



*Powell & Booth, PC  
Presents:*

*Understanding and  
Accounting for:  
The Davis-Bacon Act*

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## **Who are the chief sponsors of The Davis-Bacon Act?**

The Davis-Bacon Act (DBA), was enacted on March 3, 1931, and was named after its chief sponsors Senator Davis of Pennsylvania and Representative Bacon of New York.

There are, and have been, many who support and many who oppose the DBA. It has been said that at the time the DBA was passed, local workers were complaining about non-locals taking construction jobs from them. The local construction workers and contractors complained to their Congressmen who in turn voiced their frustration.

## **Who was the Davis-Bacon Act directed towards and who was the act suppose to protect?**

The DBA was directed towards migrant 'fly by night' contractors.

The DBA was supposed to protect **local** wage standards by preventing contractors from basing their bids on wages lower than those prevailing in the area.

## **Who is covered by the Act?**

The DBA applies to contractors on the site of Federal projects that involve the "construction, alteration, and/or repair, including painting and decorating, of public buildings or public works."

Stated simply, any type of construction related work that exceeds \$2,000 in federal funding when the site of the construction is on public property.

Stated very simply, if the construction project involves federal funding then the contract is subject to the Davis-Bacon Act.

## **Who is excluded from the Davis-Bacon Act?**

Excluded from the DBA are: Executives, Professionals, and Administrative Staff

Not limited to but including:

- Accountant(s)
- Attorney(s)
- Engineer(s)
- Project Manager(s)
- Secretary(s)

and, according to the DOL's Field Operations Handbook, 15e16, "as a matter of administrative policy the Department of Labor has exempted true owner-operators of trucks and hauling equipment."

## **What are the costs?**

The General Accounting Office (GAO) conducted a study in 1977 for the Department of Labor.

### **GAO findings in 1977 dollars**

- The DBA increased federally funded jobs from 228 million to 513 million
- The DBA increased administrative costs to contractors by 189.1 million
- The DBA increased federal agencies spending by 12.4 million to administer and enforce the Act's requirements.

## GAO findings in 2011 dollars

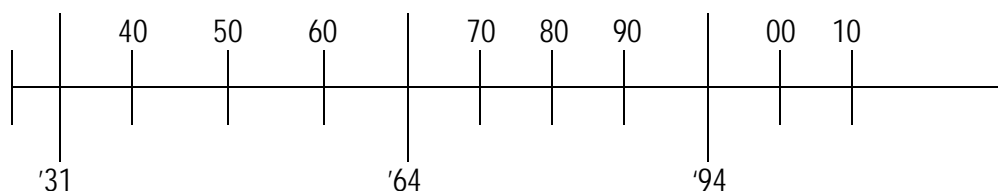
- Federally funded jobs increase from 859 million to 1.93 billion
- Administrative costs to contractors increased by 712.1 million
- Administrative costs to federal agencies increased by 46.7 million

Annual inflation over this period was 3.98%

The Beacon Hill Institute, in its widely used study on Davis-Bacon Act "mismeasure of wages," concluded that there are three main consequences of the flawed estimates:

- The Wage and Hour Division (WHD) method inflates wages, on average, by 22%
- The WHD method inflates construction costs by 9.91%
- The WHD raised public construction costs by 9 billion in 2009

## What is the Davis Time Line?



- Enacted in 1931
- Amended in 1964 to include fringe benefits
- Amended in 1994 to include projects funded by Head Start programs
- Suspended in 1935 by Roosevelt to manage the New Deal
- Suspended in 1992 by George H.W. Bush for Hurricane Andrew recovery
- Suspended in 2005 by George W. Bush for Hurricane Katrina recovery

## What are the basis provisions?

- Employers are required to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits employed on similar projects in the area.
- Apprentices and trainees may be employed at less than the predetermined rates if in a program certified by the Department of Labor.
- Exclusions: Executives, Professionals, and Administrative personnel.

## What are considered acceptable fringe benefits?

In addition to basic hourly rates of pay, fringe benefits are included in determining wages paid to laborers.

Examples of fringes:

- Medical or hospital care
- Pension plans

- Insurance (life, health, disability, accident)
- Vacation pay
- Holiday pay
- Defraying costs of apprenticeship programs
- other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or Local law to provide any of such benefits.

### **What is a wage determination?**

A wage determination is a listing of wage rates and fringe benefits for each classification of workers in a given area for a particular type of construction determined by the DOL. [www.wdol.gov/dba.aspx](http://www.wdol.gov/dba.aspx)

### **What if modifications come out after I have started the project?**

Any modifications to the determination are not applicable to the contract unless the contract has not been awarded within 90 days after the bid opening and an extension has been granted.

### **What are the record keeping requirements?**

- Payroll and basic records for all laborers and mechanics must be maintained and include:
  - Name, address, and Social Security number of employee
  - Employee's work classification
  - Hourly rate of pay, contributions, or costs anticipated for fringe benefits
  - Daily and weekly number of hours worked
  - Deductions made
  - Actual wages paid
  - Details of fringe benefit plans/programs
  - Information regarding apprenticeship or trainee programs implemented
- Records must be maintained throughout the course of the contract and a period of three years thereafter
- Must indicate that any fringe benefit plans/programs have been communicated in writing to employees affected
- Certified payroll information must be submitted weekly to the federal agency for preceding weekly payroll period (Form WH-347)
- Prime contractor is responsible for submission of payrolls by all subcontractors
- A signed statement of compliance (Form WH-347) must accompany the payroll submitted and certify that:
  - That the payroll contains all required information, information is being maintained accordingly, and is correct/complete
  - That each laborer or mechanic has been paid the full weekly wages earned and that no deductions were made (that were not approved by the contracting agency and the DOL)
  - Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits for the classification of work performed

## What are the determinations for Apprentice & Trainee Wages?

- Must be enrolled in a certified apprenticeship or trainee program:
  - "A person employed and individually registered 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, or
  - A person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program,"
  - **Trainees** employed must be persons registered in a construction occupation under a program approved by the U.S. DOL
- Conformance to Davis-Bacon requirements are not necessary as long as they do not perform work that could be construed as a laborer
- Wage rates to be paid are specific to the particular program in which they are enrolled

## What is the statute of limitations?

Statute of limitations is 2 years for accidental wage violations

- The most common remedy for wage violations is an order that the employer make up the difference between what the employee was paid and the amount he or she should have been paid. Referred to as "back pay"
- The order will most likely come in the following form:
  - The Wage and Hour Division may supervise back pay
  - The Secretary of Labor may bring suit for back wages and an equal amount of liquidating damages.
  - Employee may file private suit for back pay, equal amount of liquidating damages, plus attorney's fees and court costs.
  - The Secretary of Labor may obtain an injunction to restrain any person from violating the FLSA, including the unlawful withholding of proper minimum wage and overtime pay.
- In the case of willful violations a 3 year statute applies.

## Where am I to apply the wage determination if I have multiple jobs?

- Under the Davis-Bacon Act, the physical place(s) where the building or work in the contract will remain is considered the site of the work, which is where the wages are to be applied.
- Any site where a significant portion of the building or work is constructed provided that such site is established specifically for the performance of the contract or project
- Does not include permanent home offices, branch plants, fabrication plants, tool yards, etc. that would otherwise be used for other projects beyond the federally funded contract in question.

## Where do I post the Davis-Bacon Act poster?

The DBA poster (WH – 1321) should be placed where employees can see it at the site of the work (which includes):

- Physical place(s) where the building or work in the contract will remain
- Any site where a significant portion of the building or work is constructed provided that such site is established specifically for the performance of the contract or project

## Where can I find the Davis-Bacon Act poster?

<http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>

## When my employees work overtime?

- Laborers and mechanics that work over 40 hours in a given workweek are required to receive no less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such work-week.
- Contractor and any subcontractor are liable for unpaid overtime wages as well as liquidated damages.

## When do I have to pay my employees?

The Copeland Act "Anti-Kickback Act" states that contractors and subcontractors performing work on Federally financed or assisted construction contracts are to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." (40 U.S.C SS 3145)

## When I have multi-tasking employee what is his or her wage rate?

You can pay the wage rates specified for each work week for each employee.

*but*

You can only pay the wage rates specified for each work classification in which work was performed if you maintain accurate time records showing the amount of time spent in each classification.

*By default*, if you do not maintain accurate records for time spent performing each task, you must pay the highest wage rate of all of the classifications of work performed.

## When my contract is missing wage determinations can I pay my employees their normal pay rate?

**NO**

The "Christian Doctrine" is a rule of Government procurement arising from the case *GL Christian & Assoc. v. United States*. The doctrine states that mandatory clauses automatically become part of the contract despite their omission from the contract. The converse is also true; where a clause is prohibited by regulation it can be stricken from a contract.

Because the Federal Acquisition Regulation (FAR) is the law, and government contractors are presumed to be familiar with the FAR, the standard clauses are treated as included in every contract, even if left out by the government contracting officer.

Conversely, if the contract is not subject to the Davis-Bacon Act and the government contracting officer has included a wage determination, a claim can be made.

### **When preparing payroll do I have to use the DOL form?**

Form 347 is optional; however, "it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. SS 3.3, 5.5 (a)."

When responding, provide: contractor/subcontractors name, address, payroll number, week ending, project & location, contract/project number, employees name and last four, withholdings, work classification, day and date, hours worked, rate of pay, gross earned, withholding tax, deductions, and net pay.

Additionally, payroll is to be accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

### **When I prefer to fill out the WH-347, is there an editable pdf?**

YES [www.dol.gov/whd/forms/wh347.pdf](http://www.dol.gov/whd/forms/wh347.pdf)

### **How to Complete Form WH-347?**

**Contractor/Subcontractor:** Fill in your firm's name and check appropriate box

**Address:** Fill in your firm's address

**Payroll No.:** Beginning with "1", list the payroll number for the submission

**For Week Ending:** List the workweek ending date

**Project & Location:** Self-explanatory

**Project or Contract No.:** Self-explanatory

**Column 1:** Enter each worker's full name and last four digits of SSN on each weekly payroll submitted

**Column 2:** (optional): List number of withholding exemptions for each worker

**Column 3:** List classification of descriptive work performed by worker as set forth in classification and minimum wage schedule of contract specifications (use separate entries if multiple classifications are applicable to same worker)

**Column 4:** List the day, date, straight time, and overtime hours worked (hours over 40/week are overtime)

**Column 5:** Total the hours worked in column 4

**Column 6:** In straight time box, list actual hourly rate plus cash paid in lieu for fringe benefits (i.e. \$15/.50 would reflect hourly base rate of \$15 plus \$.50 for fringe benefits). This will assist in computing overtime pay. If overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid for each worker (must be at least one and one-half the regular hourly rate of pay for overtime)

**Column 7:** Enter gross amount earned on the project. If worker was engaged on both federally and non-federally funded jobs, list first the amount earned on covered federal project then total of all projects worked (i.e. \$175/\$500)

**Column 8:** Use the five columns to list applicable deductions from pay. If more than five deductions are applicable, enter the balance of "other deductions" in the fifth box and enter total in "total deduction" box.

**Column 9:** Net of column 7 and total deductions

**Item 1 & 2:** Describe any deductions in space between item 1 & 2

**Item 4:** If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined, show the basic cash hourly rate and overtime rate paid to each worker on first page and check box 4(a). Note any exceptions in 4(c).

**4(c) Exceptions:** List any exceptions for payments less than predetermined rate as cash in lieu of fringe benefits.

**\*This is to be filed once a week**

### **Where do I submit the certified payroll and compliance form?**

Certified payroll reports are to be submitted to the contracting agency. Make sure it is clear to whom the payrolls should be transmitted during your initial meeting with the contracting officials. It is not uncommon for a contracting official to request that you hold the payroll reports on-site or at the agency for them to review and not actually transmit them.

The certified payroll reports are to be submitted for each payroll period within seven (7) days of the payment of wages.

### **Where are the "Little Davis-Bacon Acts"?**

Labor standards requirements, governed in large part by the federal Fair Labor Standards Act ("FLSA"), can be very confusing.

Withstanding, States are free to set higher standards that would govern employees also covered by the FLSA or enact their own for those not covered by FLSA.

Some states and the District of Columbia have enacted their own public works statutes, often called "Little Davis-Bacon Acts."

#### **States with "Little Davis-Bacon Acts"**

Alaska – reformed in 2008	Massachusetts	Tennessee
Arkansas	Michigan	Texas
California	Missouri	Vermont
Connecticut	Montana	Washington
Delaware	Nebraska	West Virginia
Hawaii	Nevada	Wisconsin
Illinois	New Jersey	Wyoming
Kansas	New Mexico	
Indiana	New York	
Kentucky	Ohio	
Main	Pennsylvania	
Maryland	Rhode Island	

## How do I strategically manage my contract?

When the Davis-Bacon Act wage is higher than the wage you are currently paying your employees, there are several strategies a contractor can implement to reduce costs:

1. Maintain a cafeteria plan.
2. Perform cost-benefit analysis for a reduction in staff on DBA contracts?
3. Maintain Multi-tasked employee hour accountability

## What is a cafeteria plan?

A cafeteria plan is a separate written plan maintained by an employer for employees that meets the specific requirements of and regulations of section 125 of the Internal Revenue Code. It provides participants an opportunity to receive certain benefits on a pretax basis. Participants in a cafeteria plan must be permitted to choose among at least one taxable benefit (such as cash) and one qualified benefit.

A qualified benefit is a benefit that does not defer compensation and is excludable from an employee's gross income under a specific provision of the Code, without being subject to the principles of constructive receipt

## How can I perform a cost-benefit analysis for a reduction in staff on Davis-Bacon Act contracts?

### Reduction in staff on DBA job?

**Costs:** Increased over-time for existing staff on DBA contract

Hourly rate \* OT + benefits

or

2 x Hourly rate + benefits

**Benefit:** Employee is receiving increased compensation. Contractor reduces overhead.

**Analysis:** Will the contract be completed in a timely fashion? If so, benefits exceed costs.

By default, employees ***will be paid the highest wage rate applicable*** to their job task if they are a multi-tasked employee and the tasks performed have not been properly documented. Therefore, internal controls should be such that a project manager or foreman instructs his employees to sign the time sheet at the end of the work week to ensure the accurate wage rate will be applied, appropriated and acknowledged to alleviate any discrepancy.

## How do I efficiently implement the DBA with my accounting software?

If you are using QuickBooks you can set up several different rates for your employees. You may want to set up a new account for the Davis-Bacon Act titled "DBA wages" and set the rate for the applicable DBA wage. Then, when entering time for the week, select the item name, wage rate, and the number of hours and have QuickBooks calculate payroll as usual.

After payroll is processed in QuickBooks, go to the report center and open an Employee Earnings Summary. If you added an account for DBA wages, you can sort the data or "modify report" by filtering by the DBA wages account and export to excel. As stated earlier, if you have the required data you can print and file this report instead of page 1 of the WH-347.