



Davis-Bacon and Related Acts

When Are Davis-Bacon Prevailing Wages Required on Federally Assisted Contracts?



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR



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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.



What Is a Related Act?

- Many federal statutes authorize federal assistance for state or local construction work.
- Where such federal statutes specifically include a statutory provision applying the Davis-Bacon prevailing wage requirements to the assisted work, the statute is considered a Davis-Bacon Related Act.



Federal Assistance

- The structure of the federal funding or federal assistance does not determine coverage.
- Davis-Bacon coverage can result from many forms of federal assistance, including grants, loans, loan guarantees, or insurance.



Funded In Whole Or In Part

- Davis-Bacon prevailing wage requirements generally apply to construction funded or assisted in whole or in part under a Related Act, regardless of how the recipient allocates the funding.
- Even if funding is allocated only to a portion of the construction of a project, prevailing wage requirements generally will still apply to all construction work on the project.



Related Act Variations

- Because coverage of federally assisted projects is due to the specific statutory language in each Related Act that applies the Davis-Bacon prevailing wage requirements to the assisted project, the parameters of coverage can vary by Related Act.
- For example, some Related Acts apply to assisted construction work performed in the U.S. territories, while other Related Acts require the assisted project to meet certain size requirements, such as a certain number of residential units.



Examples of Related Act Projects

- HUD financed low-income housing projects
- Expansion or repairs of roads and bridges using Federal-Aid Highway funds
- Energy projects receiving funding under the Bipartisan Infrastructure Law
- Federal assistance administered by the Department of Education for local school construction



Identifying Related Acts

- Many, but not all, statutes providing federal assistance for construction are Related Acts.
- Funding agencies will inform funding recipients whether their funding is subject to Davis-Bacon requirements, and funding recipients are required to inform their contractors.
- A listing of Related Acts can be found at <https://www.dol.gov/agencies/whd/government-contracts>.



Labor Standards Clauses

- Funding recipients and their sub-recipients must ensure that the Davis-Bacon labor standards clauses in 29 CFR 5.5 and the applicable wage determination(s) are included in all construction contracts for projects assisted in whole or in part under a Related Act.
- Funding recipients must also advise prime contractor(s) that they must include Davis-Bacon labor standards clauses and applicable wage determination(s) in all subcontracts.



Funding Recipient Obligations

- Funding recipients should advise contractors regarding the application of wage determinations and the scope of worker classifications contained in the wage determination(s).



Day-to-Day Oversight

- Funding recipients should also engage in day-to-day oversight, including:
 - Ensuring that the contractor(s) have posted the Davis-Bacon Employee Rights poster (WH-1321), the applicable wage determination(s), and any approved conformances on the site of work.
 - Reviewing certified payroll and related documents.
 - Interviewing workers to confirm compliance in accordance with any enforcement procedures established by the federal funding agency.



Overlap with State or Local Prevailing Wages

- Where a construction project receives both federal and state or local funding, the project may be subject to both Davis-Bacon prevailing wage requirements and state or local laws that similarly require payment of prevailing wage rates set by the state or locality.
- Where both federal and state or local prevailing wage requirements apply, contractors must pay whichever prevailing wage rate is higher for each classification, and meet whichever requirements are more protective of workers.

Work Performed by Government Agencies

- Many Related Acts require prevailing wages to be paid to laborers or mechanics who work for a “contractor or sub-contractor.”
- Because government agencies do not meet the definition of “Contractor,” if the government agency performs the assisted work with its own employees, Davis-Bacon prevailing wages are not required.
- If the government agency contracts out the work, those contracts are subject to the Davis-Bacon prevailing wage requirements.



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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