



# Davis-Bacon and Related Acts Final Rule Provisions

Revisions to 29 CFR Parts 1, 3, and 5



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

[dol.gov/agencies/whd](https://dol.gov/agencies/whd)  
1-866-4-US-WAGE

# Important Dates

- Effective Date - October 23, 2023
- Applicability Dates
  - Part 1 provisions relating to wage determination methodologies apply to wage determinations completed and published after October 23, 2023
  - 29 CFR 1.6(c)(2)(iii) provisions relating to updating wage determinations after contract award apply to new and existing contracts as of October 23, 2023
  - All other provisions apply to contracts awarded after October 23, 2023



# Determining Applicable Prevailing Wage Rates

# Adoption of State or Local Rates

- Wage rates determined for public construction by State and/or local officials may be adopted, with or without modification, provided that certain conditions are met.
- Methods and criteria used by State or local officials may differ from those otherwise used by the Administrator.



# Periodic Rate Adjustments

- Adjustments to non-collectively bargained prevailing wage and fringe benefit rates on general wage determinations based on U.S. Bureau of Labor Statistics Employment Cost Index (ECI) data or its successor data.
- Such rates may be adjusted based on ECI data no more frequently than once every 3 years, and no sooner than 3 years after the date of the rate's publication.
- WHD will issue modifications to general wage determinations with such adjusted rates.

# Updating Wage Determinations After Award

- After contract award, the contracting agency must include the most recent applicable wage determination modification(s) when:
  - a contract or order is changed to include additional and substantial work not within the scope of work of the original contract, or to require the contractor to perform work for an additional time period.
  - an option to extend the term of a contract is exercised.

# Updating Wage Determinations After Award

- Where contracts require a general commitment to perform necessary construction as the need arises, over a period of time that is not tied to the completion of any particular project, the contracting agency must incorporate the most recent applicable wage determination modification(s) on each anniversary date of the contract's award.



# Coverage



# Clauses Included by Operation of Law

- Regardless if the contracting agency fails to incorporate the contract clauses and wage determination(s) into a prime contract, the clauses and wage determination(s) will still be considered part of that contract and will be effective as a matter of law.
- Where the clauses and applicable wage determinations are effective by operation of law, contracting agencies must compensate the prime contractor for any increase in wages in accordance with applicable law.

# Site of the Work – Secondary Sites

- Any site where a significant portion of a building or work is constructed for specific use in that building or work, as long as the site is either:
  - established specifically for the performance of the contract or project, or
  - is dedicated exclusively, or nearly so, to the performance of the contract or project for a specific period of time.

# Site of the Work – Drivers

- Drivers who work for construction contractors are covered for any time that is more than de minimis when their work requires them to come on and offsite.
- The final rule clarifies that the total amount of time a driver spends on the site of the work during a typical day or workweek—not just the amount of time that each delivery takes—is relevant to a determination of whether the onsite time is de minimis.

# Material Suppliers Exception

- Exception applies if:
  - The firm's only obligation is to deliver supplies or equipment, and
  - Its facilities are not located on the project's primary or secondary construction site, and
    - were either established before opening of bids or contract award, or
    - are not dedicated exclusively, or nearly so, to the performance of the contract.



# Prime Contractor

- *Prime contractor* is broadly defined as any person or entity that enters into a covered contract with an agency, including non-profit organizations, owners/developers, borrowers or recipients, project managers, or single-purpose entities.
- *Prime contractor* also includes the controlling shareholder or member of any entity holding a prime contract, the joint venturers or partners in any entity holding a prime contract, and any contractor that has been delegated the responsibility for overseeing all or substantially all of the construction anticipated by the prime contract.

A construction site at sunset. A large crane is visible in the upper right, with its hook and cables hanging down. Three workers wearing hard hats (one blue, one yellow, one white) are standing on a construction floor, looking towards the crane. The floor is covered with a grid of rebar and wooden formwork. In the background, other buildings and a city skyline are visible under a warm, orange and yellow sky.

# Compliance Provisions

# Basic Records Requirements

- Contractors must now maintain workers' last known phone numbers and email addresses as part of their required records.
- Contractors are also required to maintain contracts, subcontracts, and related documents.

# Length of Record Retentions

- All required records must be maintained for at least 3 years after all work on the prime contract has been completed.
- This requirement also applies to subcontractors, even though the subcontractor's work may be finished prior to the completion of the prime contract.



# Certified Payrolls - Signatures

- Must be signed with a handwritten signature or a legally valid electronic signature.
- Valid electronic signatures include any electronic process that indicates acceptance of the certified payroll record and includes an electronic method of verifying the signer's identity.

# Certified Payrolls – Submission Methods

- Contracting agencies and prime contractors can permit or require contractors to submit their certified payrolls through an electronic system, if:
  - the electronic system requires a legally valid electronic signature;
  - other methods are permitted where a contractor may not be able to use or access the electronic system; and
  - the electronic system allows the contractor, the contracting agency, and the Department to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed.





# Enforcement Mechanisms



# Anti-Retaliation

- It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for engaging in protected activity.



# Retaliation Remedies

- The Wage and Hour Division may require contractors to provide appropriate relief to affected worker(s) and job applicant(s) or take appropriate remedial action, or both.

# Debarment

- The standard for DBA and Related Act debarments is now the same.
- Debarment is for 3 years with no early removal from the exclusion list for both DBA and Related Act.

A photograph of three construction workers on a rooftop at sunset. The workers are wearing hard hats and safety vests. One worker is pointing towards a large crane that is lifting a heavy object. The other two workers are holding and looking at a large set of blueprints. The background shows a city skyline under a warm, orange and yellow sky. The foreground is filled with construction materials and rebar.

# Resources

# WHD Resources

- DBRA Final Rule webpage - <https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon>
- Wage and Hour Division: <http://www.dol.gov/agencies/whd/government-contracts>
- WHD Protections for Workers in Construction under the Bipartisan Infrastructure Law: <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>
- Resource Book: <http://www.dol.gov/agencies/whd/prevaling-wage-resource-book>
- Office of the Administrative Law Judges Law Library: <https://www.dol.gov/agencies/oalj/topics/libraries/LIBDBA>
- Prevailing Wage Topic videos: <https://www.dol.gov/agencies/whd/government-contracts/construction/presentations>

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