



U.S Department of Labor

WAGE & HOUR DIVISION

Corey Walton

U.S. Department of Labor

Wage-Hour Division

Minneapolis, MN District Office



U.S. Department of Labor
Wage and Hour Division



Laws Enforced by WHD

- Fair Labor Standards Act
- Family and Medical Leave Act
- Davis Bacon and Related Acts
- Service Contract Act
- Polygraph Protection Act
- Wage Garnishment
- Temporary Worker Programs



How Our Laws Help

- **Payment of minimum wages and overtime**
- **Standards for employing youth**
- **Job protections for time taken for the birth of a child or caring for sick family members**
- **Housing and transportation standards for farm workers**
- **Payment of prevailing wage rates for federally funded construction and service contract work**
- **Standards for hiring and paying workers temporarily in the U.S.**



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
- Truck drivers
- Apprentices Trainees & Helpers
- Area Practice
- 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



Selecting Proper WD (29 CFR 1.5)

- Location of the construction project
- Type of construction
- Current Wage Determination



Selecting & Incorporating Proper WD (Construction Type - AAM 130)

- Building
- Residential
- Highway
- Heavy



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



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



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:

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

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

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

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



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



Certified Payroll Reports



U.S. Department of Labor
Wage and Hour Division



WHD
U.S. Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)



Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	OMB No.: 1235-0008 Expires: 01/31/2015
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PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
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(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT	OR	ST	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
						HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS		
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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)(ii) 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



McNamara-O'Hara Service Contract Act (SCA)



Elements of SCA Coverage

(29 C.F.R. §§ 4.107, 4.108 & 4.110)

- Contracts entered into by Federal Government and District of Columbia
- Contracts principally for services
- Contracts performed in the U.S.
- Contracts performed through the use of service employees



Contracts to Furnish Services **(29 C.F.R. §§ 4.111 & 4.130)**

- Examples of service contracts:
 - Security and guard services
 - Janitorial services
 - Cafeteria and food services
 - Support services at Federal installations



Use of “service employees” (29 C.F.R. § 4.113)

- Section 8(b) of SCA defines service employee as:
 - Any person engaged in performance of contract, except
 - Employees who qualify for exemption as *bona fide* executive, administrative or professional employees under the FLSA (29 C.F.R. Part 541)
- Employee coverage does not depend on contractual relationship (29 C.F.R. § 4.155)



SCA Compliance Principles

- Payment of wages and fringe benefits
- *Bona fide* Fringe Benefit Plans
- Health & Welfare Fringe Benefits
- Paid Vacation Fringe Benefits
- Paid Holiday Fringe Benefits
- Equivalent Fringe Benefits
- Temporary & Part-time employment



Payment of Wages (29 C.F.R. § 4.165)

- Wages established by wage determination, otherwise FLSA minimum wage
- Calculated on fixed and regularly recurring workweek of 7 consecutive 24-hour workday periods
 - Payroll records kept on this basis
 - Bi-weekly or semi-monthly pay periods if advance notice



Payment of Fringe Benefits

- Cash payments in lieu of fringe benefits (FBs) must be paid on regular pay date (29 C.F.R. § 4.165(a))
- Payments into *bona fide* FB plans must be made no less often than quarterly (29 C.F.R. § 4.175(d))
- FB costs may not be credited toward wage requirements (29 C.F.R. § 4.167)



Discharging Minimum Wage & Fringe Benefit Obligations

Under SCA, the contractor may not credit excess wage payment against the FB obligation:

Wage Determination:		Employee Paid:	
Wage	\$10.25	Wage	\$12.00
FB	\$ 3.35	FB	\$ 1.60
<hr/>		<hr/>	
Total	\$13.60	Total	\$13.60



Computation of Hours Worked (29 C.F.R. §§ 4.178-4.179 & Part 785)

- Determined under the FLSA pursuant to 29 C.F.R. Part 785
- Includes all periods in which employee is “suffered or permitted” to work
- Hours work subject to SCA are those performed on covered contracts
- Must keep affirmative proof of time spent on covered and non-covered work in a workweek



Wage Payments for Work Subject to Different Rates

- Employee must be paid -
 - Highest rate for all hours worked, unless
 - Employer's payroll records or other affirmative proof show periods **spent in each class of work**
- Applies when employee works part of workweek on SCA-covered and non-SCA-covered work



Fringe Benefits Plans

(29 C.F.R. § 4.171(a)(2))

- Provide benefits to employees on account of:
 - Death
 - Disability
 - Advanced age
 - Retirement
 - Illness
 - Medical expenses
 - Hospitalization
 - Supplemental unemployment benefits



Health and Welfare (H&W) Fringe Benefits

- Three types of FB requirements:
 - “Fixed cost” per employee benefits
 - “Average cost” benefits
 - Collectively bargained (CBA) benefits
- Types and amounts of benefits and eligibility requirements are contractor’s prerogative



“Fixed Cost” Benefits (29 C.F.R. § 4.175(a))

- Increased to \$3.50 per hour June 22, 2010
 - Included in all “invitations for bids” opened, or
 - Other service contracts awarded on or after June 22, 2010
- Required to be paid “per employee” basis
 - **For ALL HOURS PAID FOR** up to 40 hours in a workweek, and 2,080 hours a year
 - Includes paid leave and holidays



Holiday Fringe Benefits

(29 C.F.R. § 4.174)

- Employee entitled to holiday pay if works in the holiday workweek
- Employee not entitled to holiday pay if holiday not named in WD (*i.e.*, government closed by proclamation)
- Paid holidays can be traded for another day off if communicated to employees



Equivalent Fringe Benefits

(29 C.F.R. § 4.177)

Contractor may dispose of FBs:

- By furnishing the benefits listed in WD, or
- Furnish equivalent combinations of *bona fide* FBs, or
- Make equivalent cash payments
 - Equal in cost
 - Separately stated in employer's record
 - Not used to offset wage requirements



Furnishing Cash Equivalents

(29 C.F.R. § 4.177(c))

- For FBs listed in weekly amounts (\$60), divide amount by hours worked (40):
 - $\$60/40 \text{ hours} = \1.50 per hour

- For FBs listed in non-cash amounts (one week paid vacation), multiply wage (\$10) by vacation (40 hours) and divide by annual non-overtime hours (2080 hours):
 - $\$10 \times 40 \text{ hours} = \$400/2080 \text{ hours} = \0.19 per hour



Part-time Employees

(29C.F.R. § 4.176)

- Entitled to proportionate amount
- Maximum: Vacation/Holidays = 40/8 hours
- Part-time employee works 20 hours per week:
 - Entitled to $\frac{1}{2}$ week of vacation, or 20 hours
 - Entitled to $\frac{1}{2}$ holiday pay, or 4 hours
 - Must receive full amount of H&W FBs

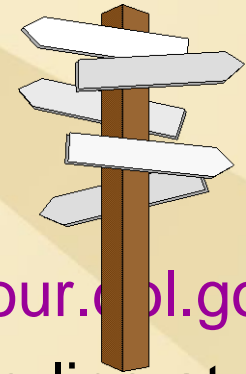


Disclaimer

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ADDITIONAL INFORMATION



- Visit the WHD homepage at: www.wagehour.dol.gov
- Call the WHD toll-free information and help-line at **1-866-487-9243**
- Use the DOL interactive advisor system - **ELAWS** (Employment Laws Assistance for Workers and Small Businesses) at: www.dol.gov/elaws
- Call or visit the nearest Wage and Hour Division Office

