



# Essential Workers Essential Protections



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

[dol.gov/agencies/whd](https://dol.gov/agencies/whd)  
1-866-487-9283

# Wage and Hour Division

Who we are



# Essential Protections



- Payment of minimum wages and overtime
- Youth employment standards
- Job protections for time taken for the birth of a child or caring for sick family members
- Housing and transportation standards for farm workers
- Payment of prevailing wage rates for federally funded construction and service contract work
- Standards for hiring and paying workers temporarily in the U.S under H-2A, H-1B and H-2B visas



# PREVAILING WJ E SEMINARS



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR



# Davis-Bacon Coverage

# DBA

- Enacted in 1931
- Amended in 1935 and 1964
- Protects communities and workers from non-local contractors underbidding local wage levels

# Coverage of the DBA

- 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

# DBRA

- Davis-Bacon (DB) requirements extend to numerous “related Acts” that provide federal assistance by
  - Grants
  - Loans
  - Loan guarantees
  - Insurance



# DBRA Examples

- HUD financed construction of low-income housing projects
- The Federal Highway Administration provides grants to states for reconstruction of roads and bridges on Federal-aid highways

# Davis-Bacon Labor Standards/Contract Stipulations

- The term “labor standards” means the requirements of:
  - The Davis-Bacon Act;
  - The Contract Work Hours and Safety Standards Act;
  - The Copeland Act;
  - Prevailing wage provisions of the Davis-Bacon and “related Acts”; and
  - Regulations, 29 CFR 1, 3, and 5.

# Davis-Bacon Labor Standards (29 CFR 5.5)

- 5.5(a)(1) - Minimum wages
- 5.5(a)(2) - Withholding
- 5.5(a)(3) - Maintaining basic payroll records
- 5.5(a)(4) – Apprentices and trainees
- 5.5(a)(5) – Copeland Act compliance

# Davis-Bacon Labor Standards

- 5.5(a)(6) - Subcontracts
- 5.5(a)(7) - Contract termination and debarment
- 5.5(a)(8) - Rulings and interpretations
- 5.5(a)(9) - Disputes concerning labor standards
- 5.5(a)(10) - Certification of eligibility

# Davis-Bacon

## Wage Determinations

- 1. Federal agency responsibility to identify.**
- 2. General wage determinations (WDs).**
- 3. Project WDs.**
- 4. Selecting proper WD.**
- 5. Interpreting wage determinations.**

# Federal or Funding Agency Responsibilities

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

# Wage Determinations

- **General wage determinations.**
- **Project wage determinations.**

# “General” WDs

- Issued for most counties for each major type of construction (building, heavy, highway and residential) nationwide.
- Official site for General Wage Determinations – <https://sam.gov/content/homesam.gov>.
- May be used by Federal agencies without notifying the WHD.



# “Project” WDs

- **Issued at request of federal agency;**
- **No “General” WD in effect;**
- **Standard Form (SF) 308 used to request;**
- **Application to a specific project only;**
- **Effective for 180 days; and**
- **Virtually all work (100%) on contract performed by a classification not listed on General WD.**

# Selecting & Incorporating Proper WD (Construction Type - AAM 130)

- **Building;**
- **Residential;**
- **Highway; and/or**
- **Heavy.**

# Selecting & Incorporating Proper WD (Construction Types - AAM 131)

- **Application of Multiple Wage Schedules**
  - (AAM 131)
- **Separate construction types and:**
  - **At least 20% of the total project is a different type of construction; and/or**
  - **The different type of construction is at least \$1,000,000 in cost.**

# Building Construction

- Construction, alteration, or repair of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies.
- Includes all construction of such structures, the installation of utilities, and the installation of equipment both above and below grade.
- Structures need not be “habitable” to be building construction.
- Installation of machinery or equipment does not generally change the project’s character from building.

# Highway Construction

- Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects.

# Heavy Construction

- The “other” category - projects that are not properly classified as either “building,” “highway,” or “residential.”
- Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued, such as for dredging, water and sewer lines, dams, major bridges and flood control.

# Interpreting “General” WDs

## Body of WD

**List of classifications and rates.**

**Basis for rates – Identifiers:**

- **Union Identifiers; and**
- **SU Identifiers.**

# Interpreting “General” WDs

## Body of WD

### Union Identifiers

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

**ELEV**ator Constructors: 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

## Body of WD

CARP0055-001

11/01/2016

	<b>Rates</b>	<b>Fringes</b>
CARPENTER (Acoustical Ceiling Installation and Drywall Hanging Only)	\$26.25	\$8.64

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CBA rates are updated when CBA rates are changed

# Interpreting “General” WDs

## Body of WD

### **SU (Non-Union) Identifiers**

**SUCO2015-015**

**07/31/2015**

<b>SU:</b>	<b>SUR</b> vey – Basis of Rate(s)
<b>CO:</b>	Colorado
<b>2015:</b>	Date of Survey
<b>015:</b>	Internal numbering
<b>7/31/2015:</b>	Date submitted for publication

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

# Interpreting "General" WDs

## Body of WD

**SUCO2015-015 07/31/2015**

	<b>Rates</b>	<b>Fringes</b>
<b>Bricklayer.....</b>	<b>\$ 21.96</b>	<b>0.00</b>
<b>Carpenter.....</b>	<b>\$ 18.22</b>	<b>0.00</b>

# Interpreting “General” WDs Conformance

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

# Criteria for Conformance Actions

- **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.**

# “Reasonable Relationship”

- When determining whether a proposed rate bears a “reasonable relationship” to wage rates in the wage determination:
  - Determine the category of the classification in question (skilled craft, laborer, equipment operator, or truck driver)
  - Determine whether the majority of the rates in that category are union or non-union rates
  - Consider the entirety of those rates and determine whether the proposed rate is reasonable in light of those rates
  - Do not automatically use the lowest rate in the category

# “Reasonable Relationship”

- Based on the following, does the proposed hourly rate of \$20.99 plus \$10.04 in fringe benefits (\$31.03 in total) for a skilled craft bear a reasonable relationship to the rates on the WD?

Classification	Sector	Hourly Wage	FB	Total
Carpenter	Union	\$26.06	\$10.56	\$36.62
Cable Splicer	Union	28.62	3% + \$12.98	\$42.46
Electrician	Union	28.37	13.98	\$42.35
Ironworkers	Union	31.09	19.60	50.69
Cement Mason/Finisher	Survey	20.22	7.98	28.20
General Laborer	Union	\$21.04	\$9.65	\$30.69

# Unnecessary Conformance Actions

Conformance requests are not  
needed for bona fide:

- **Apprentices;**
- **Trainees; or**
- **Welders.**



# Conformance Process

## **Pre-Bid/Pre-Award**

- **Review the WD;**
- **Compare the WD with the project work;**
- **Anticipate needed classifications; and**
- **Apply key criteria.**

# Conformance Process

## **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.**



# **DBA/DBRA Compliance Principles**

# DBA/DBRA Compliance Principles

- Laborers and mechanics
- Site of the work
- Classification of Work
- Fringe Benefits
- Deductions
- Certified Payrolls

# Laborers and Mechanics

- Workers whose duties are manual or physical in nature;
- Includes apprentices, trainees and helpers; and
- For CWHSSA, includes guards and watchmen.

# Apprentices

- 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.
- Individuals in their first 90 days of probationary employment as an apprentice in such a program.
- Regulations: 29 C.F.R. §§ 5.2(n)(1) and 5.5(a)(4)(i).

# Trainees

- Persons registered and receiving on-the-job training in a construction occupation under a program approved in advance by DOL's Employment Training Administration (ETA).
- Regulations: 29 C.F.R. §§ 5.2(n)(2) and 5.5(a)(4)(ii).

# Apprentices and Trainees

- Are laborers and mechanics; not listed on WDs.
- Permitted to work on covered projects and be paid less than the journey level WD rate when:
  - Individually registered in an approved apprenticeship or training program;
  - Paid the percentage of hourly rate required by the apprenticeship or training program;



# Apprentices and Trainees

- Paid the FB's specified in approved program; if the program is silent, the full amount of FB's listed on the WD; and
- Are employed within the allowable ratio specified in approved program for the number of apprentices or trainees to journeymen.
  - Note: ETA apprenticeship regulations were revised in 2008; questions about portability of wages and ratios on DBA/DBRA covered projects may require careful consideration by WHD. See 29 C.F.R. § 29.13(b)(7).

# Ratios

- “The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program.” 29 CFR 5.5(a)(4)(i)
- Compliance with the ratio is determined on a daily, not a weekly basis
- The use of fractions in computing the ratio is not permitted unless specified in the **approved** apprenticeship agreement.

# Laborers and Mechanics

- Does not include:
  - Timekeepers, inspectors, architects, engineers; or
  - Bona fide executive, administrative, and professional employees as defined under FLSA.
- Working foremen are generally non-exempt:
  - must be paid the Davis Bacon (DB) rate for the classification of work performed if not 541 exempt.

# Site of the Work

- Davis-Bacon applies only to laborers and mechanics employed “directly on the site of the work.”
- A three-part definition applies to determine the scope of the term “site of the work.”

# Site of the Work Definition ¶1

- DBA applies only to workers “directly on the site of the work:”
  - The physical place or places where the construction called for in the contract will remain after work has been completed; and
  - Any other site where a **significant** portion of the building or work is constructed, *provided that* such site is established specifically for the contract.

# Site of the Work Definition ¶2

- “Site of the work” also includes job headquarters, tool yards, batch plants, borrow pits, etc., *provided* they are:
  - Located adjacent or virtually adjacent to the “site of the work” described in paragraph 1; and
  - Dedicated exclusively or nearly so to the performance of the contract or project.
  - Except if they are excluded – see next slide

# Site of the Work Definition ¶3

- “Site of the work” does not include a contractor’s or subcontractor’s:
  - permanent home office, branch locations, fabrication plants, tool yards, etc.;
  - whose location and continuance in operation are determined without regard to a particular covered project.

# Definition ¶3 (Cont'd.)

- Also not included in the “site of the work” are:
  - Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials:
    - Before the opening of bids for a project; and
    - Not located on the actual site of the work.
  - Such permanent, previously established facilities, are not part of the “site of the work,” even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.



# Truck Drivers

- Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:
  - Spent working on the “site of the work;”
  - Transporting materials and supplies between a facility that is part of the “site of the work” and the actual construction site; or
  - Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain.

# Wages & Fringe Benefits

- All laborers and mechanics employed or working upon the site of work must be paid at least the applicable prevailing wage rate for the classification of work performed, without regard to skill.

# Wages & Fringe Benefits

- Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed.” 29 CFR 5.5(a)(1)

# Wages & Fringe Benefits

- DBA: the terms “wages” and “prevailing wages” include:
  - The basic hourly rate (BHR);
  - Contractor contributions *irrevocably* made to a trustee or third party pursuant to a bona fide fringe benefit (FB) fund, plan, or program; and/or
  - The rate of costs the contractor reasonably anticipates in providing bona fide FB’s where certain conditions are met.

# Wage & Fringe Benefits

- Under DBA, FB's are a component of the DBA "prevailing wage."
- The prevailing wage obligation may be satisfied by:
  - Paying the BHR and FB in cash (including negotiable instruments payable on demand);
  - Contributing payments to a bona fide plan; or
  - Any combination of the two.

# Wages & Fringe Benefits

- Must be paid weekly for all hours worked:
  - Unless the fringe benefits are paid into a bona fide FB plan and then contributions must be paid no less often than quarterly.
- Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation (unlike under SCA).

# Prevailing Wage Example

- **BHR** **\$14.00**
- **FB** **\$ 1.00**
- **Total prevailing wage** **\$15.00**
  
- **The contractor may comply by paying:**
  - **\$15.00 in cash wages**
  - **\$14.00 in cash wages plus \$1.00 for FB**
  - **\$12.00 in cash wages plus \$3.00 for FB**

# Prevailing Wage Example

- An employee spent 32 hours working as an electrician, with a BHR of \$22.00 and an FBR of \$3.00, and 8 hours working as a laborer, with a BHR of \$14.00 and a FBR of \$1.00.
- The employee is due \$800.00 for his electrician work (32 hours X (\$22.00 + \$3.00)) and \$120.00 for his laborer work (8 hours X (\$14.00 + \$1.00)), for a total of \$920.00.
- The \$920.00 can be paid in any combination of cash wages and fringe benefit contributions.



# Examples of Fringe Benefits

- Life Insurance;
- Health Insurance;
- Pension;
- Vacation;
- Holiday; and
- Sick Leave.

# Funded Fringe Benefit Plans

- Contractors may take credit (without prior approval from DOL) for bona fide FB fund contributions made to third-party trustees or insurers that:
  - Are *irrevocably* paid; and
  - Are made regularly, not less often than *quarterly*.
- Credit is for payments made for individual workers eligible to participate in the plan, program, or fund.

# Unfunded Fringe Benefit Plans

- Costs for an “unfunded” FB plan count towards WD obligation if specific criteria are met:
  - The contributions reasonably anticipate the cost to provide a bona fide FB;
  - Contributions are made pursuant to an enforceable commitment;
  - That is carried out under a financially responsible plan; and
  - The plan has been communicated in writing to affected workers.
  - The plan has been approved by WHD

# Eligibility and Participation

- Employers may not take credit for contributions for employees who are not eligible to participate in the fringe benefit plan.
- Employers may take credit for contributions made on behalf of employees who are participants in a plan but are not yet eligible to receive benefits (for example, a health insurance plan with a 30 day waiting period for new participants)

# Administrative Expenses

- The administrative expenses incurred by a contractor or subcontractor in connection with the administration of a bona fide fringe benefit plan are not creditable towards the prevailing wage under the DBA.

# Annualization Principle

- Davis-Bacon credit is based on the effective annual rate of contributions for all hours worked in a year (both Davis-Bacon and non-Davis-Bacon work).
- Davis-Bacon work may not be used as the exclusive or disproportionate source of funding for a benefit in effect during both covered and non-covered work.

# Annualization –

## Computing the creditable hourly rate

- Determine the hourly rate of contribution that is creditable towards a contractor's Davis-Bacon prevailing wage obligation by:
  - Dividing the total annual contributions by the total annual hours worked (both Davis-Bacon and non-Davis-Bacon work).

# Annualization – Exception

## Certain Defined Contribution Pension Plans

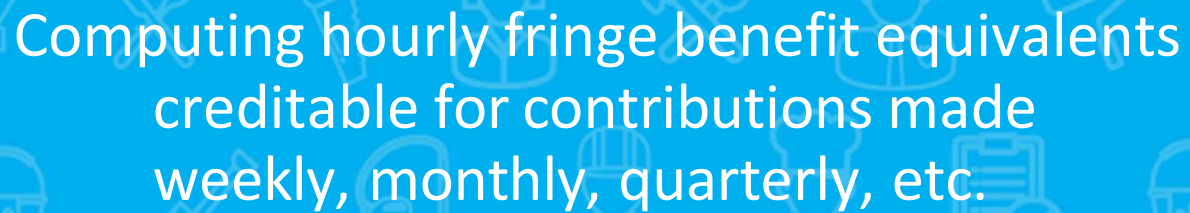
- An exception to annualization applies to:
  - Defined contribution pension plans that provide:
    - immediate participation; and
    - essentially immediate vesting (100% vesting after an employee works 500 or fewer hours).
- This exception allows full credit for the amount of contributions made on Davis-Bacon work.



## Annualization – Example

- A firm's contribution for an employee's pension plan that does not provide for immediate vesting was computed at \$2,000 a year
  - The employee worked 1,500 hours on a Davis-Bacon project and 500 hours on other jobs not Davis-Bacon covered.

Credit per hour:  $\$2,000 / 2000 \text{ (hours)} = \$1.00$



## Computing hourly fringe benefit equivalents creditable for contributions made weekly, monthly, quarterly, etc.

- In determining cash equivalent credit for fringe benefit payments, the period of time to be used is the period covered by the contribution.
  - If contributions are made weekly, cash equivalents should be computed weekly.
  - If contributions are made quarterly, cash equivalents should be computed quarterly, etc.

## Computing the Hourly Equivalent Fringe Benefit Credit – Medical Insurance

- Employer provides medical insurance at \$200 per month to an electrician on a Davis-Bacon project. The WD requires \$16.00 plus \$2.50 in FB's, or \$18.50 an hour. Employee works 160 hours a month
  - $\$200/160 \text{ hours} = \$1.25$  credit per hour for the FB
  - No other benefit provided
  - Electrician is due: \$17.25 in cash wages per hour  
( $\$18.50 - \$1.25 = \$17.25$ )

## Fringe Benefit Payments in Advance – converting to hourly cash equivalents

- On occasion, a contractor may offset the annual cost of a particular fringe benefit by converting such costs to an hourly cash equivalent
  - Since construction workers often do not work a full year (2,080 hours), if a contractor makes annual payments in advance to cover the coming year cost, and actual hours worked will not be determinable until year-end, total hours worked by DB-covered workers in the preceding year (or plan year) can be considered representative of a normal work year in the computation.
  - Example: Assume total annual cost of pension program is \$15,000, and that the total working hours (DB and non-DB) for the workers on whose behalf the employer made contributions in the previous year was 15,000.  
 $\$15,000 / 15,000 \text{ hours} = \$1.00 \text{ per hour cash equivalent}$

# Fringe Benefit Payments in Advance – converting to

- Where the contractor pays monthly health insurance premiums in advance on a lump sum basis, the total hours worked in the previous month or in the same month in the previous year may be used to determine (i.e. estimate) the hourly equivalent credit per employee during the current month.
  - Any representative period may be used, provided the period selected is reasonable.
  - However, keep in mind that If the employer contributes at different rates, such as under a health insurance plan for single and family plan members, credit cannot be taken based on an across the board average, but rather must be computed to reflect the cash equivalent to be credited for each individual employee.

# Deductions

- 29 CFR 3.5 lists deductions that an employer can make from the prevailing wage rate without the approval of the Secretary of Labor.
- Examples include Social Security and federal or state taxes, certain court-ordered payments, bona fide pre-payments of wages, certain payments of union dues, and voluntary charitable donations.

# Deductions

- 29 CFR 3.6 generally provides that the Secretary may approve other deductions whenever all of the following conditions are met:
  - The contractor does not profit directly or indirectly from the deduction
  - The deduction is not otherwise prohibited by law
  - Either the employee voluntarily consented to the deduction in writing in advance of the time that the work was performed or the deduction is under the terms of a collective bargaining agreement
  - The deduction serves the convenience and interest of the employee

# Payroll and Basic Records

- Payrolls and related basic records shall be maintained by the contractor during the course of the work and for three years thereafter for all laborers and mechanics working at the site of the work.
- Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. 29 CFR 5.5(a)(3)



# Certified Payrolls - Continue

- Weekly payrolls must include specific information as required by 29 C.F.R. § 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:

<http://www.dol.gov/whd/forms/wh347instr.htm>

# WHD Internet Sites

- Wage Determinations – <https://beta.sam.gov/>
- Wage and Hour Division - <http://www.dol.gov/whd/index.htm>
- [Resource Book - https://www.dol.gov/agencies/whd/government-contracts/prevaling-wage-resource-book](https://www.dol.gov/agencies/whd/government-contracts/prevaling-wage-resource-book)
- Office of the Administrative Law Judges Law Library - <http://www.oalj.dol.gov>
- Administrative Review Board - <http://www.dol.gov/arb>



# **Investigative Process, Withholding, and Debarment**

# Overview of Investigative Process

- Initial Steps in Conducting an Investigation;
- Determining Compliance; and
- Conclusion of Investigation.

# Authority for SCA and DBA Investigations

- DOL has sole enforcement authority under SCA.
- Under Reorganization Plan No. 14 of 1950, federal contracting agencies also have the authority to conduct DBA/DBRA investigations.

# Why Are Employers Investigated?

- WHD conducts investigations for a variety of reasons, and generally does not disclose the reason during the investigation
- Many investigations are the result of complaints, but all complaints are confidential, and investigators may not even disclose whether one has been received
- WHD also conducts investigations of business or industries for a variety of other reasons, such as high violation rates, employment of vulnerable workers, or rapid changes in the industry

# Compliance Issues

- An investigation will generally identify and examine the following issues:
  - Are the correct contract clauses included in contract?
  - Does contract have the correct WDs?
  - Are the poster and WD, including any conformance actions, posted at the site or made available to employees?
  - Does the WD contain necessary classifications?

# Compliance Issues (cont'd)

- More investigation issues:
  - Is a conformance necessary?
  - Are employees properly classified?
  - Are fringe benefits being properly paid?
  - For DBA/DBRA, have apprenticeship and/or trainee requirements been met?
  - Is “overtime” correctly paid under the FLSA or CWHSSA, if appropriate?
  - Has employer kept accurate payroll records?



# Preliminary Steps in Conducting Investigations

- Obtain the following information:
  - Copy of labor standards clauses in contract(s);
  - Copy of WDs in contract(s); and
  - Employer identification number.

# Initial Employer Contact

- Initiate contact with the employer, prime contractor (if not the subject of the investigation), and contracting agency.
- Obtain:
  - Legal name and trade name of employer;
  - Officers (Name and Title);
  - Full address;
  - Federal tax identification number (FEIN);
  - Information on business (size, dollar volume, etc.).
  - Copies of all SCA/DBA/DBRA contracts, subcontracts and applicable wage determinations

# Initial Employer Contact (cont'd.)

- Inform the employer of the investigation process:
  - Scope of investigation.
  - Examine payroll records.
  - Conduct employee interviews.
  - Inspect job site.

# Examine Payroll Records (29 C.F.R. §§ 4.6(g), 4.185,

- The contractor and each subcontractor must maintain adequate records for each employee for 3 years:
  - Name, address and social security number;
  - Work classification, wages and benefits;
  - Daily/weekly compensation and hours worked, and any payroll deductions;
  - Copies of certified payroll for DBA/DBRA; and
  - Length of service list of the predecessor contractor for SCA.

## Employee Interviews – 29 CFR 4.6(g)(4) and 5.5(a)(3)(iii)

- 4.6(g)(4) – “The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.”
- 5.5(a)(3)(iii) - “The contractor or sub-contractor ... shall permit such representatives [of DOL or the contracting agency] to interview employees during working hours on the job.”

# Employee Interviews

- Are essential to the investigation.
- Information provided is confidential.
- Interview Statement should contain:
  - Place and date of interview;
  - Name and address of employer/employee;
  - Employment status and classification
  - Detailed description of work performed and tools/equipment used
  - Daily and weekly hours worked
  - Pay rates
  - Other information indicating potential violations

# DBA/DBRA - Area Practice Surveys

- There are no nationwide standard classification definitions under the DBA
- To determine proper classifications for workers employed on a Davis-Bacon covered project, it may be necessary to examine **local area practice**

# Conclusion of Investigation

- Compute any back wages or liquidated damages
- Inform contractor of investigation findings;
- Detail steps to eliminate violations;
- Consider additional evidence;
- Request payment of back wages; and
- Notify contracting agency of any liquidated damages under CWHSSA.



# Withholding of Contract Funds

- SCA, DBA, and CWHSSA provide for withholding of contract funds to satisfy alleged wage underpayments pending resolution of a wage dispute.
  - 41 U.S.C. § 352(a); 40 U.S.C. § 3142(c)(3); 40 U.S.C. § 3702(d).
- Withholding of contract funds is an effective enforcement tool in SCA and CWHSSA cases.
  - It protects the rights of covered workers to wages due them.

# Withholding of Contract Funds

- SCA, DBA, and CWHSSA contract clauses provide for withholding to ensure the availability of contract funds needed for the payment of:
  - unpaid back wages found to be due to covered workers; and
  - CWHSSA liquidated damages.
- DOL regulations address withholding in the SCA, DBA, and CWHSSA contract clauses at 29 C.F.R. § 4.6(i), 4.187, 29 C.F.R. §§ 5.5(a)(2), and 5.5(b)(3).

# Withholding of Contract Funds

- Withholding may be undertaken at the request of DOL or by the contracting agency under its own initiative, if it is determined to be necessary to secure the funds to pay wages or fringe benefits due to underpaid employees.
- It is mandatory for a contracting officer to adhere to a request from the Department of Labor to withhold funds where such funds are available.

# Withholding of Contract Funds

- Withholding may take place due to underpayments by the prime contractor themselves, or for underpayments by any of their sub-contractors
- Funds may be withheld from any contract between the same prime contractor and the federal government, not only the contract(s) upon which the underpayments occurred.

# Withholding of Contract Funds

- If subsequent investigation confirms violations, the contracting officer must adjust the withholding as necessary
- If DOL requested the withholding, the contracting officer must not reduce or release the withheld funds without written approval by DOL
- The withheld funds are to be used to satisfy:
  - assessed liquidated damages; and
  - unless the contractor makes restitution, validated wage underpayments

# Withholding of Contract Funds

- The contractor and prime contractor (if separate) will be notified in writing of the withholding and will be provided with time to provide additional information.
- Funds may be withheld prior to the institution of administrative proceedings by the Secretary. However, those funds will not be disbursed until the contractor and/or prime contractor has had an opportunity to request a hearing before the Administrative Law Judge.

# Withholding of Funds

- Wage claims have priority over other claims, including:
  - IRS tax levies
  - Agency re-procurement costs
  - Any claim by the trustee in bankruptcy
  - Any assignee of the contractor
- The government may also institute court action against the contractor, or its surety, to recover wage and fringe benefit underpayments if the accrued payments withheld under the terms of the contract are insufficient.

# Debarment – DBA/DBRA

- 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



# Debarment –DBA/DBRA

- 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

## Removal From the Debarment List - DBRA

- Any person or firm debarred due to aggravated or willful violations under DBRA may make a written request for removal from the debarment list not sooner than six months after the date their name was published on the list
- The Administrator will determine whether the contractor has demonstrated a current responsibility to comply with the labor standards of the related acts

# Hearing Process (29 C.F.R. Part 6)

- A complaint is filed by WHD with DOL's Administrative Law Judge (ALJ) when a contractor:
  - Fails to pay back wages; or
  - Refuses to agree to future compliance; or
  - Debarment is recommended.

# Hearing Process (cont'd.)

- For SCA, the contractor is served with a copy of the complaint, who may file an answer within 30 days of the date of service.
- For DBA/DBRA, a registered or certified notification shall be sent to the last known address of the contractor, who may make a written request for a hearing postmarked within 30 days of the date of the letter from the Administrator
- The Office of the Chief ALJ is responsible for scheduling administrative hearings.
- ALJ decisions may be appealed (within 40 days) to the Administrative Review Board, which makes final agency rulings.

# Debarment List

- The name(s) of the contractor and any responsible parties, along with the name of any firms in which they are known to have an interest, are placed on the list of ineligible persons or firms, which is distributed to federal agencies
- [This list is searchable online at the System Awards Management website](#)



# DBA/DBRA Certified Payrolls

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

# Certified Payrolls

- Weekly payrolls must include specific information as required by 29 C.F.R. § 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:  
<http://www.dol.gov/whd/forms/wh347instr.htm>



# Certified Payrolls

- Weekly, the contractor must submit “a copy of all payrolls” to:
  - The federal agency; or
  - If the federal agency is not a party to the contract, to the applicant, sponsor, or owner for transmission to the federal agency). 29 C.F.R. § 5.5(a)(3)(ii)(A)

# “Statement of Compliance”

- The certification “Statement of Compliance” attached to each weekly payroll must be:
  - On page 2 of the WH-347 Form “Payroll (For Contractors Optional Use)”; or
  - On any form with identical wording

# “Statement of Compliance” Certification for weekly payrolls

- The properly signed “Statement of Compliance” submitted or transmitted to the appropriate federal agency certifies that:
  - The payroll for the payroll period contains the information required to be provided
  - The appropriate information is being maintained
  - Such information is correct and complete
  - Each laborer or mechanic has been paid the full weekly wages earned; and
  - Each laborer or mechanic has been paid not less than the applicable wages, as specified in the applicable wage determination incorporated into the contract

# “Statement of Compliance”

- Must be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. 29 C.F.R. § 3.3(b)
- Each weekly statement must be delivered or mailed by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency contracting for or financing the building or work. 29 C.F.R. § 3.4(a)

# Availability of Certified Payroll

- The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the contracting agency or the Department of Labor
- If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to suspend any further payment, advance, or guarantee of funds
- Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12

# Certified Payrolls & Signatures

- The signature on each weekly “Statement of Compliance” may be either an original handwritten or an electronic signature
- A contracting agency or prime contractor may permit or require contractors to submit the weekly payrolls, each with the accompanying “Statement of Compliance” through an electronic system

# Certified Payrolls & Signatures

- Photocopies or “pdf” copies of the “Statement of Compliance,” faxed “Statements of Compliance,” or an electronically scanned “Statement of Compliance” e-mailed to an agency do not satisfy the requirement that each “Statement of Compliance” be:
  - “signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract”

# Certified Payrolls & Electronic Signatures

- Under pertinent provisions of the Copeland Act and the Government Paperwork Elimination Act (Pub. L. 105-277, Stat 2681, codified at 44 U.S.C. § 3504, note):
  - WHD affirms that the use of electronic signatures is sufficient for compliance purposes under the Copeland Act



# Certified Payrolls & Electronic Signatures

- WHD encourages all government agencies to:
  - submit certified payrolls electronically or allow access to appropriate agency approved limited access Web-based portals providing the required information and certification
- Some agencies and contractors have set up systems to comply electronically
- Contracting agencies determine electronic submission options

# Certified Payrolls & Electronic Signatures

- Web-based systems for the electronic submission of certified payrolls;
  - Often include compliance monitoring tools; and
  - Can improve efficiency in the review of data reported, as well as reducing recordkeeping burdens and storage expenses

# Certified Payrolls & Signatures

- The importance of the “Statement of Compliance” requirement is clear in that;
  - “The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.” 29 C.F.R. § 5.5(a)(3)(ii)(D) and reiterated at FAR 48 C.F.R. § 52.222-8(b)(4)

# WHD Links

Wage Determinations – <https://sam.gov>

WHD - WHD Main Webpage: <https://www.dol.gov/agencies/whd>

WHD DBRA Webpage: <https://www.dol.gov/agencies/whd/government-contracts/construction>

Office of the Administrative Law Judges Law  
Library- <http://www.oalj.dol.gov>

Administrative Review Board - <http://www.dol.gov/arb>

# Disclaimer

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# Compliance Assistance

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