



Davis Bacon

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Davis-Bacon Part 3



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AGENDA

Part III

- Wage & Fringes
- Fringe Plans
- Overtime
- Deductions
- Executive Orders
- Helpful Publications

Wage & Fringes

Definitions

Wage

- A fixed regular payment, made by an employer to an employee.

Fringe Benefit

- An extra benefit supplementing an employee's total compensation package.

Total Package

- The combined amount that must be at least the prevailing wage rate requirement.

Prevailing Rate Example	
Wage	\$15.00/hr.
Fringe	\$3.00/hr.
Total Package	\$18.00/hr.

Fringe Benefits: Acceptable

- Health Insurance
- Holidays
- Life Insurance
- Pension
- Sick Leave
- Supplemental Unemployment Benefits
- Vacation



Fringe Benefits:

Things that aren't Fringes

- Federal, State or Local Requirements
- Social Security Contributions
- Unemployment Compensation
- Workers' Comp



Things that are also **NOT** Fringe Benefits

Christmas Bonus



Company Cell Phone



Thanksgiving Turkey



Use of Company Truck



Fringe Benefits – Helpful Hint

- Fringe benefits must be paid for all hours worked, but they are not paid at overtime rates
- Example: Carpenter works 44.5 hours in a standard work week

Required Basic Prevailing Rates for Carpenter		
Wage	\$20.00/hr.	40 hours x \$20.00 per hour
Wage OT	\$30.00/hr.	4.5 hours x \$30.00 per hour
Fringe	\$6.00/hr.	44.5 hours x \$ 6.00 per hour

Fringe Benefit Plans

Funded Fringe Benefit Plans

Fund, plan or program requirements for credit without prior USDOL approval

- Amount of contributions must be paid irrevocably to trustee or third party
- Contributions must be paid not less often than quarterly

Unfunded Fringe Benefit Plans

Contractor funds; must set aside in a separate account

- Typically for:
 - Holiday plan
 - Sick plan
 - Vacation plan
- Must:
 - Contractors must seek out permission from the USDOL WHD, per 29 CFR
 - Provide benefits as described in DBA
 - Represents a commitment that can be legally enforced
 - Carried out under a financially responsible plan
 - Be communicated in writing to the laborers and mechanics affected

Annualization

Computation strategy used to determine the hourly rate of contribution that a contractor may claim towards their fringe benefit obligation

- Contractors must seek out permission from the USDOL WHD, per 29 CFR
- Complex and complicated principle that encourages Contractors to utilize traditional fringe benefit plans (IMHO)

Overtime

Paying Overtime



MUST BE PAID FOR ALL HOURS
WORKED OVER 40 IN A WEEK



RATE EQUALS NOT LESS THAN
ONE AND ONE-HALF (1.5) TIMES
THE REGULAR RATE OF PAY



AND REMEMBER...

FRINGE BENEFITS DO NOT GET
PAID OVERTIME

Determining Overtime Rate Examples

Example: Cement Mason worked 42 hours in one week.

$$\begin{aligned} 42 \text{ hours} \times \$26.00 &= \$1,092.00 \text{ (straight time pay)} \\ 2 \text{ hours} \times \$11.00 &= \underline{\$ 22.00} \text{ (overtime pay)} \\ &= \$1,114.00 \end{aligned}$$

(\$11.00 is $\frac{1}{2}$ of \$22)

OR

$$\begin{aligned} 40 \text{ hours} \times \$22.00 &= \$ 880.00 \text{ (straight time pay)} \\ 2 \text{ hours} \times \$33.00 &= \$ 66.00 \text{ (overtime pay)} \\ 42 \text{ hours} \times \$ 4.00 &= \underline{\$ 168.00} \text{ (fringe benefit pay)} \\ &= \$1,114.00 \end{aligned}$$

(\$33.00 is 1.5x \$22)

Required Basic Prevailing Rates for Cement Mason

Wage	\$22.00
Fringe	\$4.00
Total Package	\$26.00

Deductions

Deduction:

The mandatory and voluntary amounts withheld from an employee paycheck by their employer.

- Deductions reduce the gross pay of an employee.
- 29 CFR Part 3.5 allows employers to make deductions

Permissible Deductions:

29 CFR § 3.5

- a) Social security, federal or state income tax
- b) Bona fide prepayment of wages
- c) Court ordered payments
 - IRS Garnishment
 - Child Support
- d) Contributions to fringe benefit plans, provided:
 - Not prohibited by law
 - Consented by employee in writing in advance of time work completed, or provided for in a Collective Bargaining Agreement
 - No profit or benefit is obtained by Employer
 - Deduction serves convenience of Employee

§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

- (a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.
- (b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A *bona fide prepayment of wages* is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.
- (c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.
- (d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: *Provided, however,* That the following standards are met:
 - (1) The deduction is not otherwise prohibited by law;
 - (2) It is either:
 - (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or
 - (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;
 - (3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and
 - (4) The deductions shall serve the convenience and interest of the employee.
- (e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

Permissible Deductions Cont.:

- e) Purchase of US Defense stamps or bonds
- f) Pay back Credit union loans or purchase shares
- g) Contributions to quasi-government agencies, such as American Red Cross
- h) Contributions to United Way, other charitable organizations
- i) Union fees/membership dues
- j) Reasonable cost of board and lodging
- k) Safety equipment purchased by employee

- (f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
- (h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.
- (i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however,* That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.
- (j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under § 516.25(a) of this title shall be kept.
- (k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either
 - (1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or
 - (2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

Permissible Deductions

I have a deduction that doesn't fall into those categories!



Deduction Approval Process

- Email to the Secretary of Labor at dbadeductions@dol.gov
- Use the standards described in 29 CFR Part §3.6
- Application should include:
 - A description of the proposed deduction
 - Purpose to be served
 - Classes of laborers or mechanics the deduction would apply to
 - Name of the third-party business the funds will be transmitted to

CAUTION: if approved, it applies to all current and future projects of the applicant for 1 year only. Doesn't automatically renew.

Executive Orders

What is an Executive Order?

- A rule or an order issued by the President of the United States
- Manages operations of the federal government
- Has the force of law
- Created without input from the legislative or judicial branches



Executive Order (EO) 13658

President Obama signed EO on February 12, 2014

- Raised the minimum wage for workers
- ONLY on DBA contracts
- Effective on solicitations issued on or after January 1, 2015
- Minimum wage rate will be adjusted annually

**\$12.15 per hour as
of 01/01/2023**

Executive Order (EO) 14026

President Biden signed EO on April 30, 2021

- Supersedes EO 13658
- Raised the minimum wage for workers to \$15.00
- Effective on solicitations issued on or after January 30, 2022
- Will increase annually after January 1, 2023

**\$16.20 per hour
as of 01/01/2023**



Executive Order (EO) 13706

WORKER RIGHTS UNDER EXECUTIVE ORDER 13706

PAID SICK LEAVE FOR FEDERAL CONTRACTORS ONE HOUR OF PAID SICK LEAVE FOR EVERY 30 HOURS WORKED, UP TO 56 HOURS EACH YEAR

PAID SICK LEAVE Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors, requires certain employers that contract with the Federal Government to provide employees working on or in connection with those contracts with 1 hour of paid sick leave for every 30 hours they work—up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury, or other health-related needs, including preventive care; to assist a family member who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member who is the victim of, domestic violence, sexual assault, or stalking.

Employers are required to inform employees of their paid sick leave balances and must approve all valid requests to use paid sick leave. Rules about when and how employees should ask to use paid sick leave also apply. More information about the paid sick leave requirements is available at www.dol.gov/whd/govcontracts/eo13706

ENFORCEMENT The Wage and Hour Division (WHD), which is responsible for making sure employers comply with Executive Order 13706, has offices across the country. WHD can answer questions, in person or by telephone, about your workplace rights and protections. WHD can investigate employers and recover wages to which workers may be entitled. All services are free and confidential. If you are unable to file a complaint in English, WHD will accept the complaint in any language.

The law prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Executive Order.

ADDITIONAL INFORMATION Executive Order 13706 applies to new contracts and replacements for expiring contracts with the Federal Government starting January 1, 2017. It applies to federal contracts for construction and many types of federal contracts for services.

Some state and local laws also require that employees be provided with paid sick leave. Employers must comply with all applicable requirements.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

www.dol.gov/whd/govcontracts

1-866-487-9243

TTY: 1-877-889-5627



WH000 REV 08/16

President Obama signed EO on September 7, 2015

- Establish Paid Sick Leave for Federal Contractors
- Provides employees ability to earn and use up to seven (7) days of paid sick leave annually
- Applies to new contracts and replacements for expiring contracts issued on or after January 1, 2017

Executive Order (EO) 14063

Use of Project Labor Agreements for Federal Construction Projects

President Biden signed EO on February 4, 2022

- Asks agencies to utilize PLA's on large-scale construction projects
- Large scale = \$35million +
- Senior officials within agencies may grant an exception based on cause



Helpful Publications

Field Operations Handbook

- Chapter 15
- Revised 03/31/2016
- www.dol.gov/whd/foh

Prevailing Wage Resource Book

- Revised May 2015
- www.dol.gov/whd/recovery/pwrb

All Agency Memorandums

- 130
- 131
- 212
- 213
- 233

Websites

- www.dol.gov
- www.sam.gov
- www.hud.gov



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