

October 23, 2023

# **Updated Davis-Bacon Wages Rules Apply**

## **10/23/23**





Is your municipality working on a federally funded public building or infrastructure project, or planning to in the future? If so, the Davis-Bacon Act applies to your project.

**Updated Davis-Bacon regulations became effective on October 23, 2023.**

## **What Is the Davis-Bacon Act?**

The [Davis-Bacon Act](#) requires contractors and subcontractors working on federally funded projects that cost more than \$2,000 to pay certain workers the “prevailing” wage. Davis-Bacon requirements may be extended to federal financial assistance programs by the terms of other statutes (collectively referred to as Davis-Bacon and Related Acts). For instance, the Contract Work Hours and Safety Standards Act is a Related Act that requires overtime pay to employees on most Davis-Bacon Act covered contracts.

The DBA applies to work:

- on public buildings or public works (for example, a town office or town garage building with USDA Rural Development grants or loans, or water, wastewater, or transportation project with federal funding).



- involving construction, prosecution, completion, or repair.
- performed at the site of the work.

Davis-Bacon Act requirements apply to:

- laborers and mechanics.
- people who guard property (ex. watchperson or guards) (under certain conditions).
- working foreperson (under certain conditions).

The US Environmental Protection Agency's [Davis Bacon Act Overview](#) summarizes the requirements. This overview was published prior to the updated regulation.

## What Has Changed?

The DOL worked to streamline and standardize Davis-Bacon compliance, but contractors and contracting agencies, such as municipalities, will carry more risk. The DOL summarized the changes in a [comparison chart](#). Below are the main changes.

### Prevailing Wages

- The methods for how the DOL determines prevailing wages and whether payment of fringe benefits prevails over not paying benefits have both changed. This may have changed the wage or benefit rate for your project.
- The updates allow DOL to define a wage rate for multi-county projects (“areas”) and geographic subdivisions, such as state highway districts, not just for counties. Mixing rural and metropolitan county data is no longer banned.

### Wage Determinations

- Wage determinations for substantial activities must be incorporated into the Request for Bids and the awarded contract.



- Wage determinations must be updated *after a contract is awarded* if the contract's construction scope of work or its period of performance changes, or if a new subcontract is signed. Contracts not tied to completion of a specific project (retainer contracts, pre-qualified consultant contracts, etc.) must have wage determinations updated annually.

## Definitions

The updated regulations clarify existing definitions and define terms that previously did not have definitions.

- **Agency** was clarified to include state and local agencies or other entities that provide assistance for Davis-Bacon projects.
- **Building** and **work** were modernized to include energy generation, broadband, and electric vehicle charger installations.
- **Construction, completion, or repair** includes demolition work and future construction on a demolition site if that construction will be subject to Davis-Bacon.
- There are new definitions for **contractor**, **subcontractor**, and **prime contractor**.
- **Site of work** has a revised definition that expands its scope.
- Flaggers are covered under Davis-Bacon if they are associated with the construction project. They do not have to be physically on the construction site.
- **Material suppliers** are not considered contractors for Davis-Bacon purposes. Contractor workers who move materials within a site or off site may be covered.
- Davis-Bacon applies to truck drivers employed by contractors and subcontractors when they are engaged in certain activities.
- Surveyors are considered laborers or mechanics in certain circumstances, and therefore are covered by Davis-Bacon.

## Compliance



**Record Keeping** – Contractors and subcontractors are required to keep certain documentation to prove they tried to comply with Davis-Bacon; to maintain a list of workers with telephone numbers and email addresses; and to retain all documents for at least three years after the work on the *prime contract* is completed. They also must certify payroll (by signature) and submit it on a weekly basis to the contracting agency. The contracting agency (you!) must retain these records too, and you are responsible for ensuring that the signature on the certified payroll is valid.

**Contracting** – Contractors and upper-tier contractors now may be liable for lower-tier subcontractor violations. This means they are required to pay back wages on behalf of their lower-tier subcontractors and may be subject to debarment for subcontractor violations. Intent doesn't matter. Prime contractors must follow up and ensure compliance. Upper-tier subcontractors must have some degree of intent to incur liability.

Contract clauses must be inserted in full. Anti-retaliation provisions are included in the contract clauses and include remedies.

**Fringe Benefits** – Fringe benefit contributions must be annualized, and an hourly equivalent rate must be calculated if a contractor's worker performs work on both Davis-Bacon and non-Davis-Bacon projects. There are some exceptions to annualization calculations, and they have nuances!

**Apprenticeships** – Specific requirements must be met for a contractor to claim a fringe benefit credit for the costs of an apprenticeship program.

**Enforcement** –

- Interest will be due on back wages, calculated per an IRS standard, and compounded daily. Back wages and interest can be withheld from the prime



contractor's other federal contracts.

- Certain Davis-Bacon requirements have been aligned with requirements of related acts (e.g., one standard for debarment, its mandatory period, etc.).
- If wage determinations and contract clauses are missing from executed (signed) contracts, they must be incorporated retroactively. This may require an increase in the contract amount for cover wages even if the contract has closed.

## What Should Municipalities Do Now?

### Review your Davis-Bacon compliance program.

- Are the required contract clauses in all contracts subject to Davis-Bacon?
- Do you have a mechanism or procedure to ensure contractors *and* subcontractors are following Davis-Bacon requirements?
- Are you collecting records (including the newly required records) and certified payrolls from your contractors? How do you ensure that the certification signature is valid?
- Do you have a system to verify Davis-Bacon compliance with your contractors and subcontractors?
- Do you have any project wage determinations that are nearing expiration?

**Conduct a risk assessment** of your Davis-Bacon compliance program. Even if your "program" is informal, take the time to identify gaps and create controls to close them.

**Revisit training.** Do you have clear guidance for contractors and subcontractors to comply with Davis-Bacon? Is your staff receiving regular training on Davis-Bacon compliance?

## Need Resources?



To learn more about the updated Davis-Bacon and related acts regulations, visit <https://www.dol.gov/agencies/whd/government-contracts/construction/>. The webpage includes a Small Entity Compliance Guide that is useful for understanding the updates.

Need current Davis-Bacon Wages? Our Project Management Tip of the Week includes our [Guide to Obtaining Davis-Bacon Wage Determinations](#).

