



# **Davis-Bacon Compliance Principles**

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**U.S. Department of Labor**  
**Wage and Hour Division**



# 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.



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# Davis-Bacon Related Acts

- Davis-Bacon (DB) requirements extend to numerous “related Acts” that provide federal assistance by
  - Grants
  - Loans
  - Loan guarantees
  - Insurance



# **Davis-Bacon Labor Standards/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 CFR 1, 3, and 5.



# Wage Determinations

- Davis-Bacon wage determinations 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.



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# Selecting the Correct Wage Determination

- Selecting and incorporating the appropriate general wage determination for the project type
  - Building
  - Residential
  - Heavy
  - Highway
- Guidance provided in AAM 130
- 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 \$1 million





# Interpreting General Wage Determinations

- Useful information contained in a general wage determination:
  - State and county
  - Type of construction with description
  - Record of modifications
  - List of classifications and rates



Superseded General Decision Number: SC20160056

State: South Carolina

Construction Type: Heavy

Counties: Berkeley and Dorchester Counties in South Carolina.

#### HEAVY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number      Publication Date  
0                              01/06/2017

\* IRON0848-001 12/01/2015

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 24.00	12.50
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PLUM0421-005 07/01/2016		

	Rates	Fringes
PIPEFITTER.....	\$ 26.50	11.45
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SUSC2011-047 11/02/2011		

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 14.85	0.00
LABORER: Common or General.....	\$ 11.64	2.53
LABORER: Pipelayer.....	\$ 12.55	1.82



# **Wage Determinations: Contracting Agency Responsibilities**

- Ensure proper wage determination (WD) is identified and applied;
- Advise contractors which schedule of rates applies to various construction items; and
- Advise contractors regarding the duties performed by various crafts in the WD.



# 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 C.F.R. § 5.5(a)(3)(ii)(A).
  - Each weekly payroll submitted must be accompanied by a “Statement of Compliance.” 29 C.F.R. § 5.5(a)(3)(ii)(B).



# Certified Payrolls

- Weekly payrolls must include specific information as required by 29 C.F.R. § 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:  
*<http://www.dol.gov/whd/forms/wh347instr.htm>*



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## PAYROLL

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

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



NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	OMB No.: 1235-0008 Expires: 04/30/2021
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PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
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(1)  NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2)  NO. OF WITHHOLDING 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
														FICA	WITH- HOLDING TAX			OTHER	TOTAL DEDUCTIONS	
				HOURS WORKED EACH DAY																
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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)(ii) 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, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Date \_\_\_\_\_

I, \_\_\_\_\_  
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the  
(Contractor or Subcontractor)

\_\_\_\_\_ ; that during the payroll period commencing on the  
(Building or Work)

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ from the full  
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- ☐ — in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- ☐ — Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

# Site of the Work

- Davis-Bacon applies only to laborers and mechanics employed “directly upon the site of the work”
- Construction includes “construction, alteration and repair, including painting and decorating”





# Laborers and Mechanics

- Workers whose duties are manual or physical in nature
- Includes apprentices, trainees, and helpers
- For CWHSSA, includes watchmen and guards



# Laborers and Mechanics

## ■ Does not include:

- Timekeepers, inspectors, architects, engineers
- Bona fide executive, administrative, and professional employees as defined under FLSA

## ■ Working foremen are generally non-exempt

- must be paid the Davis Bacon (DB) rate for the classification of work performed if not 541 exempt



# Apprentices

- Persons individually registered in a bona fide apprenticeship program registered with DOL or a DOL approved State apprenticeship agency
- Include 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 advance by DOL's Employment Training Administration (ETA)
- DOL regulations: 29 CFR 5.2(n)(2) and 5.5(a)(4)(ii)



# Apprentices and Trainees

- Are laborers and mechanics, but are not listed on the WD
- Permitted to be used on covered projects and paid less than the journeyman rate when:
  - Individually registered in an approved apprenticeship or training program
  - Paid the percentage of hourly rate required by the apprenticeship or training program



# Apprentices and Trainees

- Paid the FB's specified in the approved program, or the full amount of FB's listed on the WD, if the program is silent; and,
- Within the allowable ratio specified in the approved program for the number of apprentices or trainees to journeymen





# Wages & Fringe Benefits

- DBA: the term “wages” or “prevailing wages” includes:
  - The basic hourly rate (BHR)
  - Contractor contributions *irrevocably* made to a trustee or third party pursuant to a bona fide fringe benefit (FB) fund, plan, or program



# Fringe Benefits

- Under DBA, FB's are a component of “prevailing wage”
- The WD obligation may be satisfied by:
  - Paying the BHR and FB in cash
  - Contributing payments to a bona fide plan
  - Any combination of the two



# Fringe Benefits

- Must be paid weekly for all hours worked
- Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation (unlike under SCA)



# Fringe Benefit Example

■ BHR	\$10.00
■ <u>FB</u>	<u>\$ 1.00</u>
■ Total prevailing wage	\$11.00

■ The contractor may comply by paying:

- \$11.00 in cash wages
- \$10.00 in cash wages plus \$1.00 for FB
- \$ 9.00 in cash wages plus \$2.00 for FB



# Examples of Fringe Benefits

- Life Insurance
- Health Insurance
- Pension
- Vacation
- Holiday
- Sick Leave



# Overtime Pay

- *Neither DBA nor SCA* provide premium rates for overtime hours of work, but *both* recognize other federal laws that do:
  - Contract Work Hours and Safety Standards Act (CWHSSA) applies to contracts in excess of \$100,000 (\$150,000 for contracts procured under the Federal Acquisition Regulations) that employ laborers, mechanics, guards, and watchmen.
  - Fair Labor Standards Act (FLSA) *applies more broadly, with over 143 million workers subject to coverage.*





# Requirements of CWHSSA

- 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
- Liquidated damages can be assessed per day for each laborer, mechanic, guard, or watchman not paid proper overtime



# Computing Overtime Hours (CWHSSA Earnings)

An employee worked 44 hours as electrician,  
where WD BHR is \$12.00 plus \$2.50 in FB's:

44 hours	X	\$ 2.50	= \$110.00	FB's
44 hours	X	\$12.00	= \$528.00	BHR
4 hours	X	\$12.00/2	= \$ 24.00	OT
			<u>\$662.00</u>	



# Overtime Computation where Employee Employed at Two Rates

During a workweek an employee works 20 hours as an Electrician at \$12.00 BHR plus \$2.50 in FB's and as a Painter for 24 hours at \$10.00 BHR plus \$3.00 in FB's. The regular rate for determining the overtime rate is:

$$20 \times \$12.00 = \$240.00 \text{ (as Electrician)}$$

$$24 \times \$10.00 = \underline{\$240.00} \text{ (as Painter)}$$

$$\$480.00/44 = \$10.91$$

$$\text{Overtime due: } \$10.91 \times 1/2 \times 4 \text{ hours} = \$21.82$$



# 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.
- 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



# Davis-Bacon Resources

- Prevailing Wage Seminar Presentations
- Government Contracts Compliance Assistance Toolkit
- Wage Determination Website
- Comprehensive Davis-Bacon Compliance Assistance
- Branch of Construction Wage Determinations
- Regional Wage Specialists
- Industry-Specific Resources for Construction
- Office of Apprenticeship



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