

# Federal Labor Standards Training

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# Overview

- » **Basics of Prevailing Wage Requirements**
  - **Federal Statutes**
  - **Applicability**
  - **Making Davis Bacon Work**
    - **Requirements**
    - **Responsibilities**
  - **Enforcement/Compliance**

# Major Federal Labor Statutes

- » **Davis-Bacon and Related Acts (DBRA)**
- » **Copeland Act (Anti-Kickback Act)**
- » **Contract Work Hours and Safety Standards Act (CWHSSA)**
- » **Fair Labor Standards Act (FLSA)**

# Davis-Bacon Act (DBA)

- » **Enacted in 1931, amended in 1935 & 1964**
- » **Federal construction contracts over \$2,000**
- » **Applies to construction, alteration and/or repair including painting & decorating of public buildings or public works contracts**
- » **Requires pay of prevailing wages to all laborers and mechanics employed on site – regardless of any alleged contractual relationship**

# Davis Bacon Act (DBA)

- » **Requires weekly pay to mechanic and laborers**
- » **Requires posting of applicable wage decision**
- » **Defines prevailing wage to include fringe benefits**
- » **Permits withholdings from contractors' payments for wages due**

# Davis Bacon Act (DBA)

- » **Permits payment of wage restitution from withheld amounts**
- » **Permits contract termination**
  - contractor continually underpays mechanic and laborers
- » **Permits debarment of persons or firms**
  - Disregard for obligations to employees and subcontractors
- » **Usually applied through the “Related acts”**

# Davis Bacon and Related Acts (DBRA)

- » **The Davis Bacon Act is applicable to HUD programs by statutory provisions in HUD related Acts, known as Davis Bacon Related Acts (DBRA)**
  - **The National Housing Act**
  - **U.S. Housing Act of 1937, as amended**
  - **The Housing and Community Development Act of 1974, as amended**
  - **The National Affordable Housing Act of 1990**

# Copeland Anti-Kickback Act

- » **Enacted in 1934**
- » **Makes it a criminal offense for contractors to demand workers give up any part of earned wages**
- » **Requires the submission of:**
  - **Weekly Certified Payrolls**
  - **Statement of compliance (with each payroll)**
- » **Allows for civil or criminal prosecution for the “willful” falsification of payrolls**
- » **Regulates payroll deductions from wages**

# **Contract Works Hours and Safety Standards Act (CWHSSA)**

- » **Enacted in 1962**
- » **Applies to contracts of over \$100,000**
  - **Contract Amount – Prime Contractor**
- » **Overtime provision – work in excess of 40 hours per week for covered project**
- » **Liquidated damages – \$25 per day, per worker, per violation**

# Fair Labor Standards Act (FLSA)

- » **Sets the Federal minimum wage and additional overtime requirements**
- » **Overtime applies to mechanical and laborers working in excess of 40 hours per week.**
  - **If CWHSSA does not apply, FLSA does**
  - **DOL enforces FLSA and investigates any violations**

# Davis-Bacon Applicability

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# Davis-Bacon Applicability

- » **Davis Bacon applicable to CDBG through Related Acts**
  - **Housing and Community Development Act of 1974, Section 110(a)**
- » **Davis-Bacon applies when federal funds are used to pay for construction contracts of more than \$2,000 in whole or in part**

# Davis-Bacon Applicability

- » **Residential: the property has 8 or more units**
  - **Property is defined as one or more buildings on an undivided lot or contiguous lots or parcels that are commonly owned and operated as one rental, cooperative, or condominium project**

# Exceptions - CDBG

- » **In certain rare cases, Grantee can pay for non-construction costs without triggering Davis-Bacon**
- » **Demolition, except:**
  - **If subsequent construction on site is planned as part of the same contract**
  - **If subsequent construction is contemplated as part of a future construction project under another eligible activity**

# Exceptions - CDBG

## » Volunteer labor

### – Specific record keeping and tracking required

- the name and address of the agency sponsoring the project
- a description of the project
- the number of volunteers
- the names of the volunteers
- the hours of work they performed
- the type of work performed by the volunteers.

## » Employees of recipient

### – Force account labor

# Making Davis-Bacon Work

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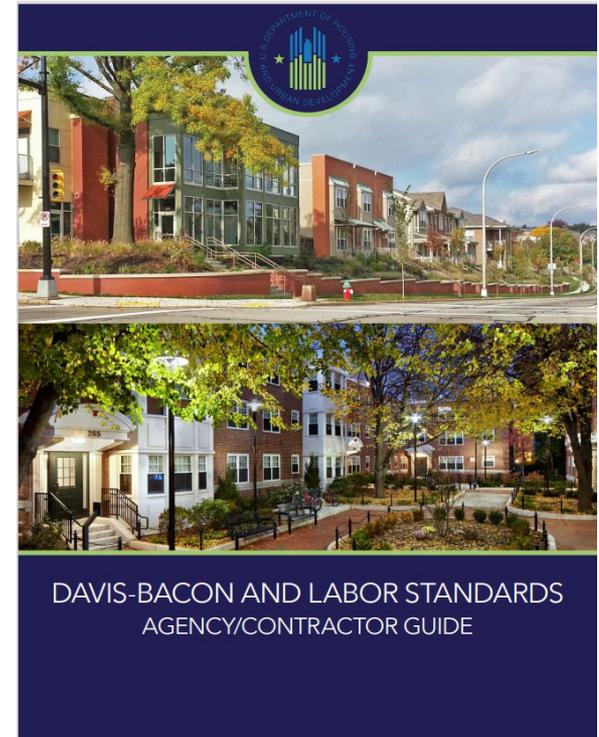
# Labor Standards Compliance Resources

## » CDBG Management Guide

- [www.iowaeda.com/cdbg/management-guide/](http://www.iowaeda.com/cdbg/management-guide/)
  - Chapter 2
  - Appendix 2
  - Required contract language

# Labor Standards Compliance Resources

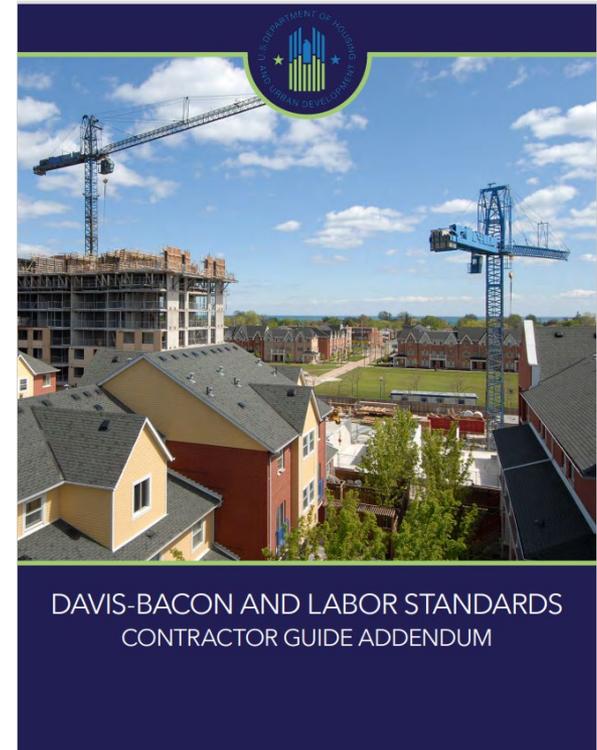
## » Davis-Bacon and Labor Standards Agency/Contractor Guide



[Davis-Bacon and Labor Standards: Agency/Contractor Guide \(hudexchange.info\)](http://hudexchange.info)

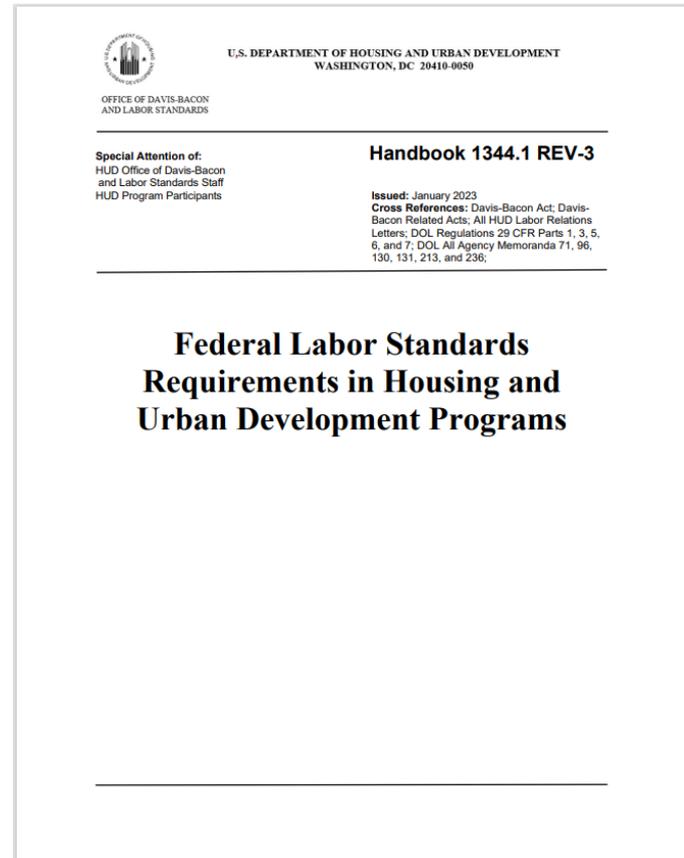
# Labor Standards Compliance Resources

## » Davis-Bacon and Labor Standards Contractor Guide Addendum



[Davis-Bacon and Labor Standards: Contractor Guide Addendum\(hudexchange.info\)](http://hudexchange.info)

# Labor Standards Compliance Resources



» HUD Handbook 1344.1 Rev.3

[www.hud.gov/program\\_offices/administration/hudclips/handbooks/sech/13441](http://www.hud.gov/program_offices/administration/hudclips/handbooks/sech/13441)

# Making Davis Bacon Work

- » **Job Sites – Safety, Required Postings**
- » **Interviews (on-site workers) – HUD Form 11**
- » **Review of Certified Payrolls – Receive weekly**
- » **Statement of Compliance – all blocks must be completed**
- » **Required Reporting – Enforcement Reports**

# Making Davis Bacon Work

- » **Designate an individual for compliance monitoring**
  - **Grant recipient is ultimately responsible for overall compliance**
  - **Prime/general contractor is responsible for full compliance of all subcontractors and lower-tier contracts**

# Grantee Responsibilities

- » **Ensure bid documents, contracts and subcontracts contain Federal Labor Standards Provisions (HUD-4010)**
- » **Ensure bid documents, contracts and subcontracts contain applicable wage determination**
- » **Review certified payroll reports (CPR's) and confirm discrepancies through employee field interviews**

# Obtain A Wage Determination

- » Request prior to bid advertising date
- » Submit request in IowaGrants
- » Contact IEDA for modifications to wage determination
  - at least 10 days prior to bid opening
    - Do not submit a request for 10-day check in IowaGrants system
- » Wage determination must be included in all bid documents

# Contractor Eligibility

## After bid letting:

- » **Verify eligibility status of contractors**
  - Debarred/Suspended List
    - SAM.gov
  - Contractor registration number
    - [Contractor Registration | Iowa Division of Labor](#)
- » **Inform contractor of his/her responsibilities**
- » **Required contract language in all contracts**
- » **Request additional classifications, if needed**

# Additional Classifications

- » **Classification not found on wage determination**
- » **Submit request through IowaGrants with contractor's proposed rate of pay**
- » **Department of Labor makes final decision**
- » **All Agency Memorandum (AAA No. 213)**
- » **Proposed rates must bear a "Reasonable Relationship"**

# Enforcement and Compliance

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# Required Job Site Postings

## » Davis Bacon Poster

- Obtain English and Spanish versions
- Post signs so that all can see
- Include Authority's compliance officer's contact information in the contact block of these posters
- Post in a highly visible area protected from the weather elements that is easily accessible and traveled by most workers working at the job site

» Whose name is added to the poster as the compliance officer for reporting violations?

# Required Job Site Postings

## » Project Wage Decision

- Approved DOL conformance / additional classifications

## » Other DOL Required Posters

- EEO
- FLSA
- OSHA
  
- DOL website : [www.dol.gov/agencies/whd/posters](http://www.dol.gov/agencies/whd/posters) – posters are available for downloading

# Examine Weekly Payrolls

- » **Proper classification, including group letter (when applicable)**
- » **Proper wage for work performed**
- » **Check calculations**
- » **Verify method of payment for fringe benefits**
- » **All forms must be certified (signed)**
- » **Original signed payroll reports are required (no copies)**

**PAYROLL**

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



Rev. Dec. 2008

OMB No.: 1235-0008  
Expires: 07/31/2024

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	OMB No.: 1235-0008 Expires: 07/31/2024
---------------------------------------------------------------------------------------	---------	-------------------------------------------

PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
-------------	-----------------	----------------------	-------------------------

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING CAPTIONS	(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)(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

Date

I, \_\_\_\_\_  
(Name of Signatory Party)

\_\_\_\_\_ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the  
(Contractor or Subcontractor)

\_\_\_\_\_ ; that during the payroll period commencing on the  
(Building or Work)

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ from the full  
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAME AND TITLE	SIGNATURE
_____	_____

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 3729 OF TITLE 31 OF THE UNITED STATES CODE.

# On-site Interviews

- » **Form HUD-11**
- » **Ensure proper classification**
- » **Observe duties on-site – must match classification**
- » **Verify the stated wage conforms to weekly payroll form**

# On-site Interviews

- » **Ensure the following items are posted at work site in prominent location:**
  - Wage determination
  - Federal Labor Standards Provisions (HUD 4010)
  - Labor posters

# Review for Compliance

- » **Cross reference employee interview forms with weekly payrolls**
- » **Note any discrepancies**
- » **Contact the contractor to resolve any issues**
- » **Obtain sufficient documentation for any wage restitution issues**

# Enforcement

- » **Payroll & Document Review**
- » **Employee Interviews**
- » **Additional Classifications/Conformances**

# Enforcement

- » **Establish enforceable procedures/processes**
  - Share with applicable entities
- » **Identify and document violations**
- » **Notify the contractor (in writing)**
- » **State date for completion**

# Enforcement

- » **Investigate and resolve complaints**
- » **Look for payroll red flags**
  - **Mis-classifications**
    - Apprentices
  - **Laborers v. skilled workers**
    - Cement mason/concrete finishers
    - Plumbers
  - **Not enough employees**
  - **Ghost employees**

# Enforcement

- Same hours, same rate of pay, same gross, same net
- Non-allowable deductions
- “Other” deductions listed but no authorization
- » **Ensure restitution, if any, is paid timely**
- » **Pursue debarment, if necessary**
  - Refer to HUD for debarment and or restrictions
- » **Determine other action, if necessary**

# Potential Problem Areas

# Self-employed Owners

- » **Owners of a subcontractor firm who are themselves performing work of laborers and mechanics are entitled to the applicable prevailing wage rate for the classification of the work performed**
- » **Include in the sub-contract:**
  - **the total hourly prevailing wage rate for the trade, and**
  - **The estimated number of hours for job completion**

# Self-employed Owners

- » **HUD Office of Labor Relations Letter (LR-96-01)**
  
- » **Owners working by themselves**
  - Carried on the responsible employer's weekly payroll
  - Payroll report must include:
    - name
    - work classification
    - actual hours of work
    - effective hourly rate
    - amount paid

# Self-employed Owners

- » **Owners working with their crew**
  - **Can certify payroll report**
  - **Payroll report must include:**
    - **name**
    - **work classification including “owner”**
    - **daily and total hours worked**
  - **Do not need to list a rate of pay or amounts earned**

# Use of Apprentices

## » Apprentices

- Workers classified as apprentices can work at a rate of pay lower than the prevailing wage rate

## » Require the following:

- Individual registration for the apprentice
- Relevant pages from DOL approved apprenticeship program
  - Title page (shows name of the program)
  - Page reflecting ratio of apprentices to journeyman
  - Page reflecting pay scale for apprentices
    - Includes apprenticeship level and percentage of journeyman's rate for each level

# Use of Apprentices

- Page reflecting fringe benefits
    - If silent on fringe benefits, pay full amount of fringe benefit stated on the wage decision
  - Signatory page (reflects signatories to agreement)
- » **Absent this information, pay full journeyman's rate**
- » **Potential red flags**
- One worker's beginning date is after the start of his work on the prevailing wage project
  - Another worker's ending date is before the start of his work on the prevailing wage project
  - No information submitted for one apprentice

# Payroll Report Issues

- » **Contractor failed to include all required information**
  - **No employee identifier number**
  - **Classification missing**
  - **Group letter not included**
  - **Hours shown in OT hour row instead of Standard hour row**
  - **Other deductions listed, but no employee authorizations provided.**

# Statement of Compliance

- » **Contractor failed to include all required information**
  - No information in block 1
  - No sub-block of 4 (regarding fringe benefit payment) checked, or wrong block checked
  - No original signature
  - Payroll clerk signed the statement of compliance, no letter of authorization provided

# Common Questions – Wage Rates

- » **Why are the rates so high?**
- » **Can a contractor appeal a DOL approved rate?**
- » **Where is the guidance for appealing a wage rate?**
- » **Why are major crafts/trades missing from wage decisions?**

# Common Questions

- » **How can a contractor estimate the labor costs when the trade/craft is not listed on the wage decision?**
- » **Can a classification from another wage determination be used? (e.g., there is a Plumber rate listed on the Residential wage determination but not on the Building wage determination issued for the project)**
- » **Why does the DOL restrict when to submit the conformance/request for additional classification?**

# DOL All Agency Memorandum (AAM)

## » Conformance / Additional Classification Requests

### – AAM 213

- Proposed rate must bear a reasonable relationship to all wage rates in the decision

# Resources

- » **CDBG Management Guide**
  - [www.iowaeda.com/cdbg/management-guide/](http://www.iowaeda.com/cdbg/management-guide/)
- » **Davis-Bacon and Labor Standards - Agency/Contractor Guide**
  - [Davis-Bacon and Labor Standards: Agency/Contractor Guide \(hudexchange.info\)](http://hudexchange.info)
- » **Davis-Bacon and Labor Standards – Contractor Guide Addendum**
  - [Davis-Bacon and Labor Standards: Contractor Guide Addendum\(hudexchange.info\)](http://hudexchange.info)

# Resources

- » **Federal Labor Standards Requirements in Housing and Urban Development Programs (1344.1 Rev. 3)**
  - [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/handbooks/sech/13441](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/sech/13441)
- » **Wage Determinations Online Website**
  - <https://sam.gov/>

# Questions?

- » **Contact your Project Manager**
- » **Contact me**

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# THANK YOU!