

U.S. Department of Housing and Urban Development Davis-Bacon Basics

Key Labor Standards Objectives

- Apply Davis-bacon requirements correctly.
- Provide basic training and technical support to contractors.
- Monitor contractor performance.
- Investigate probable violations and complaints of underpayment.
- Pursue debarment and sanctions against repeat violators.

Department of Labor Statutory Provisions

- Davis-Bacon Act (DBA)
- Davis-Bacon Related Acts (DBRA)
- Copeland Act (Anti–Kickback Act)
- Contract Work Hour and Safety Standards Act
- See 29 CFR Parts 1,3,5,6,7

HUD Related Laws and Handbook

- Section 110 of Housing and Community Development Act of 1974, as amended (CDBG, Section 108 Loan Guarantee, EDI/BEDI, NSP)
- National Affordable Housing Act of 1990 (HOME)
- HUD Handbook 1344.1 Rev 2

Local Contracting Agency Responsibilities

- Designate Labor Standards Officer(LSO).
- Prepare and ensure all bid documents, contracts and subcontracts contain Federal Labor Standard provisions (HUD 4010) and the applicable Davis-Bacon wage determination.
- Verify contractor eligibility.
- Provide contractor training and technical assistance.

Local Contracting Agency Responsibilities (continued)

- Post the applicable wage determination & Notice to All Employees,
- Conduct on-site interviews,
- Review certified payrolls,
- Investigate probable violations & complaints,
- Recommend debarment against repeat violators, and
- Prepare and submit enforcement reports.

Recordkeeping

 Maintain related construction records including certified payrolls for 3 years.

<u>LR-06-02</u>, 11/15/06, Custody, security and disposal of Federal labor standards compliance documents and investigative records

COMMUNITY BLOCK GRANT PROGRAM (CDBG)

NEIGHBORHOOD STABILIZATION PROGRAM (NSP)

Applicability Factors

- Funding in whole or in part construction work with contract amount \$2,000>
- Using CDBG fund for finances (interest payment, permanent financing)
- Threshold unit 8 units or more

Soft Costs

Do not trigger Davis-Bacon requirements:

- Real Property Acquisition,
- Architectural & Engineering Fees,
- Other Services (legal, accounting, construction management),
- Other non-construction items (furniture, business licenses, and real estate taxes)

Demolition work

 Covered by Davis-Bacon requirements if it will be followed by Davis-Bacon — covered construction.

• See Labor Relations Letter No. OLR-09-01.

Force Account

- Direct Recipients DB does not apply.
- Sub-recipients (for example, not-for-profit organizations) - DB applies.

HOME PROGRAM

APPLICABILITY FACTORS

- The standard for coverage is "assisted" not financed...
- "Any *contract* for the construction of affordable housing with 12 or more units assisted with [HOME] funds . . ."

APPLICABILITY FACTORS

(continued)

 Once triggered, DB requirements apply to the entire project (Refer to HUD Labor Standards Letter No. LR-96-02)

Sweat equity participation is exempt.

CONTRACT REQUIREMENTS



PROCUREMENT

• Inform Labor Standards Officer (LSO) in advance of advertisements, bid opening, contract awards, etc.

 Keep LSO "in the loop" re: construction progress, and requests for payment.

Copy LSO on all key documents.

Obtain LSO's concurrence for final payment.

Labor Standards Documents Required for Construction Contracts

- Applicable (Locked-in) wage decision
- Federal labor standards provisions, HUD– 4010

Incorporation of Labor Standards Documents

- Incorporation of hard copy
- Incorporation into other documents
- Incorporation by reference

Wage Decision

- Work Classification
- Basic Hourly Rate of Pay
- Fringe Benefits Hourly Rate

How to Locate General Wage Decision

http://www.wdol.gov

- By WHD Number
- By Selecting criteria
 - By State
 - By County
 - By Construction Type

Types of Wage Decision

- Residential
- Building
- Highway
- Heavy

See Dept. of Labor All Agency Memorandum No. 130 and 131

What is Wage Decision Lock-In?

 The wage rates in the wage decision are used for the entire period of construction from start to finish without changes.

What locks in the Wage Decision?

- Competitively bid contracts
 - Bid Opening Date if contract award is within 90 days.
 - If contract award is > 90 days contract award date.
- No bid contract award date.
- No bid or contract award construction start date.

Federal Labor Standards Provisions

U.S. Department of Housing and Urban Development

Office of Labor Relations

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such 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, except as provided in 29 CFR 5.5(a)(4). 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 therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its

The work to be performed by the classification requested is not performed by a classification in the wage determination: and

The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this

Request for Additional Classification, when do you need it?

When a classification is needed for the construction project but it is not listed in the applicable wage determination.

Request for Additional Classification

Submit a request in writing to DBLS. The request must include:

- 1. The Proposed classification.
- 2. The Proposed wage hourly rate and benefit hourly rate, if paid.
- 3. The scope of work.
- 4. Supporting documents, if available.

Additional Classification Rules

- The proposed classification is used by construction contractors in the area of the project.
- The work performed is not already performed by another classification on the wage decision.
- 3. The proposed wage rate "fits" with the other wage rates already on the wage decision.
- 4. The workers/employer agree with the proposed wage rate.

Contractor Clearance

On-line verification

https://www.sam.gov/portal/public/SAM/

Documentation of Verification

POSTER

Davis-Bacon poster (WH-1321)

English:

http://www.dol.gov/whd/regs/compliance/posters
/fedprojc.pdf

Spanish:

http://www.dol.gov/whd/regs/compliance/posters
/davispan.pdf

ENFORCEMENT

Payroll Review, Employee Interviews, and Document Review



PAYROLL BASICS

- Optional WH347 form
- Compliance statement (certification)
- Weekly Submission
- First and Final payroll
- "No Work" payrolls
- Complete & legible

PAYROLL BASICS Project & Contractor Information

- Contractor/sub-contractor name
- Business address
- Project name & number
- Week ending date
- Day & date for each day in the workweek
- Numbering payrolls (optional but strongly recommended)

PAYROLL BASICS Employee Information

- Employee name
- Identification number
- Employee work classification
- Rate of pay
- Straight/Overtime hours worked per day, per week

PAYROLL BASICS Wages & Deductions

- Gross wages earned
- Deductions from wages
- Net pay
- Statement of compliance one for each weekly payroll

Payment of Wages

- Basic wages and fringe benefits
- All cash wages

Example

A Davis-Bacon wage determination:

Basic hourly rate \$20.00

Fringe benefit \$5.00

Total prevailing rate \$25.00

- 1. \$25.00 in cash wages;
- 2. \$20.00 plus \$5.00 in pension contributions or other "bona fide" fringe benefits; or
- 3. \$19.00 plus \$6.00 in pension contributions or any combination of "bona fide" fringe benefits.

Overtime

 Hours worked in excess of 40 during any workweek on the project site must be compensated at a rate not less than one and one half times the regular basic rate of pay.

FRINGE BENEFITS

- Does not include employer payments required by Federal, state or local law.
- Unfunded plans i.e. Kaiser dental, 401 K plans, etc.
- Contractor must identify on certified payroll whether fringe benefits are, or are not paid.

DEDUCTIONS

- Those deemed permissible by 29 CFR Part 3.
- Contractor's Documentation.

Poster & Wage Decision



Record of Employee Interview

U.S. Department of Housing and Urban Development Office of Labor Relations OMB Approval No. 2501-0009 (exp. 10/31/2010)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information is collected to ensure compliance with the Federal labor standards by recording interviews with construction workers. The information collected will assist HUD in the conduct of compliance monitoring; the information will be used to test the veracity of certified payroll reports submitted by the employer. Sensitive Information. The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrasement, inconvenience, or unfairness to any individual on whom the information is maintained. The information collected herein is voluntary, and any information provided shall be kept confidential.

1a. Project Name	2a. Employee Name								
1b. Project Number	2b. Employee Phone Number (including area code)								
•									
1c. Contractor or Subcontractor (Employer)	2c. Employee Home Address & Zip Code								
re. Contractor of Cubechtractor (Employer)	20. Employee Home Address & Zip Gode								
	2d. Verification of identification?								
	Yes No No								
3a. How long on this 3b. Last date on this 3c. No. of hours last	4a. Hourly rate of pay? 4b. Fringe Benefits? 4c. Pay stub?								
job? job before today? day on this job?	Vacation Yes No Yes No								
	Medical Yes No								
	Pension Yes No								
Your job classification(s) (list all) continue on a separate sheet if ne									
	,								
6. Your duties									
o. Four dance									
7. Tools or equipment used									
7. Tools of equipment used									
Y N	Y N								
	id at least time and ½ for all hours worked in excess of 40 in a week?								
	ever been threatened or coerced into giving up any part of your pay?								
12a. Employee Signature	12b. Date								
13. Duties observed by the Interviewer (Please be specific.)									
Tel: Dallot observed by the intervience (1 loads be openies)									
14. Remarks									
15a. Interviewer name (please print) 15b. S	ignature of Interviewer 15c. Date of interview								
Payroll Examination									
16. Remarks									
17a. Signature of Payroll Examiner	17b. Date								
Previous editions are obsolete	Form HUD-11 (08/2004)								

Davis Bacon Definitions



Laborer or Mechanic?

- Laborer & Mechanic mean anyone who is performing construction work on the project.
- Foremen/Supervisors are covered if they spend 20% or more of their time performing manual work
- Every person who performs work is considered "employed" regardless of any contractual relationship

Site of Work

 Construction site and any other site where a significant portion of the building or work is constructed, provided that such site(s) is established specifically for the performance of the contract or project.

Exemption

Persons employed in a bona fide executive, administrative, or professional capacity as defined in Department of Labor Regulations 29 CFR 541.

Volunteers

- Services are offered freely and without pressure and coercion, direct or implied, from an employer
- An individual shall not be considered a volunteer if the individual is otherwise employed at any time in the construction or maintenance work for which the individual volunteers.

HUD – 24CFR Title I, Part 70—USE OF VOLUNTEERS ON PROJECTS SUBJECT TO DAVIS-BACON AND HUD-DETERMINED WAGE RATES

APPRENTICES and TRAINEES

- Only apprentices & trainees registered in an approved program may be paid less than the wage rate specified for their work classification
- "Approved program" means a program registered with the State Apprenticeship Agency or DOL

APPRENTICES and TRAINEES (Continued)

- Ratio requirements apply
- Pre-apprentices not registered in a program must be paid the full journeyman rate for the classification of work they perform

SPLIT CLASSIFICATIONS

 An employee performing work in more than one classification may be paid the wage rate specified for each classification only if accurate time records are kept. Otherwise, pay the employee the highest wage rate of the applicable classifications

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U.S. Department of Labor

PAYROLL

Wage and Hour Division (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.									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 CONTRA							OR CONTRAC	OT NO.						
			(4	(4) DAY AND DATE		(5)	(6)	(6) (7)	(8) DEDUCTIONS				(9) NET					
NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	NO. OF WITHHOLDING EXEMPTIONS	WORK CLASSIFICATION	OT. OF	HOUR	S WORK	(ED EA	CH DAY	Y	TOTAL HOURS	RATE OF PAY	GROSS AMOUNT EARNED	FICA	WITH- HOLDING TAX			OTHER	TOTAL DEDUCTIONS	WAGES PAID
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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)(iii) 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.

Date				
Date		(b) WHERE FRIN	IGE BENEFITS ARE PAID IN	CASH
(Name of Signatory Party) do hereby state:	(Title)	_	as indicated on the payroll, a	ted in the above referenced payroll has been pai in amount not less than the sum of the applicable he amount of the required fringe benefits as liste ted in section 4(c) below.
(1) That I pay or supervise the payment of the persons employed b	у	(c) EXCEPTIONS	\$	
(Contractor or Subcontractor)	on the	EXCEPT	TION (CRAFT)	EXPLANATION
; that during th (Building or Work)	e payroll period commencing on the			
day of,, and ending the	day of,,			
all persons employed on said project have been paid the full weekly ween or will be made either directly or indirectly to or on behalf of said	vages earned, that no rebates have			
	from the full			
(Contractor or Subcontractor)				
weekly wages earned by any person and that no deductions have been from the full wages earned by any person, other than permissible deduct 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Cop 33 Start. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and describ	tions as defined in Regulations, Part beland Act, as amended (48 Stat. 948,			
		REMARKS:		
(2) That any payrolls otherwise under this contract required to be correct and complete; that the wage rates for laborers or mechanics cor applicable wage rates contained in any wage determination incorp classifications set forth therein for each laborer or mechanic conform wit (3) That any apprentices employed in the above period are apprenticeship program registered with a State apprenticeship age: Apprenticeship and Training, United States Department of Labor, or if no State, are registered with the Bureau of Apprenticeship and Training, United States.	ntained therein are not less than the orated into the contract; that the high the work he performed. e duly registered in a bona fide noy recognized by the Bureau of a such recognized agency exists in a			
(4) That: (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED F	PLANS, FUNDS, OR PROGRAMS	NAME AND TITLE		SIGNATURE
 in addition to the basic hourly wage rates paid to the above referenced payroll, payments of fring have been or will be made to appropriate pemployees, except as noted in section 4(c) below 	e benefits as listed in the contract programs for the benefit of such		IL OR CRIMINAL PROSECUTION. S	E STATEMENTS MAY SUBJECT THE CONTRACTOR SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TI

employees, except as noted in section 4(c) below.

ENFORCEMENT

Investigation conducted by;

- Department of Labor,
- Recipients, or
- HUD Office of Davis Bacon and Labor Standards (DBLS)

ENFORCEMENT Use resources for investigations

- Send questionnaires
- Target employee interviews
- Develop complaints

ENFORCEMENT

Falsification Indicators

- Ratio of laborers to mechanics
- Too few or irregular hours
- Discrepancies in wage computations
- Extraordinary deductions

CORRECTING VIOLATIONS

- Notify prime contractor
- In writing, insert contractor's appeal rights
- Require appropriate documentation
- Withhold funds from the contractor, if necessary
- Document wage restitution of \geq \$10

ENFORCEMENT CORRECTING VIOLATIONS

- Wage restitution documentation
- Submit 5.7 report to OLS if > \$1,000 per contractor