

Davis Bacon Wage Rates Revised FAQ

- Do Davis Bacon Act (DBA) wage rates apply to job sites that are 5 units or above or buildings that are 5 stories or more?
 - DBA wage rates are required for laborers and mechanics operating on job sites that are 5 units and above. Davis Bacon is only required while they are on site. DBA requirements are based on the number of units and **not** the number of stories of a building.
- Are non-profit corporations subject to DBA wage rates?
 - Yes, for purposes of DBA, non-profit corporations are treated the same as for-profit corporations. Therefore, when performing work on government-funded projects, the non-profit must pay its employees the DBA prevailing wages.
- Is the Residential Construction the correct construction category for multifamily building construction/alteration/repair?
 - The answer depends upon the number of levels in the building. If the contractor will be working on a DBA covered project where the residential housing unit is 4 stories or less, the “residential construction” category is correct; however, where the multi-family building is 5 stories or more, the appropriate category is “building construction.”
- Is it true that a driver of a truck delivering equipment to a DBA jobsite is covered under DBA? What if the truck delivering equipment to jobsite is not owned by the contractor?
 - No, DBA requirements only apply to laborers and mechanics employed on the site of work. Time spent at the home office, picking up supplies, traveling to the work site, etc., are not DBA hours.
- Are energy audits and inspections subject to Davis Bacon wage rates?
 - No, energy audits and inspections are not subject to DBA wage rates.
- What is expected of subgrantees regarding enforcement, tracking, and record of Davis Bacon compliance ?
 - HCR is working to provide software and consultants to help assist with support to the subgrantees.
- Will DBA wage rates apply to the savings investment ratio (SIR) for a project?
 - No, for the purpose of calculating the SIR on Davis Bacon applicable projects subgrantees can use standard weatherization wage rates.
 - Furthermore, from [WPN 22-1](#) the following text below states :
 - “Therefore, as per WPN 10-4, for purposes of calculating cost-effectiveness, a local agency may use either the weatherization labor rates or the commercial prevailing wage for weatherization measures installed in high-rise buildings. However, in accordance with BIL requirements, prevailing wages for labor must be paid.”
- In regards to subcontractors employees, how will it be determined under which Davis Bacon category each employee doing work on BIL buildings should be classified and paid?
 - DBA wage rates are required for laborers and mechanics operating on job sites that are 5 units and above. Davis Bacon is only required while they are on site. HCR and the US DOL will also provide a screensharing of how to search for WD’s by County in NY and select an accurate WD on

www.sam.gov .

- Will there be a 15% Owner Contribution of the project cost for BIL?
 - No, it is not required for BIL, but it is encouraged for owner's to contribute. A waiver will be required to proceed without investment and please see the link [here](#) to the waiver form.

- What would happen if the incorrect wage classification was used for a project and then needed to be corrected?
 - The contractor would be compensated for any increases in wages resulting from such change. The agency shall either terminate and resolicit the contract with the valid wage determination or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order.
 - This can be found in <https://www.ecfr.gov/current/title-29/subtitle-A/part-1/section-1.6> under [29 CFR 1.6\(f\)](#)

- Is the subgrantee required to post the wage rate in the Invitation for Bid or simply list the link to the DOL? Is it the subgrantee's responsibility or the Contractors?
 - Yes, the subgrantee must inform contractors that the work will be subject to the DBA, and may either attach the wage decision in the bid documents or incorporate it by reference to the appropriate website: www.wdol.gov.

- If a wage determination is modified or superseded during the period of a contract, must the contractor change his/her rate of pay to conform to the newer wage determination?
 - No, once incorporated in a contract that calls for construction work, a wage determination generally remains effective for the life of the contract. An exception, for example, where an incorrect wage determination was applied, where the contract is amended to require significant additional construction requirements, or where a term contract provides an option for its term to be extended and such an option is exercised.

- If an employer pays DB in wages and fringe benefits, but deducts a portion of the cost of medical from employees, is the employer still in compliance with Davis/Bacon?
 - Wages under the DBA include both the cash wages and "bona fide" fringe benefits provided to laborers and mechanics. A contractor may discharge its prevailing wage obligation by any combination of cash wages and creditable "bona fide" fringe benefits. The total prevailing wage for a given classification, including any amount listed for fringe benefits, (1) may be paid entirely as cash wages, (2) payments made or costs incurred for "bona fide" fringe benefits may be credited towards fulfilling the requirement, or (3) a combination of cash wages paid and "bona fide" fringe benefits may be used together to meet the total required prevailing wage. Examples of fringe benefits include health insurance, pension contributions, and paid time off.

- Can any combination of pay and fringes be used to meet the Davis Bacon base rate? For example, if a D- B classification is \$10.00/hr base rate + \$1.00 in fringes = \$11.00, can the contractor \$9.00/hr +\$2.00 in fringes = \$11.00?
 - Yes, a combination of cash wages and bona fide fringe benefits can be used to meet the DBA rate. (The relevant DBA provision is set forth at 40 U.S.C. 3141, available at <http://www.dol.gov/whd/regs/statute/dbra.htm>. In your example above, the DBA wage determination rate is \$10/hr wage + \$1/hr fringe = \$11/hr DBA rate. The contractor can pay \$9/hr wage + \$2/hr fringe, as that equals \$11/hr in total compensation. As long as the

total compensation meets or exceeds the DBA rate of \$11/hr, then the contractor is paying

in compliance with the DBA.

- How does the DBA apply to labor performed by local government employees?
 - Local units of government are not considered by DOL to be contractors or subcontractors, and their workers are not covered by DBA. Any contracts awarded by the local government, however, must include the DBA labor clauses and applicable wage determination(s) for the contractor's employees.
- What is a certified payroll record and where can I find a copy with instructions for completing it?
 - Contractors must pay laborers and mechanics employed on the work site at least once a week. Covered employers must submit a certified payroll on a weekly basis. You find a copy of a certified payroll form (WH-347) on the Labor Department's Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347.pdf> and the instruction for completing the form is at: <http://www.dol.gov/whd/forms/wh347instr.htm>.
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Compliance Assistance Materials

Fact Sheets:

- #66 - The Davis-Bacon and Related Acts (DBRA) - <https://www.dol.gov/agencies/whd/fact-sheets/66-dbra>
- #22 - Hours Worked Under the Fair Labor Standards Act (FLSA) - <https://www.dol.gov/agencies/whd/fact-sheets/22-flsa-hours-worked>
- #17A – Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the FLSA (aka the 541 exemptions) - <https://www.dol.gov/agencies/whd/fact-sheets/17a-over-me>

www.sam.gov – Official site for General Wage Determinations (WD) – search for WDs by county and project type here.

[Prevailing Wage Seminars](#) – Recorded government contract presentations and presentation slides

[Government Contracts Toolkit](#) – includes required posters

[Forms | U.S. Department of Labor \(dol.gov\)](#)

- Form WH-347 (Certified Payroll and Statement of Compliance) - <http://www.dol.gov/whd/forms/wh347instr.htm>

Field Operations Handbook Chapter 15 -

https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch15.pdf

- See specifically Chapter 15f05 regarding Area Practice Surveys - <https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-15#B15f05>

Regulations

- 29 CFR Part 1 - <https://www.ecfr.gov/current/title-29/subtitle-A/part-1>
- 29 CFR Part 3 - <https://www.ecfr.gov/current/title-29/subtitle-A/part-3?toc=1>
- 29 CFR Part 5 - <https://www.ecfr.gov/current/title-29/subtitle-A/part-5>

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Branch of Construction Wage Determinations: <https://www.dol.gov/agencies/whd/government-contracts/state-assignments> - find contact information here for Branch Chief RhonTia Thomas-Johnson, Section Chiefs Timothy Holmes and Carola Diaz, and the Analyst assigned to New York: Raven Butler.