

**PREVAILING WAGE
SEMINARS**



DBA/DBRA Compliance Principles



WAGE AND HOUR DIVISION | 1-866-4USWAGE | www.dol.gov/whd/govcontracts



DBA/DBRA

Compliance Principles

- Laborers and mechanics
- Site of the work
- Truck drivers
- Apprentices Trainees & Helpers
- Area Practice
- Fringe Benefits
- Certified Payrolls & Electronic Signatures
- Leases as Contracts for Construction

Laborers and Mechanics

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

Laborers and Mechanics

- Does not include:
 - Timekeepers, inspectors, architects, engineers; or
 - 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 and Trainees

- Are laborers and mechanics; not listed on WDs.
- Permitted to work on covered projects and be paid less than the journeylevel WD 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

- Persons 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.
- Individuals in their first 90 days of probationary employment as an apprentice in such a program.
- Regulations: 29 C.F.R. §§ 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 approved in advance by DOL's Employment Training Administration (ETA).
- Regulations: 29 C.F.R. §§ 5.2(n)(2) and 5.5(a)(4)(ii).



Helpers

- May be employed if:
 - Duties are clearly defined and distinct from other classifications on the WD;
 - An established prevailing practice in the area; and
 - Not employed in an informal training program.
- May be added to WD if all above conditions are met; and no WD class performs the work.

Site of the Work

- Davis-Bacon applies only to laborers and mechanics employed “directly on the site of the work.”
- A three-part definition applies to determine the scope of the term “site of the work.”



Site of the Work Definition 1

- DBA applies only to workers “directly on the site of the work:”
 - 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 constructed, *provided that* such site is established specifically for the contract.

Site of the Work Definition 2

- “Site of the work” also includes job headquarters, tool yards, batch plants, borrow pits, etc., *provided* they are:
 - Located adjacent or virtually adjacent to the “site of the work” described in paragraph 1; and
 - Dedicated exclusively or nearly so to the performance of the contract or project.

Site of the Work Definition 3

- “Site of the 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 covered project.

Truck Drivers

- Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:
 - Spent working on the “site of the work;” and/or
 - Spent loading or unloading materials and supplies on the “site of the work,” if such time is more than *de minimis*.

Truck Drivers

- Truck drivers are also covered when:
 - Transporting materials and supplies between a facility that is part of the “site of the work” and the actual construction site; or
 - 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.

Area Practice Surveys

- There are no nationwide standard classification definitions under the DBA.
- To determine proper classifications for workers employed on a Davis-Bacon covered project, it may be necessary to examine **local area practice**.

Area Practice Surveys (cont'd)

- Proper classification of the laborers or mechanics performing the work in question will be resolved by examining the classification practice(s) of contractors who performed the work in question:
 - On similar construction projects (building construction, residential construction, highway construction, heavy construction);
 - In progress in the same area (normally the same county);
 - During the year preceding the wage determination lock-in date for the contract in question.



Wages & Fringe Benefits

- 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 FB’s where certain conditions are met.

Fringe Benefits

- Under DBA, FB's are a component of the DBA “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.

Fringe Benefit Example

- | | |
|-------------------------|---------|
| ■ BHR | \$14.00 |
| ■ FB | \$ 1.00 |
| <hr/> | |
| ■ Total prevailing wage | \$15.00 |
- The contractor may comply by paying:
 - \$15.00 in cash wages
 - \$14.00 in cash wages plus \$1.00 for FB
 - \$12.00 in cash wages plus \$3.00 for FB

Examples of Fringe Benefits

- Life Insurance;
- Health Insurance;
- Pension;
- Vacation;
- Holiday; and
- Sick Leave.

	Rates	Fringes
Carpenter (includes form work).....	\$ 13.21	
Ironworker, reinforcing.....	\$ 13.29	.52
Ironworker, structural.....	\$ 21.15	15.54
Laborers:		
Blaster, demolition.....	\$ 20.38	2.60
Concrete worker.....	\$ 12.46	
Driller.....	\$ 14.50	2.60
Flagger.....	\$ 11.15	4.40
Guardrail installer.....	\$ 9.88	
Highway line striping.....	\$ 14.38	
Landscape laborer.....	\$ 10.19	1.03
Sign installer.....	\$ 11.70	4.26
Unskilled.....	\$ 12.01	
Power equipment operators:		
Auger.....	\$ 15.16	
Backhoe.....	\$ 15.54	
Broom.....	\$ 14.50	3.72
Bulldozer.....	\$ 16.22	3.35
Cold planer.....	\$ 16.20	
Crane.....	\$ 17.58	2.63
Excavator.....	\$ 15.97	1.36
Grader.....	\$ 16.44	3.50
Loader.....	\$ 15.13	
Mechanic.....	\$ 14.00	6.05
Paver.....	\$ 15.16	
Founder.....	\$ 15.16	
Roller.....	\$ 15.92	6.05
Screed.....	\$ 14.85	4.09

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>



Certified Payrolls

- Weekly, the contractor must submit “a copy of all payrolls” to:
 - The federal agency; or
 - If the federal agency is a not a party to the contract, to the applicant, sponsor, or owner for transmission to the federal agency).

29 C.F.R. § 5.5(a)(3)(ii)(A).



“Statement of Compliance”

- Must be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. 29 C.F.R. § 3.3(b).
- Each weekly statement must be delivered or mailed by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency contracting for or financing the building or work. 29 C.F.R. § 3.4(a).



Certified Payrolls & Electronic Signatures

- The signature on each weekly “Statement of Compliance” may be either an original handwritten or an electronic signature.
- A contracting agency or prime contractor may permit or require contractors to submit the weekly payrolls, each with the accompanying “Statement of Compliance” through an electronic system.



U.S. Department of Labor
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at 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.

OMB No.: 1235-0008
Expires: 01/31/2015

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>		ADDRESS		PROJECT AND LOCATION		PROJECT OR CONTRACT NO.	
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 WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(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		

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



Typical Problems

- Misclassification of Laborers and Mechanics
- Failure to Pay the Prevailing Wage and fringe Benefit
- Inadequate Record Keeping (HW, multiple classifications)
- Bonafide Apprenticeship Program documents
- Certified Payrolls
- DB poster and applicable WDs
- Failure to distribute Contract Stipulations to Subs

WHD Internet Sites

- Wage Determinations – <http://www.wdol.gov>
- Wage and Hour Division - <http://www.dol.gov/whd/index.htm>
- Resource Book - <http://www.dol.gov/whd/recovery/pwrb/toc.htm>
- Office of the Administrative Law Judges Law Library - <http://www.oalj.dol.gov>
- Administrative Review Board - <http://www.dol.gov/arb>

