

FAQ: Davis-Bacon and Related Acts

All health centers receiving funding through the American Recovery and Reinvestment Act (ARRA) are required to comply with the Davis-Bacon Act. The Davis-Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating) to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts (<http://www.access.gpo.gov/davisbacon/allstates.html>).

In addition to the Davis-Bacon Act itself, Congress added Davis-Bacon prevailing wage provisions to approximately 60 laws—"related Acts"—under which Federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. (Examples of the related Acts are the American Recovery and Reinvestment Act, the Federal-Aid Highway Acts, and the Federal Water Pollution Control Act.) Generally, the application of prevailing wage requirements to projects receiving Federal assistance under any particular "related" Act depends on the provisions of that law.

The U.S. Department of Labor (DOL) has oversight responsibilities to assure coordination of administration and consistency of enforcement of the labor standards provisions of the DBRA. Under this authority, DOL has issued regulations establishing standards and procedures for the administration and enforcement of the Davis-Bacon labor standards provisions (<http://www.dol.gov/compliance/laws/comp-dbra.htm>). Federal contracting agencies have day-to-day responsibility for administration and enforcement of the Davis-Bacon labor standards provisions in covered contracts for which they are responsible or to which they provide federal assistance under laws they administer. Within DOL, the Employment Standards Administration's Wage and Hour Division (WHD) is responsible for administration and enforcement of the DBRA.

The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent. For additional guidance, please refer to http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_5/29CFR5.2.htm.

The following summarizes the requirements of the Davis-Bacon Act:

- Wages must be paid at least once a week and in full, making only those deductions that are permitted by the Secretary of Labor.
- The recipient shall place a copy of the current prevailing wage determination in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination.

- Current Davis Bacon Act Wage Determinations (WD) can be found online at <http://www.wdol.gov/dba.aspx>.
- To determine the WDs for a certain project, the appropriate state, county, and construction type needs to be entered into the WDOL search engine.
- Must display the Secretary of Labor's Wage Poster and Wage Determination Poster in a conspicuous place at the work site (<http://www.dol.gov/esa/whd/regs/compliance/posters/fedprojc.pdf>)
- Must permit monitoring of compliance with Federal Labor Standards including spot checks on the job site and interviews of employees.
- Must complete a number of forms and records:
 - Payroll Form WH-347 including the signed "Statement of Compliance" <http://www.dol.gov/esa/whd/forms/wh347.pdf> [Grantees are not required to use this payroll form, however they must attach the signed, verbatim "Statement of Compliance" if using their own payroll format.]
 - Report of Construction Contractor's Wage Rates WD-10 <http://www.dol.gov/esa/whd/programs/dbra/WD10Instrctns/wd10instructions.htm>

Generally, in construction projects where there is a general contractor, it will be the general contractor's responsibility to complete the pre-construction interview, random interviews, sample employee interviews, and the weekly payroll sheets. In those instances where the grantee is acting as the general contractor, the grantee will need to complete the necessary items.

Apprentices and trainees may be employed at less than predetermined rates. Apprentices must be employed pursuant to an apprenticeship program registered with the Department of Labor or with a State apprenticeship agency recognized by the Department. Trainees must be employed pursuant to a training program certified by the Department. Davis-Bacon does not apply to volunteer labor or members of an eligible family who provide labor in exchange for equity or rent.

Other Davis-Bacon Guidance

DOL Regs 29 CFR 5.7 require Federal agencies to submit a report to the Secretary of Labor on all enforcement actions where underpayments by a contractor or subcontractor total \$1,000 or more, or where there is reason to believe the violations are aggravated or willful. Reports are due within 60 days of the completion of the investigation. (Threshold applies to entire workforce, not individual employees.)

Resources

Department of Labor (DOL) Wage and Hour Division	http://www.dol.gov/esa/whd/programs/dbra/
DOL Davis-Bacon and Related Acts (DBRA) page	http://www.dol.gov/compliance/laws/comp-dbra.htm
Wage Determinations Online	http://www.wdol.gov/
HHS Recovery Act	http://www.hhs.gov/recovery/