

Denver Housing Authority

Contractor Information and Requirements of The Davis-Bacon Act

The Davis-Bacon Act was enacted in 1931 to require the inclusion of minimum wage rates for laborers and mechanics employed on the site of Federal government contracts for construction, alteration or repair, painting and decorating of public buildings and public works. The Act regulations are found in Title 40 U.S.C. 276a –5.

Requirements:

- The Davis-Bacon Act applies to all construction, alteration, repair, or renovation projects using federal funds in excess of \$2,000.
- Paragraph 47 of the General Conditions of the HUD General Contractor Contract contains the requirement for the General Contractor to comply with the Davis-Bacon Act.
- The Davis-Bacon Act applies to all laborers and mechanics working on the construction/renovation site. Please see the “Laborer or Mechanic Definition” for further description.

Wage Determinations:

- Wage Determinations outline the prevailing wages and fringes for various classifications of workers that are determined by the Secretary of Labor and are issued by the Department of Labor (DOL). The determinations are based upon the prevailing wages for the classes of laborers and mechanics employed on projects similar in character and performed in the same state and county as the future construction project.
- Each RFP/IFB contains the Wage Determination upon which the contractor should base their bid. The contract will incorporate the Wage Determination that the contractor must use.
- There are 4 categories of Wage Determination:
 - Residential - Includes construction, rehabilitation and repair of single family houses, townhouses and apartments that are no more than four (4) stories in height.
 - Building Commercial - Includes construction, rehabilitation and repair of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies that are five (5) or more stories.
 - Highway - Includes construction, alteration or repair of roads, streets curbs, gutter, highways, runways, parkways and most paving work not incidental to building or heavy construction.
 - Heavy – Is a ‘catch-all’ which includes those projects that cannot be classified as Residential, Building or Highway.

Wage Determination Category is dependent upon the type and character of construction, as determined by DHA. It is also important to note that Wage Determinations are continually updated and modified. As such, if there is any confusion regarding the appropriate modification to use, please contact DHA's Compliance Officer for clarification.

General Contractor Duties:

The General Contractor is responsible for the full compliance of all employers (the contractor, subcontractors, and any lower-tier subcontractors) with the labor standards provisions applicable to the project. All subcontractors will prepare their own payroll and Statement of Compliance. The General Contractor will submit the completed original forms to DHA on subcontractor's behalf. Due of the contractual relationship between the General Contractor and his/her subcontractors, the Davis-Bacon Compliance Officer will only communicate with subcontractors through the General Contractor. The General Contractor must:

- Display a Wage Determination and Department of Labor Wage Poster.
- The General Contractor must submit Certified Payrolls every week, for themselves, all subcontractors and any lower tier subcontractors. Each payroll must contain:
 - A Statement of Compliance that is executed by an authorized signer such as a company owner or officer. If the contractor wishes to delegate the execution of the weekly payroll and Statement of Compliance to a regular employee it is necessary to submit an "Alternate Authorized Signature Form" provided by DHA.
 - Payrolls should be numbered beginning with the first week work is performed by the (sub) contractor through the final payroll. The last payroll should be noted as "Final."
 - The project and (sub) contractor information, employees' name, address, SS#; wage classification, wage rate, fringes paid, hours worked, overtime rate (1.5 x base + fringes), gross wages earned, deductions and net pay.
- The General Contractor should review each subcontractor's payroll reports for compliance prior to submitting them to DHA. The General Contractor is liable for violations and underpayments to workers of subcontractors, at all tiers.
- Every contractor (including every subcontractor) must keep a complete set of their own payrolls and their basic records such as time cards, tax records, and evidence of fringe benefit payments for a Davis-Bacon project for at least 3 years after the project is completed. The General Contractor must keep a complete set of all payrolls for every tier of subcontractors for the same period.

If the appropriate work classification isn't on the wage decision. It will be necessary to contact the DHA Davis-Bacon Compliance Officer in order to obtain an additional classification and wage rate.

The contractor identifies the classification required, recommends a wage and submits a written, signed request to DHA's compliance officer. The written request must name the work classification and wage rates that are proposed. DHA will review the request and will then submit it to HUD for approval. Additional classifications and wage rates can be approved if:

- The requested classification is used by construction contractors in the area of the project. (The area is usually defined as the county where the project is located).

- The work that will be performed by the requested classification is not already performed by another classification that is already on the wage decision.
- The proposed wage rate for the requested classification is in line with other with other wage rates already on the wage decision. For example, the wage rate proposed for a trade classification must be at least as much as the lowest wage rate for other trade classifications contained in the wage decision.
- The workers, or their representatives, that will be employed in the new classification must agree with their proposed wage rate.

Typical Payroll Errors and Required Corrections

- **Classifications Errors**– If the payrolls show work classifications that either do not appear on the wage decision or are not properly classified for work performed, the (sub) contractor will be asked to reclassify the employees in accordance with the wage decision or to request an additional classification and wage rate from HUD. If reclassification results in an underpayment, the (sub) contractor will be required to pay wage restitution to all reclassified employees.
- **Copy of Payrolls and Statement of Compliance submitted**- Originals are required.
- **One Statement of Compliance for multiple work weeks** – A Statement of Compliance must be submitted for each weekly payroll report.
- **Unauthorized signature on Statement of Compliance** – Statement of Compliance must be executed by an authorized signer such as an owner or officer of the company. If the contractor wishes to delegate the execution of the weekly payroll and Statement of Compliance to a regular employee it is necessary to submit an “Alternate Authorized Signature Form” provided by DHA.
- **Inadequate/Incomplete Payroll Information** – The (sub) contractor will be asked to revise and resubmit payrolls with correct information.
- **Missing Addresses and Social Security Numbers** – This information must be provided for every employee. If not, the (sub) contractor will be asked to revise and resubmit the payroll with correct information.
- **Other deductions are not properly identified or excessive** – The (sub) contractor will be asked to revise and resubmit the form with correct or additional information.
- **Wage Rates** – If the wage rates are less than the rates on the wage decision for the work classifications reported, the (sub) contractor will be asked to pay wage restitution.
- **Overtime** – If the employees did not receive at least correct overtime rate (1.5 x hourly + fringe) for any overtime hours worked on the project the (sub) contractor will be asked to pay restitution.
- **Apprentices/Trainees** – A copy of the employee(s) registration, the approved program ratio and wage schedule are to be submitted with the first payroll in which the apprentice/trainee appears. DHA will request this information if not included in the first payroll. If the ratio of apprentices to journeymen on the payroll is greater than the ratio approved for the program, the (sub) contractor will be asked to pay wage restitution to any excess apprentices. Any apprentice that is not registered in an approved program must receive the journeyman’s wage rate for the classification of work they performed.

- **Fringe Benefits** – If the wage decision contains fringe benefits, but the payroll does not indicate how the fringe benefits were paid, the contractor/subcontractor will be asked to submit corrected payrolls and required to pay wage restitution if underpayments occurred.

DHA is responsible for:

- Verify prime contractor eligibility against GSA Debarred List.
- Ensure that ALL laborers and mechanics are paid a prevailing wage.
- Conduct employee interviews at work site.
- Investigate and correct all underpayment complaints.
- Create and maintain documents demonstrating compliance.

The General Contractor must comply with the Davis-Bacon requirements before final payment can be made. Therefore, any unresolved issues with the certified payroll, Statement of Compliance or unpaid restitution will delay final payment. Non-compliance may also lead to termination of the contract, criminal proceedings, and/or debarment.

Restitution for Underpayment of Wages

Where underpayments have occurred, the (sub) contractor will be required to pay wage restitution to the effected employees. Wage restitution must be paid promptly, in the full amounts due, less permissible and authorized deductions (taxes, etc.).

The Davis-Bacon Compliance Officer will notify the General Contractor, in writing, of any underpayments found during the payroll or other reviews and provide appeal rights. The notice will describe the underpayments and provide instructions for computing as well as documenting payment of restitution. The General Contractor is responsible to correct the underpayments and pay restitution within 30 days.

Wage restitution is the difference between the wage rate paid and the wage rate required on the wage decision for ALL hours worked. This difference is called the adjustment rate.

$$\text{Adjustment Rate} \times \text{Total Hours Worked} = \text{Restitution}$$

The (sub) contractor will be required to report the restitution paid on a certified payroll. It will reflect the period of time for which restitution is due, list each employee to whom restitution is due, their work classification, total number of hours work, adjustment wage rate, gross amount of restitution due, deductions and the net amount to be paid. A Statement of Compliance executed by an authorized signer must be attached to the certified payroll that documents the restitution payment.

Definitions

Laborer or Mechanic - Defined as: “[A]t least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.” Laborers and mechanics are the two groups of workers that must be paid at least Davis-Bacon prevailing wage rates. Working foremen supervisors that regularly spend more than 20% of

their time performing construction work and do not meet the exclusions below are covered laborers and mechanics for labor standards purposes for the time spent performing construction work. Exclusion: People whose duties are primarily administrative, executive, or clerical are not laborers or mechanics. Examples include superintendents, office staff, timekeepers, messengers, etc. (Contact the Davis-Bacon Compliance Officer if you have any questions about whether an employee is excluded.)

Apprentices and Trainees – Are persons REGISTERED and receiving on-the-job training in a construction occupation under a program which has been registered with the Bureau of Apprentices and Trainees (BAT registered programs). The (sub) contractor must submit a copy of the registration/apprentice agreement, approved program ratio and wage schedule. Only workers that meet this requirement can be paid less than the prevailing wage rate specified on the wage decision. Apprentices/trainees that are not registered or that are utilized out of ratio must be paid the full rate (base + fringes) listed on the wage decision for the classification of work they perform.

Prevailing Wages – Wage Determinations outline the prevailing wages and fringes for various classifications of workers that are determined by the Secretary of Labor and are issued by the Department of Labor (DOL). The determinations are based upon the prevailing wages for the classes of laborers and mechanics employed on projects similar in character and performed in the same state and county as the future construction project. The wage rates reflected on the Wage Determination is the MINIMUM basic hourly rate of pay for each work classification. Some wage decisions include fringe benefits which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate unless you provide bona fide fringe benefits for your employees (see Fringe Benefits).

Piecework – Some employees are hired on a piece-work basis, that is, the employee's earnings are determined by a factor of work produced. Employers may calculate weekly earnings based upon piece rates provided the weekly earnings are sufficient to satisfy the wage rate requirement based upon actual hours, including any overtime, worked. Accurate time records must be maintained for any piece-work employees. If the weekly piece rate earnings are not sufficient, the employers must recalculate weekly earnings based upon the actual hours worked and the rate on the wage decision for the work classification(s) involved.

Fringe Benefits – Includes health insurance premiums, retirement contributions, life insurance, pension, vacation and other paid leave as well as some contributions to training funds. Fringe benefits do not include employer payments or contributions required by other Federal, State or local laws. Examples of excluded benefits are: employer's contribution to Social Security, workers' compensation premiums, unemployment compensation or some disability insurance payments. Remember, a fringe benefit is something the company pays the cost and the employee receives the benefit. The employee cannot be held financial responsible for that benefit.

Overtime – Hours worked on the contract in excess of 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefit.