



Davis Bacon

Presented by Aliecia Taormina
Director of Education & Compliance

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Aliecia Taormina

Director of Education & Compliance and former Director of Client Services. She manages the Compliance, Academy and Documentation teams while assisting with day-to-day business operations.

Prior to working for LCPtracker, Aliecia was a contractor for more than 20 years. She last worked for the Kiewit Companies, as a Senior Compliance Manager out of their Corporate office in Nebraska and was a Business Manager for a couple of small construction companies in Colorado.

She is a Certified Compliance & Ethics Professional with the Society of Corporate Compliance and Ethics and a Master Compliance Administrator with the American Contract Compliance Association.

Fun fact: she is a rabid hockey fan and used to work for the Detroit Red Wings.



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AGENDA

Part I

- History Lesson
- The Regulation(s)
- Primary Requirements
- Interesting Topics
- Misclassification Exercise
- Conformances

A History Lesson – Davis-Bacon



A History Lesson – Davis-Bacon



Davis-Bacon History Lesson

In 1927, an Alabama contractor won a bid in Long Island, NY to build a VA Hospital.

They imported workers from down South, primarily African-American. They paid them below scale wages and housed them in sub-par places.

This took jobs away from local workers, and local contractors were highly upset.



SENATOR JAMES DAVIS, R-PA



CONGRESSMAN ROBERT BACON, R-NY

The Davis-Bacon Act (DBA)

- Enacted in 1931
- Amended in 1935, 1964 and **2023** (hopefully)
- Currently under a “Notice of Proposed Rule Making”

Protects communities and workers from non-local contractors underbidding local wage levels

WHAT IS NPRM?

“Notice of Proposed Rulemaking”

BILLING CODE: 4510-27-P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Parts 1, 3, and 5

RIN 1235-AA40

Updating the Davis-Bacon and Related Acts Regulations

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor (Department) proposes to amend regulations issued under the Davis-Bacon and Related Acts that set forth rules for the administration and enforcement of the Davis-Bacon labor standards that apply to federal and federally assisted construction projects. As the first comprehensive regulatory review in nearly 40 years, the Department believes that revisions to these regulations are needed to provide greater clarity and enhance their usefulness in the modern economy.

DATES: Interested persons are invited to submit written comments on this notice of proposed rulemaking (NPRM) on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235-AA40, by either of the following methods:

- **Electronic Comments:** Submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments.

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

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

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.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5827
www.dol.gov/whd



WH1321 REV 0617

Employee Rights Under the Davis-Bacon Act

- Poster No. WH1321
- Revised 10/2017



**US Army Corps
of Engineers.**



U.S. Department
of Transportation

**Federal Highway
Administration**

The Regulation

Davis-Bacon Act (“DBA”)

Contracts in excess of \$2,000 entered with the United States or the District of Columbia for the construction, alteration or repair (including painting and decorating) of public buildings or public works

Davis-Bacon Related Acts (“DBRA”)

Federally funded or assisted contracts (grants, loans, loan guarantees, insurance) under statutes which adopt the DBA requirements, including all contracts funded in whole or in part by the 2009 American Recovery and Reinvestment Act.

Davis-Bacon Act – Additional Regulations

1

Contract Work Hours & Safety Standard Act (“CWHSSA”)

Requires payment of overtime for all hours worked over 40 in a week, and includes liquidated damages for violations of **\$31** per day per employee

2

Copeland Anti-Kickback Act (“CAA”)

Prohibits the “kickback” of wages by workers to contractors and requires contractors to submit weekly statement of compliance

3

McNamara-O’Hara Service Contract Act (“SCA”)

Prevailing wages and fringe benefit standards for contracts in excess of \$2,500 with the principal purpose of furnishing services to the United States or the District of Columbia

State Prevailing Wages Programs

State	Date Enacted	Date Repealed	State	Date Enacted	Date Repealed	State	Date Enacted	Date Repealed
Alabama	1941	1980	Kentucky	1982	2017	North Dakota	No program	
Alaska	1931		Louisiana	1968	1988	Ohio	1931	
Arizona	1912	1984	Maine	1933		Oklahoma	1909	1995
Arkansas	1955	2017	Maryland	1945		Oregon	1965	
California	1931		Massachusetts	1914		Pennsylvania	1961	
Colorado	1933 / 2020	1985	Michigan	1965 / 2022	2018	Rhode Island	1961	
Connecticut	1935		Minnesota	1973		South Carolina	No program	
Delaware	1962		Mississippi	No program		South Dakota	No program	
District of Columbia	1931		Missouri	1957		Tennessee	1953	
Florida	1933	1979	Montana	1931		Texas	1933	
Georgia	No program		Nebraska	1923	1999	Utah	1933	1981
Hawaii	1955		Nevada	1937		Vermont	2007	
Idaho	1911	1985	New Hampshire	1941	1985	Virginia	2021	
Illinois	1931		New Jersey	1913		Washington	1945	
Indiana	1935	2015	New Mexico	1937		West Virginia	1933	2016
Iowa	No program		New York	1897		Wisconsin	1931	2017
Kansas	1891	1987	North Carolina	No program		Wyoming	1967	

Prevailing Wages Update Calendar

State	Updates Done...	Dates
Alaska	Bi-annual	April 1, September 1
California	Bi-annual	February 22, August 22 (takes effect 10 days thereafter)
Connecticut	Annual	July 1
Colorado	Bi-annual	January 1 and July 1
Delaware	Annual	"Preliminary PW Determination" February 15, "PW Determination" March 15
DC	With every modification	DC utilizes USDOL wage determinations
Hawaii	Bi-annual	On or about February 15 and September 15
Illinois	Anytime	The IDOL may update their prevailing wages at will
Maine	Annual	January 1
Maryland	N/A	Issued per project
Massachusetts	N/A	Issued per project
Michigan	N/A	Issued per project and County
Minnesota	N/A	Issued per project
Missouri	Annual	AWO annually in March, GWO annually in July
Montana	Annual	January
Nevada	Annual	October 1
New Jersey	N/A	Issued per project
New Mexico	Annual	January 1
New York	Annual and monthly	July 1
Ohio	Weekly	Issued per project
Oregon	Bi-annually and quarterly	January 1 and July 1, Amendments April 1 and October 1
Pennsylvania	N/A	Issued per project
Rhode Island	With every modification	RI utilizes USDOL wage determinations
Tennessee	Annual	January 1
Texas	Annual	January 1
Vermont	With every modification	VT utilizes USDOL wage determinations
Virginia	Annual	Assumed January 1
Washington	Bi-annually	1st business day of February, 1st business day of August
Wyoming	Annual	March 1

Primary Requirements

Requirements

DEFINE

“LABORERS AND MECHANICS”

Requirements apply to “laborers” and “mechanics” of contractors and subcontractors on or virtually adjacent to the site of work

- Includes those workers whose duties are manual or physical in nature
- Includes those workers who use tools or who are performing the work of a trade



Laborers & Mechanics – Are these covered?

Foreman

Foreman

If a “working” Foreman spends more than 20% of their time a week doing the manual work of a laborer or mechanic, then they must be paid the applicable prevailing wage

Executives

Executives

People who do not perform any work that is “manual” in nature, such as executives, administrative workers or professionals, do not fall under the laborer or mechanic category

Surveyors

Surveyors

Survey crews who perform work directly before and during construction are considered “covered” under Davis-Bacon.
Members of the crew who perform manual or physical work are typically considered “laborers”

Business Owners

Business Owners

Someone who owns at least a bona-fide 20% equity interest in a business and is involved in its management does not fall into the laborer & mechanic category.

Not to be confused with an Owner-Operator.

NOTE: for questions regarding Survey, review AAM 212 and AAM 235

Requirements

DEFINE

“SITE OF WORK”

Requirements apply to laborers and mechanics of contractors and subcontractors on or virtually adjacent to the “site of work”

- The physical place or places where the building or work called for in the contract will remain,

AND

- Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project



Site of Work Examples



The Denver VA

- The building itself
- Grounds that it is on
- *The parking lot?*
- *The main street it's on?*



Chicago O'Hare

- Taxiways
- Airport itself
- Grounds that it is on
- *Nearby roads?*
- *Nearby highway?*



C-70 Highway in CO

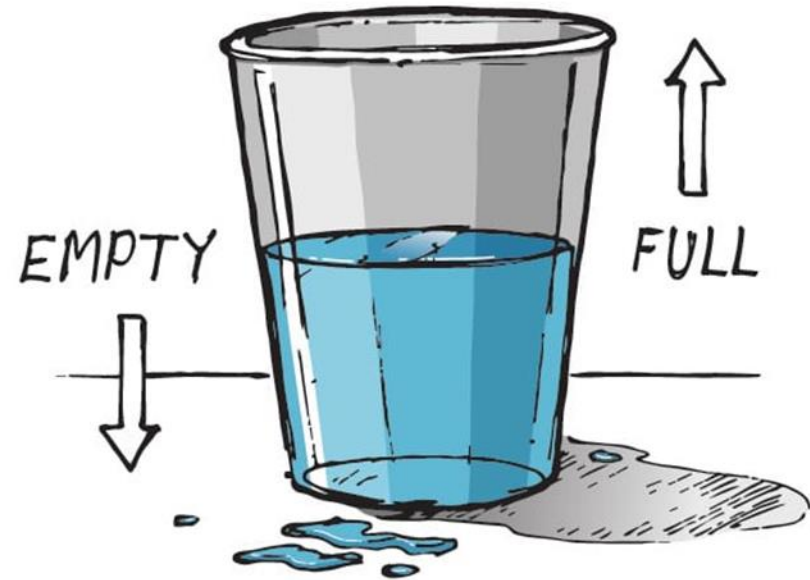
- Highway itself
- *Entrance/Exit Ramps?*
- *Adjoining roads?*
- *Secondary "sites of work"?*
- *Rebar tie-down yard?*
- *Portable asphalt plant?*

Virtually Adjacent

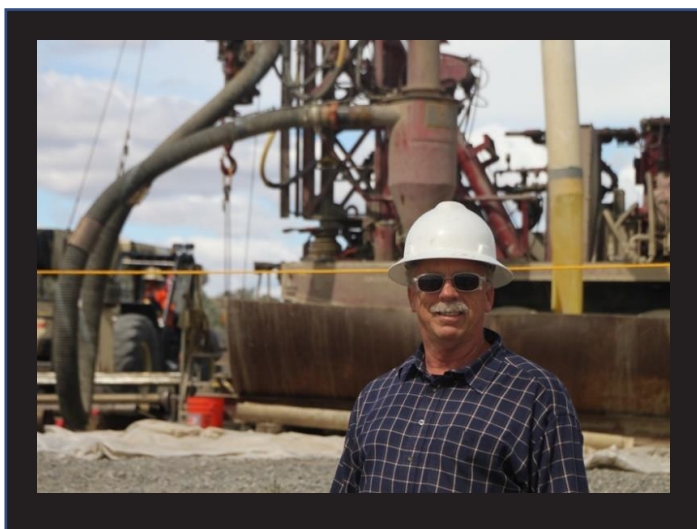
Places that can be considered part of the “site of work” so long as they are dedicated exclusively or nearly so, to the contract or project:

- Batch plants,
- Tool yards,
- Borrow pits,
- Equipment shops, etc.

It's Perspective...



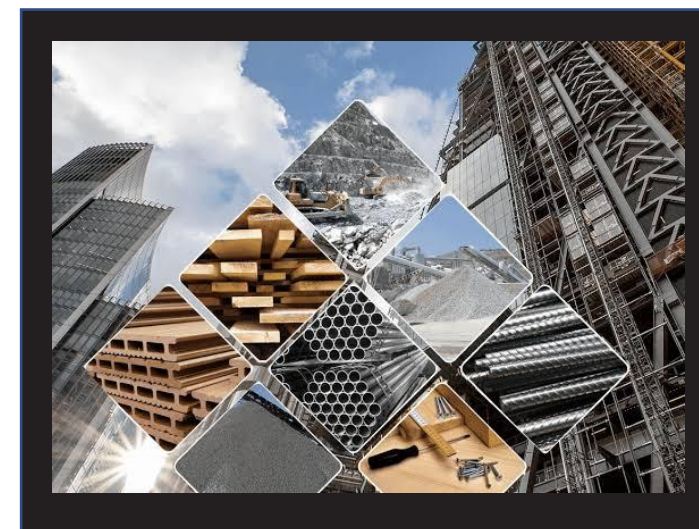
Interesting Topics



Business Owners



Trucking



Suppliers



Business Owners

Business owners are employees who own at least a bona fide 20% equity interest in the enterprise and is actively engaged in its management

- Considered a bona fide exempt executive
- Salary requirements do not apply

Exemption does NOT apply if:

- Business owner is required to work long hours
- Makes no management decisions
- Supervises no one
- Has no authority over personnel

Truck Drivers

Driver

Defined as an employee who drives a truck

Teamster

Defined as an employee who is a member of the Teamster union; includes drivers

Trucker

Typically defined as a long-distance driver

WHAT ELSE MAY THEY BE CALLED?

Davis-Bacon: Owner-Operators

USDOL enforcement position on bona-fide independent contractors who own and operate their own truck:

- Certified payrolls must include the names of such owner-operators with the notation “owner-operator”
- Certified payrolls do not need to show the hours worked or rates paid
- If working for a Trucking Broker, then they are typically considered “employees” and in that event must be included on a CPR as the correct type of driver or teamster.



REMEMBER: Agencies may enforce stricter rules than what DBA requires

Trucking Covered Work



- Time spent working on the site of work
- The transport of supplies/materials or equipment on the site of work
- The transport of supplies/materials between off site location that is site of work to actual site of work
- Time spent loading and/or unloading supplies or materials at the site of work, so long as the amount of time isn't de minimis



Repair: Tire & Equipment

Tire and Heavy Equipment repair employees are covered by Davis-Bacon, provided:

- They perform the repair work on the site of work
- Their time spent on the site of work is more than incidental, or de minimis

Material Suppliers



- Delivery of materials or supplies to a construction site of work is not covered under Davis-Bacon
- However, if laborers & mechanics are employed at the site of work to perform part of a construction contract, then they are subject to coverage under Davis-Bacon
- State laws can be different

Misclassification



1. Stripping forms

Carpenter is \$18.32/hr. higher than a Laborer

2. Tack welding

Ironworker is \$16.82/hr. higher than a Laborer

3. Protect finished concrete

Laborer is \$5.95/hr. higher than a Cement Mason

4. Placing pipe

Electrician is \$11.55/hr. higher than a Laborer

What happens when you can't find a classification?



- Do you make one up and add it to your wage determination?
- Do you just use the classification that most closely resembles you're looking for?
- Do you use the Laborer classification?



To find out..

Attend our **NEW** 'Conformances' Session



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**See you for
DBA Part 2!**