



# **U.S Department of Labor**

## ***WAGE & HOUR DIVISION***

**U.S. Department of Labor  
Wage-Hour Division  
Minneapolis, MN District Office**



**U.S. Department of Labor**  
**Wage and Hour Division**



# Laws Enforced by WHD

- Fair Labor Standards Act
- Family and Medical Leave Act
- **Davis Bacon and Related Acts**
- Service Contract Act
- Polygraph Protection Act
- Wage Garnishment
- Temporary Worker Programs





# **Davis-Bacon Compliance Principles (\$2,000)**



# SOME OF THE BASICS



**U.S. Department of Labor**  
**Wage and Hour Division**



# DBA vs DBRA

**DBA projects:** An agency of the federal government or the District of Columbia signs the contract;  
(DBA = Davis-Bacon Act)

**DBRA projects:** An agency or grant recipient, rather than the federal government signs the construction contract.  
(DBRA = Davis Bacon and Related Acts)

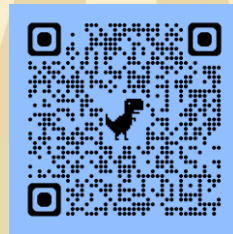


# **DBA/DBRA**

## **Compliance Principles**

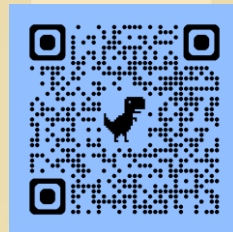
- Laborers and mechanics
- Site of the work
- Truck drivers
- Apprentices
- Fringe Benefits
- Certified Payrolls





**Final Rule Website**

<https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon>



**Prevailing Wage Resource Book**

<https://www.dol.gov/whd/govcontracts/pwrp/toc.htm>



# Laborers and Mechanics

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

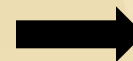
***\*\*Note: Survey crew members who spend most of their time on a covered project taking or assisting in taking measurements would likely be deemed laborers or mechanics (provided that they do not meet the tests for exemption as professional, executive, or administrative employees Under 29 CFR Part 541) See New Rule page for additional guidance)***





# Working Foremen

- **Working foremen** are generally non-exempt:
  - Such employees who devote more than 20 percent of their time during a workweek to mechanic or laborer duties are laborers and mechanics for the time so spent, and must be paid at least the appropriate wage rates specified in the wage determination.
  - Must be paid the Davis Bacon (DB) rate for the classification of work performed if not 541 exempt.
- **Does not include:**
  - Timekeepers, inspectors, architects, engineers; or
  - Bona fide executive, administrative, and professional employees as defined under FLSA.
- **Salary Increase for exempt employees**
  - **Before July 1, 2024:** \$684 per week
  - **July 1, 2024:** \$844 per week
  - **January 1, 2024:** \$1,128 per week



# Truck Drivers Owner-Operators

- DOL has an enforcement position with respect to ***bona fide* owner-operators** of trucks who are **independent contractors** (an owner-operator is a person who owns and drives a truck). **Certified payrolls** including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation “**owner-operator**”.
- This position **does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.**
- See state law on ‘owner-operators of trucks



# Selecting Proper WD (29 CFR 1.5)

- Understanding the wage determination is key to determining whether you need a conformance. Compare labor classifications on the wage determination with the anticipated work to be performed. Conversation between the contracting agency, contractors and WHD will help identify any potential missing labor classifications. Typically, the labor classifications listed on the wage determination include the work being performed on a Davis-Bacon covered contract.
- The scope of work performed by a labor classification will depend on local area practice. Therefore, if it is unclear whether a labor classification on the wage determination performs the work in question, it may be helpful to consult WHD and/or local construction industry stakeholders.
- When the type of worker that performs the work needed on your project is listed on the general wage determination, you should not request a conformance.
- *Labor classifications, not individual tasks, are listed on wage determinations. It is, therefore, vital to understand the scope of the project and the labor classifications that are necessary for the work to be performed.*

Source: <https://www.dol.gov/agencies/whd/government-contracts/construction/faq/conformance>



# WAGE DETERMINATIONS



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# Selecting Proper WD (29 CFR 1.5)

- Location of the construction project
- Type of construction
- Current Wage Determination

***\*\*Contracting Agency is responsible for insuring that only the appropriate WD (General Wage Determination) is incorporated in bid solicitations and contract specifications***



# Selecting & Incorporating Proper WD (Construction Type - AAM 130)

- **Building Construction** includes the construction, rehabilitation and repair of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies.
- **Residential Construction** includes the construction, rehabilitation, and repair of single family houses, townhouses, and apartment buildings of no more than four (4) stories in height.
- **Highway Construction** includes the construction, alteration or repair of roads, streets, highways, runways, parking areas and most other paving work not incidental to building or heavy construction.
- **Heavy Construction** is a “catch-all” category which includes those projects which cannot be classified as Building, Residential or Highway. Heavy construction is often further distinguished on the basis of the characteristics of particular projects, such as dredging, water and sewer line, dams, major bridges and flood control projects.



## **Application of Multiple Wage Determinations (AAMs 130, 131 and 236 )**

- Multiple wage determinations may apply when a project includes construction, alteration, or repair items that in themselves would be a different type, or category, of construction.
- If the project does have work that is in itself in a separate category of construction, the contracting agency must then determine **whether the amount of work in the other category of construction is substantial**. Generally, construction in another category is considered to be substantial if the total cost of all the work in that category **exceeds either 20% of the total project cost or \$2.5 million**. If the total work in the other category is substantial, then multiple wage determinations will generally apply.
- Generally, if the work in the other category will be less than 20% of the total project cost and will cost less than \$2.5 million, it is considered incidental to the primary type of construction involved on the project, and a separate wage determination is generally not applicable.



Wage Determinations - WDOL.gov has moved to [SAM.gov](#).



Official U.S. Government Website  
100% Free

### The Official U.S. Government System for:

**Contract Opportunities**  
(was fbo.gov)

**Contract Data**  
(Reports ONLY from fpds.gov)

**Wage Determinations**  
(was wdol.gov)

**Federal Hierarchy**  
Departments and Subtiers

**Assistance Listings**  
(was cfda.gov)

**Entity Information**  
Entities, Disaster Response Registry,  
Exclusions, and Responsibility/  
Qualification (was fapiis.gov) **NEW**

**Entity Reporting**  
SCR and Bio-Preferred Reporting



### Register Your Entity or Get a Unique Entity ID

Register your entity or get a Unique Entity ID to get started doing business with the federal government.

[Get Started](#)

[Renew Entity](#)

[Check Entity Status](#)

### Already know what you want to find?

Select Domain... ▼ e.g. 1606N020Q02

### Announcements

#### Entity Validation Review Time [🔗](#)

Mar 21

Entity validation review time will depend on whether we can make a match from your original document submission, or if we need to request additional documentation. Most entities find a match immediately, but in some cases additional documentation and a manual review is required. The average ...

### Have Questions about SAM.gov?

VIDEO TRAINING: Get a Unique Entity ID

TOPIC	DESCRIPTION
WHAT IS THE UNIQUE ENTITY ID?	The Unique Entity ID is a 12-character alphanumeric value assigned, managed, and owned by the federal government.
THE UNIQUE ENTITY ID & ENTITY REGISTRATION	The Unique Entity ID is a 12-character alphanumeric value assigned, managed, and owned by the federal government.
SET A UNIQUE ENTITY ID	The Unique Entity ID is a 12-character alphanumeric value assigned, managed, and owned by the federal government.

**UNIQUE ENTITY ID**

- ✓ 12-character alphanumeric value
- ✓ Assigned, managed, and owned by the federal government



# PREVAILING WAGES



**U.S. Department of Labor**  
**Wage and Hour Division**



# Prevailing Wage

■ BHR	\$28.50
■ <u>FB</u>	<u>\$12.75</u>
■ Total prevailing wage	\$41.25

■ The contractor may comply by paying:

- \$41.25 in cash wages
- \$31.25 in cash wages plus \$10.00 for FB
- \$25.00 in cash wages plus \$16.25 for FB



# Discharging DB Prevailing Wage Obligation

- If WD requires a prevailing wage of \$44.50 (\$32.00 BHR plus \$12.50 in FB's), the contractor can comply by paying:
  - \$44.50 in cash wages; or
  - \$32.00 plus \$12.50 in bona fide FB; or
  - \$40.00 plus \$4.50 in bona fide FBs



# Examples of Fringe Benefits

- Vacation\*
- Holiday\*
- Sick Leave\*
- Life Insurance
- Health Insurance
- Pension

*\*\* Often unfunded – (unfunded@dol.gov)*



# Fringe Benefits

- Must be paid weekly for **all** hours worked
- Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation (unlike under SCA)



# Overtime



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# Computing Overtime Pay (CWHSSA Earnings)

An employee worked 44 hours as electrician,  
where WD BHR is \$37.00 plus \$12.50 in FB's:

44 hours	X	\$12.50	=	\$550.00	FB's
44 hours	X	\$37.00	=	\$1,628.00	BHR
4 hours	X	\$37.00/2	=	\$ 74.00	OT
				<u>\$2,252.00</u>	



# ANNUALIZATION



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**Wage and Hour Division**





# Annualization Example

## Medical Insurance

- Employer provides medical insurance at \$300 per month to electrician on Davis-Bacon project. WD requires \$36.00 plus \$13.00 in FB's, or \$49.00 an hour. Employee works 160 hours a month
  - $\$300/160 \text{ hours} = \$1.87$  (credit per hour)
  - No other benefit provided
  - Electrician is due: \$47.13 an hour  
( $\$49.00 - \$1.87 = 47.13$ , is remaining balance of applicable prevailing wage)



# Apprentices



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**Wage and Hour Division**



# Apprentices

- Persons individually registered in a bona fide apprenticeship program registered with DOL or a DOL approved State apprenticeship agency
- Include individuals in their first 90 days of probationary employment as an apprentice
- DOL regulations: 29 CFR 5.2(n)(1) and 5.5(a)(4)(i)



# Apprentices

- Are laborers and mechanics, but are not listed on the WD
- Permitted to be used on covered projects and paid less than the journeyman 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

- Paid the FB's specified in the approved program, or the full amount of FB's listed on the WD, if the program is silent; and,
- Within the allowable ratio specified in the approved program for the number of apprentices or trainees to journeymen



# Apprentices

- The required ratio and rates have changed when a contractor is working in a locality other than the locality in which its apprentices' program(s) is registered.
- The ratios and wage rates applicable in the approved apprenticeship program for the locality in which the construction is being performed will apply.
- If there is no approved program in the locality, the ratio and wage rate specified in the contractor's registered program must be observed.



# Helpers

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



# MISCLASSIFICATION



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# Are You An Employee Or An Independent Contractor?



## Indicators of an Employee

Working for someone else's business

Generally, can only earn more by working additional hours

Typically uses the employer's materials, tools and equipment

Typically works for one employer or may be prohibited from working for others

Continuing or indefinite relationship with the employer

Employer decides how and when the work will be performed

Employer assigns the work to be performed

-OR-



## Indicators of an Independent Contractor

In business for themselves

Can increase profit through business decisions

Typically provides their own materials, tools and equipment and uses them to extend market reach

Often works with multiple clients

Temporary relationship until project completed

Decides how and when they will perform the work

Decides what work or projects they will take on

*These are general concepts. All relevant facts about the work relationship should be considered as a whole, and the existence or absence of any particular fact does not require a particular outcome.*

[dol.gov](https://www.dol.gov)



# Labor Classifications

- Compare labor classifications on the wage determination with the anticipated work to be performed.
- Conversation between the contracting agency, contractors and WHD will help identify any potential missing labor classifications. Typically, the labor classifications listed on the wage determination include the work being performed on a Davis-Bacon covered contract.
- If it is unclear whether a labor classification on the wage determination performs the work in question, it may be helpful to consult WHD and/or local construction industry stakeholders.



# Conformance

- **Conformance is the process used to add additional occupational classes to a contract after it has been awarded.**
- **SF-1444**



**DOL-WHD Conformance Guidance**



**U.S. Department of Labor**  
**Wage and Hour Division**



**WHD**  
U.S. Wage and Hour Division

# CERTIFIED PAYROLLS



**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](http://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.*

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	OMB No.: 1235-0008 Expires: 01/31/2015
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PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
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(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	OT, OR ST	(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		
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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)(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

Date \_\_\_\_\_

I, \_\_\_\_\_  
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the  
(Contractor or Subcontractor)

\_\_\_\_\_ ; that during the payroll period commencing on the  
(Building or Work)

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ from the full  
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

— in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

— Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

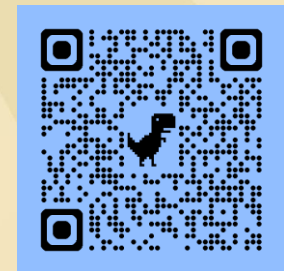
REMARKS:

NAME AND TITLE	SIGNATURE
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THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

# HELP FOR CERTIFIED PAYROLLS

- **Instructions For Completing Payroll Form, WH-347**
  - **Online help completing the WH-347**
  - **Column by column instructions**
  - **<https://www.dol.gov/agencies/whd/forms/wh347>**



# RECORDKEEPING

- The final rule adds requirements that contractors and subcontractors maintain DBRA contracts, subcontracts, and related documents, as well as worker telephone numbers and email addresses.
- The final rule clarifies that the required records must be retained for at least 3 years after all the work on the prime contract is completed.
- The final rule also codifies WHD's longstanding policy that certified payrolls may be signed and submitted electronically.





# NEW RULE TIDBITS

## DEMOLITION

The final rule adds a new sub-definition to the term construction, prosecution, completion, or repair to codify the Department's long-standing guidance that demolition work is covered under DBRA when the demolition itself constitutes construction, alteration, or repair, or when future construction that will be subject to the DBRA is contemplated on a demolition site.

## ANTI-RETALIATION

The final rule adds anti-retaliation provisions in the contract clauses in as well as corresponding remedies. (Protected activities)

## 'FLOW DOWN REQUIREMENTS'

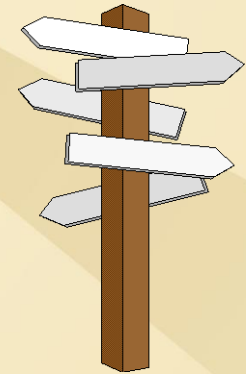
See Regulations and New Rule page for guidance



# Disclaimer

- ❖ This presentation is intended as general information only and does not carry the force of legal opinion.
- ❖ The Department of Labor is providing this information as a public service. This information and related materials are presented to give the public access to information on Department of Labor programs. You should be aware that, while we try to keep the information timely and accurate, there will often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. The *Federal Register* and the *Code of Federal Regulations* remain the official source for regulatory information published by the Department of Labor. We will make every effort to keep this information current and to correct errors brought to our attention.





## **DOL-WHD RESOURCES**

**USDOL-Wage and Hour Division Website:**

<http://www.dol.gov/whd/index.htm>

**USDOL-Davis Bacon and Related Acts Website:**

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

**USDOL-WHD Prevailing Wage Resource Book:**

<https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book>

**USDOL-WHD DBRA Final Rule Website:**

<https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon>

**USDOL-WHD Employee vs Independent Contractor Final Rule Website:**

<https://www.dol.gov/agencies/whd/flsa/misclassification/rulemaking>

**USDOL-WHD Fact Sheet Index Page:**

<https://www.dol.gov/agencies/whd/fact-sheets>

