

---

## Chapter 4 DAVIS-BACON COMPLIANCE PRINCIPLES AND REPORTING REQUIREMENTS

- 4-1 **Introduction.** Davis-Bacon compliance principles involve 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.
- A. **Responsibilities of employers.** Contractors and subcontractors and any lower-tier subcontractors (employers) are required to pay all laborers and mechanics employed or working on the site of the work unconditionally and not less often than once a week, the full amount of wages and bona fide fringe benefits computed at rates not less than those contained in the wage decision. Employers must prepare, certify and submit weekly payroll reports reflecting all the laborers and mechanics (employees) engaged in construction on the site of the work. Employers may also be required to submit related documentation in order to demonstrate compliance with these standards.
- B. **Responsibility of the principal (prime) contractor.** The principal contractor (also referred to as the *prime* contractor) is responsible for the full compliance of all employers (itself, subcontractors, and any lower-tier subcontractors) with the labor standards provisions applicable to the project. For ease in reference, the term "*prime contractor*" shall mean the principal contractor, the term "*subcontractor*" shall mean all subcontractors and lower-tier subcontractors, and the term "*employer*" shall mean any contractor, subcontractor or lower-tier subcontractor that has engaged the services of laborers or mechanics on the project.
- 4-2 **Definitions and interpretations.**
- A. **Laborers and mechanics.** "Laborers" and "mechanics" are those individuals, whose duties are manual or physical in nature, including workers who are performing the work of a trade (e.g., Electrician). These terms 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.
- B. 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 CPRs for their craft, hours of work, and wages paid. (See *Labor Relations Letter LR-96-01, Labor Standards Requirements for Self-Employed Laborers and Mechanics*, for further guidance concerning wage and reporting requirements concerning working subcontractors.)
  2. **Administrative allowances.** HUD permits administrative allowances concerning payroll reporting and certification requirements relating to the following (also described in *Labor Relations Letter LR-96-01*):
    - a. Owners of Businesses Working with Their Crew
    - b. Owner/Operators of Power Equipment
    - c. Owner/Operators of Trucks
- C. Apprentice.** An "apprentice" is a person employed and individually registered in a bona fide apprenticeship program, including *Step-Up* apprenticeship programs designed for Davis-Bacon construction work. Bona fide programs are those that have been registered with DOL, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, Bureau of Apprenticeship and Training (BAT) or with a BAT-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 the BAT 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."
-

- D. 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 BAT.
- E. 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 he/she performs, and shall be paid the appropriate wage rate and fringe benefits for the classification regardless of their level of skill.
- F. Split 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.
- G. Wages.** The term "wages" 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.
- H. 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.

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.

- I. 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.
- J. Deductions.** The employer may make payroll deductions as permitted by DOL Regulations 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.
- K. 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 property 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.

4-3 **Discharging prevailing wage obligations.** Davis-Bacon prevailing wage rates generally appear as a basic hourly rate plus fringe benefits, if any.

- A.** "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	<u>\$ 1.00</u>
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.

4-4 **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 the BAT or a SAC. (*Note:* See paragraph 4.2(C) 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 his/her level of progress. If the rate specified is represented as a percentage of the journeyworker 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 journeyworkers.** The maximum number of apprentices or trainees employed on the site of work may not exceed the ratio of apprentices or trainees to journeyworkers permitted to the employer by the BAT/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).

Compliance with the allowable ratio shall generally be met on a day-to-day basis. However, back wages need not be assessed for minor, temporary, and inadvertent ratio imbalances which are promptly corrected.

- E. **De-certification.** In the event the BAT 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.

4-5 **Payrolls and other reporting requirements.** Payrolls and basic records relating to such payrolls shall be maintained by each employer with respect to his/her 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.

Payrolls and related records shall be maintained during the course of the construction work and preserved by the agency (HUD or LCA), the prime contractor and all employers for at least three years following the completion of the work. Such records shall contain:

- A. The name and a individually identifying 4-digit number for each laborer and mechanic;

*Note:* Employers must maintain each employee's address and full social security number (SSN) at all times during the construction of the project and for no less than three years following its 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;
- E. Gross earnings, deductions made, and actual net wages paid;
- F. Evidence pertaining to any fringe benefit programs; and
- G. Evidence of the approval of any apprenticeship or trainee program, the registration of each apprentice or trainee, and the ratios and wage rates contained in the program.

4-6 **Certified payroll reports.** Weekly certified payroll reports (CPRs) shall be submitted for each week any contract work is performed. Each employer shall prepare and certify such payroll reports to demonstrate compliance with the labor standards requirements.

- A. **CPR format.** CPR information may be submitted in any format provided that the LRS can reasonably interpret the information to monitor employer compliance with the labor standards. Employers are encouraged to utilize DOL Payroll Form WH-347. Employers who choose to use other formats must ensure that all information from the WH-347 is included in their format. The WH-347 form is available on-line at the OLR web site (Labor Relations Forms), at HUDClips, and at:  
[www.dol.gov/dol/esa/programs/drba/forms.htm](http://www.dol.gov/dol/esa/programs/drba/forms.htm)
- B. **Submission requirements.** CPRs shall be submitted for each employer beginning with the first week such employer performs work on the site of the work. CPRs shall be submitted promptly following the close of each such pay week.
- C. **CPR preparation.** CPRs that are prepared by hand shall be prepared in ink; CPRs prepared in pencil are not acceptable.

1. **Employer information.** Enter the name and address of the employer involved.
2. **Project information.** Enter the name, number and location of the project involved.
3. **Payroll numbering.** CPRs may be numbered sequentially beginning with "1." (Employers are not *required* to number CPRs. However, HUD encourages this practice as it assists in "managing" payroll submissions.) The CPR must identify the name of the employer, the project for which the CPR is prepared, the week ending date, and the workdays throughout the workweek. The CPR for the last week of work performed on the project by each employer should be clearly marked *Final*.
4. **Dates.** Enter the week ending date, and the day and date for each day.
5. **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 Federal labor standards compliance monitoring. Prime contractors may require a subcontractor(s) to provide this information for the prime contractors records.

6. **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 CPR on which the first apprentice or trainee appears.
  7. **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.*)

8. **Split classifications.** 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.
  9. **Hours worked at other job sites.** The CPRs 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 CPR is prepared, those hours worked at other job sites should *not* be reported on the CPR. 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.
- D. "No Work" payrolls.** Employers are not required to submit CPRs for weeks during which no work was performed on the site of the work, *provided* that the CPRs are numbered sequentially *or* that the employer has provided written notice that its work on the project has been suspended.
- E. 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 the 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, which must certify to the following:
1. That the payroll for the payroll period contains the information required to be maintained and that the information is correct and complete;

2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3; and
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage decision incorporated into the contract.

**F. Falsification.** 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.

4-7 **Inspection of records and on-site interviews.** Each employer shall make the required records (CPRs 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 or to make them available, or to 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 on request or to make them available may be grounds for debarment action pursuant to 29 CFR 5.12.

4-8 **Requests for payrolls by outside parties.** In order to protect the personal privacy interests of employees, copies of CPRs shall 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).

4-9 **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 (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.*)

4-10 **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 shall be governed by the provisions of the FOIA and the Privacy Act of 1974.

A. **Privacy Act Release.** The LRS 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 that the informant sign a Privacy Act Release in order 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 CPRs or other employer records;
3. Where the informant alleges kick-backs; or
4. Where the only way the LRS 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 in the course of 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.