

PREVAILING WAGE CONFERENCES



DBA Compliance for DOE WAP, SEP, EECBG Grantees, Sub- Grantees, and their Contractors



U.S. Department of Labor
Wage and Hour Division



Internet Sites

- Wage Determinations – <http://www.wdol.gov>
- Wage and Hour Division -
<http://www.dol.gov/whd/index.htm>
- WHD Recovery Site
<http://www.dol.gov/whd/recovery/>
- Debarred Bidders List - <http://www.epls.gov>



Code of Federal Regulations 29 CFR Part

- 1 - Procedures for Predetermination of Wage Rates under the Davis-Bacon Act
- 3 - Payment & Reporting of Wages on Federal Construction Contracts
- 4 - Federal Service Contracts
- 5 - Labor Standards Provisions Applicable to Federal Construction Contracts
- 6 - Rules of Practice for Administrative Proceedings



Code of Federal Regulations 29 CFR Part

7 & 8 - Rules for DBA/SCA appeals before the ARB

525 - FLSA (Workers with Disabilities)

531 - FLSA (Credit for tips, meals, & lodging)

541 - FLSA (Exempt - Salaried employees)

778 - FLSA (Overtime)

785 - FLSA (Hours Worked)



Labor Standards Statutes

- The Davis-Bacon Act (DBA)
- Davis-Bacon and Related Acts (DBRA)
- Contract Work Hours and Safety Standards Act (CWHSSA)
- Copeland “Anti-Kickback” Act (CA)
- Walsh-Healey Public Contracts Act (PCA)
- McNamara-O’Hara Service Contract Act (SCA)





The Davis-Bacon Act

(DBA)



DBA

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



DBA Requirements

- Payment of locally “prevailing wages” and “fringe benefits” to laborers and mechanics, as determined by the U.S. Department of Labor (DOL)
- Applies to direct Federal and District of Columbia contracts



DBA Requirements

- Applies to “laborers” and “mechanics” of contractors and subcontractors
- Performing work on the “site of the work”
- Must be paid not less often than weekly
- Wage scale must be posted at the job site



Coverage of the DBA

- Applies to contracts in excess of \$2,000 to which the Federal Government or the District of Columbia is a party for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works.



Criteria For Considering DBA Coverage

- Is the contract an agreement to which the U.S. or District of Columbia is a party?
- Is the agreement a “contract for construction”?
- Is the “contract for construction” a contract for construction of a public building or public work of the U.S. or the District of Columbia?





The Davis-Bacon Related Acts **(DBRA)**



DBRA

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



DBRA Examples

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



Distinguishing DBA and DBRA

- Examples of DBA Projects
 - VA hospital
 - Federal office building (GSA)
 - Military base housing (DOD)
 - National Park road (Dept. of Interior)



Distinguishing DBA and DBRA (cont'd.)

- **Examples of DBRA Projects**
 - HUD - assisted housing construction project
 - EPA - assisted water treatment plant construction project



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American Recovery & Reinvestment Act of 2009 (ARRA)



U.S. Department of Labor
Wage and Hour Division



Overview of ARRA

- Signed into law by President Obama on February 17, 2009
- ARRA is structured in two separate parts:
 - ARRA Division A — Appropriations Provisions
 - ARRA Division B — Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions
- Each “Division” stands alone.



ARRA Division A – Appropriations

- ARRA Division A appropriates substantial funding for
 - Construction, alteration and repair of federal buildings (federal contracts - DBA)
 - Infrastructure projects such as roads, bridges, public transit, water systems, and housing (DBRA)
 - Various activities that federal agencies may contract out for service employees to perform (SCA)



ARRA & Davis-Bacon Labor Standards

- ARRA includes Davis-Bacon labor standards provisions:
 - Division A and Division B have separate Davis-Bacon provisions.
- Under ARRA Division A, section 1606:
 - Davis-Bacon labor standards apply to construction projects funded by ARRA Division A appropriations
- The ARRA Division B Davis-Bacon provision applies to projects financed by certain types of bonds



DOL ARRA Guidance All Agency Memoranda (AAMs)

- **AAM No. 207** - May 29, 2009:
 - DOL guidance on applying Davis-Bacon labor standards to federal and federally assisted construction projects funded in whole or in part by ARRA Division A appropriations.
- **AAM No. 208** - May 5, 2010:
 - DOL guidance on applying Davis-Bacon labor standards to construction projects funded in whole or in part with tax-favored bonds specified in ARRA Division B, section 1601.



Advisory Letters & HUD Clarification

- Advisory letters, such as those issued to the Department of Energy and Department of Interior, provide further guidance
- The Supplemental Appropriations Act of 2009, enacted on June 24, 2009 (Pub. L. 111-32) includes a provision that affects the scope of Davis-Bacon applicability to certain specific HUD programs



Labor Standards Coverage on ARRA funded projects

- Reorganization Plan No. 14 of 1950 gives:
 - Federal agencies responsibility to ensure that laborers and mechanics are paid at least the applicable Davis-Bacon prevailing wages
 - DOL has regulatory authority and oversight responsibility and can investigate compliance.



ARRA Labor Standards Implementation

- Federal agencies must:
 - Ensure that their bid solicitations and resulting covered contracts contain labor standards and wage determinations in accordance with Federal Acquisition Regulations
 - Generally, ensure that recipients of assistance funded by ARRA appropriations require contractors and subcontractors to pay laborers and mechanics employed on covered ARRA-assisted construction at least the Davis-Bacon prevailing wages



WHD ARRA Website

- The Wage and Hour Division has established a special ARRA website where AAM Nos. 207 and 208, advisory letters, important links, and other relevant information is posted:

■ **www.dol.gov/whd/recovery**



WHD Internet Sites

- WHD Recovery Act (ARRA) website –
 - <http://www.dol.gov/whd/recovery/>.
- WHD ARRA inquiries e-mail address –
 - whdarra@dol.gov
- DOL Prevailing Wage Resource Book –
 - <http://www.dol.gov/whd/recovery/pwrb/tod.htm>.



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Contract Work Hours and Safety Standards Act **(CWHSSA)**



U.S. Department of Labor
Wage and Hour Division



Purpose of 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 FLSA require overtime pay for work over 40 hours in a workweek



Requirements of CWHSSA

- 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
- Liquidated damages can be assessed at a rate of \$10 per day for each laborer or mechanic not paid proper overtime



Coverage of CWHSSA

- Covers contracts over \$100,000 that require or involve the employment of “laborers” and “mechanics” on:
 - DBA covered construction contracts
 - DBRA covered construction contracts
 - SCA covered service contracts
- Is self-executing (even if not stated in contract)
- Has no “site of the work” limitation





Copeland “Anti-Kickback” Act (CA)



Purpose and Requirements of CA

- Prohibits “kickback” of wages and back wages
- Requires contractors on DBA/DBRA covered projects to submit weekly a “statement of compliance”
- Regulates payroll deductions



Permissible Deductions Without DOL Approval (29 CFR 3.5)

- Social security or federal or state income tax withholding
- *Bona fide* prepayment of wages
- Court ordered payments
- Fringe benefit plans with certain provisions
- Purchase of U.S. savings bonds
- Repayment of loans or purchase shares in a credit union



Permissible Deductions (29 CFR 3.5)

- Deduction to pay regular union initiation fees and membership dues provided by a collective bargaining agreement (CBA)
- Authorized contribution to charitable organizations such as the Red Cross, United Way, etc.
- Deduction for “reasonable cost” of board, lodging, or other facilities meeting the requirements of section 3(m) of FLSA
- Deduction for safety equipment - if not prohibited by FLSA, or required by law for employer to furnish



Deductions Requiring DOL Approval (29 CFR 3.6)

- DOL may approve payroll deductions when:
 - Contractor makes no direct or indirect profit
 - Deduction is not prohibited by law
 - Deduction is voluntarily consented to in writing before work begins, or deduction is provided for under CBA terms
 - Deduction serves the convenience and interest of employee





Davis-Bacon Investigation Procedures



Davis-Bacon

Investigation procedures

- Reorganization Plan No. 14 of 1950
- Davis-Bacon (DB) Labor Standards Contract Stipulations
- Specific Steps in Conducting DBA/DBRA/CWHSSA Investigations
- Conclusion of Investigation
- Report Writing
- The Hearing Process



Reorganization Plan No. 14 of 1950

- DOL Functions/Responsibilities
 - Determining “prevailing wages”
 - Issuing regulations and standards to be observed by contracting agencies
 - Perform oversight function and has independent authority to conduct investigations



Reorganization Plan No. 14 of 1950

- 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



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”
 - Regulations, 29 CFR 1, 3, and 5



Davis-Bacon Labor Standards (29 CFR 5.5)

- Minimum wages (MW's)
- Withholding
- Maintaining basic payroll records
- Submission of certified payroll records
- Apprentices
- Trainees



Davis-Bacon Labor Standards

- Copeland Act (CA) compliance
- Subcontracts
- Contract termination and debarment
- Rulings and interpretations
- Disputes
- Certification of eligibility



Preliminary Steps in Conducting Investigations

- Obtain the following information:
 - Copy of labor standards clauses in contract
 - Copy of Davis-Bacon WD in contract, including any instructions for multiple schedules
 - Copies of certified payrolls
 - Employer identification number



The Investigation Process

- Initiate contact with employer
- Examine certified payrolls
- Examine basic payroll records



The Investigation Process (Cont'd.)

- Check for compliance with apprenticeship and/or trainee requirements
- Determine if a conformance is necessary



Employee Interviews

- Are essential to the investigation
- Information provided is confidential
- Interview statements should contain:
 - Place and date of interview
 - Name and address of employer/employee
 - Employment status and classification
 - Alleged violations



Determining Compliance

- Determine compliance with prevailing wages, including FB's
- Determine compliance with CWHSSA
- Compute any back wages and liquidated damages



Computing Liquidated Damages under CWHSSA

Liquidated damages are computed at \$10 per day per CWHSSA violation. Example:

	S	M	T	W	T	F	S	<u>TOTALS</u>
Regular Time	0	10	12	13	9	8	3	55

15 weekly hours of overtime were worked on three calendar days (Thursday, Friday, Saturday) without the payment of overtime. Liquidated damages computed @ \$30.



Computing Back Wages (40-hour workweek)

Contractor employs an Electrician on the site of the work 40 hours a week. WD calls for a prevailing wage of \$14.50 (\$12 + \$2.50 in FB's). Employee paid \$13 (\$10.00 plus \$3.00 in FB's), which is the WD prevailing wage for Painters.

Prevailing Wage	\$14.50	X 40 hours =	\$587.00
<u>Employee paid</u>	<u>\$13.00</u>	<u>X 40 hours =</u>	<u>\$527.00</u>
Back wages per employee			\$ 60.00



Conclusion of Investigation

- Final Conference Procedure
 - Inform contractor of investigation findings
 - Detail steps to eliminate violations
 - Consider additional evidence that may impact on findings (*e.g.*, conformance)
 - Request payment of back wages and any liquidated damages under CWHSSA
- Contact WHD if no agreement



Withholding of Funds

- In refusal-to-pay cases, contracting agency can withhold funds to cover back wages
- Contracting agency can withhold funds from other contracts which have same prime contractor (cross-withholding)
- Contracting agency should immediately notify WHD if contractor may be filing for bankruptcy



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



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
- Prime contractors can be debarred for subcontractor violations



Hearing Process (29 CFR Parts 6 and 7)

- Refusal to pay cases are resolved pursuant to 29 CFR 5.11
 - If factual issues in dispute, WHD notifies contractor of findings and offers opportunity to request a hearing before an Administrative Law Judge (ALJ)
 - If only questions of law in dispute, WHD issues ruling letter that may be appealed to DOL's Administrative Review Board (ARB)
- If debarment action initiated, contractor may request a hearing pursuant to 29 CFR 5.12



Administrative Review Board

- Members appointed by the Secretary of Labor
- Hears appeals of ALJ decisions
- Acts on petitions to review final rulings of WHD Administrator on coverage interpretations, and WD matters
- Appeals may be in the form of an oral hearing in Washington, D.C., but typically are by review of record in closed session



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