



Essential **Workers** Essential **Protections**



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
1-866-487-9243

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Wage and Hour Division



Who we **are**



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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



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Fair Labor Standards Act (FLSA)



Essential Protections:

- Minimum wage: \$7.25 per hour
- Overtime at “time and one-half” for hours worked over forty in a workweek
- Recordkeeping requirements
- Prohibited youth employment
- Anti-retaliation provisions



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Hours Worked



An employee must be paid for all of the time considered to be “hours worked” under the FLSA. This may include time spent engaged to wait, on-call, in training, or traveling. Work not requested but **“suffered or permitted”** is work time.

[View Fact Sheet# 22: Hours Worked](#)



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

Bipartisan Infrastructure Law

The Bipartisan Infrastructure Law will:

- Create an estimated 800,000 good-paying jobs that will expand the middle class
- Revitalize our nation's transportation, communications and utilities systems
- Build a more resilient, reliable, and environmentally sound future

Projects subject to Davis-Bacon labor standards through BIL include:



Roads, bridges and public transit

- Includes Surface Transportation Reauthorization Act and Surface Transportation Investment Act funding
- Provides funding to replace and repair bridges
- Includes major project competitive grant programs
- Funds nation's transit system repair backlog
- Expands transit systems and supports clean transit



Airports, ports and waterways

- Increases funds for airport improvement grants for runways, gates, and taxiways
- Provides funding for airport terminal improvement
- Improves air traffic control infrastructure
- Supplies funding for waterway and coastal infrastructure, inland waterway improvements, port infrastructure, and land ports of entry



Water infrastructure, power and grid

- Increases funding for Drinking Water and Wastewater Infrastructure Act of 2021 and lead service line replacement
- Provides funding for grid reliability and resiliency
- Supports critical minerals and other supply chains for clean energy
- Includes funding for technologies like carbon capture, hydrogen, direct air capture, and energy efficiency



Enhanced disaster resiliency

- Supplies funding for cybersecurity, flood and wildfire mitigation, coastal resiliency, ecosystem restoration and heat stress
- Provides funding for home weatherization, prioritizing assistance for low-income individuals

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



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 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

SAM.GOV



The Official U.S. Government System for:

Contract Opportunities

(was fbo.gov)

Contract Data

(Reports ONLY from fpds.gov)

Wage Determinations

(was wdol.gov)

Federal Hierarchy

Departments and Subtiers

Assistance Listings

(was cfda.gov)

Entity Information

Entities, Disaster Response Registry,
and Exclusions

Entity Reporting

SCR and Bio-Preferred Reporting

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

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 – Cover Sheet

General Decision Number: LA170002 01/20/2017 LA2

Superseded General Decision Number: LA20160002

State: Louisiana

Construction Type: Heavy

Counties: Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, Lafourche, Livingston, Ouachita, Rapides, St Landry, St Martin, Terrebonne, Webster and West Baton Rouge Counties in Louisiana.

HEAVY CONSTRUCTION PROJECTS (includes flood control, water & sewer lines, and water wells; excludes elevated storage tanks, industrial construction-chemical processing, power plants, and refineries)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/06/2017
1	01/13/2017
2	01/20/2017

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

	Rates	Fringes
<ul style="list-style-type: none">• Carpenter (Acoustical Ceiling, Installation, and Dry Wall Hanging Only)	\$26.25	\$8.64
<ul style="list-style-type: none">• 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

	Rates	Fringes
Bricklayer	\$21.96	\$0.00
Carpenter	\$18.22	\$0.00



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

Conformances: Contracting Agencies & Contractors

Pre-Bid/Pre-Award

- Review the WD
- Compare the WD with the project work
- Anticipate needed classifications
- Apply key criteria

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. They are wearing hard hats and safety vests, looking at blueprints. A large crane is visible in the background against the orange and yellow sky. The foreground shows a grid of rebar on a concrete slab.

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.

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.

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



PREVAILLING WAGE SEMINARS



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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).

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.

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.

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

Examples of Fringe Benefits

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

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.

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)

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**

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>



Investigations

Investigations

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

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

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)

Debarment Criteria

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.

SCA Coverage

- The Service Contract Act applies “any contract” that (1) “is made by the Federal Government or District of Columbia,” (2) “involves an amount exceeding \$2,500,” and (3) “has as its principal purpose the furnishing of services in the United States” (4) “through the use of service employees.” 41 U.S.C. 6702(a).

“Any Contract” –

29 CFR 4.110 and 29 CFR 4.111

- The SCA was intended to apply to “a wide variety of contracts,” and “the nomenclature, type, or particular form of contract used by procurement agencies is not determinative of coverage.” 29 CFR 4.111(a)
- “It makes no difference in the coverage of a contract whether the contract services are procured through negotiation or through advertising for bids.” 29 CFR 4.110
- The contract does not have to be of direct benefit to the federal public, but can benefit the general public (such as a concessionaire contract) – 29 CFR 4.133(a)

Requirements of SCA (29 C.F.R. § 4.6)

- Contracts in excess of **\$2,500** must contain labor standards clauses and:
 - Minimum monetary wages and fringe benefits determined by Department of Labor (DOL)
 - Recordkeeping - Posting requirements
 - Safety and health provisions
 - Statement of rates paid to federal employees

Contracts to Furnish Services

(29 C.F.R. § 4.111 & 4.130)

- The SCA does not define or limit the types of services that may be contracted for.
- Examples of service contracts:
 - Security and guard services
 - Janitorial services
 - Cafeteria and food services
 - Support services at Government installations

Use of “service employees” (29 C.F.R. § 4.113)

- Section 8(b) of SCA defines service employee as:
 - Any person engaged in performance of contract, **except**
 - Employees who qualify for exemption as ***bona fide*** executive, administrative or professional employees under the FLSA (29 C.F.R. Part 541)
- Employee coverage does not depend on contractual relationship (29 C.F.R. § 4.155)

Contracts Not SCA Covered

(29 C.F.R. § 4.134)

- Contracts primarily for something other than services, *e.g.*, construction
- Contracts for leasing of space
- Contracts for professional services
- Federally-assisted contracts for services entered into by state governments, *e.g.*, Medicaid and Medicare programs



SCA Compliance Principles

SCA Compliance Principles

- Payment of wages
- Payment of fringe benefits
- Vacation Fringe Benefits
- Holiday Fringe Benefits
- Deductions
- Recordkeeping
- Notice to employees

Payment of Wages

- The SCA requires contractors and subcontractors performing services on prime contracts in excess of \$2,500 to pay service employees in various classes no less than the **wage rates and fringe benefits prevailing** in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement.
- For contracts equal to or less than \$2,500, contractors are required to pay the federal minimum wage as provided in Section 6(a)(1) of the Fair Labor Standards Act.

Payment of Wages (29 C.F.R. § 4.165)

- Wages established by wage determination, otherwise FLSA minimum wage (29 C.F.R. § 4.165(c))
- Monetary wages to be paid when promptly due (29 C.F.R. § 4.165(a)(1))
- **No distinction** between Full and Part Time Employees (29 C.F.R. § 4.165(a)(2))
- Calculated on fixed and regularly recurring workweek of 7 consecutive 24-hour workday periods (29 C.F.R. § 4.165(b))
 - Payroll records kept on this basis
 - Bi-weekly or semi-monthly pay periods if advance notice

Finding the Correct Wage Rate

- Workers *must be paid* the wage rate set forth in the wage determination for the classification of work they perform.
- To prevent misclassification, it is very important that a contractor fully utilize the applicable wage determination and the Directory of Occupations to find the classification that most closely matches the *workers' duties*.

Wage Payments for Work Subject to Different Rates

- Employee must be paid:
 - Highest rate for all hours worked; unless
 - Employer's payroll records or other affirmative proof show periods spent in each class of work.
- Applies when employee works part of workweek on SCA-covered **and** non-SCA-covered work.

Computation of Hours Worked

(29 C.F.R. §§ 4.178-4.179 & Part 785)

- Determined under the FLSA pursuant to 29 C.F.R. Part 785.
- Includes all periods in which employee is “**suffered or permitted**” to work.
- Hours worked that are subject to the SCA are those performed on covered (SCA) contracts.

Contractor **must** keep affirmative proof of the time spent on covered and non-covered work in a workweek.

Payment of Fringe Benefits

- Cash payments in lieu of fringe benefits (FBs) must be paid on regular pay date (29 C.F.R. § 4.165(a)).
- Payments into *bona fide* FB plans must be made no less often than quarterly (29 C.F.R. § 4.175(d)).
- FB costs **may not** be credited toward wage requirements (29 C.F.R. § 4.167).

Discharging Minimum Wage & Fringe Benefit Obligations

Under the SCA, the contractor may not credit excess wage payments against the FB obligation:

Wage Determination:		Employee Paid:	
Wage	\$10.25	Wage	\$12.61
<u>FB</u>	<u>\$ 4.54</u>	<u>FB</u>	<u>\$ 2.12</u>
Total	\$14.79	Total	\$14.73

Bona Fide Fringe Benefits

(29 C.F.R. § 4.171(a))

- Constitute a legally enforceable obligation that:
 - Is communicated **in writing** to employees;
 - Provides payment of benefits to employees;
 - Contains a definite formula for determining the amount of contribution and benefits provided;
 - Is paid ***irrevocably*** to an independent trustee or third person pursuant to a fund, trust, or plan; and
 - Meets criteria established by IRS and ERISA.

Fringe Benefits Plans

(29 C.F.R. § 4.171(a)(2))

- Provide benefits to employees on account of:
 - Death;
 - Disability;
 - Advanced age;
 - Retirement;
 - Illness;
 - Medical expenses;
 - Hospitalization; and/or
 - Supplemental unemployment benefits.

Health and Welfare (H&W)

Fringe Benefits

- Three types of FB requirements:
 - “Fixed cost” per employee benefits;
 - “Average cost” benefits; or
 - Collectively bargained (CBA) benefits.
- Types and amounts of benefits and eligibility requirements are contractor’s prerogative.

H&W Footnotes (Determine Compliance)

- Prevailing WDs provide a H&W footnote.
- All occupations listed on the WD receive benefits as specified.
- “Fixed cost” H&W footnote:
 - Single line specifying hourly, weekly, and monthly contribution amounts.
 - Specified on odd numbered WDs.

“\$4.54 an hour or \$181.60 a week or \$786.93 a month”

\$4.22 an hour if subject to EO 13706

H&W Footnotes (Cont'd)

- “Average Cost” H&W footnote – a brief paragraph listing types of benefits and the hourly contribution, and specified on even numbered WDs.

“HEALTH & WELFARE: Life, accident, and health insurance plans, sick leave, pension plans, civic and personal leave, severance pay, and savings and thrift plans. Minimum employer contributions must cost an average of \$4.54 per hour computed on the basis of all hours worked by service employees employed on the contract.”

Collectively Bargained Fringe Benefits

- Based on a CBA.
- **Required** to be paid by a successor contractor under section 4(c) of the SCA.
- A contractor not signatory to the CBA does not need to provide the specific FBs stipulated in the CBA. Equivalent benefits may be provided.
- Cash equivalent payments can be used to offset the FBs.

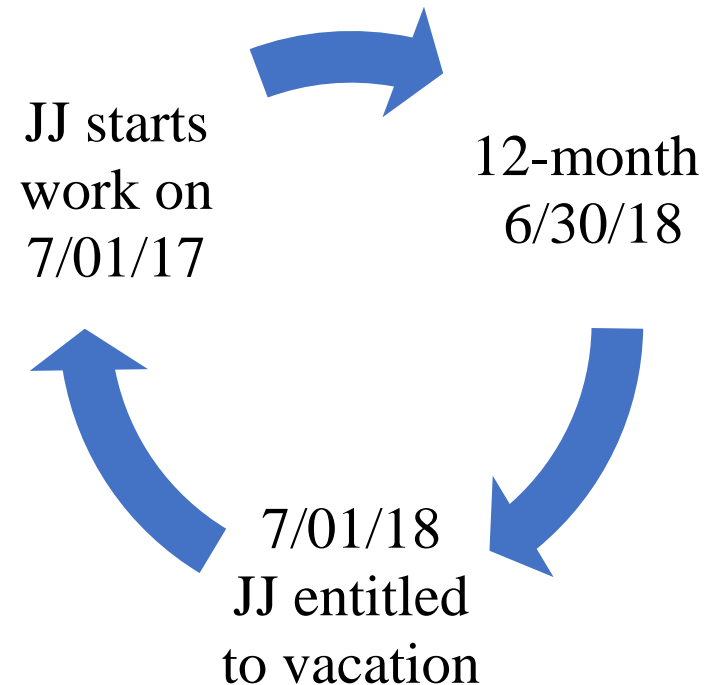
Vacation Fringe Benefits

(29 C.F.R. § 4.173(c)(1))

- Are vested and become due after the employee's anniversary date.
- Need not be paid immediately after the anniversary date, but must be discharged before (whichever occurs first):
 - The next anniversary date;
 - The completion of the contract; or
 - The employee terminates employment

Anniversary Date (12-months of Service)

- Employee eligible for vacation benefits
- Contractor who employs employee on anniversary date owes vacation
- Paid at hourly rate **in effect** in workweek vacation is taken
- H&W benefits due under “fixed cost” requirements



“Continuous Service” (29 C.F.R. § 4.173(a)-(b))

- Determines employee’s eligibility for vacation benefits.
- Determined by total length of time employed by:
 - Present contractor in any capacity; and/or
 - Predecessor contractors in performance of similar contract functions at same facility.
- Contractor’s liability determined by WD.

Continuous Service Examples (WD – 1-week vacation after 1-year)

- Present contractor – employee employed **“in any capacity”**:
 - 6-months on SCA-contract.
 - 6-months on “commercial” work.
- Present and predecessor contractors:
 - 16-months for predecessor at same facility.
 - 8-months for present contractor.
- Employee eligible for vacation benefits.

Notification of Length of Service

29 CFR 4(1)(2)

- **Not less than 10 days prior to completion of the contract,** the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance.
- Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee.
- The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

Holiday Fringe Benefits

(29 C.F.R. § 4.174)

- An employee is entitled to holiday pay **if** he/she works in the holiday workweek.
- An employee **is not** entitled to holiday pay if the holiday is not named in the WD (*i.e.*, government closed by proclamation).
- Paid holidays can be traded for another day off if communicated to employees.

Part-time Employees

(29C.F.R. § 4.176)

- Entitled to proportionate amount of FBs.
- Maximum: Vacation/Holidays = $40 \div 8$ hours.
- Part-time employee works 20 hours per week:
 - Entitled to $\frac{1}{2}$ week of vacation, or 20 hours;
 - Entitled to $\frac{1}{2}$ holiday pay, or 4 hours; and
 - Must receive full amount of H&W FBs.

Equivalent Fringe Benefits (29 C.F.R. § 4.177)

A contractor may dispose of FBs:

- By furnishing the benefits listed in WD;
- By furnishing equivalent combinations of *bona fide* FBs; or
- By making equivalent cash payments:
 - Equal in cost;
 - Separately stated in employer's record; **and**
 - Not used to offset wage requirements.

Deductions from Wages – 29 CFR 4.168

- “The wage requirements of the Act will **not** be met where unauthorized deductions, rebates, or refunds ***reduce*** the wage payment made to the employee below the minimum amounts required under the provisions of the Act and the regulations thereunder, or where the employee fails to receive such amounts free and clear because he **“kicks back”** directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to him.”

Deductions from Wages – 29 CFR 4.168

- Authorized deductions are limited to:
 - deductions required by law, such as taxes or court-ordered garnishments
 - deductions for the reasonable cost of board, lodging, or other facilities as set forth in 29 CFR 4.167
 - deductions authorized to be paid to third persons for the worker's benefit pursuant to his voluntary assignment or order or a bona fide collective bargaining agreement

Deductions which cut into the wages required under the SCA **may not** be made if they are contrary to law, the contractor, sub-contractor or any affiliated person profits by them directly or indirectly, or the deductions are being made to a third party and the worker did not authorize them.

Recordkeeping – 29 CFR 4.6(g)

- Contractors shall make and maintain for **3 years** from the completion of the work records containing the following information:
 - Name and address and social security number of each employee
 - The **correct** work classification **or** classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee
 - The number of daily and weekly hours so worked by each employee

Recordkeeping – 29 CFR 4.6(g)

- Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
- A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been conformed.
- Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to §4.6(1)(2).

Notice to Employees – 29 CFR 4.183 and 29 CFR 4.184

- Contractors **must** notify each employee commencing work on a SCA contract of the wage rates and fringe benefits required to be paid for work performed on the contract. A notice form (WH Publication 1313 and any applicable wage determination) provided by the Wage and Hour Division is to be used for this purpose. It may be delivered to the employee or posted as stated in §4.184.
- Posting of the notice provided by the Wage and Hour Division shall be in a **prominent** and accessible place at the worksite.

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

Application of FLSA Overtime Pay

- On contracts to which CWHSSA does not apply (for example, on DBRA a prime contract of \$100,000 or less, or a FAR contract of \$150,000 or less) overtime pay requirements may apply to a contractor or subcontractor under the FLSA. On contracts to which CWHSSA applies, FLSA may also apply

Overtime Pay is for Hours Worked

- CWHSSA and FLSA requirements apply only to hours worked
 - Non-work hours such as paid holidays and paid leave are not counted in computing overtime pay. Rules concerning “Hours Worked” are at 29 C.F.R. Part 785

Work in More than One Classification

- If in a single workweek an employee works in more than one classification for which different non-overtime rates of pay have been established, the overtime pay should be computed based on the weekly average rate (or **“regular rate”**)
 - the total straight time pay for work (at all such rates) during the week, divided by the total number of hours worked at all jobs worked in the workweek *See* 29 C.F.R. § 778.115

Work in More than One Classification

- An employee who performs work in two or more classifications for which different straight time hourly rates are established may also agree with his/her employer in advance of performing the work to be paid during overtime hours at a rate not less than one and one-half times the hourly non-overtime rate established for the type of work he/she will perform during such overtime hours

See 29 C.F.R. § 778.115 and 778.415-778.419

Executive Order 13658

Executive Order 13658, Establishing a Minimum Wage for Contractors: Annual Update

Davis-Bacon and Related Acts

Final Rule: Increasing the Minimum Wage for Federal Contractors (Executive Order 14026)

Notice of Proposed Rule: Nondisplacement of Qualified Workers under Service Contracts (Executive Order 14055)

Notice of Proposed Rule: Updating the Davis-Bacon and Related Acts Regulations

Protections for Workers in Construction under the Bipartisan Infrastructure Law

On September 30, 2022, the Department of Labor published a notice in the Federal Register announcing that, beginning January 1, 2023, the Executive Order 13658 minimum wage rate will increase to \$12.15 per hour ([Minimum Wage for Federal Contracts Covered by Executive Order 13658, Notice of Rate Change in Effect as of January 1, 2023](#)). This Executive Order minimum wage generally applies to workers performing work on or in connection with federal contracts that were entered into, renewed, or extended prior to January 30, 2022, in the following four categories:

- Procurement contracts for construction covered by the DBA;
- Service contracts covered by the SCA;
- Concessions contracts, including any concessions contract excluded from the SCA by the Department's regulations at 29 CFR 4.133(b); and
- Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

Additionally, beginning January 1, 2023, tipped employees performing work on or in connection with contracts covered by Executive Order 13658 generally must be paid a minimum cash wage of \$8.50 per hour. Contractors covered by Executive Order 13658 must ensure that workers receive no less than the minimum wage rates in effect during each calendar year in which a covered multi-year contract is performed.

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Executive Order 14026

Final Rule: Increasing the Minimum Wage for Federal Contractors (Executive Order 14026)

Davis-Bacon and Related Acts

Final Rule: Increasing the Minimum Wage for Federal Contractors (Executive Order 14026)

Notice of Proposed Rule: Nondisplacement of Qualified Workers under Service Contracts (Executive Order 14055)

Notice of Proposed Rule: Updating the Davis-Bacon and Related Acts Regulations

Protections for Workers in Construction under the Bipartisan Infrastructure Law

Construction Surveys

McNamara-O'Hara Service Contract Act (SCA)

On November 22, 2021, the Department announced publication of the final rule, “Increasing the Minimum Wage for Federal Contractors.” The Department has finalized regulations to implement Executive Order 14026, “Increasing the Minimum Wage for Federal Contractors,” which was signed by President Joseph R. Biden Jr. on April 27, 2021. Executive Order 14026 states that the Federal Government’s procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. The Executive Order raises the minimum wage paid by those contractors to workers performing work on or in connection with covered federal contracts to \$15.00 per hour, beginning January 30, 2022; and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor (Secretary). This final rule establishes standards and procedures for implementing and enforcing the minimum wage protections of Executive Order 14026, and is effective on January 30, 2022.

On September 30, 2022, the Department of Labor published a notice in the Federal Register announcing that, beginning January 1, 2023, the Executive Order 14026 minimum wage rate will increase to \$16.20 per hour ([Minimum Wage for Federal Contracts Covered by Executive Order 14026, Notice of Rate Change in Effect as of January 1, 2023](#)). This Executive Order minimum wage generally applies to workers performing work on or in connection with federal contracts that are entered into, renewed, or extended (pursuant to an option or otherwise) on or after January 30, 2022, in the following four categories:

- Procurement contracts for construction covered by the DBA;
- Service contracts covered by the SCA;
- Concessions contracts, including any concessions contract excluded from the SCA by the Department’s regulations at 29 CFR 4.133(b); and
- Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.^[1]

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Executive Order 13706 Establishing Paid Sick Leave for Federal Contractors



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Overview of Executive Order 13706: Paid Sick Leave for Federal Contract Workers

- EO 13706 was signed on September 7, 2015.
 - It requires covered contractors to allow employees to accrue **1 hour** of paid sick leave for every **30 hours** worked on or in connection with a covered contract, up to **56 hours** (7 days) per year, and to use accrued leave for certain purposes.
- Regulations for the EO were published on September 30, 2016 ([29 CFR Part 13](#)).
 - The regulations provide details about coverage, exclusions, the accrual and use of paid sick leave, requirements for contractors and contracting agencies, and enforcement.

Overview of Executive Order 13706: Paid Sick Leave for Federal Contract Workers

- Requirements are effective as of January 1, 2017.
 - The requirements of the EO and regulations are effective as of January 1, 2017, though they only apply to “new contracts” on or after that date.



Coverage:

Which contracts are covered by EO 13706?

EO 13706 applies to **four types of contracts** entered into by the federal government (29 CFR 13.3(a)(1)):

- Procurement contracts for construction covered by the Davis-Bacon Act (DBA).
 - This includes prime contracts at the \$2,000 threshold and DBA-covered lower-tier contracts of any monetary value.
- Service contracts covered by the Service Contract Act (SCA).
 - This includes prime contracts at the \$2,500 threshold and SCA-covered lower-tier contracts of any monetary value.

Coverage:

Which contracts are covered by EO 13706?

- Concessions contracts, including concessions contracts excluded from the SCA by 29 CFR 4.133(b).
 - These include contracts principally for furnishing food, lodging, auto fuel, souvenirs, newspaper stands and recreational equipment to the general public. 23 CFR 13.2.

Coverage:

Which contracts are covered by EO 13706?

Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

- These include leases of space in a federal building to operate a child care center, credit union, gift shop, barber shop, coffee shop or fitness center to serve federal employees and/or the general public.
- Contracts in this category may also fit into the second and/or third covered categories.

Coverage:

Which contracts are covered by EO 13706?

EO 13706 applies to **“new contracts”** beginning January 1, 2017.
29 CFR 13.3(a)(1).

A “new contract” is (29 CFR 13.2):

- A contract solicited or awarded without solicitation on or after January 1, 2017.
- The term also includes a contract that existed before January 1, 2017 but that is renewed, extended (other than short-term limited extensions), or subject to a modification that is outside the scope of the contract after that date.
- It does not include the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government.

Coverage:

Which contracts are not covered by the EO?

EO 13706 **does not** apply to:

- Contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government, including those subject to the Walsh-Healey Public Contracts Act (29 CFR 13.3(d));
- Contracts that are subject only to the **Davis-Bacon Related Acts** (81 FR 67613);
- Grants within the meaning of the Federal Grant and Cooperative Agreement Act. (29 CFR 13.4(a))
- Contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (29 CFR 13.4(b));
or

Coverage:

Which employees does EO 13706 apply to?

EO 13706 covers employees (29 CFR 13.3(a)(2)):

1. Working “on” or “in connection with” a covered contract
2. Whose wages are governed by the DBA, SCA, or FLSA, including employees who qualify for an exemption from the FLSA’s minimum wage and overtime provisions.



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>

Online Resources

Worker.gov COMPLIANCE ASSISTANCE RESOURCES [Español](#)

Your rights ▾ Workplace concerns About

Worker Protections

You have rights. This site covers common workplace concerns and the Federal labor laws that protect you.

Learn about your rights

- Worker.gov
- Employer.gov



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dol.gov/agencies/whd
1-866-487-9243

Online Resources

Elaws Advisors

- Coverage and employment status advisor
- Overtime calculator
- Overtime security advisor
- Hours worked advisor

dol.gov/elaws



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dol.gov/agencies/whd
1-866-487-9243

Contact Us

- Visit www.dol.gov/agencies/whd
- Call our toll-free information and helpline at **1-866-4US-WAGE (1-866-487-9243)**



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
1-866-487-9243

Compliance Assistance

Northern New England District Office

PHONE: 603-666-7716 (M-F, 8-4:30pm)

Web: www.dol.gov/agencies/whd