



# Davis-Bacon and Related Acts

My Company is Being Investigated – What  
Happens Next?



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 Clauses
- 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
- **Funding/Contracting Agency Functions/Responsibilities:**
  - In addition to including the contract stipulations and correct wage determinations, federal contracting agencies also have the authority to conduct investigations.
  - Agencies should be interviewing workers, regularly reviewing certified payrolls, and examining apprenticeship documents to assure compliance with the labor standards clauses.

# Regulatory Provisions 29 CFR 5.6(a)

- WHD will conduct investigations or other compliance actions as necessary in order to determine compliance with the labor standards provisions of the DBRA
- WHD will conduct investigations on its own initiative or upon referral from a contracting or funding agency

# Why are Contractors Investigated?

- WHD conducts investigations for a variety of reasons, and generally does not disclose the reason during the investigation.
- Some investigations are the result of complaints. All complaints are confidential, and investigators may not disclose whether one has been received.
- WHD also conducts investigations of businesses or industries for a variety of other reasons, such as high violation rates, employment of vulnerable workers, or rapid changes in the industry.

# Preliminary Steps

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



# The Investigation Process – Record Review

- Initial conference with Contractor
- Examine certified payrolls
- Examine basic payroll records and time records
- Check for compliance with apprenticeship and/or trainee requirements
- Examine fringe benefits plans documentation

# The Investigation Process – Site Visit

- Tour site of the work
- Interview workers
- Determine if a conformance is necessary

# The Investigation Process – Back Wages

- Compute back wages and liquidated damages, if any
- Final conference with Contractor to discuss results of the investigation

# Initial Conference

- Investigators will meet with the contractor at the beginning of every investigation
- Although investigators will frequently contact the contractor prior to opening the investigation to schedule the initial conference, the investigator is not required to do so
- Investigators will collect information to determine which laws or exemptions apply, as well as to determine compliance

# Examining Records

- The contractor is required to 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. 29 CFR 5.5(a)(3)(iii)
- Information from a contractor's records will not be revealed to unauthorized persons

# 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
  - Detailed description of work performed and tools utilized
  - Alleged violations

# Area Practice

- The scope of worker classifications depends on area practice surveys.
- During an investigation, every effort will be made to determine the correct classification according to work actually performed.
- If there is a genuine dispute about the scope of work an area practice may be needed.

# Determining Compliance

- Determine compliance with DBRA, including:
  - Prevailing wages, including fringe benefits
  - Recordkeeping requirements
  - Posting requirement (WH-1321 and WD)
  - Certified payroll requirements
- Determine compliance with 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 (\$50 plus \$10 in FBs), which is the WD prevailing wage for Laborers

Prevailing Wage  $\$68.04 \times 40 \text{ hours} = \$2,721.60$

Worker paid  $\$25.96 \times 40 \text{ hours} = \$1,038.40$

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 findings (*e.g.*, conformance)
  - Request payment of back wages and advise of any liquidated damages that may be assessed under CWHSSA

# 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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