



Weatherization Assistance Program

# Davis-Bacon and the Bipartisan Infrastructure Law



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

[dol.gov/agencies/whd](https://dol.gov/agencies/whd)  
1-866-4-US-WAGE

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A construction worker in an orange shirt and blue jeans is working on a steel rebar grid at a construction site. The worker is in the background, slightly out of focus, holding a tool. The foreground shows a dense grid of steel rebar. The background is a blurred construction site with other workers and structures.

# 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

# DBRA Coverage of Bipartisan Infrastructure Law Construction Projects

The Infrastructure Investments and Jobs Act (IIJA), also commonly referred to as 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

# Statutory Language

The Infrastructure Investments and Jobs Act (IIJA) Section 41101 reads as follows:

All laborers and mechanics employed by contractors or subcontractors in the performance of construction, alteration, or repair work on a project assisted in whole or in part by funding made available under [Division D] or an amendment made by [Division D] shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 United States Code (commonly referred to as the “Davis-Bacon Act”).

# Statutory Exceptions

Section 40551(b) reads as follows:

“(b) Application of Wage Rate Requirements to Weatherization Assistance Program.--With respect to work performed under the weatherization assistance program ... the requirements of section 41101 shall apply only to work performed on multifamily buildings with not fewer than 5 units.”





# 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](https://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 – 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**

	<b>Rates</b>	<b>Fringes</b>
• Carpenter (Acoustical Ceiling, Installation, and Dry Wall Hanging Only)	\$26.25	\$8.64
• 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**

	<b>Rates</b>	<b>Fringes</b>
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	
	<b>Rates</b>	<b>Fringes</b>
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



# 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. The workers 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 foreground shows rebar and construction materials on the roof.

# 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.

# Determining Worker Classifications

- There are no nationwide standard classification definitions under Davis-Bacon
- To determine proper classification for workers employed on a Davis-Bacon covered project, it may be necessary to examine **local area practice**
- Contracting agencies are responsible for advising contractors regarding the duties performed by various crafts in the WD



# Apprentices

- Are laborers and mechanics; not listed on WDs.
- Only includes persons individually registered in a bona fide apprenticeship program registered with DOL's Employment Training Administration (ETA) Office of Apprenticeship (OA) or a State Apprenticeship Agency recognized by OA
- Apprentices must be employed within the allowable ratio specified in the approved program for the number of apprentices or trainees to journey worker
- Apprentices individually registered in an approved program and employed within the allowable ratio may be paid less than the journey worker wage

# 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

# Travel Time

- Ordinary home to work travel is *not* compensable work time
- Travel between job sites during normal work day *is* work time and thus compensable hours worked
- Special rules apply to travel away from employee's home community



# 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>

The background image shows three construction workers in silhouette against a warm, orange-hued sunset sky. They are wearing hard hats and safety vests. One worker on the left is pointing towards the background, while the other two are looking at a large set of blueprints held by the worker in the middle. A crane hook is visible in the upper left background.

# Investigations

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## **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 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)

# 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](https://www.dol.gov/agencies/whd/government-contracts/construction/presentations)

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