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Davis-Bacon and Related Acts

- The DBRA applies to contractors and subcontractors performing on federal or federally assisted contracts in excess of \$2,000 for construction, alteration, or repair.
- Covered contractors and subcontractors must pay their laborers and mechanics working on the site of work no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.



Davis-Bacon and Related Acts

Who Actually Gets Paid Prevailing Wage Rates Anyway?



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
1-866-4-US-WAGE

Laborers and Mechanics – Examples

- Bricklayers
- Carpenters
- Electricians
- Ironworkers
- Laborers
- Plumbers
- Operators – Power Equipment
- Traffic Control (including Flaggers)
- Truck Drivers

Who are Laborers and Mechanics?

- Workers whose duties are manual or physical in nature
- Applies to any individual who performs laborer or mechanic duties, regardless of any alleged contractual relationship
- No employment relationship required – independent contractors usually should receive prevailing wages

Duties are Manual or Physical in Nature

- Because the term laborers and mechanics includes those workers whose duties are manual or physical in nature, it does *not* include:
 - Timekeepers, inspectors, architects, engineers
 - Bona fide executive, administrative, and professional employees as defined under Fair Labor Standards Act (FLSA) and 29 CFR part 541

What About Business Owners?

- Business owners are excluded from the term “laborers and mechanics” when they
 - Own at least a 20% equity interest in the company in which they are employed, **and**
 - Are actively engaged in its management
- Management includes activities such as hiring and overseeing employees, planning and controlling the budget, monitoring or implementing legal compliance measures, etc.

What About Working Supervisors?

- A working supervisor is generally *not* an exempt employee under the FLSA and 29 CFR part 541
 - Working supervisors who devote more than 20% of their workweek to laborer or mechanic duties are considered laborers and mechanics for that work.
 - These workers must be paid the applicable Davis-Bacon (DB) prevailing wage rate for the classification of work performed if they are not 541 exempt.

Who is an Apprentice?

- An apprentice is a person who is
 - 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, **or**
 - An individual in their first 90 days of probationary employment as an apprentice in such a program, provided certain requirements are met.

Bona Fide Apprentices

- Bona fide apprentices are permitted to work on DB covered projects and be paid less than the journey level WD rate for the classification of work performed when they are employed in accordance with the terms of the applicable apprenticeship program.
- However, apprentices must be paid the full prevailing wage rate for the classification of work performed if they are not individually registered in and employed pursuant to the terms of a bona fide apprenticeship program.



Davis-Bacon and Related Acts

How Do I Pay Prevailing Wages?



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DBRA Requirements: Prevailing Wages

- 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, without regard to skill.
- Exception for apprentices in approved programs

What are Prevailing Wages?

- Under the Davis-Bacon Act (DBA), 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 (FB) fund, plan, or program, and/or
 - The rate of costs the contractor reasonably anticipates in providing bona fide FBs, where certain conditions are met

How Often Do I Pay Workers?

- Davis-Bacon prevailing wages must be paid weekly for all hours worked.
- If the fringe benefits are paid into a bona fide fringe benefit plan, then contributions must be made no less often than quarterly.

How Do I Pay Prevailing Wages?

- Under the DBA, fringe benefits are a component of the “prevailing wage.”
- The prevailing wage obligation may be satisfied by:
 - Paying the 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 (unlike under SCA).

Prevailing Wage Example

- Basic Hourly Rate (BHR) = \$25.00
- Fringe Benefits (FB) = \$10.00
- Total Prevailing Wage = \$35.00
- The contractor may comply by paying:
 - \$35.00/hour in cash wages, or
 - \$25.00/hour in cash wages + \$10.00/hour in FBs, or
 - \$20.00 in cash wages + \$15.00/hour in FBs
- Other combinations are also acceptable, as long as the total Prevailing Wage paid equals at least \$35.00/hour

Work in More Than One Classification

- Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked in that classification.
- To pay the different rates for each classification, the contractor's payroll records must accurately set forth the time spent in each classification in which work is performed.

Prevailing Wage Example – Multiple Classifications

- A worker spent 32 hours working as an electrician, with a BHR of \$22.00 and FB of \$3.00, and 8 hours working as a laborer, with a BHR of \$14.00 and FB of \$1.00.
- The worker is due \$800.00 for their electrician work (32 hours x (\$22.00 + \$3.00)) and \$120.00 for their laborer work (8 hours x (\$14.00 + \$1.00)), for a total of \$920.00.
- The \$920.00 can be paid in any combination of cash wages and fringe benefit contributions.

Can Apprentices be Paid a Lower Rate?

- When apprentices are individually registered in an approved program, they may be paid a lower rate than the journey level wage determination rate for the classification of work performed if the program requirements are met.
- Apprentices must be paid the full journey level wage determination rate if they are working in a different classification than their apprenticeship classification.

Apprenticeship Program Requirements

- Basic hourly rate percentage appropriate for the apprentice's progress in the program
- Fringe benefits
- Allowable ratio for the number of apprentices to journeyworkers

What Hourly Rate do I Pay Apprentices?

- Apprenticeship programs typically specify the percentage of the hourly rate required for each level of progression within the program.
- To determine the minimum hourly wage rate for an apprentice, the percentage specified in the program for the level of progression is applied to the journey worker basic hourly rate listed in the applicable wage determination.

What About Fringe Benefits for Apprentices?

- Apprentices must be paid the fringe benefits (FBs) specified in the approved program.
- If the program does not specify FB amounts, apprentices must be paid the full amount of FBs listed on the WD for the classification of work performed.

What are Ratio Requirements?

- Apprentices must be employed within the allowable ratio specified by the approved program.
 - “The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program.”
 - Compliance with the ratio is determined on a daily, not a weekly, basis.
- The use of fractions in computing the ratio is not permitted unless specified in the approved apprenticeship agreement.

What About Reciprocity of Ratios and Wage Rates?

- Apprenticeship programs are generally not portable.
- Where a contractor is performing construction in a locality other than the locality in which the apprenticeship program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which construction is being performed must be observed.

Can Deductions Be Taken From Prevailing Wages?

- Certain common deductions, as listed in 29 CFR 3.5, do not require the approval of the DOL
- The DOL may approve other deductions whenever all the conditions in 29 CFR 3.6 are met

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: <https://www.dol.gov/agencies/whd/government-contracts/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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