

# **DAVIS BACON**

**A CONTRACTOR'S GUIDE TO PREVAILING WAGE FOR  
FEDERALLY FUNDED CONSTRUCTION PROJECTS**

# OUTLINE

- Laws, Regulations, Contracts and Responsibilities
- Recordkeeping, Reporting, Notices and Posters
- Wage Determinations (Decisions)
- Project Requirements
- Forms
- Underpayment of Wages
- Common Errors

# LAWS, REGULATIONS, CONTRACTS AND RESPONSIBILITIES

- **Davis-Bacon Act (DBA)**: requires payment of prevailing wage rates to be paid to all laborers and mechanics on Federal government and District of Columbia construction projects over \$2,000. Payroll for Davis-Bacon is required to be done weekly and reported weekly.
- **Contract Work Hours and Safety Standards Act (CWHSSA)**: requires overtime pay for hours worked in one workweek that is over 40. Pay is at the rate of 1.5 times the basic hourly rate.
  - Projects over 100k
  - Violations: \$10/day per violation + interest (per violation is considered per person who has been underpaid)

# LAWS, REGULATIONS, CONTRACTS AND RESPONSIBILITIES

- **Copeland Act (Anti-Kickback Act)**: this act make it a Federal crime for anyone to require any laborer or mechanic to give-up or pay back any part of their wages. (You can still have deduction) This is the act that established the requirement of the Certified Payroll Report (CPR)
- **Fair Labor Standards Act (FLSA)**: contains the minimum wages rates, overtime (O/T) and child labor requirements. The authority to administer and enforce FLSA is held with the Department of Labor.

# LAWS, REGULATIONS, CONTRACTS AND RESPONSIBILITIES

- EVERY DAVIS-BACON PROJECT THAT YOU ENTER INTO IS REQUIRED TO IDENTIFY THE LABOR STANDARDS AND WAGE DETERMINATIONS THAT ARE TO BE USED ON THE PROJECT.
- This will come from your contract administrator.
  - Labor Standards Clauses can include:
    - Remedies in the event of violations (can include withholding funds due to the contractor until strict compliance is met)
    - Applicable forms for the project (may differ on project type and the administrator)

# LAWS, REGULATIONS, CONTRACTS AND RESPONSIBILITIES

- Department of Labor (DOL) has the role of monitoring Davis-Bacon administration and enforcement. They can conduct investigations and visit jobsites to ensure strict compliance is being met.
- The contract administrator is responsible for the proper administration and enforcement of the Federal labor standards on contracts covered by Davis-Bacon requirements.
  - This can be a person or persons that provide labor standards advice and support to the prime/general contractor, they will also include the proper wage determinations to use. (owner, sponsor, architect, employee/agent of a federal entity, city/county officials)

# LAWS, REGULATIONS, CONTRACTS AND RESPONSIBILITIES

- The prime/general contractor is responsible for the full compliance of all employers (the contractor, subcontractors and lower-tier subcontractors)
  - Prime/general contractor is required to have the wage determinations at the jobsite.
    - Subcontractors will rarely ever communicate with the administrator of the project and will direct all communications to the prime/general contractor.
- Subcontractors are responsible to the prime/general contractor to ensure that strict compliance is met, to maintain open lines of communications, complete the project required for and reporting, and to pay their employees the proper wage determination

WE ARE A TEAM!!!

# RECORDKEEPING, REPORTING, NOTICES AND POSTERS

- Notices and Posters:
  - Every employer performing work covered by the labor standards of the DBRA must post the WH-1321 [“Employee Rights Under the Davis-Bacon Act” poster](#) at the site of the work in a prominent and accessible place where it may be easily seen by workers. The applicable wage determination must be similarly posted.

## EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

### FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

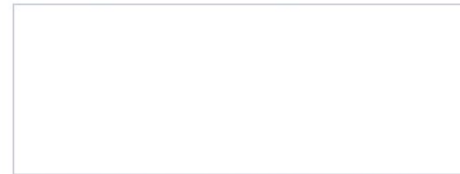
**PREVAILING WAGES** You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

**OVERTIME** You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

**ENFORCEMENT** Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

**APPRENTICES** Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

**PROPER PAY** If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:



or contact the U.S. Department of Labor's Wage and Hour Division.



# RECORDKEEPING, REPORTING, NOTICES AND POSTERS

- Under the Davis-Bacon and related Acts, covered contractors must maintain payroll and basic records for all covered laborers and mechanics during the course of the work and for a period of three years thereafter. Records to be maintained include:
  - Name, address, and social security number of each worker
  - Each worker's work classifications
  - Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents
  - Daily and weekly numbers of hours worked
  - Deductions made
  - Actual wages paid
  - Detailed information regarding bona fide fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected
  - If applicable, detailed information regarding approved apprenticeship or trainee programs

# **RECORDKEEPING, REPORTING, NOTICES AND POSTERS**

Must be maintained  
for 3-years after the  
project has closed.

All documents  
related to the  
project,  
communications,  
memos etc.

# WAGE DETERMINATIONS (DECISIONS)

- **Work classifications and wage rates:** simply a listing of different work classifications (carpenters, electricians, plumbers, roofers, etc..) and the *minimum wage rates that must be paid*.
  - Basic hourly + fringe benefits = total wage
- As stated before, the wages for the project are to be supplied to you by the contractor administrator.
  - IF your wage is not listed contact the contractor administrator immediately to get a wage decision for your type of work.
  - Include in your request:
    - Description of work
    - Suggested wage for the work
- IF the administrator does not think that your request can be approved at their level, it will be moved up to the DOL for final approval.

# WAGE DETERMINATIONS (DECISIONS)

- Rules to get an additional classification:
  - The request classification is used by construction contractors in the area of the project (county where the project is located)
  - Work that will be performed by the requested classification is not already performed by another classification on the wage decision.
  - The proposed wage rate for the requested classification “fits” with the other wage rate already on the wage decision.
  - Workers (if known) must agree with the proposed wage rate.

**\*\*It is always good to talk to your contract administrator prior to submitting a wage rate request. They can offer suggestions that will save time and increase the likelihood that your request will be approved.\*\***

# WAGE DETERMINATIONS (DECISIONS)

- REMEMBER – you must still pay your employees even if a final wage decision has not been made.
  - Make payments at the pending rate.
    - If approved, you are good to go.
    - If denied, you must resubmit with a new proposed wage and make back payments to the employees immediately the new proposed rate
    - Continue, until you receive final approval from the DOL or contract administrator
    - Once approved, the prime/general contractor is required to post the rate at the jobsite and the approval letter.

# PROJECT REQUIREMENTS

- Payroll is to ran weekly.
- Basic hourly rate and the fringe benefit rate:
  - Pay all to the employee
  - Pay the basic hourly to the employee and the fringe into an program
  - Pay the basic hourly + some fringes to the employee and the rest of fringes into a program.

# PROJECT REQUIREMENTS

- Certified Payroll Reports (WH-347)
  - You can use any other type of payroll form as long as it contains all the of the information that the WH-347 has.
    - Must report: full name, last 4 of SSN, address, work classification, whether an apprentice/trainees, hours worked, rate of pay, gross wages earned (project/payroll period [\$425.68/687.14]), authorized deductions.
      - DEDUCTIONS OTHER THAN TAXES MUST BE AUTHORIZED BY THE EMPLOYEE OR LISTED IN A UNION AGREEMENT. (THE PAYROLL DEDUCTION LETTER/FORM NEEDS TO BE WITH THE FIRST CERTIFIED PAYROLL)
      - REMEMBER PAYROLL FOR FEDERAL PROJECTS IS PAID WEEKLY, DEDUCTION MUST BE DONE/REPORTED WEEKLY.

# PROJECT REQUIREMENTS

- Payroll certification: (you must use the longer certification form that is found on the back of the WH-347, regardless of how you reported the back)
  - Signature: completed by an owner, officer, partner, or person authorized in writing by an owner, officer or partner.
    - Must be in pen (cannot sign electronically)
  - What to select for fringe benefits:
    - 4(a): indicates that you are paying required fringe benefits to approved plans and programs
    - 4(b): indicates that you paying fringe benefits to the employee directly
    - 4(c): indicates that you are paying a portion of the required fringe benefits to a program and the remaining amount is going to the employee.

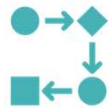




# PROJECT REQUIREMENTS/DEFINITIONS



**Piece-work:** for this type of work you must ensure that the piece-work total when broken down by the hour is equal to or greater than the prevailing wage rate.



**Spilt-classification:** for employees that perform more than one craft you must maintain detailed records of what task was completed and when to be able to pay the different rates.

If no time record exists, you must pay the higher of the two rates.



**Working Foreman:** employees that regularly spend more than 20% of their time performing construction work would not meet the requirement of being solely a foreman/supervisor and will need to be paid for the work performed at the prevailing wage rate.



**Site of work:** usually means the boundaries of the project, can include adjacent or virtually adjacent property used by a contractor as a fabrication site that dedicated exclusively to the project.

# PROJECT REQUIREMENTS

- **Apprentices and trainees:** must be registered with an approved apprenticeship or training program listed by the DOL or by a DOL-recognized State Apprenticeship Council (SAC)
  - Payrates are based on a percentage of the full prevailing wage rate, this comes from the program the apprentices comes from
  - Ratio is determined by the program that the apprentice is enrolled in
  - Must include a copy of the apprentice's or trainees registration certificate to submit with the first payroll an apprentice/trainee is on you jobsite. Must also include the wage rates and ratio information as provided by the program they are enrolled.
    - Get this information from the program that they are enrolled.
  - Contractors must maintain their ratios, if the contractor goes out of their ratios, they will be required to pay the apprentice at the full wage rate.

Must include a copy of the apprentice's or trainees registration certificate to submit with the first payroll an apprentice/trainee is on you jobsite. Must also include the wage rates and ratio information as provided by the program they are enrolled.

State Apprenticeship Office:

<https://www.doleta.gov/oa/contactlist.cfm>

**Nora L. Carlton**

California State Director

USDOL/ETA/OA

801 I Street Suite 274

Sacramento, CA 95814

Tel: (916) 414-2389

E-Mail: [Carlton.Nora@dol.gov](mailto:Carlton.Nora@dol.gov)

\*\*You must meet your ratio requirement at the end of each day that you have an apprentice.

Sierra West Finish  
280 Drake Drive  
San Bernardino, CA 92408

The following individuals are apprentices registered with the U.S. Department of Labor, Office of Apprenticeship, under the sponsorship of Program Number CA000070119:

AGC of America - San Diego Chapter  
P.O. BOX 927870  
San Diego, CA 92192

APPRENTICE ID	SSN	APPRENTICE NAME	OCCUPATION	DATE APPRENTICESHIP BEGAN	DATE CANCELLED (if applicable)	DATE COMPLETED (if applicable)
CA06ND	****	SALVA RODRIGUEZ	CARPENTER	01/03/2008		

**SAMPLE**

CERTIFIED BY:

DATE ISSUED:



Signature on file

12/27/2011

ARTHUR PAGE (CA002)

Apprenticeship Training Representative

\*\*\*\*\*VOID 90 DAYS FROM ISSUE DATE\*\*\*\*\*

# PROJECT REQUIREMENTS

- Certified Payroll Reports (WH-347)
- Nonperformance payrolls
- Fringe Benefits Statement
- DOL certificates for apprentices
- Apprentice wage schedules/ratios
- Training/union payments made
- Payments made to a fringe benefit program

# UNDERPAYMENT OF WAGES

- In the event that a wage underpayment is discovered:
  - Make payment immediately to the employee(s)
  - Submit a new certified payroll record indicating that a wage underpayment as been corrected.
    - Use the WH-347
    - Can have multiple weeks of restitution pay on one form (you will list the total hours, will not have to breakdown by the day usually)
    - Report the adjusted wage rate (the difference between what was paid and what should have been paid)
    - Total gross paid
    - Deductions
    - Sign

# UNDERPAYMENT OF WAGES

- In the event that workers cannot be found to make restitution payment to, the employer must submit a list of all the workers who could not be found.
  - Name, SSN, last known addresses and the gross amount owed.
  - Money owed must be transferred by the contractor to a deposit/escrow account that is to be held for 3-years after the project ends.
  - The contract administrator will makes attempts to the find the works for 3 years.
  - If money is still in the account at the end of the 3-years, the money will be given to the Federal entity.



# CORRECTING ERRORS

- The contract administrator as the authority to withhold payments from the prime/general contractor until strict compliance is met on a project.
  - Only the amount needed to cover a contractor's liability should be withheld.
- If the issue cannot be resolved before the end of the project, an escrow account will be opened to hold the payments until a final decision is made.

# CORRECTING ERRORS

- Remember the prime/general contractor is responsible to ensure that the subcontractors have paid their employees, any wage underpayment or violations assessed from a subcontractor will fall onto the prime/general if the subcontractor cannot pay.
- A prime/general can withhold payments to a subcontractors until strict compliance is met.

# COMMON ERRORS

- Inadequate payroll information
- Missing the last-4
- Incomplete payrolls
- Incorrect classification
- Incorrect wage rates
- Not calculating overtime
- Deductions not approved
- Not paying fringes properly
- No signature
- Onsite interview comparison

**QUESTIONS?**