

**PREVAILING WAGE**  
CONFERENCES



# **Davis-Bacon Compliance Principles**



**U.S. Department of Labor**  
Wage and Hour Division



# **DBA/DBRA**

## **Compliance Principles**

- Laborers and mechanics
- Site of the work
- Apprentices Trainees  
& Helpers
- Fringe Benefits
- Federal contracts: PCA  
interaction with DBA
- Computing overtime pay



# Laborers and Mechanics

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



# Laborers and Mechanics

- Does not include:
  - Timekeepers, inspectors, architects, engineers
  - 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”



# Site of the Work Definition

- “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.



# Apprentices

- Persons individually registered in a bona fide apprenticeship program registered with DOL or a DOL approved State apprenticeship agency
- Include 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

- Persons registered and receiving on-the-job training in a construction occupation under a program that 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
- Permitted to be used on covered projects and paid less than the journeyman 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 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 or trainees to journeymen



# 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 above conditions are met; no WD class performs the work



# Wages & Fringe Benefits

- DBA: the term “wages” or “prevailing wages” includes:
  - 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
  - The rate of costs the contractor reasonably anticipates in providing bona fide FB’s where certain conditions are met



# Fringe Benefits

- Under DBA, FB's are a component “prevailing wage”
- The WD obligation may be satisfied by:
  - Paying the BHR and FB 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 BHR may count to offset or satisfy the FB obligation (unlike under SCA)



# Fringe Benefit Example

■ BHR	\$10.00
■ <u>FB</u>	<u>\$ 1.00</u>
■ Total prevailing wage	\$11.00

■ The contractor may comply by paying:

- \$11.00 in cash wages
- \$10.00 in cash wages plus \$1.00 for FB
- \$ 9.00 in cash wages plus \$2.00 for FB



# 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

- Costs for an “unfunded” FB plan count towards WD obligation if specific following are met:
  - Costs reasonably anticipated to provide bona fide FB
  - Pursuant to an enforceable commitment
  - Carried out under a financially responsible plan
  - Has been communicated in writing to affected workers



# Discharging DB

## Prevailing Wage Obligation

- If WD requires a prevailing wage of \$14.50 (\$12.00 BHR plus \$2.50 in FB's), the contractor can comply by paying:
  - \$14.50 in cash wages; or
  - \$12.00 plus \$2.50 in bona fide FB; or
  - \$11.00 plus \$3.50 in bona fide FBs



# Computing Overtime Pay (CWHSSA Earnings)

An employee worked 44 hours as electrician,  
 where WD BHR is \$12.00 plus \$2.50 in FB's:

44 hours FB's	X	\$ 2.50	=	\$110.00
44 hours BHR	X	\$12.00	=	\$528.00
<u>4 hours</u> <u>OT</u>	X	\$12.00/2	=	<u>\$ 24.00</u>
				\$662.00



# Overtime Computation where Employee Employed at Two Rates

During a workweek an employee works 20 hours as an Electrician at \$12.00 BHR plus \$2.50 in FB's and as a Painter for 24 hours at \$10.00 BHR plus \$3.00 in FB's.

The regular rate for determining the Overtime rate is:

$$20 \times \$12.00 = \$240.00 \text{ (as Electrician)}$$

$$24 \times \$10.00 = \underline{\$240.00} \text{ (as Painter)}$$

$$\$480.00/44 = \$10.91$$

$$\text{Overtime due: } \$10.91 \times 1/2 \times 4 \text{ hours} = \$21.82$$



# **INTERACTION AMONG GOVERNMENT CONTRACTS LAWS**

## ■ Federal contracts requiring PCA & DBA

- PCA covered contract has **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.



# **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.





# **Interaction of Labor Standards Statutes on Federal Government Contracts**

## **SCA interaction with DBA & PCA**





# **SCA or DBA ?**

## **General Principles**



# Contracts Requiring SCA or DBA

- SCA does not apply to any contract principally for construction subject to the DBA
- “Construction” under the DBA includes “construction, alteration, and repair, including painting and decorating”



# SCA Maintenance vs. DBA Repair

- SCA Maintenance – Work is typically
  - Scheduled, regular and recurring maintenance activities
  - Routine to keep something in state of continuous utilization
  - Examples: custodial service, routine HVAC filter changes, snow removal



# DBA Repair Work

- Typically covers activities such as restoration of facility
  - One time fix to something not functioning
  - Restoration, alteration or replacement of fixed components
  - Examples: building structural repair, renovation, roof shingling, paving repairs



# Important Considerations for DBA vs. SCA Coverage

- DBA-covered when activity part of construction contract
  - Performed prior to acceptance by owner
  - Examples of activities:
    - Cleanup
    - Landscaping
    - Carpet laying
    - Drapery installation



# Important Considerations for SCA Coverage

- SCA-covered when activity is scheduled routine maintenance and upkeep
  - Examples:
    - Replace worn-out carpeting
    - Janitorial work
    - Mowing grass
    - Replace draperies



# **DBA or SCA - Demolition Work (29 C.F.R. § 4.116(b))**

- DBA-covered if subsequent construction of public building or public work is planned at the site as part of same contract or contemplated as part of future construction project
- SCA-covered if subsequent construction is not contemplated
- AAM # 90 provides further discussion



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# **SCA Contracts with DBA Segments**



**U.S. Department of Labor**  
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## **Contracts Requiring SCA and DBA (29 C.F.R. § 4.116(c)(2))**

- SCA and DBA both apply to contracts “principally” for services that:
  - Contain specific requirements for substantial amounts of construction, alteration, or repair work
  - Physically or functionally separate from other work called for by the contract



## Contracts Requiring SCA and DBA (29 C.F.R. § 4.116(c)(2))

- SCA contracts that require **substantial** and **segregable** amounts of construction activity must include the DBA
  - **Substantial**: the type and quantity of construction work, not merely dollar value
  - **Segregable**: construction work is physically and functionally separate



## **Example: Contract for Food Services includes painting requirements**

- Federal contract for furnishing food services includes requirements to paint cafeteria and kitchen:
  - SCA-covered, as principally to provide food services through the use of service employees
  - Construction activity (*i.e.*, painting) is DBA-covered



# **Example: DOD Base Maintenance & Operation Contracts**

- Are principally for services, but often require substantial and segregable construction work:
  - Painting or repainting of base housing
  - Refinishing floors
  - Reroofing buildings
- If unclear whether SCA/DBA coverage applies to work element, contact contracting officer



# **SCA & DBA – Contract Work Orders**

- Questions can arise on whether work required by work order, task order, or service call is:
  - SCA maintenance, or
  - DBA painting/repairs
- Individual task or work orders are not to be split to avoid DBA coverage



# **SCA & DBA – Contract Work Orders DOD guidance (DFARS – 48 C.F.R. 222.402-70(d)(1)&(2)**

- If distinction between SCA maintenance & DBA repair (other than painting) is unclear:
  - SCA if service call or order will require less than 32 work hours
  - DBA if 32 or more work hours



# **SCA & DBA – Contract Work Orders**

## **DOD guidance (DFARS – 48 C.F.R. 222.402-70(d)(3))**

- If distinction between SCA maintenance & DBA painting unclear:
  - DBA if 200 square feet or more of painting work is to be performed under a service call or task order
  - Regardless of total work hours



# Coverage Determination

## SCA/DBA/PCA

- Contracting agency has initial responsibility for determining coverage
- DOL has authority for final determination on coverage
- Final rulings may be appealed to the Administrative Review Board (ARB)





# **(Non)Compliance Monitoring**

What to look for and how to find it ... (Davis-Bacon payrolls)



# Payroll reviews...

- Ensure all laborers and mechanics paid no less than required based on:
  - Type of work performed
  - Hours worked, including any overtime
- Monitoring for violations, not compliance



# Types of violations...

- Face of the record
  - Inadvertent
  - Easily resolved
  - If early, not too costly
- Concealed (falsification)
  - Willful
  - Independent validation / investigation
  - Bigger bucks / bigger impact



## Why DOL?

- Resources
- Trained investigators
- Broader scope of authority
- Potential for debarment

Besides....

- We've got something they don't have



# Compliance Factors

- Type of work performed (classification)
- Number of hours worked (straight time and overtime)
- Wage rate for the classification
- Actual payment to the worker



# Spot-Check Payrolls

- Review for major trades
- Detect patterns
- Compare on-site interviews
- Focus on falsification
- Ensure corrections, as needed



## 1<sup>st</sup> things 1<sup>st</sup>...

- Sort by employer / arrange by date
- Check the signature
- Check the data
- If not, require resubmission – never return payrolls for correction



## Next steps...

- Face of the record
  - Work classifications / pay rates
  - Hours
  - Apprentices / trainees
  - Require corrections if needed
  - Restitution on correction certified payroll



## **A closer look...**

- Concealed violations
  - Misclassification
  - Reduced hours
  - Deficient rates of pay
  - Unauthorized deductions
  - Kickbacks



# Payroll Falsification Indicators

- Payroll data are simple
- Patterns over time
- Anomalies / mistakes
- What's false / what's true?



## **Ratio >1:1...**

### ■ Example:

- 10 Laborers : 2 Electricians



## **Ratio >1:1?**

- Misclassification
  - Possible exceptions: Landscaping; cement; paving
- What is false / what may be true



# Too few / irregular hours...

## ■ Examples:

- No 40 hour workweeks
- Crew doesn't work together
- Hours reported in 10<sup>th</sup> or 100<sup>th</sup> fractions



## **Too few / irregular hours?**

- Reduction of hours / backing into hours
- Hours reduced to fit fabricated calculation
  - Earnings ÷ WD rate = false hours
- What is false / what may be true



# No 40-hour workweeks...

- W/D: \$20/hour
- Er pays: \$10/hour
- Actual: 40 hours x \$10 = \$400  
\$400 ÷ \$20 = 20 hours
  
- P/R shows: 20 Hours x \$20 = \$400



## Hours in 10ths / 100ths...

- W/D: \$33.68/hour
- Er pays: \$17.50/hour
- Actual: 40 hours x \$17.50 = \$700

$$\$700 \div \$33.68 = 20.78(384\dots) \text{ hours}$$

- P/R shows: 20.78 hours x \$33.68 = \$700



# Computation discrepancies...

## ■ Examples:

- Hours x rate of pay  $\neq$  gross earned
- Round gross earned from uneven DB wage rates



# Computation discrepancies?

- Insufficient hourly rate / piece work
- Er disregards math to match gross earnings / net pay
- What is false / what may be true



# Math doesn't work...

- W/D: \$33.68/hour
- Er pays: \$17.50/hour
- Actual: 40 hours x \$17.50 = \$700
- P/R shows: 20 hours x \$33.68 = \$700
- BUT: 20 x \$33.68 ≠ \$700

$$20 \text{ hours} \times \$33.68 = \$673.68$$



# Extraordinary deductions...

- Examples:
  - Unidentified / disproportionate deductions
  - Savings / other deduction  $\geq$  take home pay



# Extraordinary deductions?

- Kickback
- Er takes “cut” from the back end
- What is false / what may be true



## **Compliance excess...**

- Employer submits unrequired / unrequested documents
- Employer submits employee “labor releases”



# Worker complaint...

- All manner of underpayment / falsification schemes
  - Employer pays in cash
  - Employer “cashes” pay checks
  - “Ghost” employees



## On-Site Interviews

- Validate / test payroll data (inspector's observations / employee perspective)
- Develop complaints / substantiate suspected violations
- Target interviews
- Get a “good” story – focus on suspect activity



## Next steps...

- Validate suspected violations
  - What happened / what do you need
  - How much restitution / LDs
- Contact Federal funding agency / DOL?
- Request employee addresses / SSNs
  - Send questionnaires (customize – what’s false/what’s true)
- Target on-site interviews



## More steps...

- Assess the data
- Estimate restitution / CWHSSA L/Ds
- Consider withholding



# Then what?

- Informal consultation
  - Nature of the violations
  - Scope of violations
- Send summary / documents
- Cooperate / ensure withholding
- Monitor for non-compliance



## At any point...

- Contact the Federal funding agency / DOL if:
  - You have any questions
  - Need assistance
  - There is any suggestion that kickbacks are involved



# Resources...

- DOL Wage and Hour Division
  - <http://www.dol.gov/whd>
  - <http://www.dol.gov/whd/recovery>
- HUD Office of Labor Relations
  - <http://www.hud.gov/offices/olr>
- Wage Determinations On-Line
  - <http://www.wdol.gov>





# **CERTIFIED PAYROLLS**

**(Weekly Payrolls and Statements of  
Compliance)**

**29 CFR 5.5(a)(3) and FAR 22.406-6**



**U.S. Department of Labor**  
Wage and Hour Division



# Certified Payrolls

- Certified payrolls include the following information:
  - Name and worker's classification
  - Hourly rates of pay (including the rates of contributions or costs anticipated for bona fide fringe benefits, or cash equivalents paid for the benefits)
  - Daily and weekly number of hours worked
  - Deductions made
  - Actual wages paid



# Certified Payrolls

- Full social security numbers and home addresses of each worker shall not be included on the payroll records submitted to the agency
- Instead, an individually identifying number for each employee should be used. The last four digits of the employee's social security number are recommended
- The prime contractor must maintain addresses and social security numbers for all workers and provide them, on request, to the contracting agency or WHD



# Certified Payrolls

- Contractors must submit payroll records weekly for each week in which any contract work is performed within 7 calendar days of the payment date
- The prime contractor is responsible for submission of payrolls by all subcontractors



# Certified Payrolls

- Payroll Form 347 (For Contractors Optional Use) may be used for certified payroll records, but the required information can be submitted in any form desired
- Each payroll report must contain a Statement of Compliance signed by the contractor or subcontractor, or its authorized agent, who pays or supervises the payment of the covered workers



# Certified Payrolls

- Federal agencies receiving the payroll reports and Statements of Compliance must retain them for three years from the date of the completion of the contract and produce them at the request of WHD at any time during the three year period
- Contract funds may be withheld for nonsubmission of certified payrolls (FAR 22.406-6(b))
- Certified payroll reports are agency records as defined by the Freedom of Information Act (FOIA) (FAR 22.406-6(e))



# Certified Payrolls

- A response to a FOIA request for certified payroll information is a matter within the administrative jurisdiction of the federal agency holding the requested records, and should be made in compliance with the applicable terms and conditions of the FOIA
- The requirements of the FOIA include the obligation on the part of the agency to respond to requests for records within 20 days of receipt and advise the requesting party whether it will comply with the request and the reasons supporting the agency determination



# Certified Payrolls

- Certified payrolls may be submitted electronically with proper use of electronic signatures
- Electronic certified payrolls reduce processing and storage costs, assist in compliance monitoring, and expedite responses to FOIA requests
- Submitting certified payrolls by use of a fax machine does not satisfy the electronic signature requirement



# PREVAILING WAGE CONFERENCES



## Wage Determinations OnLine.gov

Providing public access to federal wage determinations and related information.

WDOL.gov is part of the Integrated Acquisition Environment, one of the E-Government initiatives in the President's Management Agenda. It is a collaborative effort of the Office of Management and Budget, Department of Labor, Department of Defense, General Services Administration, Department of Energy, and Department of Commerce.

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Service Contract Act	Davis-Bacon Act	Related Information
<ul style="list-style-type: none"><li>▪ <a href="#">Selecting SCA WDs</a></li><li>▪ <a href="#">e98</a></li><li>▪ <a href="#">Archived WDs</a></li><li>▪ <a href="#">WDs due to be revised</a></li><li>▪ <a href="#">PACT (Price Adjustment Calculation Tool) <b>NEW!</b></a></li></ul>	<ul style="list-style-type: none"><li>▪ <a href="#">Selecting DBA WDs</a></li><li>▪ <a href="#">Archived WDs</a></li><li>▪ <a href="#">WDs due to be revised</a></li></ul>	<ul style="list-style-type: none"><li>▪ <a href="#">Agency Labor Advisors</a></li><li>▪ <a href="#">Library</a></li><li>▪ <a href="#">DOL Wage and Hour Website</a></li></ul>

### 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 well. Guidance in selecting WDs from this website is provided in the WDOL.gov User's Guide.

Alternatively, the WDOL.gov Program also provides contracting officers direct access to the Department of Labor's (DOL's) "e98" website to submit a request for SCA WDs for use on official contract actions. In some instances, the WDOL.gov Program will not contain the appropriate SCA WD, and contracting officers will be directed to use DOL's e98 website in order to obtain the required SCA WD. DOL will provide the contracting officer with an SCA WD through the e98 system.

### News and Updates...

» **NEW!** The Department of Labor Wage and Hour Division is happy to announce the 2011 Prevailing Wage Conference Schedule:  
[Melbourne, FL: May 10-12](#)  
[New York City, NY: May 24-26](#)  
[Phoenix, AZ: July 12-14](#)  
[Denver, CO: August 2-4](#)  
[Las Vegas, NV: August 16-18](#)  
Please [CLICK HERE](#) for additional Prevailing Wage Conference general and registration information. You may also click on each individual conference location listed above for additional information.



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# PREVAILING WAGE CONFERENCES



## FAR Supplements and Other Acquisition Regulations

- Department of Agriculture
- Department of Defense
- Department of the Air Force
- Department of the Army
- Department of the Navy
- Department of Energy
- Department of Housing and Urban Development
- Department of the Interior
- Department of Labor
- Department of State
- Department of Transportation
- Department of Treasury (PDF)
- Environmental Protection Agency
- General Services Administration
- National Aeronautics and Space Administration
- Nuclear Regulatory Commission
- U.S. Postal Service (PDF)

## Sites Relating to Labor Standards and Compliance Requirements

- Significant All Agency Memoranda Issued by DOL **Updated**
- Davis-Bacon Act
- Service Contract Act
- Employment Laws Assistance for Workers and Small Businesses
- Office of the DOL/Administrative Law Judge (Wage Appeal Board Decisions) and (Administrative Review Board Decisions and Library)
- DBA - Information on Apprentices and Trainees
- DOL Approved State Apprenticeship Agencies
- DOL Prevailing Wage Resource Book (Updated)

- General Schedule (GS) Rates
- Acquisition Network
- Chief Acquisition Officers Council
- USA.gov
- FedBizOpps
- National Technical Information Service
- Office of Labor Relations, U. S. Department of Housing and Urban Development
- Questions pertaining to contract or labor relations or disputes, contact your agency labor advisor.
- Federal Procurement Dollars: A Federal Procurement Data System Snapshot of Actions Subject to the Service Contract Act and the Davis-Bacon Act (Microsoft Powerpoint) **Updated**

- SF308 (217 KB, PDF) - Request for DBA Project Wage Determination: For contracting officers to use in requesting Project WD under DBA per FAR 22.404-3 and Title 29 CFR Part 1.5
- Cross Index for Labor Standards: Cross-walk from Title 29 CFR to FAR (Title 41 CFR)

## Conformances

- SF1444 - Request for Authorization of Additional Classification and Rate (87 KB, PDF)

### Procedures:

- Conformances under the Service Contract Act
- Conformances under the Davis-Bacon Act



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## Useful Web Links:

- Wage Determinations Online - <http://www.wdol.gov/>
- Instructions Completing WH-347 - <http://www.dol.gov/whd/forms/wh347instr.htm>
- WH-347 Blank Form - <http://www.dol.gov/whd/forms/wh347.pdf>
- Wage and Hour Division's Davis-Bacon Act Page - <http://www.dol.gov/whd/contracts/dbra.htm>



# Disclaimer

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# PREVAILING WAGE CONFERENCES



# Q & A



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