



Davis-Bacon 101

An Overview of the Davis-Bacon Act



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
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A photograph of three construction workers on a rooftop at sunset. They are wearing hard hats and safety vests. One worker is pointing towards a crane that is suspended in the air. The workers are holding blueprints. The background shows a cityscape under a bright orange and yellow sky. The foreground shows a grid of rebar on a concrete slab.

History and Coverage

Davis-Bacon Act (DBA) History

- **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 hourly rate and any amount contributed by the contractor or subcontractor for certain fringe benefits.
- **Reorganization Plan No. 14 of 1950**
 - Under Reorganization Plan No. 14 of 1950, federal contracting agencies have the day-to-day administration and enforcement authority of the DBA.
 - DOL has oversight authority for the administration and enforcement of the DBA.

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



Wage Determinations and Conformances



Wage Determinations (WDs)

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.

Two types of wage determinations: **General** and **Project**

- In almost all instances, general WDs are available on sam.gov and should be used in bid solicitations and contracts on which the Davis-Bacon labor standards apply.
- Project WDs should only be requested under certain circumstances

Selecting the Correct WDs-Type

Selecting and incorporating the appropriate general wage determination for the project type. Guidance provided in AAM 130.

- Building
- Residential
- Heavy
- Highway

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 \$2.5 million – guidance provided in AAM 131 and 236.

Selecting Current Wage Determination

- Incorporate the most current WD
 - Negotiated contracts (“RFPs”): time of award
 - Competitively bid contracts: in effect 10 days or more before opening of bids
 - Exceptions

Extension of General WD

- Contract not awarded within 90 days of bid opening
 - Any modification to the wage determination must be incorporated into the contract up to award *unless* the Federal agency requests and obtains an extension of the 90 day period

Contracting Agency Responsibilities

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

Conformances

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

(29 CFR 5.5(a)(1)(ii)).

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



Compliance Principles and Investigative Procedures

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.

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.

Wages and Fringe Benefits-Payment

Under DBA, fringe benefits (FBs) are a component of the DBA “prevailing wage.”

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

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 the work” limitation
- Includes Liquidated Damages provision – currently \$29/day

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

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).

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>

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).)

- 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 set forth at 29 CFR 5.12(b)

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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Office Hours

Wage and Hour Division Office Hours

Wednesday 1:30-5:00 & Thursday 8:30-5:00

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