



# Davis-Bacon and Related Acts

## Compliance Oversight for Contracting Agencies



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

[dol.gov/agencies/whd](https://dol.gov/agencies/whd)  
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# Introduction

- The Wage and Hour Division (WHD) is responsible for administering and enforcing several federal laws involving labor standards including:
  - The Davis-Bacon and Related Acts (DBRA);
  - The McNamara – O’Hara Service Contract Act (SCA);
  - Executive Orders applicable to federal contractors;
  - The Fair Labor Standards Act (FLSA);
  - Family Medical Leave Act (FMLA).

# Davis-Bacon and Related Acts

- The DBRA applies to contractors and subcontractors performing on federal or federally assisted contracts in excess of \$2,000 for construction, alteration, or repair.
- Covered contractors and subcontractors must pay their laborers and mechanics working on the site of work no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

# Davis-Bacon Investigation Procedures

- Reorganization Plan No. 14 of 1950
- Davis-Bacon (DB) Labor Standards Contract Stipulations
- Specific Steps in Conducting DBRA/CWHSSA Investigations
- Conclusion of Investigation
- Report Writing
- The Hearing Process

# Reorganization Plan No. 14 of 1950

- DOL Functions/Responsibilities:
  - Determining “prevailing wages”
  - Issuing regulations and standards to be observed by contracting agencies; and
  - Performing oversight function and exercising independent authority to conduct investigations

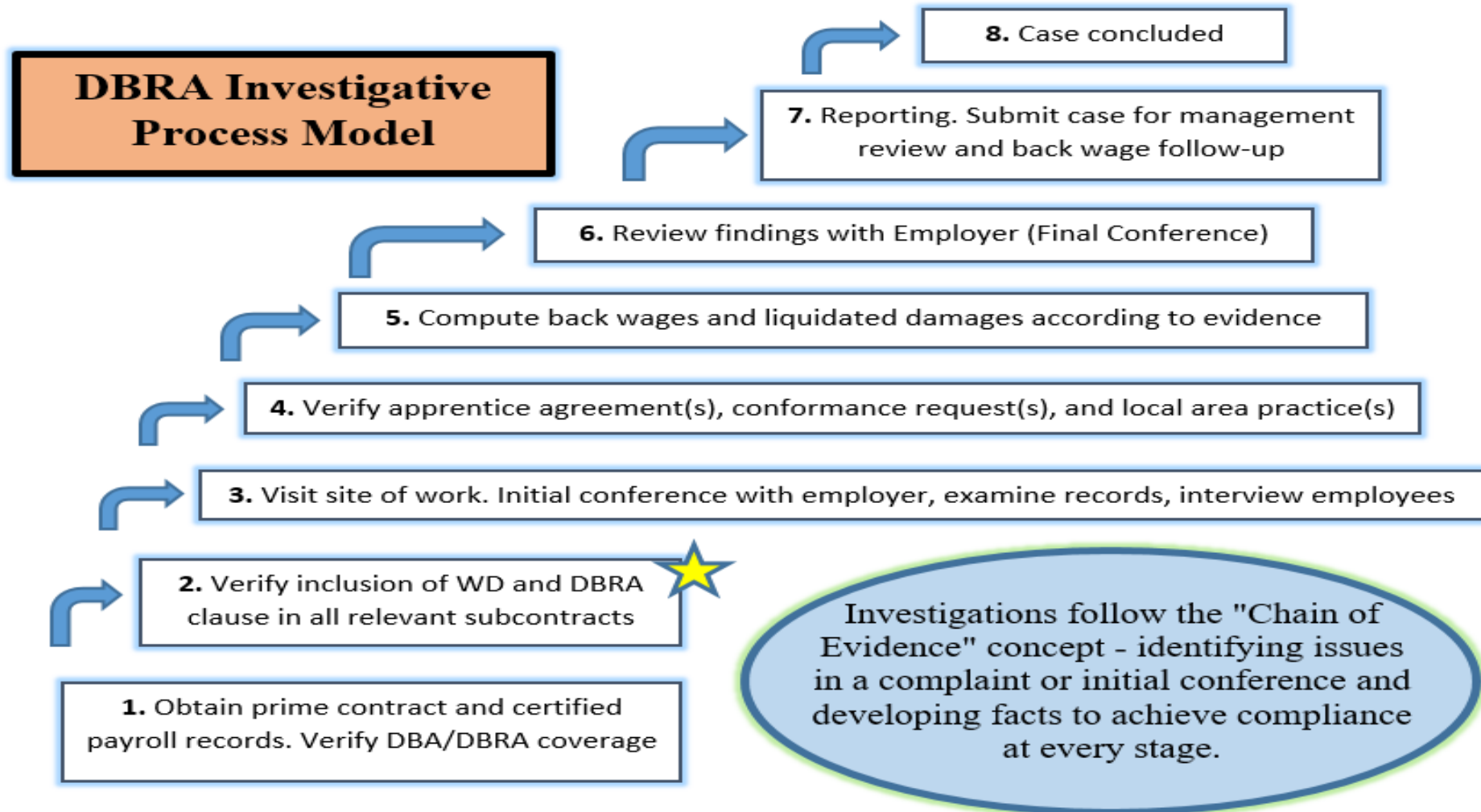
# Contracting Agencies under Reorganization Plan No. 14 of 1950

- Contracting agencies have day-to-day enforcement responsibility for:
  - Contract Stipulations
  - Wage Determinations
  - WH-1321 Poster
  - Reviewing certified payrolls
  - Worker interviews and investigations
  - Forwarding refusal-to-pay and/or debarment consideration cases to WHD for appropriate action; and
  - Enforcement reports

# Authority to Examine Records

- The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the contracting agency or the Department of Labor
- Failure to do so may result in suspension of payment or debarment
- Information from an employer's records will not be revealed to unauthorized persons

# The Investigation Process





# Preliminary Steps in Conducting Investigations

- Obtain the following information:
  - Copy of labor standards clauses in contract
  - Copy of Davis-Bacon WD in contract, including any instructions for multiple schedules
  - Copies of certified payrolls; and
  - Employer identification number

# The Investigation Process

- Initiate contact with contractor
- Examine certified payrolls
- Examine basic payroll records and time records
- Check for compliance with apprenticeship requirements
- Examine evidence of fringe benefit plans and payments
- Interview workers
- Determine if a conformance is necessary

# Worker Interviews

- Are essential to the investigation
- Information provided is confidential
- Interview statements should contain:
  - Place and date of interview;
  - Name and address of contractor/worker;
  - Employment status and classification; and
  - Alleged violations

# Identifying Potential Violations

- Based on information reviewed, including certified payrolls, basic payroll records, interviews, other relevant documents, identify potential violations and compliance, including:
  - Proper classification of workers
  - Full payment of wages with appropriate credit for fringe benefits provided
  - Accurate reporting of hours worked; and
  - Overtime pay

# Area Practice Surveys

- Proper classification of the laborers or mechanics performing the work in question will be resolved by examining the classification practice(s) of contractors who performed the work in question:
  - On similar construction projects (building construction, residential construction, highway construction, heavy construction)
  - In progress in the same area (normally the same county); and
  - During the year preceding the wage determination lock-in date for the contract in question

# *Fry Brothers Corp.* WAB Case No. 76-6, 6/14/77

- In accord with the Wage Appeals Board decision in *Fry Brothers Corp.*, information to be considered in the area practice survey is from firms in the sector (union or non-union) whose wage rates were found to be prevailing in the area and incorporated in the applicable wage determination for each classification listed in the wage determination that may perform the work in question

# Area Practice Surveys - Principles

- If, in the applicable wage determination...
- The rates listed for all classifications that may perform the work in question are collectively bargained rates, the dispute will be resolved by examining the practice(s) of union contractors in classifying workers who have been performing the duties in question in the area
- The rates listed for all the classifications that may perform the work in question are survey rates, the dispute will be resolved by examining the practice(s) of participating contractors in classifying workers who have been performing the duties in question in the area

# Area Practice Surveys - Principles

- If a combination of collectively bargained and survey rates are listed in the wage determination for the classifications that may have performed the work in the area, the dispute will be resolved based on the combined information from:
  - union contractors for the classification(s) for which collectively bargained rates are listed; and
  - non-union contractors for the classification(s) for which survey rates are listed



# Full Area Practice Survey

- Proper Classification of workers is determined by examining the number of workers performing similar work on similar construction, in the same area during the same time period
  - Only union sector data can be used to support a collectively-bargained classification and rate on the WD
  - Only open shop sector data can support use of a survey classification and rate on WD
- The classification with clear majority (60%) is proper (local prevailing) classification for the work

# Determining Compliance

- Determine compliance with prevailing wages, including fringe benefits (FB's)
- Determine compliance with Contract Work Hours and Safety Standards Act (CWHSSA)
- Compute any back wages and liquidated damages

# Computing Back Wages (40-hour workweek)

- Contractor employs a Plumber on the site of the work 40 hours a week. WD calls for a prevailing wage of \$68.04 (\$44.66 + \$23.38 in FBs).
- Worker paid \$25.96 (\$19.90 plus \$6.06 in FBs), which is the WD prevailing wage for Laborers.

Prevailing Wage	\$68.04	X 40 hours	=	\$2,721.60
<u>Worker paid</u>	<u>\$25.96</u>	<u>X 40 hours</u>	<u>=</u>	<u>\$1,038.40</u>
Back wages per worker				\$1,683.20

# Conclusion of Investigation

- Final Conference Procedure:
  - Inform contractor of investigation findings
  - Detail steps to eliminate violations;
  - Consider additional evidence that may impact on findings; (*e.g.*, conformance); and
  - Request payment of back wages and any liquidated damages under CWHSSA
- Contact WHD if no agreement

# Internet Sites

- Wage Determinations: <https://sam.gov>
- 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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