Disclaimer

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

• The Department of Labor is providing this information as a public service. This information and related materials are presented to give the public access to information on Department of Labor programs. You should be aware that, while we try to keep the information timely and accurate, there will often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. The Federal Register and the Code of Federal Regulations remain the official source for regulatory information published by the Department of Labor. We will make every effort to keep this information current and to correct errors brought to our attention.
Introduction to Davis Bacon
Davis Bacon Act (DBA)

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

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

**DBA**

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

**DBRA**

- HUD - assisted housing construction project
- EPA - assisted water treatment plant construction project
- The Federal Highway Administration provides grants to states for reconstruction of roads and bridges on Federal-aid highways
• 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.
• 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
• 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
Compliance Principles

Basics
Laborers and Mechanics

- Workers whose duties are manual or physical in nature;
- Includes apprentices, trainees and helpers; and
- For CWHSSA, includes guards and watchmen.
• 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.”
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” 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” 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.
• Also not included in the “site of the work” are:
  
  • Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials:
    - Before the opening of bids for a project; and
    - Not located on the actual site of the work.

• Such permanent, previously established facilities, are not part of the “site of the work,” even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.
Truck Drivers

• Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:
  • Spent working on the “site of the work;” and/or
  • Spent loading or unloading materials and supplies on the “site of the work,” if such time is more than *de minimis*. 
Truck Drivers

• Truck drivers are also covered when:
  • 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.
• DOL has an enforcement position with respect to \textit{bona fide} owner-operators of trucks who are independent contractors (an owner-operator is a person who \underline{owns and drives a truck}). Certified payrolls including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation “owner-operator.”

• This position does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.
Material Suppliers

- The manufacture and delivery to the work site of supply items such as sand, gravel, and ready-mixed concrete by bona fide material suppliers, are activities not covered by DBA/DBRA requirements (even though the materials are delivered directly into a contractor’s work site mixing facilities).

- Bona fide material suppliers (including truck drivers) whose only contractual obligations for on-site work are to deliver materials and/or pick up materials are not considered contractors under the DBA/DBRA. Thus, their employees are not subject to the Davis-Bacon labor standards.
However, laborers and mechanics employed at the site of the work by a material supplier, manufacturer, or carrier that undertakes to perform a part of a construction contract as a subcontractor:

- Would be subject to Davis-Bacon labor standards in the same manner as those employed by any other contractor or subcontractor.
- For enforcement purposes, if such a worker spends more than an incidental amount (20%) of his/her time in a workweek engaged in construction work on the site, he/she is covered for all time spent on the site during workweek.
Compliance Principles

Wage Determinations & Conformances
Davis-Bacon WDs specify the prevailing wages, including fringe benefits, which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character in the localities specified therein.
“General” WDs

• Issued for most counties for each major type of construction (building, heavy, highway and residential) nationwide.


• May be used by Federal agencies without notifying the WHD.
• Selecting and incorporating the appropriate general wage determination for the project type
  • Building
  • Residential
  • Highway, and/or
  • Heavy

• Application of Multiple Wage Schedules
• Separate constructions types and:
  • At least 20% of the total project is a different type of construction; and/or
  • The different type of construction is at least $1 million in cost

Guidance found in AAM 130 and 131
Selecting the Correct Wage Determination

Incorporate most current WD:

- Negotiated contracts ("RFPs") – Time of award.
- Competitively bids contracts: In effect 10 days or more before opening of bids.
- Exceptions.
- If the contract is not warded within 90 days of bid opening, any modification to the WD must be incorporated unless the federal agency requests and obtains an extension of the 90 day period.
Interpreting General Wage Determinations

- Decision Number
- 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.

<table>
<thead>
<tr>
<th>Modification Number</th>
<th>Publication Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>01/06/2017</td>
</tr>
<tr>
<td>1</td>
<td>01/13/2017</td>
</tr>
<tr>
<td>2</td>
<td>01/20/2017</td>
</tr>
</tbody>
</table>
Union Identifiers

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

ELEVator Constructors: International Union

Local **101**: Local union Number

**001**: Internal Processing Number

**10/01/2017**: Date the rate became effective on the CBA
Interpreting “General” WDs

Body of WD

CARP0055-001                 11/01/2016

Rates    Fringes
CARPENTER (Acoustical Ceiling Installation and Drywall Hanging Only) $26.25 $8.64

CBA rates are updated when CBA rates are changed
Interpreting “General” WDs

Body of WD

**SU (Non-Union) Identifiers**

SU CO 2015-015 07/31/2015

SU: SUrvey – Basis of Rate(s)
CO: Colorado
2013: Date of Survey
015: Internal numbering
7/31/2015: Date submitted for publication

* SU rates remain unchanged until new survey*
Interpreting “General” WDs

Body of WD

SUCO2015-05 07/31/2015

<table>
<thead>
<tr>
<th></th>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bricklayer</td>
<td>$ 21.96</td>
<td>0.00</td>
</tr>
<tr>
<td>Carpenter</td>
<td>$ 18.22</td>
<td>0.00</td>
</tr>
</tbody>
</table>
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 (29CFR 5.5 (a) (1) (ii)).

• Conformance requirements:
  • 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.
Conformance requests are **not** needed for **bona fide**:

- Apprentices;
- Trainees; or
- Welders
Pre-Bid/Pre-Award

Both the Contracting Agency & Contractor should:

• Review the WD;
• Compare the WD with the project work;
• Anticipate needed classifications; and
• Apply key criteria.
Conformance Process

After-Award
Contractor should:

• 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.
Conformance Process: Submitting the SF-1444

• https://www.wdol.gov/docs/sf1444.pdf

• https://www.wdol.gov/conform-faqs.pdf
WDOL
Home Page
https://beta.sam.gov/
Compliance Principles
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.
Accuracy and completeness of wage determinations is dependent upon:

• Survey participation by contractors, unions, contractor associations, federal agencies and other interested parties; and

• The level of construction activity.
Wage Survey Process

- Notification of contractors and interested parties;
- Non-respondent follow-up; and
- Data collection, analysis and clarification.
  - If insufficient data is received for a classification, no rate will be recommended.
Compliance Principles
Apprentices, Trainees, & Helpers
• 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

- Persons individually registered in a bona fide apprenticeship program registered with DOL’s Employment Training Administration (ETA) Office of Apprenticeship (OA) or a State Apprenticeship Agency recognized by OA.

- Individuals in their first 90 days of probationary employment as an apprentice in such a program.

- Regulations: 29 C.F.R. §§ 5.2(n)(1) and 5.5(a)(4)(i).
Trainees

• Persons registered and receiving on-the-job training in a construction occupation under a program approved in advance by DOL’s Employment Training Administration (ETA).

• Regulations: 29 C.F.R. §§ 5.2(n)(2) and 5.5(a)(4)(ii).
Helpers

• May be employed if:
  • Duties are clearly defined and distinct from other classifications on the WD;
  • An established prevailing practice in the area; and
  • Not employed in an informal training program.
• May be added to WD if all above conditions are met; and no WD class performs the work.
Compliance Principles

Prevailing Wage & Fringe Benefits
DBA: the terms “wages” and “prevailing wages” include:

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

• Under DBA, FB’s are a component of the DBA “prevailing wage.”

• The prevailing wage obligation may be satisfied by:
  • Paying the BHR and FB in cash (including negotiable instruments payable on demand);
  • Contributing payments to a bona fide plan; or
  • Any combination of the two.
Wages & Fringe Benefits

• Must be paid weekly for all hours worked:
  • Unless the fringe benefits are paid into a bona fide FB plan and then contributions must be paid no less often than quarterly.

• Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation (unlike under SCA).
Prevailing Wage Example

- **BHR** $14.00
- **FB** $1.00
- **Total prevailing wage** $15.00

- The contractor may comply by paying:
  - $15.00 in cash wages
  - $14.00 in cash wages plus $1.00 for FB
  - $12.00 in cash wages plus $3.00 for FB
• An employee spent 32 hours working as an electrician, with a BHR of $22.00 and an FBR of $3.00, and 8 hours working as a laborer, with a BHR of $14.00 and a FBR of $1.00.

• The employee is due $800.00 for his electrician work (32 hours X ($22.00 + $3.00)) and $120.00 for his laborer work (8 hours X ($14.00 +$1.00)), for a total of $920.00.

• The $920.00 can be paid in any combination of cash wages and fringe benefit contributions.
Examples of Fringe Benefits

- Life Insurance;
- Health Insurance;
- Pension;
- Vacation;
- Holiday; and

- **Sick Leave** (only what exceeds Executive order 13706).
Employer provides medical insurance at $200 per month to an electrician on a Davis-Bacon project. The WD requires $16.00 plus $2.50 in FB’s, or $18.50 an hour. Employee works 160 hours a month.

- $200/160 hours = $1.25 credit per hour for the FB
- No other benefit provided
- Electrician is due: $17.25 in cash wages per hour
  ($18.50 - $1.25 = $17.25)

*$200 X 12 Months = $2400/1920 (160 X 12) = $1.25
Compliance Principles

Certified Payrolls
Certified Payrolls

- **Two separate contract clause requirements apply to “certified payrolls” for a project:**
  - The contractor shall submit weekly for any week in which any contract work is performed a **copy of all payrolls.** 29 C.F.R. § 5.5(a)(3)(ii)(A).
Certified Payrolls

- Weekly, the contractor must submit “a copy of all payrolls” to:
  - The federal agency; or
  - If the federal agency is a not a party to the contract, to the applicant, sponsor, or owner for transmission to the federal agency.

Certified Payrolls

• Weekly payrolls must include specific information as required by 29 C.F.R. § 5.5(a)(3).

• Weekly payroll information may be submitted in any form desired.
  • Optional Form WH-347 is available for this purpose
  • The WH-347 form, with instructions, is at: http://www.dol.gov/whd/forms/wh347instr.htm
<table>
<thead>
<tr>
<th>Name of Contractor</th>
<th>OR Subcontractor</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payroll No.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payroll Date</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name and Individual Identifying Number (e.g., Last Four Digits of Social Security Number of Worker)</td>
<td>Work Classification</td>
<td>Hours Worked Each Day</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(i) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement
We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.
The certification “Statement of Compliance” attached to each weekly payroll must be:

- On page 2 of the WH-347 Form “Payroll (For Contractors Optional Use)”;
- Or
- On any form with identical wording.
The properly signed “Statement of Compliance” submitted or transmitted to the appropriate federal agency certifies that:

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

- Must be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. 29 C.F.R. § 3.3(b).

- Each weekly statement must be delivered or mailed by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency contracting for or financing the building or work. 29 C.F.R. § 3.4(a).
<table>
<thead>
<tr>
<th>NAME AND TITLE</th>
<th>SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Q. Public</td>
<td></td>
</tr>
</tbody>
</table>

The willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution. See Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
Compliance Principles

Overtime
Neither DBA nor SCA provide premium rates for overtime hours of work, but both recognize other Federal laws that do:

- Contract Work Hours and Safety Standards Act (CWHSSA) (40 U.S.C. §§ 327-332) applies to contracts in excess of $100,000 ($150,000 for contracts procured under the Federal Acquisition Regulations) that employ laborers, mechanics, guards, and watchmen.

- Fair Labor Standards Act (FLSA) (29 U.S.C. § 201, et seq.) applies more broadly, with over 130 million workers subject to coverage.
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 per day for each laborer, mechanic, guard, or watchman not paid proper overtime.
Coverage of 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 covered construction contracts
  - DBRA covered construction contracts; and
  - SCA covered service contracts
- Is self-executing (even if not stated in contract)
- Has no “site of the work” limitation
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.
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.
If the employer paid $22.00 in cash wages and paid $5.00 in fringe benefits, the electrician would receive:

44 hours \times \$22.00 = \$968.00 \text{ for cash wages}

44 hours \times \$5.00 = \$220.00 \text{ in fringe benefits}

4 \text{ hours} \times \frac{1}{2} \times \$22.00 = \$44.00 \text{ for CWHSSA earnings}

\$1232.00
If the employer paid $20.00 in cash wages and $7.00 in fringe benefits:

- \[ 44 \text{ hours} \times \$20.00 = \$880.00 \text{ for cash wages} \]
- \[ 44 \text{ hours} \times \$7.00 = \$308.00 \text{ in fringe benefits} \]
- \[ 4 \text{ hours} \times \frac{1}{2} \times \$22.00 = \$44.00 \text{ in CWHSSA earnings} \]

\[ \$1232.00 \]
If the employer paid $24.00 in cash wages and $3.00 in fringe benefits:

- $22.00 per hour for 44 hours = $968.00 for cash wages
- $2.00 per hour for 44 hours = $88.00 cash in lieu of fringes
- $3.00 per hour for 44 hours = $132.00 in fringe benefits
- 4 hours at ½ rate = $44.00 in CWHSSA earnings

Total = $1232.00
Overtime Computations
Employee Employed at Different Rates

During a workweek, an employee works 20 hours as an Electrician at $22.00 an hour and 24 hours as a Painter at $20.00 an hour.

Electrician $22.00 X 20 hours = $440.00
Painter $20.00 X 24 hours = $480.00
Total Straight time wages $920.00

$920/44 hours = $20.91 (regular rate)

Overtime due: $20.91 X 1/2 x 4 hours = $41.82
Liquidated Damages

- **CWHSSA**
  - Liquidated damages shall be computed in the sum of $25 per calendar day on which an individual did not receive the required overtime compensation
  - Liquidated damages are assessed by the contracting agency, but the contracting agency must seek the concurrence of the Administrator to reduce or entirely relieve the contractor of liquidated damages liability, per 29 CFR 5.8

- **FLSA**
  - The statute provides that liquidated damages shall be assessed in an amount equal to the unpaid overtime compensation
  - Liquidated damages are assessed by WHD
Computing Liquidated Damages under CWHSSA

Are computed at $27 per day per violation:

<table>
<thead>
<tr>
<th>S</th>
<th>M</th>
<th>T</th>
<th>W</th>
<th>T</th>
<th>F</th>
<th>S</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>10</td>
<td>12</td>
<td>13</td>
<td>9</td>
<td>8</td>
<td>3</td>
<td>55</td>
</tr>
</tbody>
</table>

Regular Time

15 weekly hours of overtime were worked on 3 calendar days (Thursday, Friday, Saturday) without payment of overtime. Liquidated damages computed at $81. (Due to increase in January 2020)
Compliance Principles

Copeland Act
Copeland Act
Purpose and Requirements

• Prohibits “kickback” of wages and back wages

• Requires contractors on DBA/DBRA covered projects to submit weekly a “statement of compliance” (Certified Payroll)

• Regulates payroll deductions
• Requiring kickbacks is a felony, and under current federal crime provisions can entail a fine of up to $250,000 for a person and $500,000 for a corporation, as well as up to five years in jail.

• Depending upon the circumstances, requiring kickbacks can also potentially involve the commission of other felonies, such as false statements, mail or wire fraud, or obstruction of justice.
The properly signed “Statement of Compliance” submitted or transmitted to the appropriate federal agency certifies that:

- The payroll for the payroll period contains the information required to be provided;
- The appropriate information is being maintained;
- Such information is correct and complete;
- Each laborer or mechanic has been paid the full weekly wages earned; and
- Each laborer or mechanic has been paid not less than the applicable wages, as specified in the applicable wage determination incorporated into the contract.
• Falsification of a certified payroll is a criminal violation that can result in a fine, up to 5 years in prison, or both. 18 U.S.C. § 874 & 1001.
• It can also be grounds for a lawsuit under the False Claims Act. 31 U.S.C. § 3730.
Deductions

- Regulations enacted under the authority of 40 USC 3145(a) also regulate the circumstances in which contractors may take deductions from payroll.
- 29 CFR 3.5 describes when deductions may be made without prior approval from the Secretary, while 29 CFR 3.6 describes the circumstances in which the Secretary may grant approval for other types of deductions.
Compliance Principles

Investigative Procedures
Investigative Responsibilities

• 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; and
  • Enforcement reports.
Investigative Responsibilities

- 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.
• WHD conducts investigations for a variety of reasons, and generally does not disclose the reason during the investigation.

• Many investigations are the result of complaints, but all complaints are confidential, and investigators may not even disclose whether one has been received.

• WHD also conducts investigations of business or industries for a variety of other reasons, such as high violation rates, employment of vulnerable workers, or rapid changes in the industry.
The Investigation Process

• Investigators will 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; and
  • Employer identification number.
The Investigation 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.
• Evaluate compliance with prevailing wages and FBs
• Apply CWHSSA if applicable
• Compute back wages and liquidated damages, if any
• Final conference with employer to discuss results of the investigation
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); and
  • Request payment of back wages and any liquidated damages under CWHSSA.
Compliance Principles

Withholding & Debarment
Withholding

• DBA and CWHSSA provide for withholding of contract funds to satisfy alleged wage underpayments pending resolution of a wage dispute.

• 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

• Withholding from another federal contract with the same prime contractor is called “cross-withholding.”

• The contracting agency may withhold funds:
  • on its own initiative; or
  • at the direction of DOL.
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;
  • Misclassified covered workers in clear disregard of proper classification norms; and/or
  • As a prime contractor, failed to ensure compliance by subcontractors.
• The name(s) of the contractor and any responsible parties, along with the name of any firms in which they are known to have an interest, are placed on the list of ineligible persons or firms, which is distributed to federal agencies.

• This list is searchable online at the System Awards Management website
Effective January 1, 2020
the new rate will be
$10.80
PAID SICK LEAVE FOR FEDERAL CONTRACTORS

ONE HOUR OF PAID SICK LEAVE FOR EVERY 30 HOURS WORKED, UP TO 56 HOURS EACH YEAR

PAID SICK LEAVE

Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors, requires certain employers that contract with the Federal Government to provide employees working on or in connection with those contracts with 1 hour of paid sick leave for every 30 hours they work—up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury, or other health-related needs, including preventive care; to assist a family member who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member who is the victim of, domestic violence, sexual assault, or stalking.

Employers are required to inform employees of their paid sick leave balances and must approve all valid requests to use paid sick leave. Rules about when and how employees should ask to use paid sick leave also apply. More information about the paid sick leave requirements is available at www.dol.gov/whd/govcontracts/oe13706

ENFORCEMENT

The Wage and Hour Division (WHD), which is responsible for making sure employers comply with Executive Order 13706, has offices across the country. WHD can answer questions, in person or by telephone, about your workplace rights and protections. WHD can investigate employers and recover wages to which workers may be entitled. All services are free and confidential. If you are unable to file a complaint in English, WHD will accept the complaint in any language.

The law prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Executive Order.

ADDITIONAL INFORMATION

Executive Order 13706 applies to new contracts and replacements for expiring contracts with the Federal Government starting January 1, 2017. It applies to federal contracts for construction and many types of federal contracts for services.

Some state and local laws also require that employees be provided with paid sick leave. Employers must comply with all applicable requirements.
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.
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.
Compliance Assistance
Online Resources

- Wage and Hour Division - [http://www.dol.gov/whd](http://www.dol.gov/whd)
- Resource Book - [https://www.dol.gov/whd/govcontracts/pwrb/toc.htm](https://www.dol.gov/whd/govcontracts/pwrb/toc.htm)
Local Resources

• Oklahoma City District Office
  • 405-231-4158

• Tulsa Area Office
  • 918-581-6303

• Lawton Field Office
  • 580-357-3796