

## Chapter 4 PAYROLL REPORTING: DAVIS-BACON COMPLIANCE REQUIREMENTS

4-1 **Introduction.** Davis-Bacon compliance involves the payment to all construction laborers and mechanics of not less than the prevailing wage rate established in the wage decision for the type (classification) of work and the hours of work they actually perform. This chapter pertains to Local Contracting Agencies (LCAs), employers on Federal Housing Administration (FHA) projects, and HUD staff. Section 4-10 lists the terms used and their definitions and interpretations.

A. **Responsibilities of employers.** All contractors, subcontractors, and any lower-tier subcontractors are required to pay prevailing wages to all laborers and mechanics employed or working on the site of the work. This pay is without conditions and will occur at least once a week. The pay must be no less than the full amount of wages and bona fide fringe benefits contained in the wage decision. Employers must prepare, certify, and submit weekly payroll reports reflecting all the laborers and mechanics engaged in construction on the site of the work. Employers may also be required to submit related documentation to demonstrate compliance with these standards.

B. **Responsibility of the principal or prime contractor.** The principal contractor (also referred to as the *prime* contractor) is responsible for ensuring all employers (itself, subcontractors, and any lower-tier subcontractors) comply with the labor standards provisions that are applicable to the project.

4-2 **Complying with prevailing wage obligations.** Davis-Bacon prevailing wage rates generally appear as a basic hourly rate plus fringe benefits, if any. “Prevailing wage” is made up of two interchangeable components: the basic hourly wage and fringe benefits. The total of the basic hourly wage and fringe benefits comprises the “prevailing wage” obligation. This obligation may be met by any combination of cash wages and creditable “bona fide” fringe benefits provided by the employer. For example:

The Davis-Bacon wage decision requires:

Basic Hourly Rate	\$10.00
Fringe Benefits	\$ 1.00
Total Prevailing Wage	\$11.00

Employers may comply by paying:

1. \$11.00 in cash wages;
2. \$10.00 plus \$1.00 in bona fide fringe benefits; or
3. Any combination of wages and benefits that totals \$11.00 per hour.

4-3 **Certified Payroll Reports (CPR).** To demonstrate compliance with labor standards requirements, each employer shall prepare, certify, and submit payroll reports for each week to the sponsor, applicant, or owner for any contract work that is performed. See 29 CFR § 5.5(a)(3)(ii) and section 4-11 for information on CPRs.

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- A. **CPR format.** Employers on an FHA project are highly recommended to use the HUD-authorized Electronic Payroll System (EPS) to submit CPR reports. If another format is used, the employer must ensure that all information from U.S. Department of Labor (DOL) Payroll Form WH-347 is included and that the HUD Labor Standards Specialist (LSS) can reasonably interpret it. Form WH-347 is available online at the Davis-Bacon and Labor Standards (DBLS) website at [https://www.hud.gov/program\\_offices/bacon\\_and\\_labor\\_standards/olrform](https://www.hud.gov/program_offices/bacon_and_labor_standards/olrform) and on DOL's website at <https://www.dol.gov/whd/forms/wh347.pdf>.
- B. **Submission requirements.** Each employer shall submit payroll reports beginning with the first week such employer performs work on the site of the work. Employers shall submit reports promptly following the close of each such pay week.
- C. **"No Work" payrolls.** Employers are not required to submit reports for weeks during which no work was performed on the site of the work, *provided* that the payroll reports are numbered sequentially *or* that the employer has provided written notice that its work on the project has been suspended.
- D. **Weekly payroll certification.** Each weekly payroll submitted shall be accompanied by a "*Statement of Compliance*" that bears the original signature of the owner, executive/corporate officer, or a designee authorized by the owner or officer. The signature must be in ink; pencil is not acceptable. Signature stamps, photocopies and facsimiles are not acceptable. The employer may utilize the reverse side of DOL Payroll Form WH-347 as its Statement of Compliance or another document that contains the same language prescribed on the reverse of the WH-347.
- E. **False Submissions.** The falsification of any of the above certifications may subject the employer to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- 4-4 **Maintaining Payroll Records.** Each employer shall maintain payroll records with respect to their own workforce employed on the site of the work. The prime contractor shall maintain such records relative to *all* laborers and mechanics working on the site of the work during the course of the construction work for at least three years following the completion of the work. Such records shall contain:
- A. The name and an individually identifying 4-digit number for each laborer and mechanic. Employers must always maintain each employee's address and full social security number (SSN) during the construction of the project and for no less than three years following completion. This information must be made available to the prime contractor, HUD, and/or the LCA upon request.
- B. His or her correct work classification(s).
- C. Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits.
- D. Daily and weekly number of hours worked, including any overtime hours.
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- E. Gross earnings, deductions made, and actual net wages paid.
- F. Evidence pertaining to any fringe benefit programs.
- G. Evidence of any apprenticeship or trainee program approval, the registration of each apprentice or trainee, and the ratios and wage rates contained in the program.
- H. Evidence pertaining to any approved deductions made from an employees' pay.  
For fuller details, see 4-10.K.

- 4-5 **Inspection of records and on-site interviews.** Each employer shall make the payroll reports and related documents available for inspection, copying, or transcription by authorized representatives of HUD or DOL. In addition, each employer shall permit authorized representatives to interview employees during working hours on the job site.

Failure by any employer to submit the required records, make them available, or permit on-site employee interviews may, after written notice to the contractor, cause a suspension of any further payment, advance, or guarantee of funds. In addition, failure to submit the records upon request or to make them available may be grounds for debarment action pursuant to 29 CFR § 5.12.

- 4-6 **Use of apprentices and trainees.** Apprentices and trainees may be compensated at rates less than those prescribed by the wage decision for their craft only in accordance with the following parameters:

- A. **Registration.** The apprentice or trainee shall be individually registered in a bona fide program certified by DOL or a State Apprenticeship Council (SAC). (*Note:* See paragraph 4.10.F concerning probationary apprentices and pre-apprentices.)
- B. **Wage rates.** Each apprentice and trainee shall not be paid less than the specified rate in the registered program for their level of progress. If the rate specified is represented as a percentage of the journey-worker rate for that craft, the percentage shall be applied to the corresponding wage rate contained in the applicable wage decision.
- C. **Fringe benefits.** Apprentices and trainees must receive fringe benefits as specified in the approved apprenticeship or trainee program. If the program is silent as to fringe benefits for apprentices/trainees, the apprentices/trainees must receive the full fringe benefit specified on the applicable wage decision for their craft.
- D. **Ratio to journey-workers.** The maximum number of apprentices or trainees employed on the site of work may not exceed the ratio of apprentices or trainees to journey-workers permitted to the employer by the DOL/SAC certified program. Apprentices or trainees who are employed at the site in excess of the allowable ratio shall be paid the wage rate contained on the applicable wage decision for the classification of work actually performed. If a contractor has both an apprentice and a trainee program, the trainees must be counted together with the apprentices in determining compliance with the allowable ratio (i.e., the journeymen may not be counted twice).

In general, employers shall comply with the allowable ratio on a day-to-day basis. However, back wages need not be assessed for minor, temporary, and inadvertent ratio imbalances that are promptly corrected.

- E. **De-certification.** In the event DOL or SAC withdraws approval of an apprenticeship or trainee program, the employer shall no longer be permitted to utilize apprentices/trainees at less than the predetermined rate for the type of work performed, *unless or until* an acceptable program is reestablished and approved.
- 4-7 **Requests for payrolls by outside parties.** In order to protect the personal privacy interests of employees, copies of payroll reports should be released to outside parties *only if* the employees' personal identifiers (e.g., name, address, individually identifying number) are first deleted pursuant to Exemption 6 of the Freedom of Information Act (FOIA).
- 4-8 **Safeguarding sensitive information.** HUD and LCA staff must take necessary precautions to safeguard sensitive information that may be collected or generated for labor standards purposes. Such sensitive information and associated documents include, but are not limited to SSNs, employee addresses, certified payroll reports, complainant statements, on-site interview records (form HUD-11), schedules of wages due, interview statements, compliance review notes, and enforcement reports. (See also [Labor Relations Letter LR-06-02](#), *Custody, security and disposal of federal labor standards compliance documents and investigative reports.*)
- 4-9 **Confidentiality.** The identity of any person providing information concerning the labor standards compliance of any contractor, subcontractor, and/or employer shall not be disclosed in any manner to anyone other than authorized federal officials *unless* written consent is provided in advance by such person. Additionally, any portions of a statement or written document provided by such person that would reveal the identity of the source shall not be disclosed without prior written consent. The disclosure of such statements and documents are governed by the provisions of the FOIA and the Privacy Act of 1974.
- A. **Privacy Act Release.** The HUD LSS shall make available a Privacy Act Release to each person making a statement or providing documentation that alleges underpayment of wages. A signed Privacy Act Release waives that person's right to confidentiality. Some situations demand the informant sign a Privacy Act Release to proceed with any enforcement action. For example:
1. Where the informant's information conflicts with the employer's information;
  2. Where the informant's information impeaches the payroll reports or other employer records;
  3. Where the informant alleges kickbacks; or
  4. Where the only way the LSS can assert a violation is with that person's information.
- B. **DOL investigative materials.** From time to time, DOL may furnish investigative material to HUD during its administration and enforcement operations. None of the material, other than computations of back wages and liquidated damages, and the

summary of back wages due, may be disclosed in any manner to anyone other than HUD or LCA staff responsible for administering the contract without prior approval from DOL.

4-10 **Definitions and Interpretations.**

- A. **Prime Contractor** means the principal contractor.
- B. **Subcontractor** means all subcontractors and lower-tier subcontractors.
- C. **Employer** means any contractor, subcontractor, or lower-tier subcontractor that has engaged the services of laborers or mechanics on the project.
- D. **Laborers and mechanics** mean those individuals whose duties are manual or physical in nature, including workers who are performing the work of a trade (e.g., electrician). “Laborers” and “mechanics” include apprentices, trainees and helpers and, for contracts subject to CWHSSA, watchmen and guards.
1. **Working foremen.** Foremen or supervisors that perform construction work and devote more than 20% of their time as a laborer or mechanic are treated, for labor standards purposes, as "laborers" or "mechanics" for their time spent working as a laborer or mechanic.
  2. **Exclusions.** Persons whose duties are primarily administrative, managerial, or clerical are not laborers or mechanics.
- E. **Employee.** Every person who performs the work of a laborer or mechanic is "employed" regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such person.
1. **Working subcontractors.** Persons who perform the work of laborers or mechanics and who represent themselves to be owners of businesses, sole proprietors, or self-employed are **not** exempt from prevailing wage requirements. These laborers and mechanics are “employed” and are entitled to the prevailing wage for the type of work they perform and must be reported on payroll report for their craft, hours of work, and wages paid. For additional information, see [Labor Relations Letter LR-96-01](#), Self-Employed Laborers and Mechanics.
  2. **Administrative allowances.** HUD permits administrative allowances concerning payroll reporting and certification requirements relating to the following:
    - a. Owners of Businesses Working with Their Crew
    - b. Owner/Operators of Power Equipment
    - c. Owner/Operators of Trucks

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- F. **Apprentice.** An "apprentice" is a person employed and individually registered in a bona fide apprenticeship program. Bona fide programs are those that have been registered with DOL, Employment and Training Administration, Office of Apprenticeship, or with a DOL recognized State apprenticeship agency (SAC).
1. **Probationary apprentice.** A person in the first 90 days of probationary employment as an apprentice in a bona fide apprenticeship program but who has not yet been formally registered in such program may be considered an "apprentice" *provided* that DOL or SAC has certified that such person is eligible for probationary employment as an apprentice.
  2. **Pre-apprentice.** A person who is employed as a "pre-apprentice", that is, in a preparatory position which may result in registration in an apprenticeship program *is not* considered to be an "apprentice."
- G. **Trainee.** A "trainee" is a person registered and receiving on-the-job training in a construction occupation pursuant to a training program approved in advance by the Office of Apprenticeship Training.
- H. **Proper classification of work.** Each laborer and mechanic shall be classified in accordance with the work classifications listed on the wage decision and the actual type of work they perform and shall be paid the appropriate wage rate and fringe benefits for the classification regardless of their level of skill.
- I. **More than one classification.** Laborers and mechanics that perform work in more than one classification may be compensated at the rate specified for each classification *provided* that the employer maintains time records that accurately set forth the time spent in each classification in which the work was performed. If accurate time records are not maintained, the employee shall be compensated at the highest of all wage rates for the classifications in which work was performed.
- J. **Wages.** This term means the basic hourly rate of pay plus any contribution irrevocably made by an employer to a bona fide fringe benefit fund, plan or program.
- K. **Fringe benefits.** Fringe benefits may include:
1. Sick, vacation or holiday pay;
  2. Costs to defray expenses of apprenticeship or similar programs;
  3. Medical or hospital care;
  4. Supplemental unemployment benefits;
  5. Life insurance;
  6. Pensions on retirement or death;
  7. Compensation for injuries or illness resulting from occupational activity;
  8. Other bona fide fringe benefits; or
  9. Insurance to provide any of the above.
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In addition, fringe benefits may reflect the rate of costs to the employer that may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible program.

Fringe benefits **do not** include employer contributions or payments required by other federal, state, or local law, such as FICA, workers' compensation, or unemployment compensation.

- L. **Overtime.** Overtime hours are defined as all hours worked in excess of 40 hours in any workweek. Where governed by federal labor standards, overtime hours shall be compensated at not less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.
- M. **Deductions.** The employer may make payroll deductions as permitted by DOL regulations in 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" any of their earnings. Deductions may include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee (which will require documentation).
- N. **Site of work.** The "site of work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed. "Site of work" includes other adjacent or nearby properties used by the contractor/subcontractor in the construction of the project (e.g., fabrication sites) provided they are dedicated exclusively or nearly so to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

**4-11 Information to include in Certified Payroll Report preparation.** If an employer is not using an electronic payroll system to submit certified payroll reports, the reports shall be written in ink or using a computer. Payroll reports will need to include the following information and be easy for HUD DBLS staff or LCAs to interpret:

- A. **Employer information.** Enter the name and address of the employer involved.
- B. **Project information.** Enter the name, number, and location of the project involved.
- C. **Payroll report numbering.** Reports may be numbered sequentially beginning with "1." (Employers are not *required* to number payroll reports. However, HUD encourages this practice as it assists in managing payroll submissions.) The report must identify the name of the employer, the project for which the report is prepared, the week ending date, and the workdays throughout the workweek. The payroll for the last week of work performed on the project by each employer should be clearly marked *Final*.

- D. **Dates.** Enter the week ending date, the day of the week, and date for each day.
- E. **Employee information.** The first payroll on which each employee appears shall include the employee's name and an individually identifying number, usually the last 4 digits of the employee's SSN. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees, e.g., if two employees have the same name.
- Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for labor standards compliance monitoring. Prime contractors may require a subcontractor(s) to provide this information for the prime contractor's records.
- F. **Apprentices or trainees.** The first payroll on which any apprentice or trainee appears shall be accompanied with a copy of that apprentice's or trainee's registration in an approved program. A copy of the approved program pertaining to the wage rates and ratios shall also accompany the first payroll report on which the apprentice or trainee first appears.
- G. **Work classification.** Enter the appropriate work classification for each employee. *Note:* Only the work classifications listed on the applicable wage decision may be utilized. If the wage decision does not contain a work classification and wage rate that is needed for the project, the employer must request an additional classification and wage rate. (See 3-17, *Additional work classifications and wage rates.*)
- H. **More than one classification.** The division of hours worked in different classifications shall be accurately maintained and clearly reported. The employer may list the employee once for each classification, distributing the hours of work accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.
- I. **Hours worked at other job sites.** The payroll reports should reflect ONLY hours worked at the covered site of work. If an employee performs work at job sites other than the covered project for which the report is prepared, those hours worked at other job sites should *not* be reported on the payroll report. In such cases, the employer should list the employee's name, work classification, hours worked, hourly rate of pay and gross earnings for the covered project *over* the gross earnings for *all* projects/work performed (e.g. \$528.00/\$816.00). Deductions and net pay should be reported based upon the employee's total earnings (for all projects) for the week.