



Bridging the Gap

Davis-Bacon and the Bipartisan Infrastructure Law



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
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A construction site with rebar in the foreground and workers in the background. The word "Coverage" is overlaid in a dark blue box with yellow text.

Coverage

Davis-Bacon Act Coverage

Applies to contracts in excess of \$2,000 to which the Federal Government or the District of Columbia is a party for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works.

Davis-Bacon Related Acts

Davis-Bacon (DB) requirements extended to numerous “related Acts” that provide federal assistance by

- Grants
- Loans
- Loan guarantees
- Insurance

Bipartisan Infrastructure Law

The Bipartisan Infrastructure Law will:

- Create an estimated 800,000 good-paying jobs that will expand the middle class
- Revitalize our nation's transportation, communications and utilities systems
- Build a more resilient, reliable, and environmentally sound future

DBRA Coverage of Bipartisan Infrastructure Law Construction Projects

The Bipartisan Infrastructure Law (BIL) applies Davis-Bacon labor standards to federally funded or assisted construction projects in three different ways

- Adding funding to programs previously authorized by an existing Davis-Bacon Related Act
- Adding new programs under the umbrella of an existing Davis-Bacon Related Act
- Including provisions which expressly provide that Davis-Bacon labor standards apply to all construction projects receiving funding under particular programs created by or funded through BIL

Projects subject to Davis-Bacon labor standards through BIL include:



Roads, bridges and public transit

- Includes Surface Transportation Reauthorization Act and Surface Transportation Investment Act funding
- Provides funding to replace and repair bridges
- Includes major project competitive grant programs
- Funds nation's transit system repair backlog
- Expands transit systems and supports clean transit



Airports, ports and waterways

- Increases funds for airport improvement grants for runways, gates, and taxiways
- Provides funding for airport terminal improvement
- Improves air traffic control infrastructure
- Supplies funding for waterway and coastal infrastructure, inland waterway improvements, port infrastructure, and land ports of entry



Water infrastructure, power and grid

- Increases funding for Drinking Water and Wastewater Infrastructure Act of 2021 and lead service line replacement
- Provides funding for grid reliability and resiliency
- Supports critical minerals and other supply chains for clean energy
- Includes funding for technologies like carbon capture, hydrogen, direct air capture, and energy efficiency



Enhanced disaster resiliency

- Supplies funding for cybersecurity, flood and wildfire mitigation, coastal resiliency, ecosystem restoration and heat stress
- Provides funding for home weatherization, prioritizing assistance for low-income individuals



Wage Determinations

Wage Determinations (WDs)

Davis-Bacon Wage Determinations (WDs) specify the prevailing wages, including fringe benefits, that prevail for the described classes of laborers and mechanics employed on construction projects of a similar character in the locality.

Two types of wage determinations: **General** and **Project**

- In almost all instances, general WDs are available on sam.gov and should be used in bid solicitations and contracts on which the Davis-Bacon labor standards apply.
- Project WDs should only be requested under certain circumstances

Selecting the Correct WDs-Type

Selecting and incorporating the appropriate general wage determination for the project type. Guidance provided in AAM 130.

- Building
- Residential
- Heavy
- Highway

Multiple wage determinations may apply where there are separate construction types and the different type of construction is at least 20 percent of the project cost or exceeds \$2.5 million – guidance provided in AAM 131 and 236

Selecting the Correct WDs-Date

Incorporate most current WD:

- Negotiated contracts (“RFPs”) – Time of award.
- Competitively bids contracts: In effect 10 days or more before opening of bids.
- Exceptions.
- If the contract is not awarded within 90 days of bid opening, any modification to the WD must be incorporated unless the federal agency requests and obtains an extension of the 90 day period.

Contracting Agency Responsibilities

- Ensure proper wage determination (WD) is identified and applied;
- Advise contractors which schedule of rates applies to various construction items; and
- After consulting with WHD, advise contractors regarding the duties performed by various crafts in the WD.

Interpreting General WDs

Useful information contained in a general wage determination:

- State and county
- Type of construction with description
- Record of modifications
- List of classifications and rates
- Basis for rates – Identifiers
- Union Identifiers
- Union Weighted Average Identifiers
- SU Identifiers

Interpreting General WDs – Cover Sheet

General Decision Number: LA170002 01/20/2017 LA2

Superseded General Decision Number: LA20160002

State: Louisiana

Construction Type: Heavy

Counties: Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, Lafourche, Livingston, Ouachita, Rapides, St Landry, St Martin, Terrebonne, Webster and West Baton Rouge Counties in Louisiana.

HEAVY CONSTRUCTION PROJECTS (includes flood control, water & sewer lines, and water wells; excludes elevated storage tanks, industrial construction-chemical processing, power plants, and refineries)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/06/2017
1	01/13/2017
2	01/20/2017

Interpreting General WDs – Identifiers

List of classifications and rates.

- Union Identifiers; and
- SU Identifiers.

Interpreting General WDs – Union IDs

Union identifiers - **ELEV0101-001 10/01/2017**

- Elevator Contractors: International Union
- Local 101 – Local union number
- 001 – internal processing number
- 10/01/2017 – Date the rate became effective on the CBA

Interpreting General WDs – Union Example

CARP 0055-001

11/01/2016

	Rates	Fringes
<ul style="list-style-type: none">• Carpenter (Acoustical Ceiling, Installation, and Dry Wall Hanging Only)	\$26.25	\$8.64
<ul style="list-style-type: none">• CBA rates are updated when CBA rates are changed		

Interpreting General WDs – Survey IDs

SU (Non-Union) Identifiers

SUCO2015-015 07/31/2015

SU: Survey Basis of Rate(s)

CO: Colorado

2015: Date of Survey

015: Internal Numbering

*** SU rates remain unchanged until new survey**

Interpreting General WDs – SU Example

SUCO2015-015

07/31/2015

	Rates	Fringes
Bricklayer	\$21.96	\$0.00
Carpenter	\$18.22	\$0.00

Interpreting General WDs – UAVG

UAVG- Union Weighted Average Identifiers

UAVG-CO-0016	01/01/2016	
	Rates	Fringes
Operator: Bulldozer.....	\$37.85	\$22.72

A UAVG rate prevails where 100% of the data reported for the classification is union data but because more than one union performed the work in the classification in the locality, no single majority prevailed.

UAVG rates are updated annually



Conformances

Conformances

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29 CFR 5.5(a)(1)(ii)).

- The work to be performed by the proposed classification is not performed by a classification already in the wage determination (WD);
- The proposed wage rate must bear a reasonable relationship to WD rates; and
- The proposed classification is utilized in the area by the construction industry.

Unnecessary Conformance Actions

Conformance requests are not needed for bona fide:

- Apprentices
- Trainees
- Welders

Conformances: Contracting Agencies & Contractors

Pre-Bid/Pre-Award

- Review the WD
- Compare the WD with the project work
- Anticipate needed classifications
- Apply key criteria

Conformance Process - Contractor

After-Award:

- Identify needed classes;
 - At the pre-construction conference.
 - From certified payrolls.
- Advise agency of the needed classification;
- Complete Contractor Part of SF-Form 1444.
 - Apply Conformance Key Criteria.
- Forward SF-Form 1444 to agency for review, signature, and submission to DOL.

A photograph of three construction workers on a rooftop at sunset. They are wearing hard hats and safety vests, looking at blueprints. A large crane is visible in the background, and the sky is a mix of orange and blue. The workers are standing on a grid of rebar. A blue banner with yellow text is overlaid on the image.

Compliance Principles

Wages and Fringe Benefits

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 as listed in the applicable wage determination or a rate approved in accordance with the “conformance process” set forth at 29 CFR 5.5(a)(1)(ii), without regard to skill.

Wages and Fringe Benefits-Classification

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.

Laborers and mechanics who perform work in more than one classification may be paid the different applicable rates for the work they actually perform if the employer keeps an accurate record of the time spent working in each classification and pays accordingly.

Wages and Fringe Benefits-Pay Frequency

The laborers and mechanics working on the site of the work must be paid weekly, with the exception of fringe benefit contributions paid into a bona fide FB plan, which must be paid no less often than quarterly.

Wages and Fringe Benefits-Payment

Under DBA, FB's are a component of the DBA "prevailing wage."

The prevailing wage obligation may be satisfied by:

- Paying the base hourly rate (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

Overtime Pay

Contract Work Hours and Safety Standards Act (CWHSSA)

- Covers contracts over \$100,000 (\$150,000 for contracts procured under the Federal Acquisition Regulations) that require or involve the employment of laborers, mechanics, watchmen or guards on DBA or DBRA covered construction contracts
- Is self-executing (even if not stated in contract)
- Has no “site of work” limitation

Fair Labor Standards Act (FLSA) applies more broadly, with over 130 million workers subject to coverage.

Requirements of CWHSSA-General

Requires overtime pay for laborers, mechanics, guards, and watchmen at a rate of one and a half times the basic rate of pay for hours worked in excess of 40 in a workweek on covered contracts

- The basic rate of pay under CWHSSA is the straight time hourly rate
- The “basic rate” cannot be less than the basic hourly rate required in an applicable wage determination, not including any required fringe benefit amount.

Requirements of CWHSSA

- If an employee is paid a regular rate above the basic hourly rate (excluding fringe benefits or cash payments in lieu of fringe benefits), that regular rate will be considered the basic rate.
- Amounts paid to fulfill the fringe benefit portion of the prevailing wages listed in the applicable wage determination are excluded in computing overtime obligations under CWHSSA

Application of CWHSSA

CWHSSA applies to laborers, mechanics, guards and watchmen for the time spent on covered contract work only

- Total up all the time each employee spent working on covered contracts (off-site as well as on-site on DBA/DBRA projects)
- Exclude all commercial, non-government, non-covered work.
- Liquidated damages can be assessed per day for each laborer, mechanic, guard, or watchman not paid proper overtime

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 CFR 5.5(a)(3)(ii)(A).
- Each weekly payroll submitted must be accompanied by a “Statement of Compliance.”
29 CFR 5.5(a)(3)(ii)(B).

Certified Payrolls-Reporting

Weekly payrolls must include specific information as required by 29 CFR 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:

<https://www.dol.gov/agencies/whd/forms/wh347>



Investigations

Investigations

DOL Functions/Responsibilities:

- Determining “prevailing wages”;
- Issuing regulations and standards to be observed by contracting agencies; and
- Perform oversight function and has independent authority to conduct investigations (contracting agencies also have the authority to conduct investigations)

Investigative Process

- Initial conference with employer.
- Examine certified payrolls.
- Examine basic payroll records.
- Check for compliance with apprenticeship and/or trainee requirements.
- Interview employees
- Determine if a conformance is necessary.
- Compute back wages and liquidated damages, if any
- Final conference with employer to discuss results of the investigation.

Withholding

- DBA and CWHSSA provide for withholding of contract funds to satisfy alleged wage underpayments pending resolution of a wage dispute. (40 U.S.C. § 3142(c)(3); 40 U.S.C. § 3702(d).)
- Withholding of contract funds is an effective enforcement tool in DBA/DBRA/CWHSSA cases.
- It protects the rights of covered workers to wages due them.

Withholding of Contract Funds

FAR guidance in 48 CFR Part 22 instructs that if the contracting officer believes a violation exists, or upon request of the Department of Labor:

- The contracting officer must withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages due under the CWHSSA.
(48 CFR 22.406-9(a))

Debarment

Occurs when a contractor is declared *ineligible* for future contracts due to:

- Violations of the DBA in disregard of its obligations to employees or subcontractors.
- Aggravated or willful violations under the labor standards provisions of Related Acts.
- Period of ineligibility is 3 years for DBA and up to 3 years for DBRA.
- The debarment process is given at 29 CFR 5.12(b)

Debarment Criteria

Debarment is considered when a contractor has:

- Submitted falsified certified payrolls;
- Required “kickbacks” of wages or back wages;
- Committed repeat violations;
- Committed serious violations;
- Misclassified covered workers in clear disregard of proper classification norms; and/or
- As a prime contractor, failed to ensure compliance by subcontractors.

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: <http://www.dol.gov/agencies/whd/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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