are clearly defined and distinct from all other workers on a wage determination
- The use of helpers is an established prevailing practice in the area
- The helper is not used as a trainee in an informal training program

May be added to the Wage Determination (WD) if all above conditions are met and no WD class performs the work.

Fringe Benefits (FB)

- Under Davis-Bacon, FBs are a component of the prevailing wage
- FBs must be paid weekly for all hours worked.
- The WD obligation may be satisfied by:
 - Paying the Base Hourly Rate (BHR) and the FB in cash
 - Contributing payments to a bona fide plan
 - Any combination of the two

Computing Overtime Hours (CWHSSA Earnings)

- An employee worked 44 hours as an electrician, where the WD BHR is \$12.00 plus \$2.50 in FBs:

$$44 \text{ hours} \times \$2.50 = \$110.00 \text{ FBs}$$

$$44 \text{ hours} \times \$12.00 = \$528.00 \text{ BHR}$$

$$4 \text{ hours} \times \$12.00/2 = \underline{\$ 24.00 \text{ OT at half}}$$

\$662.00

Construction Requirements

Job Site Postings

- Notice to All Employees (WH1321)
- Davis-Bacon wage decision OR Project Wage Rate Sheet
- Protected from elements
- Accessible to all laborers and mechanics
- Easy for contractors and subs to know what rates they must pay
- Easy for laborers and mechanics to see whether they are paid properly
- Easy for the contract administrators reviewing payroll reports
- Should be prepared only after the wage decision has been locked in

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 ensure 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 induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES Apprenticeship 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
(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

Job Site Postings

- Davis-Bacon wage decision OR Project Wage Rate Sheet
- Should be prepared only after the wage decision has been locked in

PROJECT WAGE RATE SHEET

Project Name: _____ Wage Decision: _____
 Project Number: _____ County: _____

<u>CLASSIFICATION</u>	<u>BHR</u>	<u>FB</u>	<u>Total</u>	<u>Laborers – FB:</u>		
				<u>Group</u>	<u>BHR</u>	<u>Total</u>
Bricklayers	_____	_____	_____	_____	_____	_____
Carpenters	_____	_____	_____	_____	_____	_____
Cement Masons	_____	_____	_____	_____	_____	_____
Drywall Hangers	_____	_____	_____	_____	_____	_____
Electricians	_____	_____	_____	_____	_____	_____
Iron Workers	_____	_____	_____	_____	_____	_____
Painters	_____	_____	_____	_____	_____	_____
Plumbers	_____	_____	_____	_____	_____	_____
Roofers	_____	_____	_____	_____	_____	_____
Sheet Metal Workers	_____	_____	_____	_____	_____	_____
Soft Floor Layers	_____	_____	_____	_____	_____	_____
Tapers	_____	_____	_____	_____	_____	_____
Tile Setters	_____	_____	_____	_____	_____	_____
<u>OTHERS</u>	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
<u>ADDITIONAL CLASSIFICATIONS (HUD 4230-A)</u>						
<u>CLASSIFICATION</u>	<u>BHR</u>	<u>FB</u>	<u>Total</u>	<u>Date HUD Approved</u>	<u>Date DOL Confirmed</u>	
_____	_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	_____	

Certified Payroll Basics

- Optional form WH 347, Payroll
- Compliance statement (w/original signature of corporate official or designee)
- Payrolls required/week
- Identify first and final payroll
- Prime contractor reviews prior to submission
- Payroll retention = 3 years

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



U.S. Wage and Hour Division
Rev. Dec. 2008

NAME OF CONTRACTOR OR SUBCONTRACTOR ADDRESS OMB No.: 1215-0149
Expires: 12/31/2011

PAYROLL NO. FOR WEEK ENDING PROJECT AND LOCATION PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF EXEMPTING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK	
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS			
			O																	
			S																	
			O																	
			S																	
			O																	
			S																	
			O																	
			S																	
			O																	
			S																	
			O																	
			S																	

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a), The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(i) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Interviews – Standard Form 1445



LABOR STANDARDS INTERVIEW						
CONTRACT NUMBER			EMPLOYEE INFORMATION			
NAME OF PRIME CONTRACTOR			LAST NAME	FIRST NAME	MI	
NAME OF EMPLOYER			STREET ADDRESS			
SUPERVISOR'S NAME			CITY	STATE	ZIP CODE	
LAST NAME	FIRST NAME	MI	WORK CLASSIFICATION		WAGE RATE	
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?						
WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?						
HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?			TOOLS YOU USE			
DATE OF LAST WORK DAY BEFORE INTERVIEW (YYMMDD)						
DATE YOU BEGAN WORK ON THIS PROJECT (YYMMDD)						
THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE						
EMPLOYEE'S SIGNATURE					DATE (YYMMDD)	
INTERVIEWER	SIGNATURE		TYPED OR PRINTED NAME		DATE (YYMMDD)	
INTERVIEWER'S COMMENTS						
WORK EMPLOYEE WAS DOING WHEN INTERVIEWED			ACTION (If explanation is needed, use comments section)		YES	NO
			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 type="checkbox"/> YES <input type="checkbox"/> NO						
COMMENTS						
CHECKER						
LAST NAME	FIRST NAME	MI	JOB TITLE			
SIGNATURE					DATE (YYMMDD)	
AUTHORIZED FOR LOCAL REPRODUCTION Previous edition not usable						
STANDARD FORM 1445 (REV. 12-96) Prescribed by GSA - FAR (48 CFR) 53.222(g)						

Recordkeeping/Reporting

- Full documentation of all covered contracts/work performed
- Bid documents/contracts
- Wage decision/conformances
- Verification of contractor eligibility
- Bid opening/start of construction
- Certified payrolls/related documents
- Onsite interviews
- Documentation of all enforcement actions
- Correspondence
- Retain for 3 years from completion

Questions?