



Davis-Bacon and Related Acts

Where Is the Site Of the Work?



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR



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.



Why Is There a Site of Work Requirement?

- DBA – “the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work ...”
- 29 CFR 5.5(a)(1)(i) – prevailing wages must be paid to “all laborers and mechanics employed or working upon the site of the work ...”



What Counts As a Site Of the Work?

- Primary construction site
- Secondary construction site
- Adjacent or virtually adjacent dedicated support sites



Primary Construction Site

- Defined as the physical place or places where the building or work called for in the prime contract(s) will remain.
- For smaller projects, the primary construction site will be limited to a specific building or work, but larger projects could have a larger area of construction activity as the primary construction site.



Secondary Construction Site

- Any site where a **significant portion** of the building or work is constructed, so long as both of the following requirements are met:
 - The construction is for **specific use** in that building or work.
 - The site is either **established specifically** for the performance of that contract or project, **or is dedicated exclusively or nearly exclusively** to the performance of the contract or project for a specific period of time.



Secondary Construction Site – Significant Portion

- Only includes sites constructing a **significant portion** of a building or work:
 - One or more entire portions or modules of the building or work with minimal construction work remaining other than the installation and/or final assembly of the portions or modules at the primary site of work.
 - Does **not** include materials or prefabricated component parts, such as door or window frames, roof trusses, cabinets, etc.



Secondary Construction Site – Specific Use

- To be covered, construction at a secondary site must be for **specific use** in a designated public building or work
 - Includes significant portions constructed specifically for a particular building or work and not part of a contractor's regular manufacturing operations
 - Does **not** include items/products that are interchangeable between projects or available to the general public



Secondary Construction Site – Relation to the Project

- To be covered, a secondary site must also be either
 - Established specifically for a particular covered project, or
 - Dedicated exclusively or nearly so to a single covered project for a specific period of time



Secondary Construction Site – Specific Period Of Time

- Specific period of time
 - A secondary site is covered if it is exclusively or nearly exclusively dedicated to the performance of the contract or project for weeks, months, or more.
 - The site is **not** covered if it shifts exclusively or nearly so to a single project just for a few hours or days in order to meet a deadline.



Dedicated Support Sites

- Includes job headquarters, tool yards, batch plants, borrow pits, and similar facilities of a contractor or subcontractor that are:
 - Dedicated exclusively, or nearly so, to performance of the contract or project, **and**
 - Adjacent or virtually adjacent to either a primary construction or secondary site of work.
- Also includes locations adjacent or virtually adjacent to a primary construction site where workers perform activities associated with directing traffic around or away from the primary construction site.



Locations That Are Not Sites Of Work

- Facilities of a contractor or subcontractor, where the location and continued operation of those facilities are determined wholly without regard to any particular Davis-Bacon covered project and where the facilities are not primary or secondary construction sites.
- Facilities of a material supplier, when the facilities are established before the opening of bids and the facility is not on the primary construction site or a secondary construction site.



Truck Drivers and Driver Assistants

- Drivers and driver assistants who work for the contractor or sub-contractor are covered for any of the following:
 - Transportation entirely within a site of work (e.g. from one place on the jobsite to another)
 - Transportation of “significant portions” between a secondary and primary construction site
 - Transportation between an adjacent/virtually adjacent support site and a primary/secondary site
 - Onsite activities essential or incidental to offsite transportation, where the driver or driver’s assistant(s) spend more than a de minimis amount of time on site.



Material Suppliers

- Prevailing wage requirements **do not apply** to a material supplier's workers, even if they are on the site of work.
- If an entity does not merely make deliveries, but also engages in construction work at the site of the work, it is not a material supplier, and its workers are covered to the same extent as the workers of other contractors or subcontractors.



Material Suppliers - Definition

- To be considered a material supplier, all of the following qualifications must be met:
 - The entity's only obligations on the project are the delivery of materials, articles, supplies, or equipment.
 - The entity's facilities are not located on the primary or secondary construction site.
 - The facilities were either established before opening of bids on the contract or project, or are not dedicated to the performance of the contract or project.



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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