



Labor Compliance Program Manual

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PART 1: GENERAL INFORMATION

1.1 Introduction

The Louisiana Department of Transportation and Development (LADOTD) Labor Compliance Manual is intended to provide guidance in a convenient form concerning enforcement of Federal Labor Standards requirements by the State of Louisiana, Instructions, procedures, and assignments of responsibility applicable to the labor compliance provisions of all federally funded highway construction contracts for Contractors and DOTD personnel for the administration of certified payrolls.

Contractors and DOTD personnel should adhere to this manual in implementing, monitoring and/or reviewing certified payrolls on federally funded projects, which include Davis Bacon wages in the contract.

This manual was prepared in the DOTD Compliance Section. It is recognized that in the course of labor compliance inspections and investigations of complaints, problems may arise which are not clearly answered by the contents of this manual.

For assistance in certified payroll submission and/or review process, please contact Angela Benn, Labor Compliance Program Manager at (225) 379-1365 or angela.benn@la.gov.

PART 2: LABOR COMPLIANCE PROCEDURES

2.1 DOTD Review Procedures

The current Federal Highway Administration's Labor Compliance Manual and Department of Labor Field Operations Handbook are followed by LADOTD to assure compliance with the requirements of the contract.

2.2 Notification of Requirements

2.2.1 Construction Section Personnel

Construction Section personnel receive all federal directives relating to Labor Compliance contract requirements, guidelines and procedures through Labor Compliance Section. Construction Section personnel have access to a copy of the formal, executed contract and refer to it continually throughout the progress of the project.

2.2.2 Contractors

The principal means of informing contractors of the labor compliance contract requirements is by clear, written description of all such requirements being included as part of each proposal and executed contract in the form of "Required Contract Provisions", i.e. **F1-F12 pages**, "Minimum Wage Determination, where appropriate, and, "Special Provisions", i.e. **D pages**.

By including all requirements in the project proposal, even potential bidders are put on notice that, if declared to be the successful bidder and awarded the contract, they will be obligated to fulfill all requirements as specified.

In signing the contract, the contractor acknowledged that he/she is contractually committed to carrying out the requirements as specified. The requirements may be more fully explained and discussed in preconstruction conferences, site inspections, project reviews and/or other meetings between the contractor and personnel of LADOTD.

Advice and clarification of labor compliance matters are readily available to the contractor by contacting the project engineer office or Compliance Programs Labor Compliance Program Manager at Angela.Benn@LA.Gov.

PART 3: RESPONSIBILITIES

3.1 Labor Compliance Manager – Primarily responsible for the interpretation and enforcement of the labor compliance standards of the contract. The labor compliance manager will review all certified payrolls for accuracy and compliance according to Davis Bacon.

- a. The labor compliance program manager will attend preconstruction conferences to provide information in all matters regarding labor compliance and certified payrolls randomly.
- b. Supply contractors with standard Form 1444, Request for Authorization of Additional Classification and Rate, who elect to utilize a classification and wage rate which is not included in the minimum wage determination of the contract. The form will be forward to the U.S. Department of Labor (USDOL) for approval or denial.
- c. Provide contractors with a link to the Labor Compliance Certified Payrolls web site for the required bulletin board posters.
- d. Will provide training to field office personnel on an as needed basis.
- e. Starting with the January 2017 letting, all contractor and subcontractor payrolls must be submitted electronically using AASHTOWARE. All payrolls submitted on Federal-Aid projects will be thoroughly reviewed to assure compliance with all Davis-Bacon requirements.
- f. Conduct investigations and audits of contractor's payroll records whenever violations are noted or complaints are received from contractor employees. Interview contractor's employees and DOTD project personnel to determine if employees are being misclassified or underpaid. Calculate back wages due to employees, then notify the contractor, in writing or e-mail, of the violations and require that restitution of back wages due be paid within a certain period of time and require contractors to provide documentation to show restitution was made.
- g. Represent DOTD whenever Labor Compliance Reviews are conducted by FHWA, Legislative Auditors or DOTD Internal Audit Section.
- h. Maintain a list of all noted labor violations and submit this information semi-annually to FHWA. This information is used by FHWA Division Office in completing Form FHWA -1494, Semi-Annual Labor Compliance Enforcement Report.

- i. Provide pertinent information to the U. S. Department of Labor, Wage and Hour Division, to assist them in conducting statewide highway wage surveys in Louisiana, if requested.
- j. Frequently, questions will arise on Davis-Bacon projects regarding proper classifications, payrolls, material supplies, subcontractors, owner-operators, fringe benefit plans, etc. These should be referred to the Labor Compliance Manager for clarification and interpretation.
- k. Develop and maintain a line of communications with the engineering consultants.
- l. Determine the type of wages used in contract proposals when requested by DOTD personnel

3.2 Project Engineers and Office Personnel Duties

- a. Discuss the labor compliance provisions with the contractors at preconstruction conferences.
- b. Assure that all classifications to be utilized on the project are included in the minimum wage determination of the contract. When additional classifications are needed, the project engineer will notify the Compliance Manager who will provide the proper forms to be completed by the contractor.
- c. Assure that the required posters, notices and contract wage determinations are posted on the project site bulletin board and provide a picture to be uploaded into FileNet in the Bulletin Board folder.
- d. Prepare a daily diary to include all subcontractors working on the project.
- e. Assure that all subcontractors shown on the diary are included on the weekly progress report and that all subcontractors have been approved by DOTD prior to their beginning work.
- f. Assure that contractor and subcontractor payrolls are received within seven (7) days after payment is made to the employees. Prime contractors must submit copies of the Statement of Compliance and certified payrolls through Final Inspection.
- g. Review each payroll for completeness and accuracy, and upon completion, if there are any wage discrepancies the contractor will be notified. Once the back wages due have been paid, a supplemental payroll and a copy of the check issued will be forwarded to the project

engineer office to be attached to the contract in AASHTOWARE or uploaded to FileNet.

- h. The Project Site Standard Interview Form (EDSM III 1_1_9) will be utilized to interview one employee per Federal-Aid contract which has a wage decision. These interviews is the sole responsibility of the district coordinator. Additional interviews can be performed on an as needed basis by compliance. The completed interview form will be turned in to the district or LPA person responsible for checking contractor payrolls. A comparison of the interview form to the payroll will be made to assure that employees are being classified and paid correctly. The payroll checker will then sign the interview form in the space provided and scan into FileNet Project Site Interviews folder.
- i. According to 49 CFR 26.37 and EDSM III 5_1_15, one Commercially Useful Function Evaluation (CUF) must be performed on “every” DBE that perform work on the project.
- j. Comply with EDSM and memoranda issued by DOTD Construction Section personnel.
- k. Assist the Compliance Manager, representatives of FHWA and Department of Labor in the investigation of complaints or reports of violations.

PART 4: CERTIFIED PAYROLLS

4.1.1 Statement of Compliance

On Federal Aid projects the Contractor (and active subcontractors) must submit contractor payrolls using the AASHTOWare Civil Rights & Labor Software. All Specifications whether Standard, supplemental or Special Provisions, are hereby amended to delete any references regarding paper payrolls and the ability to submit such paper payroll forms.

The payrolls must be submitted for each payroll period that ends within thirty (30) days before the beginning of the current estimate period.

For the prime Contractor the certified payrolls and Statement of compliance are required from the date work begin to project final inspection date (as defined by FHWA form 1273 part IV (3) "...during the course of work...") and must be submitted for each payroll period whether or not the Contractor worked during that period.

Certified payrolls are required from active subcontractors only when work is performed. The Project Engineer will be the judge of whether the subcontractor is active or not.

4.1.2 Instructions for Statement of Compliance

This statement of compliance meets needs resulting from the amendment of the Davis-Bacon Act to include fringe benefits provisions. Under this amended law, the contractor is required to pay fringe benefits as predetermined by the Department of Labor, in addition to payment of the minimum rates. The contractor's obligation to pay fringe benefits may be met by payment of the fringes to the various plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

The contractor should show on the face of his payroll all monies paid to the employees whether as basic rates or as cash in lieu of fringes. The contractor shall represent in the statement of compliance that he is paying to others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions below:

Contractors who pay all required fringe benefits:

A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor shall continue to show on the face of his payroll the basic cash hourly rate and overtime rate paid to his employees, just as he has always done. Such a contractor shall check paragraph 4(a) of the statement to indicate that he is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exception shall be noted in Section 4(c).

Contractors who pay no fringe benefits:

A contractor who pays no fringe benefits shall pay to the employee and insert in the straight time hourly rate column of his payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on the basic or regular rate plus the required cash in lieu of fringes at the straight time rate. To simplify computation of overtime, it is suggested that the straight time basic rate and cash in lieu of fringes be separately stated in the hourly rate column, thus \$3.25/.40. In addition, the contractor shall check paragraph 4(b) of the statement to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employees as cash in lieu of fringes, and the hourly amount paid to plans, funds, or programs as fringes.

4.1.3 PAYROLLS

Maintaining basic payroll records – According to USDOL the contractor must maintain basic payroll records, including time cards during the course of the work and preserve them for three years after completion of the contract. Such records shall contain:

- Name of each worker
- Last four digits of the Social Security Number or an individual identifying number.
- His or her correct classification
- Hourly rates of wages paid
- Daily and weekly number of hours worked
- Deductions made and actual wages paid

Submission of certified payroll records - The contractor must submit **weekly** all payrolls to the contracting agency according to U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii). The payrolls submitted must contain accurately and completely all of the basic payroll information listed above.

The payroll information must be submitted electronically using AASHTOWare Software. Delay in submittal of payroll will result in delay in processing payment estimates. The electronic payroll submission information is also available on the Compliance Programs website at:

http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/Certified_Payroll.aspx

The prime contractor is responsible for the submission of the certified payrolls to the contracting agency. They must ensure that all subcontractors on the project submit payrolls in a timely manner using the electronic submission process.

Submission of payrolls by staffing agencies should be submitted to the contractor in return should submit to Prime or district personnel to be uploaded into FileNet for further review by the Labor Compliance Manager depending on the contractor's usage of staffing agency employees, certified payrolls may be required.

DOL Reduces Information Required on Davis-Bacon Certified Payroll Records February 9, 2009

The U.S. Department of Labor (USDOL) has issued a final rule eliminating the requirement that contractors covered by the Davis-Bacon and Related Acts include employees' home address and Social Security numbers on weekly certified payroll records submitted to contracting agencies or DOL's Wage and Hour Division. DOL issued the rule "to better protect the personal privacy of laborers and mechanics employed on covered construction projects."

The effective date of the rule is January 18, 2009. This means for covered contracts entered into as the result of an invitation for bids issued or negotiations concluded on or after January 18, contractors should not include employees' home address or full SSNs in weekly transmittals. Instead of the SSN contractors should provide an "individually identifying number" for each covered employee. The purpose of the "individually identifying number" is to avoid confusion when more than one employee has the same name, and it may be the last four digits of the employee's SSN. For covered contracts and entered into previously, contractors should continue to follow the prior rule and include home address and full SSNs. In comments to the proposed rule submitted in November, AGC expressed support for the change, agreeing with DOL that eliminating submission of such employee information is consistent with statutory mandates and helps to fulfill legitimate policy objectives, including reducing the risk of identity theft. However, AGC noted that the proposed rule could be interpreted as prohibiting subcontractors from providing such information in weekly payrolls submitted to prime contractors, which raises concerns about a prime contractor's ability to make restitution and to avoid unfair withholdings in cases of subcontractor underpayment of wages. In the final rule, DOL adopted AGC's suggestion to clarify that prime contractors may continue to require subcontractors to provide such employee information to the prime contractor without submission to the government.

Examination of Certified Payrolls

An examination of the contractor's certified payrolls should be made for accuracy, completeness, and true representation of the facts. The examination should cover the current or most recent payrolls as well as those for selected periods which reflect the practice of the contractor or subcontractor during the life of the contract.

1. Check for completeness and accuracy of the payrolls as to the names, addresses, job classifications, hourly wage rates, daily and weekly hours worked during the payroll period, gross weekly wages earned, and deductions made from wages, and net weekly wages paid the employee. Notice if there are distinctions made among the various classifications.
2. If the Contract Work Hours and Safety Standards Act are applicable and an employee worked in excess of forty hours in any workweek, determine whether time and a half the employee's regular rate was paid.
3. Certified payrolls should be examined for discrepancies such as a disproportionate number of laborers, apprentices or helpers on the project.
4. The wage rates should be compared against those listed on the wage determination. If workers perform work in more than one classification, the payroll records should accurately reflect the time spent working in each. Unlisted classifications should be identified and additional classification procedures initiated, if applicable.
5. Check for contributions to fringe benefit plans.

The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution. Thus, the contractor is put on notice in the contract itself that criminal prosecution could result if falsified payrolls are submitted to the government.

The contractor or subcontractor must make the payroll records available for inspection, copying, or transcription by authorized representatives of the contracting agency or the DOL, and must permit such representatives to interview employees during working hours on the job.

If the contractor or subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds.

Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action.

4.1.4 FRINGE BENEFITS

An employer may discharge his/her obligation to provide fringe benefits by paying the specified fringe benefit contributions to a trustee or third person pursuant to a “bona fide” fund, plan, or trust on behalf of covered employees. Examples are life or health insurance, pension plan or retirement plans. 29 CFR 4.170 and 4.171.

To be considered a “bona fide” fringe benefit for purposes of the, a fringe benefit plan, fund or program must constitute a legally enforceable obligation which meets the following criteria. 29 CFR 4.171.

The fringe benefit plan, fund or program must be specified in writing and must be communicated in writing to the affected employees.

The primary purpose of the plan must be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, supplemental unemployment benefits, and the like.

The plan must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan.

Contributions must be made pursuant to the terms of such plan, fund, or program. Any contributions made by employees must be voluntary, and if such contributions are made through payroll deductions, such deductions must be made in accordance with 29 CFR 4.168. (No contribution towards fringe benefits made by the employees themselves or provided from monies deducted from their wages may be included or used by an employer in satisfying any part of any fringe benefit obligation.)

Generally, the contractor's contributions must be paid irrevocably to a trustee or third person, no less often than quarterly, pursuant to an insurance agreement, trust or other funded arrangement (except as indicated below with regard to certain “unfunded” fringe benefit plans).

Unfunded fringe benefit plans: With the exception of fringe benefit plans to provide vacations and holidays, unfunded "self-insured" plans under which a contractor typically pays insurance claims out of pocket to cover fringe benefit obligations are normally not considered "bona fide" plans or equivalent benefits for purposes of SCA. 29 CFR 4.171(b). A contractor must request approval by the Administrator of the Wage and Hour Division for an unfunded self-insured plan. 29 CFR 4.171(b) (2).

The following are not bona fide fringe benefits (nor can they be considered equivalent benefits):

1. Benefit plans or trusts which are disapproved by the Internal Revenue Code as not satisfying the requirements of the Internal Revenue Code or which do not meet the requirements of the Employee Retirement Income Security Act of 1974. 29 CFR 4.171(a) (5).
2. Any benefit required by any other Federal law or by any State or local law, such as unemployment compensation, workers' compensation, or social security. 29 CFR 4.171(c).
3. Board, lodging or other facilities for which the cost or value, determined in accordance with regulations under the FLSA contained in 29 CFR 531, is creditable toward the monetary wages specified under the Act. 29 CFR 4.171(d) and 4.167.
4. Facilities primarily for the benefit or convenience of the contractor or the cost of which is properly a business expense of the contractor, such as relocation expenses, travel and transportation expenses incident to employment; incentive or suggestion awards, recruitment bonuses; tools and other materials and services incidental to the employer's performance of the contract and the carrying on of his business; and the cost of furnishing, laundering, and maintaining uniforms and/or related apparel or equipment where employees are required by the contractor, the SCA contract, by law, or by the nature of the work, to wear such items. 29 CFR 4.171(e) and 4.168.
5. Contributions by contractors for such items as social functions or parties for employees, flowers, cards, or gifts on employee birthdays, anniversaries, etc. (sunshine funds), employee rest or recreation rooms, paid coffee breaks, magazine subscriptions, and professional association or club dues. 29 CFR 4.171(f).

Fringe benefits and overtime pay:

CWHSSA requires that on contracts to which it applies, any laborer or mechanic who works over 40 hours in a workweek must be compensated "at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek". The basic rate of pay excludes bona fide fringe benefits and cash equivalent payments.

29 CFR 778.215 and 29 CFR 4.180-4.182 discuss the parallel exclusion of fringe benefits from the "regular rate" for overtime purposes under the FLSA.

Vacation benefits:

Vacation fringe benefits can be determined from the language of the fringe benefit provision in the wage determination. By requiring prospective contractors who employ the same personnel to provide the same vacation benefits as an incumbent

contractor, equity in bidding is achieved – otherwise the incumbent contractor would be at a distinct disadvantage when bidding.

Vacation need not be paid immediately but must be provided at a mutually agreed upon time or payment made before the next anniversary date of employment, termination of employment, or completion of the current contract, whichever occurs first. 29 CFR 4.173(c)(2).

4.1.5 DESIGN BUILD PROJECTS

For all Design Build projects, documentation and/or payrolls will be needed throughout the life of the project in order for estimates to be approved by Labor Compliance. Acceptable documentation would be a completed **Statement of Material and Labor** form which can be provided by the Project Manager. During the design phase of the project no payrolls are entered by the Prime contractor. Invoices will be required for the processing of estimates.

4.1.6 ESTIMATES

- Assembly period (Estimate 1) does not require payrolls and can be approved by compliance
- Zero dollar estimates does not require payrolls for estimate period and can be released by compliance
- Negative dollar estimates does not require payrolls and can be approved by compliance
- Closeout estimates require payrolls up to the final inspection date for approval
- Estimates for projects taken over by surety does not require payrolls for the lapsed time can be approved with change order paperwork.
- Estimates that has lapse in dates because of the following does not require payrolls and can be approved by compliance:
 - Project number change for any reason
 - Projects taken over by new contractor or surety (paperwork needed)
 - Projects paid lump sum amounts under emergency force account projects

PART 5: POSTERS

Some of the statutes and regulations enforced by the U.S. Department of Labor (DOL) require that notices be provided to employees and/or posted in the workplace that is accessible. DOL provides free electronic copies of the required posters and some of the posters are available in languages other than English.

Please note that posting requirements vary by statute; that is, not all employers are covered by each of the Department's statutes and thus may not be required to post a specific notice. All federally funded projects must display bulletin boards with ALL required Federally Mandated Posters for construction projects. To find out which posters apply to Louisiana, please contact the PE office or Labor Compliance.

Federally Mandated Posters

Name			Description
"Employee Rights on Government Contracts" Posters(SCA, SWHSSA, Walsh-Healey)			U.S. Department of Labor's posters for contracts to which the Contract Work Hours and Safety Standards Act(CWHSSA), McNamara O-Hara Service Contract Act(SCA), and/or Walsh-Healy Public
"Notification of Employee Rights Under Federal Labor Laws" poster			U.S. Department of Labor's poster for employers informing employees of their rights under the National Labor Relations Act(NLRA). This poster is available in other languages.
"Your Rights Under USERRA" Notice/Poster			U.S. Department of Labor's poster for employers to provide persons covered by USERRA notice of the rights, benefits, and obligations of employees and employers under USERRA.
USDOL Poster Download Site			Mandated Posters -- Compliance Assistance Materials
Employee Polygraph Protection Act Notice(EPPA)			U.S. Department of Labor's required poster for employers subject to the Employee Polygraph Protection Act(EPPA).
Employee Rights and Responsibilities Under the Family Medical Leave Act(FMLA) poster			U.S. Department of Labor's required poster summarizing the major provisions of the Family Medical Leave Act(FMLA).
Employee Rights for Workers			U.S. Department of Labor's required poster

Name			Description
with Disabilities Paid at Special Minimum Wages			explaining the conditions under which special minimum wages may be paid.
Employee Rights Under the Fair Labor Standards Act (FLSA/Minimum Wage)			U.S. Department of Labor's required poster under the Fair Labor Standards Act (FLSA). The FLSA poster is available in other languages.
Equal Employment Opportunity is the Law			U.S. Equal Employment Opportunity Commission: Equal Employment Opportunity is the Law with new Genetic Information Nondiscrimination Act (GINA) of 2008, effective November 21, 2009
Equal Employment Opportunity is the Law, supplementary poster			U.S. Equal Employment Opportunity Commission: supplement to post alongside EEOC's September 2002 or OFCCP's August 2008 "EEO is the Law" poster
Federal Workplace Poster Requirements for Small Businesses and Other Employers			U.S. Department of Labor's Required Posters for Small Businesses and Other Employers (some posters are available in languages other than English)
H-2A poster			U.S. Department of Labor's poster explaining the rights of H-2A Workers and other workers employed on an H-2A work contract or by an H-2A employer in the same agricultural work as the H-2A.
H-2A poster(Spanish)			Spanish version of U.S. Department of Labor's poster explaining the rights of H-2A Workers and other workers employed on an H-2A work contract or by an H-2A employer in the same agricultural work as the H-2A.
Job Safety and Health: It's the Law poster			U.S. Department of Labor's required poster under the Occupational Safety and Health Act (OSHA). This poster is available in other languages.
Migrant and Seasonal Agricultural Worker Protection Act Notice			U.S. Department of Labor's poster explaining the rights and protections for workers required under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).
Notice of Employee Rights Under Federal Labor Laws			U.S. Department of Labor's Office of Labor-Management Standards (OLMS)
Notice to All Employees Working			U.S. Department of Labor's required poster for

Name			Description
on Federal or Federally Financed Construction Projects			employers performing work covered by the labor standards of The Davis-Bacon and Related Acts.
Your Rights Under USERRA			USERRA Notification for Non-Federal (State and Private) Employers

Posters for LADOTD construction contracts can be found at the following links:

LADOTD Compliance Programs:

http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/Labor-Compliance-Program.aspx

LA Workforce Commission:

http://www.laworks.net/Downloads/Downloads_Posters.asp#Federal

US DOL:

<https://www.fhwa.dot.gov/programadmin/contracts/poster.cfm>

5.1.1 Job Site Posters Q&A

- 1) Where can I obtain the workplace notices or posters required for Federal-aid funded construction projects?

You should contact your contracting agency for a complete list of Federal, State, or local construction job site notices or posters. [The FHWA provides a list of construction job site posters required by FHWA or the U.S. Department of Labor \(US DOL\)](#). For assistance in complying with US DOL workplace notices or posters requirements, see [US DOL Poster Compliance Assistance](#).

[US DOL Frequently Asked Questions
Federal-aid Job Site Posters](#)

- 2) Where should contractors display workplace notices or posters required on Federal-aid funded construction projects?

Workplace notices or posters must be displayed at all times by the contractor and subcontractors at the site of the work in a prominent and accessible place where they can be easily seen by the workers.

[US DOL Frequently Asked Questions](#)
[29 CFR 5.5\(a\)\(1\)\(i\)](#)

3) Can the required workplace notices or posters be placed in a binder that is accessible in a supervisor's or foreman's vehicle when an on-site job office has not been established for a covered Federal-aid construction project?

No. Placing the required workplace notices or posters in a binder does not meet the requirement for displaying or posting in a conspicuous and accessible place where they are easily visible to all employees — the intended audience.

4) Is there a specified size for each workplace notice or poster?

There are only two notices or posters where the regulations specify a size (the OSHA poster and the Executive Order 13496 poster), but all Federal workplace notices or posters must be readily observed. ([29 CFR 5.5\(a\)\(1\)\(i\)](#), [29 CFR 801.6](#), [29 CFR 516.4](#)) The U.S. Department of Labor (US DOL) provides notices and posters on the [US DOL Poster Topic web page](#) in a size that is considered easily readable.

5) Where can I find the answers to other questions relating to U.S. Department of Labor (US DOL) requirements for displaying notices or posters?

[US DOL Frequently Asked Questions](#)

6) Do I have to display the Federal workplace notices or posters in languages other than English?

Displaying the required notices or posters in languages other than English is generally not required. Under the Family and Medical Leave Act (FMLA), where an employer's workforce includes a significant portion of workers who are not literate in English, the employer shall be responsible for providing the notice in a language in which the employees are literate. Where not required, displaying notices or posters in other languages is encouraged where the contractor's workforce speak other languages.

- 7) What methods of displaying the workplace notices or posters are not acceptable?
- a. Displaying the notices or posters only at the contractor's home office and not at the job site;
 - b. Maintaining the notices or posters in a project bulletin board notebook located in the foreman's or superintendent's vehicle; and
 - c. Maintaining the notices or posters on a display board in the foreman's or superintendent's vehicle.

8) Can a contractor comply with the displaying requirements of notices or posters by providing them electronically rather than in physical paper format?

No. Notices or posters must be displayed in conspicuous places, available to employees and applicants for employment, if applicable. ([29 CFR 1903.2](#), [29 CFR 516.4](#), [29 CFR 801.6](#), [41 CFR 60-1.4\(b\)](#)) "Posting in a conspicuous place" has a well-accepted interpretation, and the requirement is usually met when a paper copy of the notice or poster is affixed to a wall or bulletin board customarily used for workplace notices or posters.

[US DOL Office of Federal Contract Compliance Programs](#)
[Frequently Asked Questions](#)

PART 6: TRUCKING (Q&A)

1. Does it matter who employs the truck driver for the application of Davis Bacon?

Answer:

No. In the decision reached in *Building and Construction Trades Dept. vs. Midway*, decided on May 17, 1991, the Court of Appeals for the District of Columbia Circuit held that language in Department of Labor (DOL) regulation was inconsistent with the Davis-Bacon Act. That case involved truck driver employees of the prime contractor's wholly owned subsidiary, who were delivering materials from a commercial supplier to the construction site. The material delivery truck drivers spent ninety percent of their workday on the highway driving to and from the commercial supply sources, ranging up to 50 miles round trip and stayed on the site of the work only long enough to drop off their loads, usually for not more than ten minutes at a time. At issue before the D.C. Circuit was whether the "material delivery truck drivers" were within the scope of construction as defined by the regulatory provision then in effect at 29 CFR 5.2(j). The Court of Appeals ruled that material delivery truck drivers, who come onto the site of the work merely to drop off construction materials, are not covered by the Davis-Bacon Act even if they are employed by the government contractor, because they are not "employed directly upon the site of the work". Subsequent Appeals Court rulings in two other cases further addressed the scope of the "site of the work". In a Final Rule published in the *Federal Register* on December 20, 2000, 65 FR 80268-80278, the Department of Labor issued revised regulatory definitions of the terms "site of the work" and "construction".

2. Are truck drivers employed by a construction prime contractor or subcontractor to transport materials or equipment from the contractor or subcontractor's plant or yard to a Davis-Bacon covered project, or from a Davis-Bacon covered project to the contractor's / subcontractor's plant or yard covered?

Answer:

If the contractor/subcontractor's *plant or yard is part of the "site of the work"*, the drivers are covered. If the contractor/subcontractor's plant or yard *is not part of the "site of the work"*, the drivers are not covered. Department of Labor (DOL) regulations 29 C.F.R. § 5.2(j) (2) states that the transportation of materials or supplies to or from the "site of the work" by the employees of the construction contractor or a construction subcontractor is not construction. Thus, transportation of such materials or supplies is not covered unless the transportation is between the construction work area and a dedicated facility located "adjacent or virtually adjacent" to the construction site. Driving to and from a commercial facility that serves the general public (not established to serve the project) would not be covered even if it is adjacent or virtually adjacent to the covered construction area.

3. Are drivers transporting materials or equipment from one Davis-Bacon project to another Davis-Bacon project covered?

Answer:

Generally, no. Again the regulatory definition of “construction ...” specifically states that the transportation of materials or supplies to or from the “site of the work” is not considered construction (29 CFR 5.2(l) (2)). Nevertheless, there may be some instances where the two sections of highway construction are contiguous and the transportation of materials or equipment is all on the “site of the work” of both sections that constitute a combined covered project.

4. Are drivers transporting material or equipment away from a Davis-Bacon project or another project of the contractor which is not a Davis-Bacon project covered?

Answer:

No. Unless the transportation of such materials or equipment is to a dedicated facility located adjacent or virtually adjacent to the construction area.

5. Truck drivers are engaged in hauling excavated material, debris, dirt, asphalt, etc., for recycling away from a Davis-Bacon covered construction site.
 - a. Is the time spent loading at the site covered?
 - b. Is the time transporting the material away from the site covered?
 - c. Is the time unloading the material covered?

Answer:

Assuming that the location or facility to which the excavated material or debris will be transported is not a facility that is part of the “site of the work” (adjacent or virtually adjacent to the construction work area: and dedicated exclusively or nearly so to the performance of the contract or project):

- a. If the time spent on the site is not more than *de minimis*, then loading the debris, dirt, asphalt, etc., is not covered.
 - b. The time transporting the material away from the covered site is not covered. The regulation specifically states that the transportation of materials or supplies to or from the “site of the work” is not considered construction.
 - c. The time unloading the material off site is not covered. Davis-Bacon only applies to work done on the “site of the work”.
6. Are truck drivers who are employed by an independent contractor or bona fide material man to haul material to a covered project from a non-covered supply source (i.e., sand or gravel pit, asphalt plant serving the public in general) covered?

Answer:

No. If the material source is commercial in nature and supplies the general public, then the drivers are generally not covered. However, if the time spent on the site of

work is more than de-minimis (20% of the truck driver's work week), the driver would be covered. (regardless of whether they are employed by the contractor or subcontractor or by an independent contractor or bona fide material man/supplier).

7. In situations where truck drivers are employed by an independent contractor or a material man to deliver materials to the "site of work" from covered supply sources (e.g., batch plants or borrow pits, stockpiles, etc.) which have been established to serve exclusively, or nearly so, the covered project), are such drivers covered?

Answer:

Yes. If the supply facility is part of the "site of the work" because it is dedicated (exclusively or nearly so) to performance of the contract or the project and located within or near the project limits – "adjacent or virtually adjacent" to the actual construction site.

Note: DOL has an **enforcement position** with respect to bona fide owner-operators of trucks that own and drive their own trucks. Certified payrolls including the names of such owner-operators do not need to show the hours worked or rates paid, only the notation "owner-operator". This position does not apply to owner-operators of other equipment such as bulldozers, backhoes, cranes, welding machines, etc.

Part 7: FAQ

Q. Why Davis-Bacon Act?

A. To protect workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels.

Q. Who is covered under Davis-Bacon Act?

A. All laborers, operators, and mechanics employed directly upon the site of the work, unconditionally not less often than once a week, and without subsequent deduction or rebate on any account.

Q. What is the Fair Labor Law?

A. The Fair Labor Law is called the Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

Q. Is all personal information required on each payroll?

A. Yes, FLSA (Fair Labor Standards Act) requires employers to keep records on wages, hours and other items (i.e. personal information), as specified in DOL recordkeeping regulations.

Q. Overtime?

A. Overtime pay for laborers, operators, and mechanics at a rate of one and one-half times the basic rate of pay for hours worked on covered contracts in excess of 40 hours in a workweek.

Q. Do contractors receive tax exempt stats by doing work for the state?

A. No, the department does not tax exempt for contractors.

Q. Is it possible for more than one wage schedule to apply to specifications for a particular contract?

A. Yes. Construction projects are generally classified as either [Building](#), [Heavy](#), or [Highway](#) for purposes of issuing wage determinations. Wage schedules for one or more of these construction categories may have application to construction items contained in a proposed construction project. Heavy wages are determined by the bridge structure or the building structure.

Q. What wage rates must be paid to supervisory employees (foremen, superintendents, etc.) employed on a covered project?

A. The wage rates for bona fide supervisory employees are not regulated under the [Davis-Bacon and Related Acts](#) because their duties are primarily administrative or executive in nature rather than those of laborers or mechanics.

Q. A barricading company is supplying traffic control products for 20 Davis-Bacon covered projects. This supplier drops off/picks up traffic control devices at the contractor's yard for each of these 20 projects. There is no set up work involved. Are the employees of this barricading company covered?

A. Generally no. If the contractor's yard is not deemed a part of the "site of work", the employees are not covered. However, if the contractor's yard is deemed a part of the "site of work", then the employees would be covered if the time spent on each project is more than 20% of their work week.

Q. Would these workers be covered if they are not only involved in drop off/pick up, but are also involved in setting up and servicing the traffic control products?

A. Yes. If a material supplier, manufacturer, or carrier undertakes to perform part of a construction contract as a subcontractor, its laborers and mechanics employed at the site of the work are subject to the prevailing wage requirements under Davis-Bacon in the same manner as those employed by any other contractor or subcontractor.

Q. The contractor hires a company to provide inspection services for the contractor's quality control operations on a Davis-Bacon covered project. Are the inspectors subject to prevailing wages?

A. Contractors and subcontractors performing work on covered contracts are required to pay "all laborers and mechanics employed directly on the site of the work" at least the wage rates listed in the contract wage determination for the work performed, for all hours worked on the site of the work. In general, individuals who perform inspections and testing for quality control purposes are not considered laborers or mechanics within the meaning of the Davis-Bacon Act. The primary function of such employees is to take measurements and to accumulate data, upon which recommendations are based, to advise contractors how to rectify problems which may become apparent. Generally, such employees do not physically make the required corrections. If, however, such an employee spends a substantial amount of his/her time in any workweek (more than 20 percent) on the jobsite performing manual, physical, and mechanical functions which are those of traditional craftsmen, he/she would be considered laborers or mechanics for the time so spent. (The regulatory definition of laborer or mechanic is set forth in 29 CFR 5.2(m).)

Q. The contractor hires an engineering firm to provide surveying and staking activities for a Davis-Bacon covered project. Are these workers subject to prevailing wages?

A. An instrument man or transitman, rodman, chainman, party chief, etc., are not considered laborers or mechanics.

PART 8: LIASON

Organizational Contact

The Department's Headquarters Compliance Section has established and maintains effective liaison with officials of the Federal Highway Administration, the Wage and Hour Division, of the United States Department of Labor, the Secretary of the Louisiana Workforce Commission, Office of Labor, and organizations and individuals involved in labor compliance matters which might, in any way, assist in improving labor compliance procedures on highway construction projects.

Communication

Through written correspondence, telephone, in-person contact or any other appropriate media of communication, the Compliance Section personnel have made known to these agencies, organizations and/or individuals their desire to cooperate and assist fully in the conduct of ensuring compliance with all required labor provisions.