Federal Labor Standards Compliance & Enforcement Training
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(Jurisdiction: Washington, Alaska, Idaho, Oregon)
Office of Labor Standards and Enforcement, 10ASL
U.S. Department of HUD
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Seattle, WA 98104-1000
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(Area Covered: Oregon and Washington State)

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(Area Covered: Alaska and Idaho)
Wage Theft in Minnesota: Non-union residential Construction

Residential construction industry built on ‘payroll fraud’ model
The act is named after its sponsors, James J. Davis, a Senator from Pennsylvania and a former Secretary of Labor under three presidents, and Representative Robert L. Bacon of Long Island, New York. The Davis–Bacon act was passed by Congress and signed into law by President Herbert Hoover on March 3, 1931.
RARIG'S KID
DOESN'T STARVE
WHY SHOULD WE?

WHY CAN'T YOU
GIVE MY DAD
A JOB?

DOESN'T STARVE
AT TOO
JEHAN
Key Federal Labor Laws

- Fair Labor Standards Act
- Davis-Bacon Act
- Davis-Bacon and Related Acts
- Contract Work Hours & Safety Standards Act
- The Copeland Act
HUD’s Office of Davis-Bacon & Labor Standards (DBLS)

(DBLS) is responsible for administering and enforcing Federal labor standards for HUD programs.

These requirements include the DBRA, Copeland Act, and CWHSSA in construction programs.

Also, maintenance and technical salary rate requirements for HUD’s Office of Public and Indian Housing.
Today’s Focus: Two of three types of prevailing wage requirements in HUD Programs.

- Davis Bacon Act prevailing wages payable to laborers & mechanics
- HUD-Determined prevailing wages (routine & non-routine) payable to laborers and mechanics as relating to maintenance work.
Davis-Bacon Act (DBA)

- **Davis-Bacon And Related Acts (DBRA)** Davis-Bacon requirements are extended to over 60 related acts that provide federal assistance for construction through grants, loans and insurance.

- Enacted in 1931

- Amended in 1935 and 1964

- Applies to Federally assisted construction contracts in excess of $2,000 for construction, alteration, and/or repair of public buildings or public works, including painting and decorating and requires:
DBA

- Payment of locally “prevailing wages” and “fringe benefits” to laborers and mechanics;

- Employed by contractors and subcontractors who are performing work on the site of work;

- Protects communities and workers from non-local contractors underbidding local wage levels
Davis-Bacon Act (DBA)

- Permit withholding from payments due to contractor on account of wage restitution found due to laborers & mechanics;

- Permit the payment of wage restitution from amounts withheld from contract payments;

- Not less often than once a week;

- Posting of wage rates and poster in a prominent & accessible place at the job site.
Requires Posting:

Wage rates &
Any Additional classifications

Wage poster placed in a prominent & accessible location for workers at the job site.
Davis-Bacon Related Acts (DBRA)

Most HUD construction work is covered by DBRA; since HUD usually contracts indirectly for construction work.

Davis-Bacon wage rates apply to HUD programs because of prevailing wage requirements expressed in HUD “Related Acts” such as the

- U.S. Housing Act of 1937
- Housing & Community Development Act of 1974, as amended.
Distinguishing DBA and DBRA

- Examples federal, directly funded “DBA” Projects
  - VA builds a hospital
  - GSA builds a new office building
  - Air Force builds base housing (DOD)
Examples of indirect use of federal funds or “DBRA Projects”:

- Boise City Housing Authority uses HUD grant funds to construct low income housing units
- City of Lewiston uses HUD’s CPD funds as part of their development budget
HUD grants being used to build new housing units
Housing Authorities use HUD funds for repairs and maintenance
Contract Work Hours & Safety Standards Act (CWHSSA)
(40 U.S.C. 3701 et seq.)

- Enacted in 1962 - consolidated a number of “eight hour” laws that provided for overtime pay on federally financed contracts employing “laborers” and “mechanics”

- In 1986, the federal daily overtime requirement was repealed to require overtime pay only after 40 hours a week

- Both CWHSSA and Fair Labor Standards Act (FLSA) require overtime pay for work over 40 hours in a workweek
Contract Work Hours & Safety Standards Act (CWHSSA)

- Applies to all Federal or Federally-assisted Davis-Bacon covered construction contracts exceeding $100,000.00.

- Liquidated damages can be assessed at a rate of $26 a day per violation not paid proper overtime.

- Is self-executing (even if not stated in contract)
- Has no “site of the work” limitation
Copeland Act Requirements

- Prohibits “kickback” of wages and back wages.
- Requires contractors on covered projects to submit weekly a “statement of compliance”;
- Regulates payroll deductions from wages: FICA, federal, and state taxes, Court ordered payments, fringe benefit plans, etc.
- Kickback is a criminal violation punishable by fine of $5,000 or 5 years in prison, or both.

Copeland “Anti-Kickback” Act
Fear, Intimidation, Extortion - all - Copeland Act Violations
The Politics Of Passing 1964's Civil Rights Act

April 4, 2014 · 12:03 PM ET
Heard on Fresh Air
Civil Rights Act of 1964

Despite strong opposition from Southern senators, President Lyndon B. Johnson got Congress to pass the bill.

Law gave Congress power to outlaw segregation in most public places; gave minorities equal access to facilities such as restaurants and theaters.
The Poor People’s Campaign was still being planned when Dr. King was assassinated in Memphis in 1968.
Excerpt from the Mountaintop Speech:

- The question is not, "If I stop to help this man in need, what will happen to me?" "If I do not stop to help the sanitation workers, what will happen to them?" That's the question.

- Let us rise up tonight with a greater readiness. Let us stand with a greater determination. And let us move on in these powerful days, these days of challenge to make America what it ought to be. We have an opportunity to make America a better nation.”
Dr. Martin Luther King’s “Poor People’s Campaign” & the Memphis Sanitation Workers Strike of 1968
MEMPHIS SANITATION WORKERS

“I AM A MAN.”
Memphis Sanitation Workers
1968
Living Wage Jobs
The Poor People’s Campaign

- The Poor People’s Campaign fell short of its goal to win significant antipoverty legislation.

- It did mark a change of the civil rights movement from advocating for only racial equality to interracial class issues and economic goals.
Since 1968, the number of Americans below the official poverty line has increased by 60 percent to 40.6 million.
Theft

Under Idaho law, a person commits theft when, with intent to deprive another person of property (or to wrongfully appropriate property), he or she wrongfully takes, obtains or withholds that property from its owner. ... obtaining property by fraud or misrepresentation, and. stealing labor or services.
A theft offense in Idaho can include the following specific actions:

- using deception to exert control over another person’s property
- embezzling money
- using extortion to obtain another person’s property (including by instilling fear of physical injury or property damage, or by threat to otherwise injury or harm)
- receiving or retaining stolen property
- acquiring lost or mistakenly delivered property (and not taking appropriate action afterward)
- obtaining property by fraud or misrepresentation, and
- stealing labor or services.
Wage Theft – What it is and what you can do about it.
Most Common Forms:

1) Not Paid Minimum Wage

2) Not Paid Correct Prevailing Wage for the Type of Work Performed

3) Not Paid For All Hours Worked

4) Not Paid Correct Overtime Rate

5) Not Paid At All
Most Common Forms:

6) Misclassified as Independent Contractors
7) No Final Pay check
8) Illegal deductions taken
No one knows exactly how much wage theft occurs each year. One estimate is that is is costing workers more than $50 billion per year.
Wage Theft By Category

- $50 Billion Total Estimate
- $8-14 Billion in minimum wage violations
- $19 Billion in Overtime Violations
Wage Theft versus other property crimes in the U.S. in terms of total annual loss in billions.

From Wikimedia Commons 19 June 2014
A Round trip to the Moon
$750 Million
2 Airbus A380 Cost $810 Million
Chicago Cubs - $1 Billion
Unprecidented Cases In a Range of Industries:
Researchers estimated:

The average loss per worker was about 15 percent of their annual earnings due to workplace violations.
Multiple laws are broken when wage theft occurs, including:

**Fair Labor Standards Act (FLSA)**
- Provides a federal minimum wage and allows states to set their own, higher minimum wage.
- Requires employers to pay time and a half for all hours worked above 40 hours per week.

**Davis-Bacon Act**
- Employees paid by a contractor or subcontractor of a federal government contract are entitled to receive the prevailing wages for that work in the city or region of the U.S. where the work was done.
- Prevailing wages are calculated by the U.S. Department of Labor and are higher than minimum wage.

**Tax laws**
- Tax laws are often broken when an employee is misclassified as an independent contractor. When an employee is called an independent contractor, the employer doesn’t pay its share of federal taxes.
Like with other kinds of robbery, wage theft is a crime.

Crime can range from unsophisticated petty theft to very sophisticated organized crime where the money is laundered all the way through the bank.
Faces of Victims

- Mr. Van Buren drove 135 miles to confront his employer to forestall eviction
Construction workers in the underground economy earn half of what properly reported workers earn.
Without employment benefits, underground workers often rely on public assistance programs — forcing taxpayers to subsidize these illegal practices.

Washington and Alaska

Washington and Alaska have the highest minimum wages in this Region.

Even at the highest of these, a person trying to support a family of 4, would be living below poverty on their state’s minimum wage if working a standard 40 hour work week.
Low Wage Earners also get the fewest benefits with their jobs:

Only 30 percent of the lowest paid workers have access to paid sick leave.
Income Security is a pay check:

Research suggests that, on average, families need an income equal to about two times the federal poverty threshold to meet their most basic needs.
Minimum Income Thresholds:

In 2014, the cost of meeting basic needs for a family of four required about:
$85,800 per year in Boston;
$61,500 in Akron, Ohio;
$57,200 in Tulsa, Oklahoma.
When a worker earns only a minimum wage ($290 for a 40-hour week), shaving a mere half hour a day from the paycheck means a loss of more than $1400 a year, including overtime premiums.
In July 2015, USA Today reported that there were a higher percentage of children living in poverty “today” than during the Great Depression.

Child poverty is growing
Free/Reduced Lunch Program Trend

Percentage of Free or Reduced Lunches Over Time

- 1970: 21%
- 1980: 45%
- 1990: 48%
- 2000: 57%
- 2010: 65%
- 2015: 73%
The Basics – 5 Key Labor Standards
Objectives for Contract Administrators

- Apply (Davis Bacon) labor standards requirements properly
- Learn how to support contractors
- Monitor the performance of these contractors
- Pursue probable violators: investigating evidence and drawing conclusions about ambiguous data.
- Pursue debarment and other sanctions when serious violations occur.
Web Sites

- Office of Labor Relations HUD
  http://www.hud.gov/offices/olr/index.cfm

- US DOL Regulations
  http://www.dol.gov/whd/govcontracts/dbra.htm

- Excluded Parties List
  http://sam.gov/

- Wage Decisions On Line
  http://www.wdol.gov/
Labor Relations Desk Guides -

- **HUD Handbook 1344.1 Rev 2, Federal Labor Standards Requirements in Housing and Community Development Programs**
- **Contractor's Guide to Prevailing Wage Requirements**
- **OLSE flash! bulletins available on-line**
<table>
<thead>
<tr>
<th>Letter</th>
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<tr>
<td>LR-09-01</td>
<td>8/12/09</td>
<td>Davis-Bacon applicability to demolition work</td>
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<tr>
<td>LR-06-03</td>
<td>11/15/06</td>
<td>Incorporation of Federal labor standards provisions and prevailing wage decisions into bid specifications and contracts</td>
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<td>LR-06-02</td>
<td>11/15/06</td>
<td>Custody, security and disposal of Federal labor standards compliance documents and investigative records</td>
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<td>LR-06-01</td>
<td>06/05/06</td>
<td>Housing Finance Agency Risk-Sharing Program and Projects</td>
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<td>LR-04-02</td>
<td>09/08/04</td>
<td>Inapplicability of certain Federal labor standards provisions to Public Housing Agencies, Indian Tribes, Tribally Designated Housing Entities, Indian Housing Authorities and the Department of Hawaiian Homelands</td>
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<td>Administration and enforcement of prevailing wage rates determined or adopted by HUD (Rev 1)</td>
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<td>LR-96-03</td>
<td>12/02/96</td>
<td>Application of Department of Labor guidance concerning &quot;projects of a similar character&quot; (Rev 1)</td>
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<td>08/21/96</td>
<td>Application of Federal labor standards to HOME projects</td>
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<td>12/02/96</td>
<td>Labor standards compliance requirements for self-employed laborers and mechanics (aka Working Subcontractors) (Rev 1)</td>
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<td>Contract Work Hours and Safety Standards Act (CWHSSA) Coverage threshold for overtime and health and safety provisions</td>
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<td>1/15/93</td>
<td>Determination of prevailing wage rates for construction work financed or eligible for financing under the Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP)</td>
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<td>LR-92-02</td>
<td>07/10/92</td>
<td>Submission requirements for §5.7 Labor Standards Enforcement Reports (Davis-Bacon and Related Acts)</td>
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<td>LR-92-01</td>
<td>07/10/92</td>
<td>Applicability of Federal wage rate requirements to prison inmates engaged in HUD-assisted maintenance or construction work</td>
</tr>
</tbody>
</table>
Laborers & Mechanics

- Excludes timekeepers, inspectors, architects, engineers, and site security.

- Excludes Bona fide executive, administrative, or professional employees as defined by the FLSA regulations.

- On HUD projects excludes bona fide volunteers.
Laborers & Mechanics

- Includes workers whose duties are manual or physical in nature
- Includes apprentices, trainees and helpers
- Generally includes working foreman
- Covers sole proprietor owner operators performing the work of a laborer or mechanic
Site of the Work

- Physical place or places where the construction remains after work has been completed;

- Includes fabrication plants, mobile factories, batch plants, borrow pits, headquarters, tool yards, etc dedicated exclusively to and located virtually adjacent to actual construction location;
Fabrication plants, batch plants, job headquarter, tool yards, etc., of a commercial supplier established by a supplier of materials.

- Before the opening of bids for a project and
- Are not located on the actual site of the work

Such facilities are not part of the site of work even where the operations are dedicated exclusively to the performance of the contract.
Truck Drivers:

Covered if driving on the “site of the work”

NOT subject to prevailing wage if:

- **only** loading/unloading on the “site of the work”
- Not driving on the “site of the work”
- Driving between Davis-Bacon site and commercial facilities

OWNER/OPERATORS:

HUD follows DOL *non-enforcement policy* for Owner/Operators who own and drive their own trucks...review LR Letter 96-01, Sec. 5.
What LCAs Need to Carry Out These Responsibilities

Specific Davis-Bacon Related Act (Statute) for the program involved.
1. D-B labor standards provisions
2. Determining whether D-B wage are applicable

HUD regulations: 24 CFR:
- Program Regulations contain further information about Davis-Bacon

DOL Regulations 29 CFR Part
1. 1 - Procedures for Predetermination of wage rates under DBA
2. 3 - Payment & Reporting of Wages on Federal Construction Contracts
3. 5 - Labor Standards Provisions Applicable to Federal Construction Contracts
Davis-Bacon Wage Determinations
Selecting DB Wage Decisions
Davis-Bacon Wage Decisions Basics

- Is obtained from the DOL.gov website
- Must be incorporated in prime & sub-contracts
- Identifies work classifications, basic hourly wages, fringe benefits
- Must be posted at the job site
- 10 day grace period prior to bid opening
WAGE DECISION “LOCK-IN”

Competitively Bid Projects:
- Lock-in at bid opening provided contract is awarded within 90 days
- Must update wage decision if contract is awarded more than 90 days after bid opening
- Modifications published less than 10 days before bid opening are not applicable if there is insufficient time to notify bidders

Negotiated Contracts:
- Lock-in at contract award date or construction start date, whichever occurs first.
Selecting Applicable WDs
Type of Construction – AAM 130

- **RESIDENTIAL** construction projects, for Davis-Bacon purposes, include construction, alteration, or repair of single family houses, townhouses, and apartment buildings of no more than four (4) stories in height.

- **BUILDING** construction is generally the construction, rehabilitation and repair of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies (includes installation of utilities and equipment, both above and below grade).

- **HIGHWAY** projects include construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and similar projects not incidental to building or heavy construction.

- **HEAVY** is not a homogeneous classification. 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. Example: sewer & water line projects.
Selecting Applicable WDs
Type of Construction – AAM 131

- Some construction items in a project may fall into a different type of construction –
  - Incidental to the principal type of construction,
  - Requiring a separate wage schedule.
Multiple wage schedules may apply to different types of construction on a project:

- If construction items of a separate type of construction are:
  - 20% or more of total project cost; or
  - Will cost $1,000,000 or more.
AAMs Nos. 130 & 131

- **AAM No. 130** addresses “Application Of The Standard Of Comparison ‘Projects Of A Character Similar’ Under The Davis-Bacon And Related Acts.”
- **AAM No. 131** provides “Clarification of All Agency Memorandum No. 130.”

Review LR Letter 96-03
RESIDENTIAL Wage Decision

- Single family houses, townhouses
- Apartment buildings 4 stories or less
BUILDING Wage Decision

- Sheltered enclosures for the purpose of housing persons, machinery, equipment, etc.
- Apartment buildings greater than 4 stories
- Commercial buildings
HIGHWAY
Wage Decision

- Roads
- Highways
- Sidewalks
- Parking areas
- Other paving work not incidental to other construction
HEAVY Wage Decision

- Projects which cannot be classified as Building, Residential, or Highway
- Dredging
- Water & sewer lines
- Parks and playgrounds
- Flood control
Selecting Wage Decision

- Mixed Development Types:
  - Convention Center with adjacent hotel
  - Hotel/Arena
  - Road/Sewer

Contract needs to be unambiguous, ar language that is understood and enforceable
- Prime must track time for each wage decision
More Complexity in projects with multiple wage decisions

- Ambiguity can lead to disputes
- Special consideration to avoiding ambiguity so that clear and enforceable requirements.
- Administrator and Prime Contractor must be able to track time for work occurring on each wage decision
## Obtaining Wage Decisions

On-line: [www.wdol.gov](http://www.wdol.gov)

<table>
<thead>
<tr>
<th>Service Contract Act</th>
<th>Davis-Bacon Act</th>
<th>Related Information</th>
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<td>Selecting SCA WDs</td>
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<td>WDs due to be revised</td>
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### Welcome to the Wage Determinations OnLine Program!

This website provides a single location for federal contracting officers to use in obtaining appropriate Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determinations (WDs) for each official contract action. The website is available to the general public as

### News and Updates...

- NOTICE: New Health & Welfare Fringe Benefit Rates!
- Updated All Agency Memorandum (AAM) #197 (PDF Document):
WDs Due to be Revised

The following DBA General Wage Determinations have been revised or created new and will be available at WDOL.gov on or after February 11, 2005

AK030001
AK030002
AK030006
AK030008
AZ030001
AZ030002
AZ030005
AZ030001
Here is the search screen. Note that we’ve selected **Idaho** for State, **Ada** for County and **Residential** for Construction Type. When you’ve completed your selection, click **Search** (and go to the next slide)
<table>
<thead>
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State: Idaho  Construction Type: Residential

Counties: Ada, Boise, Canyon, Elmore, Gem, Owyhee, Payette
and Washington Counties in Idaho.

* SUID1983-001 11/01/1983

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.
General Decision Number: ID180025 05/11/2018 ID25
Superseded General Decision Number: ID20170025

State: Idaho

Construction Type: Building

County: Ada County in Idaho.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Modification Number 3
Publication Date 05/11/2018

BRID0003-002 06/01/2017

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Here is the wage determination we’ve requested.

Note the decision number, effective date. Confirm we have the correct state, county and construction type.

Note also the publication dates are displayed.
<table>
<thead>
<tr>
<th>General Decision Number</th>
<th>Superseded General Decision No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>TN010022</td>
<td>TN000022</td>
</tr>
</tbody>
</table>

**State:** Tennessee

**Construction Type:** RESIDENTIAL

**County(ies):**
- ANDERSON
- BLOUNT
- GRAINGER
- JEFFERSON
- KNOX
- UNION
- SEVIER

**Description:** RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

**Modification Number**
- 0

**Publication Date**
- 03/02/2001
ELEC0760A  06/01/1998

ELECTRICIANS (INCLUDING HVAC CONTROL WIRING & ALARM INSTALLATION)

ELEV0064A  04/08/2011

ELEVATOR CONSTRUCTORS:

Mechanic

Wage Rate  Fringes

Rates       Fringes

Classiﬁcation

20.585       6.985+a

a. SEVEN PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day., Vacation Pay Credit: Employer contributes 8% of the basic hourly rate for employees with 5 years or more of service, or 6% of the basic hourly rate for employees with 6 months to 5 years of service.
Interpreting “General” WDs

Body of WD

Union Identifier – example:

“ELEV0101A 10/15/2006” indicates:

- **ELEV:** International Union – Elevator Constructors
- **101:** Local union number
- **A:** Internal processing number
- **10/15/2006:** Date collectively bargained rate was bargained to take effect
Interpreting “General” WDs

Body of WD

**SU (Non-Union) Identifier – Example:**

“SUAK1999-007  05/14/1998”

<table>
<thead>
<tr>
<th>SU</th>
<th>SUrvey – Basis of Rate(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>AK</td>
<td>Alaska</td>
</tr>
<tr>
<td>1999</td>
<td>Date of Survey</td>
</tr>
<tr>
<td>007</td>
<td>Internal numbering</td>
</tr>
<tr>
<td>5/14/1998</td>
<td>Date submitted for publication</td>
</tr>
</tbody>
</table>

**Note:** SU non-union rates - remain unchanged until new survey
Prevailing Wage

- Wage and Fringe Benefit Example
  - Basic Hourly Rate: $10.00
  - Fringe Benefit: $1.00
  - Total Prevailing Rate: $11.00

- The contractor may comply by paying:
  - $11.00 in cash wages
  - $10.00 plus $1.00 in fringe benefits
  - $9.00 plus $2.00 in fringe benefits
“Prevailing wage” is made up of two interchangeable components:

- Basic hourly wage
- Fringe benefits

Prevailing wages may be satisfied by:

- Paying both in cash
- Contributing payments to a bona fide plan
- Any combination of the two
Fringe Benefits

- Most common examples of Fringe Benefits
  - 401K
  - Health Ins.
  - Life Ins.

- “Unfunded” Plans
  - Sick Leave
  - Holiday Pay
  - Vacation Pay
FEDERAL LABOR STANDARDS ADMINISTRATION

Determine Davis Bacon Applicability
Prepare Bid/Contract Documents
  • Wage Decision
  • Federal Labor Standards
Verify Contractor Eligibility
  • Excluded Parties List Check

Pre-Construction Activity

Additional Classification
Contracting agencies have day to day enforcement responsibility for:

- Contract Stipulations
- Wage Determinations
- WH-1321 Poster
- Reviewing certified payrolls
- Employee interviews and investigations
- Forwarding refusal-to-pay and/or debarment consideration cases to WHD for appropriate action
- Enforcement reports
Construction Contract Provisions

CBDG Program:

Each contract subject to DB must incorporate:

1. Current wage decision (www.wdol.gov)

2. Contract provisions: HUD - 4010
For Construction:

Each contract subject to DB must incorporate:

1. Current wage decision (www.wdol.gov)

2. Contract provisions:

   **HUD 5370** – Contract greater than $100,000
   **HUD 5370 EZ** – Greater $2000 but less than $100,000
Contract Provisions (continued – Public & Indian Housing)

Non-Construction (Maintenance/Deferred Maintenance):

Each contract must incorporate:
1. Current wage decision
2. Contract provisions:

HUD 5370 – C - General Conditions for Non-construction Contracts

HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:
- 1) Non-construction contracts (without maintenance) greater than $100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than $2,000 but not more than $100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than $100,000 – use Sections I and II.
LCA Responsibilities for Davis Bacon Labor Standards

- Confirm the specific labor standards provisions applicable to project
- Ensure applicable wage determination

Monitoring/Enforcement

- Weekly Payroll Receipt for DB
- Conduct Interviews
- Interview and Payroll Comparisons
- Communication to Contractor

5.7 Enforcement Reports
Determine Coverage

- Davis-Bacon $2000 Threshold
- Demolition (Refer to LR Policy Letter 2009-01)
- HUD Program Thresholds
- Tribally Determined Rates
- Character of Construction Issues
  Memorandum #130 and #131
- Maintenance or Construction (Refer to LR Policy Letter 93-01)
Contract Requirements

Each contract must incorporate:

1. Current classifications and wage rates
   (www.wdol.gov)

   Lock In Wage Effective Dates

2. Labor Standards Clauses

   - CDBG/ HOME Projects: HUD 4010
   - HUD Insured: HUD 2554
   - Housing Authorities: HUD 5370 or (Section I or Section II) HUD 5370 EZ
Additional Classifications

Early Detections

- Review wage decision for missing classifications
- Discuss with contractors early
- Submit requests early, but after contract award
- HUD will respond in writing
- Post new classification & rate
- Make restitution payment if necessary
Contractor Eligibility

- Verify prime contractor eligibility using GSA’s Debarment List
- Place printed record in contract file

On-line access at:
- http://sam.gov/
I. Pre-Construction Phase

- Determine Coverage
- Bid & Contract Documents
  - Federal Labor Standards Clauses
  - Wage Decision
- Confirm Eligibility Excluded Parties List Check
- Pre-Construction Conference
- Additional Classification
Contractor Responsibilities

- **PRIME CONTRACTOR:**
  - Incorporate labor clauses and correct wage determinations in all subcontracts
  - Review all payrolls
  - Submit all payrolls timely
  - Request all additional classifications
  - General compliance of employees
  - Post wage rates, additional classifications and Davis-Bacon Poster

- **SUBCONTRACTORS (Including Lower Tier):**
  - Submit weekly payrolls to Prime
  - Request additional classifications through Prime
  - General compliance of employees
SUB-CONTRACTORS

- Prepare & submit certified weekly payrolls to Prime
- Instruct sub-tier or sub-contractors of responsibilities
- Request additional classifications from Prime
- Ensure interviewer access to employees on-site
The Standards are in accordance with 29 CFR Parts 1, 3, and 5.

- Minimum wages
- Withholding
- Maintaining basic payroll records
- Submission of certified payroll records
- Apprentices
- Trainees

- Subcontractors
- Contract termination and debarment
- Rulings and interpretations
- Disputes
- Certification of eligibility
Labor Standards - Records to be Kept

- Copy of executed contract
- Bid opening / contract award dates
- Verification of contractor eligibility
- Wage decision/additional classifications
- Construction start date
- Certified payrolls
- Apprentice registrations
- Employee interviews & HUD-11s
- Documentation of enforcement
- Preserved no less than three years
Labor Standards - Records to be Kept

- Employee Personal Information (not on payrolls)
- Verification of fringe benefits or voluntary withholding
Preconstruction Conference

- HUD or its LCA’s use these conferences to:
  - Confirm correct wage decision
  - Explain key labor standards contract provisions
  - Supply Contractor Guide & forms
  - Address additional classifications
  - Obtain subcontractors list
  - Pre-Construction Worksheet
Apprentices and Trainees

- Permitted to be paid less than the journeyman rate when:
  - Individually registered in approved apprenticeship or trainee plan.
  - The ratio of apprentices/trainees to journeyman on the job site meets the allowable ratio specified in the approved plan.
  - Paid a percentage of the basic hourly rate required and/or fringe benefits specified in the approved plan.
  - Fringe benefits are paid in accordance with the approved plan.
Additional Wage Classifications
also known as
“conformances”
How do I know if a conformance is needed for my project?

Step 1: Look at the project description, plans and specifications that itemizes each phase of the work — excavation, foundation, framing, flooring, dry walling, glazing, painting, roofing, electrical, plumbing.

Step 2: Obtain project wage decision.

Step 3: Save and visually scan the wage determination to make certain that there are published wage rates for all of the crafts you’ll need listed in step 1. If there are missing crafts, you’ll probably need to work with your contractor to get conformances for the classifications that aren’t on the wage decision.

In the next several slides, we’re going to discuss the process for obtaining additional classifications.
## Crafts/Mechanics

<table>
<thead>
<tr>
<th></th>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carpenter (excluding drywall hanging and batt and blown insulation)</td>
<td>$15.83</td>
<td></td>
</tr>
<tr>
<td>Cement Mason (including cement finishing)</td>
<td>$21.50</td>
<td></td>
</tr>
<tr>
<td>Drywall Hanger</td>
<td>$10.00</td>
<td></td>
</tr>
<tr>
<td>Electrician</td>
<td>$22.99</td>
<td></td>
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<tr>
<td>Glazier</td>
<td>$17.50</td>
<td></td>
</tr>
<tr>
<td>Painter</td>
<td>$12.29</td>
<td></td>
</tr>
<tr>
<td>Pipefitter HVAC Piping Only</td>
<td>$18.50</td>
<td></td>
</tr>
<tr>
<td>Plumber/Pipefitter</td>
<td>$20.40</td>
<td>$7</td>
</tr>
<tr>
<td>Roofer (excluding shingles)</td>
<td>$13.13</td>
<td></td>
</tr>
<tr>
<td>Sheet Metal Worker (including HVAC Duct)</td>
<td>$23.00</td>
<td></td>
</tr>
</tbody>
</table>

- Drywall Taper
- Soft Floor Layer
- Tile Setter
- Iron Worker
- Stone Mason
Laborer Groups

- Asphalt Raker
- Landscape Laborer
- Grade Checker

Fence Erector (including wood and chain link)...........$ 15.70
Installer
  Batt & Blown Insulation............$ 16.00
Laborer
  Excavation.......................$ 9.00
  General (excluding fence erecting and batt and blown insulation)........$ 10.84
Hod Carrier/Mason
  Tenders............................$ 14.24
  Urethaine Sprayer.................$ 19.00
Power Equipment Operators

- Concrete Pump Operator
- Skid Steer Operator
- Crane
- Pile Driver
- Loader
- Compactor

Backhoe.................. $ 19.05
Excavator............... $ 20.50
Additional Work Classifications

- Prime contractor submits requests to add the missing classifications
  - On company letterhead
  - List the classifications requested
  - State the BHR & FR for each classification
  - Spell out tasks if not clear
Additional Work Classifications

- DOL approves if:
  - Classification is used by the industry in the area
  - Work is not already performed by another classification on the wage decision.
  - Wage “fits” other wage decision rates
Crafts/Mechanics

- Drywall Taper
- Soft Floor Layer
- Tile Setter
- Iron Worker
- Stone Mason

<table>
<thead>
<tr>
<th>Job Description</th>
<th>Rates</th>
<th>Fringes</th>
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<tbody>
<tr>
<td>Carpenter (excluding drywall hanging and batt and blown insulation)</td>
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<td>Cement Mason (including cement finishing)</td>
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<tr>
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<td>$10.00</td>
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<tr>
<td>Plumber/Pipefitter</td>
<td>$20.40</td>
<td>$0.87</td>
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<td>Roofer (excluding shingles)</td>
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<td></td>
</tr>
<tr>
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</table>
AAM 213: Method for Approving Conformances
Mechanics/Crafts

23.00
22.99
21.30
20.40
18.50 mean (5) (5)

17.50 mean minus one <- If DOL follows memo they probably will not approve craft classifications less than this rate.
15.85
13.13
12.29
10.00
Add Class Form Example

- Provide a **SIGNED** letter from the contractor requesting trade and rate of pay by fax, mail, or E-mail (E-mail is preferred).

- E-mail the HUD 4230A, Contractor’s Request Letter, and the Wage Decision to your Labor Relations Specialist.
Add Class Form Example

- Provide a **SIGNED** letter from the contractor requesting trade and rate of pay by fax, mail, or E-mail (E-mail is preferred).

- E-mail the HUD 4230A, Request Letter, and Wage Decision to your Labor Relations Specialist.
II. Construction Phase

- Monitor performance
- Provide technical assistance
- Complete routine project reviews
- Request supplemental payroll records as needed
- If warranted, conduct investigations

- Certified Payroll Review
- Check Interview Data
- Examine Inspector Trip Reports
- Compare Documents
- Identify willful violations & other discrepancies
On-site Project Inspections

- Project inspectors regularly visit the construction site to ensure:
  - The correct wage determination, notice to employees, and any additional classifications are posted by the contractor at the site.
  - Employees are paid correctly by conducting employee interviews as follows:
    - Interviewers identify themselves
    - Confirm with identification
    - Explain the project is being assisted with Federal funds
    - Explain the purpose of the interview
    - Advise the employee that the prevailing wages applicable and where are posted
CERTIFIED PAYROLLS
Certified Payroll (Any format is acceptable so long as it contains all of the information that is requested on the WH-347)
Payroll Format

- Certified Payroll (Any format is acceptable so long as it contains all of the information on the WH-347)
- SSNs Not Required on this form. (maintained by employer)
- Protect Confidential Data: HUD Privacy LR Letter
Compliance statement (w/ original signature) of corporate official, such as President, Treasurer or Payroll Administrator or letter of delegation from an authorized principal (WH-347)
Certified Payroll Basics

Project & Contractor Information

- Contractor/sub-contractor name
- Business address
- Project name & number
- Week ending date
- Day & date for each day in the workweek
- Numbered Payrolls
- Name/SSN (Last 4 digits)
- Work Classifications
- Split Classifications
- Rate of Pay
- Deductions
- Fringe Benefits – Check box (a), (b) or (c)
Certified Payroll Basics

- "No Work" payrolls optional – but all weeks must be accounted
- Payrolls must be complete & legible
- Prime contractor reviews payrolls and submits to LCA
- Payroll retention = three years
- Payrolls due weekly
- Identify first and final payroll
Certified Payroll Basics

- Compliance statement (w/ original signature of corporate official, such as President, Treasurer or Payroll Administrator or letter of delegation from an authorized principal (WH-347))
Permissible Deductions

- Social security or federal or state income tax withholding.
- Bona fide prepayment of wages.
- Court ordered payments.
- Reasonable cost” of board, lodging or other facilities meeting the requirements of section 3(m) of FLSA.
- Safety equipment - if not prohibited by FLSA or required by law for employer to furnish.
Piece Work

- Convert to hourly wage rate
- Total weekly wages ÷ hours worked = effective hourly wage rate
- It is important that contractors keep good records of hours worked
Overtime

- For all hours worked over 40 per week
- Paid at 1½ times the regular rate of basic pay plus the straight-time rate of fringe benefits
- Applies to hours worked on covered project
Record Keeping:

FACT SHEET #21

- Employee name, address, SSN
- Work classification
- Hourly rates of wages paid
- Daily & weekly hours worked
- Gross wages, deductions & actual net paid.
- Records must be maintained no less than 3 years following completion of work.
Typical Errors

- Missing documentation for Apprentices and Trainees
- Misclassification of workers
- Copy or fax Statement of Compliance
- Frequent computation errors
- Inadequate payroll information
- Incomplete payrolls
- Other deductions not identified
- Overtime violations
- Unauthorized signature on Statement of Compliance
- Wage rate errors
- Fringe Benefits not paid
What We Look For

- Are the apprenticeship records on file to support the registration and ratio for apprentices reported on the payrolls?
- Is statement of compliance fringe box A or B checked?
- Does the statement of compliance include all the required language?
- Is the statement of compliance signed by a principal or designee of the firm with an original signature?

Employee Interviews:
- Do they match the payrolls?
- Are there indications of misclassification?
- Piece rate or unpaid overtime indicated?
- Unidentified employers with no payrolls?
- Kickbacks?
Project Reviews

- Communicate problems to contractor via:
  - Informal email, telephone corrections
  - Routine project reviews
  - Notice of Back Wage Due
Investigations

- Falsification indicators trigger investigations
  - Ratios of laborers to mechanics
  - Too few or irregular hours
  - Discrepancies in wage computations
  - Extraordinary deductions
  - Interviews indicate substantial violations
  - Credible complaints of falsification

- Complaint Intake Form (Form 4731)
- Questionnaire (Form 4730)
Issaquah firm to pay $550K to workers in overtime suit

By Amy Martinez

A drywall contractor in Issaquah has agreed to pay $550,000 to settle a U.S. Department of Labor lawsuit alleging it shortchanged nearly 400 workers on overtime wages over a 3 1/2 year period.

The labor department said Thursday that Summit Drywall will pay $275,000 in back wages and another $275,000 in damages to workers who allegedly were illegally denied overtime compensation from October 2009 to April 2013.

About 380 current and former employees will receive money from the settlement, which was made final by a consent judgment in federal district court in Seattle.

Investigators found that drywall hangers and tapers were paid on a “piece-rate” basis and were not compensated for all the hours they worked, including time spent traveling between job sites and transporting equipment.

“In this region, long hours and low wages are prevalent in the drywall industry,” Janet Herold, the department’s regional solicitor in San Francisco, said in a statement. “This consent decree sends the unambiguous message that the department will not permit the underpayment of workers’ wages in piece-rate schemes.”

Most Read Stories

1. Residents return to ‘war zone’ in wake of Wenatchee wildfire

2. Woman knocked unconscious by falling drone during Seattle’s Pride parade
On-Site Interviews

Use on-site interviews to:

- Validate / test payroll data
- Develop complaints
- Target interviews to substantiate suspected violations

- HUD-11 available at www.hudclips.org
Investigations

- Follow DOL investigations steps including employer conferences, notice of violations, withholding and appeal rights.

- Test indicators by seeking verification by:
  - Supplementing interviews and questionnaires
  - Securing relevant detailed employer payroll records

- Coordinate with HUD, DOL and the HUD IG

- Enforcements Report to DOL (Handbook chapter 10)
Written notice of contractor of violations and potential underpayments should:

- Identify “face of the payroll” violations.
- Request documentation as needed.
- Provide definitive response times.
- Notify or explain consequences of failure to respond, i.e. funds withholding, delay closing

Routine project reviews sample

Back Wage Schedule sample
HUD Determined Non-Routine Maintenance Wage Decision

- Projects that are non-routinely occurring maintenance not so substantial in scope that they fall within a range of “reconstruction activity” subject to Davis Bacon rates
- Upkeep that is necessary, but, non-routine
- Cyclical upkeep
PHA’s/TDHE’s responsibilities

- Ensure current MWD & contract standards are incorporated into the contract specs.
- Verify contractor eligibility.
- Provide technical support to contractor/sub.
- Conduct on-site interviews with laborers & mechanics.
- Perform periodic “spot-check reviews of con/sub records, including comparison of on-site interview data against such records.
- Notify the contractor of any labor standards deficiencies & corrective actions.
- Maintain full documentation of all labor standards administration & enforcement activities.
HUD Determined Maintenance Wage Decision

- Projects that are not construction
- Routine Maintenance/Upkeep/Repairs
- “MWD” – determined or adopted by HUD
- Annually set
- Applicable to low-income housing projects operated by PHA’s as defined by US Housing Act of 1937 & affordable housing operated by Indian tribes or TDHE’s.
Labor Standards - Records to be kept for HUD-determined rate projects

- Copy of executed contract
- Bid opening / contract award dates
- Verification of contractor eligibility
- Wage decision/additional classifications
- Construction start date
- Payroll records of sufficient detail to verify workers were paid correctly
- Apprentice registrations
- Employee interviews & HUD-11s
- Documentation of enforcement
- Preserved no less than three years
HUD Determined Technical Wage Decision

- Projects that involve design, survey, drafting which may be preliminary to construction or development
Disclaimer

- This presentation is intended as general information only and does not carry the force of legal opinion.

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