

## **What You Need to Know about the Davis-Bacon Act**

- 1. What is the Davis-Bacon Act?**
  - a. The DBA was enacted in 1931 following the Great Depression. Through this act, the Federal Government sets the standard wage determination for the minimum wage that employers have to pay their employees when working on federally-funded construction sites.
- 2. Who is affected by the Davis-Bacon Act?**
  - a. Any employer who is working on any construction, alteration or repair of public works or a public building where the United States or the District of Columbia (also known as the federal government) are providing the money for the project. The project contract must be more than \$2,000.00. The DBA includes projects for painting or decorating. For example, if your company is working on a military base, and your contract is to work for \$2,000.01, then your company and your employees fall under the DBA.
- 3. What is a wage determination?**
  - a. The wage determination under the DBA is the minimum wage that must be paid to employees covered by the DBA, including fringe benefits.
- 4. What are general wage determinations or “minimum wages”?**
  - a. General wage determinations or, minimum wages, are what each employer working on a federally funded jobsite must pay his or her employees who are skilled or craft workers. The minimum wage is a floor.
- 5. How are minimum wages determined?**
  - a. The Secretary of Labor determines what the “minimum wages” are for any job that is affected by the DBA. The Secretary of Labor uses a survey that is conducted to determine what the prevailing wages are for a certain job in a certain region. The wages will be set by what the majority of workers in a certain position on a certain type of jobsite are paid. If there is no majority, then all wage rates for that type of position will be averaged to set the DBA “minimum.” For example, if you are working in Fulton County on reconstruction for the Federal Courthouse and you employ several crane operators, then their wages are determined by the survey. The survey will ask, how much do crane operators in Fulton County Georgia get paid per hour? If the survey determines that the majority of crane operators in Fulton County are paid \$25 per hour, then the minimum you must pay your crane operator in Fulton County is \$25 per hour. However, you may always pay more, but you cannot pay less than the floor.
- 6. What are superseded wage determinations?**
  - a. Supersedes wage determinations are changes or modifications to the general wage determination. If the Department of Labor determines that a modification must be made to an existing wage rate, then it issues a superseded wage determination. The superseded wage will replace what was previously the general wage. Superseded wages are issued annually. Superseded wage determinations are "published" to the government

agencies on the date of the notice of the supersedes wage determination published on WDOL or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first.

**7. What is a Project Wage Determination?**

- a. A project wage determination is issued at the specific request of a contracting agency (using a Standard Form (SF) 308); is applicable to the named project only; and expires 180 calendar days from the date of issuance unless an extension of the expiration date is requested by the agency and approved by the Wage and Hour Division. If such a determination is not used in the period of its effectiveness, it is void.

**8. Where can I find out what the minimum wages are?**

- a. Minimum wages, as determined by the survey, are available at [www.wdol.gov](http://www.wdol.gov). On the home page, under the Davis-Bacon Act heading, select the “Selecting DBA WDs” bullet. On the page that follows you may either search by WD (wage determination) number, or you may select the state, county and type of work which pertains to you. Once you have narrowed your search, the website will produce a report of wage determinations including wage benefits. In addition to accessing the WDs online, the agency who runs the project that you are working on is required to provide you with the most current wage determinations.

**9. Which employees am I required to pay under the Davis-Bacon Act?**

- a. Skilled or craft-persons who are employed on a federally-funded job are covered under the DBA. Unskilled or semi-skilled “helpers” are not covered. Supervisory employees are not covered under the DBA. Therefore your superintendents, project managers and foremen are not covered under the DAB. However, if, for example, your foreman spends 20 percent of his or her week operating a backhoe, then he must be compensated under the DBA for that 20 percent according to the wage determination. Additionally, employees who are not employed on the jobsite are not covered. For example, persons employed in your office are not covered under the DBA.

**10. Can apprentices, trainees and helpers work on jobs covered by the Davis-Bacon Act?**

- a. **Apprentices** are allowed to work on a DBA covered project provided that they are an apprentice registered in a bona fide apprenticeship program with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau. A person can also be an apprentice if he or she is in a 90-day certified probationary program. An apprentice should be paid the wage or wage percentage specified by the program that he or she is registered or certified with.
- b. **Trainees** are permitted to work if they are registered in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which have

been so certified by that administration. Wages for trainees are determined in the same way that they are for apprentices; that is, according to the program which the trainee is registered with.

- c. **Helpers** may be issued in or added to a wage determination only where (a) the duties of the helpers are clearly defined and distinct from those of the journeyman classification and from the laborer, (b) the use of such helpers is an established prevailing practice in the area, and (c) the term "helper" is not synonymous with "trainee" in an informal training program.

**11. What happens if the wage determination changes after my company has already begun work on a project?**

- a. Most likely, if there is a modification or supersedes made to the wage determination that you used when bidding a job, and you have already begun work on that job, the rates will not change for that job. However, the rates may change if the wrong wage determination was incorporated into your bid, or if the agency awarding bids has failed to incorporate the wage determinations required by the DBA. If either of those two events should occur, then the agency must suspend the work and contract and rebid the work, or incorporate the correct wages, retroactively from the beginning of the work, and compensate you, the employer, for any increase in wages.

**12. What about other labor laws like work hours and health and safety standards?**

- a. The DBA states that all the other labor statutes that you have to follow on any other jobsites, also must be followed on a DBA site. For example, overtime has to be paid for overtime hours worked and OSHA standards still have to be followed.

**13. So I just pay regular overtime?**

- a. Not exactly. If you are a contractor on a job contract for more than \$100,000, then you must pay at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. So if you work on a job contract for \$100,000.01, and you pay a mechanic \$15 an hour, and he works 47 hours one week, then you will have to pay him \$22.50 for the seven hours over 40 that he worked.

**14. How do my employees know about these wage requirements?**

- a. Each employer covered under the DBA must post the WH-1321 "Employee Rights Under the Davis-Bacon Act" poster (available at <http://www.dol.gov/whd/programs/dbra/wh1321.htm>) at the site of the work in a place where the poster may be easily seen by employees. There is no particular size requirement. The wage determination must be similarly posted.

**15. How am I supposed to show that I am in compliance with the Davis-Bacon Act?**

- a. Recordkeeping is the best way to show that you are doing what you are supposed to be doing. You are also required by the DBA to keep payroll records for three years. Your records should include:
  - i. Name, address, and Social Security number of each employee

- ii. Each employee's work classifications
- iii. Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents
- iv. Daily and weekly numbers of hours worked
- v. Deductions made
- vi. Actual wages paid
- vii. If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected
- viii. If applicable, detailed information regarding approved apprenticeship or trainee programs

**16. What are the reporting requirements?**

- a. If you are covered under the DBA, every week you must provide the federal agency a copy of all payrolls providing the information listed above for recordkeeping for the preceding weekly payroll period. Each payroll submitted must be accompanied by a "Statement of Compliance." You or your authorized employee who supervises the payment of wages must sign the weekly statement. Statements of Compliance are to be made on the form WH-347 "Payroll (For Contractors Optional Use)" (available at <http://www.dol.gov/whd/forms/wh347instr.htm>) or on any form with identical wording. This must be completed within seven days after the regular pay date for the pay period. You may also be asked to submit, via survey, wage data that may be used by the Wage and Hour Division to determine the locally prevailing wage rates that will apply to workers on DBA covered projects. The submission of wage data is encouraged, but voluntary.

**17. Why do I have to report?**

- a. The best answer is, "because the government said so." The federal agency uses that information to make sure that companies covered under the DBA are complying with the law.

**18. Are there any consequences for not reporting?**

- a. Yes. You are also subject to criminal and civil liability for falsifying the wages that you report. Always check twice for mistakes!

**19. What are the penalties for not paying the prevailing wages?**

- a. If you choose not to pay the prevailing minimum wages, and the governing federal agency finds out about it, you may be subject to contract termination and debarment from future contracts for up to three years. In addition, contract payments may be withheld in sufficient amounts to satisfy liabilities for unpaid wages and liquidated damages that result from overtime violations of the Contract Work Hours and Safety Standards Act (CWHSSA). Also important to know, falsification of certified payroll records or the required kickback of wages may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be fines and/or imprisonment.

**20. If I am found to be in violation, can I appeal that charge?**

- a. Yes. Contractors and subcontractors may challenge determinations of violations and debarment before an Administrative Law Judge. Contractors and subcontractors may appeal decisions by Administrative Law Judge's with the Department's Administrative Review Board. Final Board determinations on violations may be appealed to and are enforceable through the federal courts.