

# Davis-Bacon Compliance Principles



U.S. Department of Labor  
Employment Standards Administration



# DBA/DBRA Compliance Principles

- Laborers and mechanics
- Site of the work
- Truck drivers
- Apprentices and Trainees
- Helpers
- Area Practice
- Prevailing Wages



# Laborers and Mechanics

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

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# Laborers and Mechanics

- Does Not Include:

  - Timekeepers, inspectors, architects, and engineers

    - Bona fide* executive, administrative, or professional employees as defined by the FLSA

- Working foremen are generally non-exempt and must be paid the Davis Bacon (DB) rate for the classification of work performed



# Site of the Work

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

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# Site of the Work Definition #1

- DBA applies only to workers 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

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# Site of the Work Definition #2

- “Site of the work” also includes job headquarters, tool yards, batch plants, borrow pits, etc., *provided* they are:
  - Located adjacent or virtually adjacent to the “site of the work” described in Paragraph 1 and
  - Dedicated exclusively or nearly so to the performance of the contract or project
  - Except if they are excluded by paragraph 3

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# Site of the Work Definition #3

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

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# Definition #3 (Cont'd.)

- Also not included in the “site of the work” are:
  - Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials
    - ← Before the opening of bids for a project, and
    - ← Are 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 driving on the “site of the work,” and
  - Spent loading or unloading materials and supplies on the “site of the work,” if such time is more than *de minimis*

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# 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

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# Truck Drivers

- Truck drivers are not covered in the following instances:
  - Material delivery truck drivers while off the “site of the work”
  - Truck drivers of a contractor or subcontractor traveling between a commercial facility and the Davis-Bacon job when they are off the “site of the work”
  - Truck drivers whose time spent on the “site of the work” is *de minimis* for pick-up or drop off



# Truck Drivers Owner-Operators

- DOL has an enforcement position with respect to *bona fide* owner-operators of trucks who are independent contractors (an owner-operator is a person who 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.



# Apprentices

- Are persons individually registered in a *bona fide* apprenticeship program registered with DOL or a DOL approved State apprenticeship agency
- Are individuals in their first 90 days of probationary employment as an apprentice
- DOL Regulations, 29 CFR 5.2(n)(1) and 5.5(a)(4)(i)



# Trainees

- Are persons registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by DOL's Employment Training Administration (ETA)
- DOL Regulations, 29 CFR 5.2(n)(2) and 5.5(a)(4)(ii)



# Apprentices and Trainees

- Are laborers and mechanics, but are not listed on the WD
- They are permitted to be used on covered projects and paid less than the journeyman rate when:
  - Individually registered in an approved apprenticeship or trainee program
  - Paid the percentage of hourly rate required by the apprenticeship or training program

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# Apprentices and Trainees

- Paid the FB's specified in the approved program, or the full amount of FB's listed on the WD, if the program is silent; and,
- Within the allowable ratio specified in the approved program for the number of apprentices/trainees to journeyman



# Helpers

- May be employed if:
  - Duties are clearly defined and distinct from other classifications on the WD
  - An established prevailing practice in the area,
  - Not employed in an informal training program
- May be added to WD if all the above conditions are met



# Area Practice Surveys

- Used to determine proper classification of workers on Davis-Bacon projects
- Limited Area Practice survey is acceptable when the prevailing practice is clear based upon preliminary data
- Full Area Practice Survey is necessary when preliminary data indicate varied classification practices



# Conducting a “Limited” Area Practice Survey Involving Union Rates

- Contact unions that may have jurisdiction over the work in question to determine if union workers did the work on similar projects in same county during the year prior to the lock-in date of the WD applied to the contract
- Survey each union about how workers were classified
- If the unions agree, confirmation should be obtained from the collective bargaining representatives of contractors



# Conducting a “Limited” Area Practice Survey Involving Open-Shop Rates

- Contact open-shop contractors to determine if they worked on similar projects in the same county during the year prior to the lock-in date of the WD applied to the contract
- If so, ask how workers were classified
- If all or a majority of contractors agree, the prevailing area practice is established



# Conducting a “Limited” Area Practice Survey Involving Mixed Rates

- Union and open-shop rates in the WD are involved in the area practice question
- For the classification that has a union rate, contact the appropriate union and union contractors to determine if union workers performed the work in question on similar projects in the same county during the year prior to the lock-in date of the WD applied to the contract
- For the classification that has an open-shop rate, contact open-shop contractors to determine if open-shop workers performed the work in question on similar projects in the same county during the year prior to the WD lock-in date
- If all parties, or a clear majority agree, the area practice is established



# Conducting a “Full” Area Practice Survey

- Identify similar projects in the same geographical area as the project in question that were in progress one year prior to the WD lock-in-date
- Determine what firms performed the work in question and contact those that are either open-shop or union based upon the wage rates issued in the WD
- From each firm contacted, determine the week in which the greatest number of employees performed the work in question and determine how such employees were classified and paid

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# Conducting a “Full” Area Practice Survey

- Compile the relevant information received and total the number of employees in each classification which performed the work in question
- The classification which has the clear majority (60%) of employees is the proper classification





# Wages & Fringe Benefits

- The term “wages” means:
  - The basic hourly rate (BHR)
  - Contributions *irrevocably* made by a contractor to a trustee or third party pursuant to a *bona fide* fringe benefit (FB) fund, plan, or program
  - The rate of costs the contractor may reasonably anticipate for providing *bona fide* FB’s where certain conditions are met
- FB’s are a component of the statutory definition of “wages”



# Fringe Benefits

- The WD obligation may be satisfied by:
  - Paying the BHR and FB's in cash
  - Contributing payments to a *bona fide* plan
  - Any combination of the two



# Fringe Benefits

- Must be paid weekly for all hours worked
- Cash wages paid in excess of the BHR may offset or satisfy the FB's obligation (unlike under SCA)



# Fringe Benefit Example

- **BHR** **\$10.00**
- **FB's:** **\$ 1.00**
- **Total prevailing wage** **\$11.00**
  
- **The contractor may comply by paying:**
  - **\$11.00 in cash wages**
  - **\$10.00 in cash wages plus \$1.00 in FB's**
  - **\$ 9.00 in cash wages plus \$2.00 in FB's**



# Examples of Fringe Benefits

- Life Insurance
- Health Insurance
- Pension
- Vacation
- Holiday
- Sick Leave



# Funded Fringe Benefit Plans

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



# Unfunded Fringe Benefit Plans

- May be allowed if they meet the following criteria:
  - Can be reasonably anticipated to provide benefits described in the Act
  - Represent an enforceable commitment
  - Can be carried out under a financially responsible plan
  - Have been communicated in writing to affected workers



# Annualization Principle

- Applies to benefits of a continuous nature (*e.g.*, health insurance, pension plans)
- Determines the hourly rate of contribution that is creditable against an employer's Davis-Bacon prevailing wage obligation by:
  - Dividing the total annual contributions by the total annual hours worked (both Davis-Bacon and non-Davis-Bacon work); and
  - Allocating fringe benefit credits so that Davis-Bacon work would not be used to fund benefits on private (non-Davis-Bacon) work





# Annualization

## Defined Contribution Pension Plans

- Davis-Bacon credit is based on the effective annual rate of contributions for all hours worked in a year (both Davis-Bacon and non-Davis-Bacon work)
- An exception to the annualization principle applies to plans that provide immediate participation and essentially immediate vesting (100% vesting after an employee works 500 or fewer hours). It allows full credit for the amount of contributions made on Davis-Bacon work



# Annualization Example

## Defined Contribution Pension Plan

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

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



# Annualization Example

## Medical Insurance

- Employer provides medical insurance at \$200 per month, \$2,400 a year, to an electrician on a Davis-Bacon project. WD requires \$12.00 plus \$2.50 in FB's, or \$14.50 an hour. Employee works 40 hours a week, 2,080 hours per year
  - $\$2,400 / 2,080 \text{ hours} = \$1.15$  (credit per hour)
  - No other benefit provided
  - Electrician is due: \$13.35 an hour (\$12.00 + \$1.35, *i.e.*, the remaining balance of FB's)



# INTERACTION AMONG GOVERNMENT CONTRACTS LAWS

- Contracts Requiring PCA & DBA

PCA covered contract(s) must have **more than incidental** amount of construction work

- DBA applies to construction work
- Construction includes:  
“construction, alteration and repair,  
including painting and decorating”
- *See FAR 48 C.F.R. § 22.402(b).*



# INTERACTION AMONG GOVERNMENT CONTRACTS LAWS Cont.

## PCA & DBA – Example 1

Contract for supply of security system

Davis-Bacon applies to:

- Replacement of existing conduit,
- Laying cable, and
- Tearing out and replacing walls.

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# INTERACTION AMONG GOVERNMENT CONTRACTS LAWS Cont.

## PCA & DBA – Example 2

Contract for supply and installation of modular furniture

DBA applies to:

- Bolting furniture or fixtures to floors, walls and/or ceilings,
- Modifying walls, floors and/or ceilings to accommodate shelving,
- Installing electrical connections for desk area outlets.

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# INTERACTION AMONG GOVERNMENT CONTRACTS LAWS Cont.

## PCA & DBA – Example 3

Lighting retrofit contract for supply and installation of energy-efficient lighting fixtures:

- DBA applies to installing new ballasts and/or lighting fixtures.

