



EPA Davis-Bacon Term & Condition

Office of Grants and Debarment

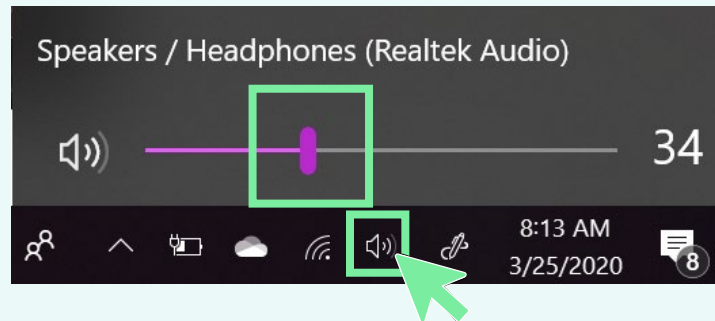
National Policy, Training, and Compliance Division

Housekeeping

Meeting Audio

- ✓ Attendees must use **Device Audio** (computer, headset, tablet, or smart phone)
- ✓ Presenter Audio Only (like a TV broadcast)
- ✓ If you cannot hear, ensure your system/device audio is turned up and not muted and that you have not paused the broadcast

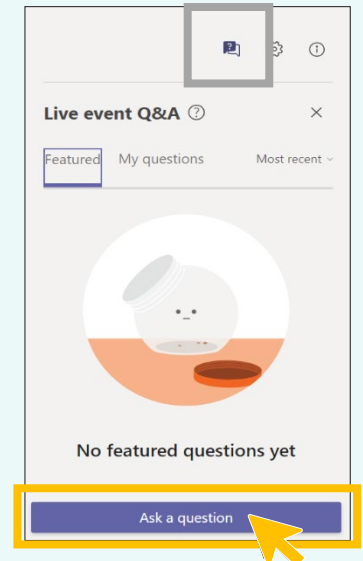
Computer audio is located at the bottom right of the Windows desktop.



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- ✓ Click “Ask a question”

Q&A panel is located on the top right side of the Live Event window.

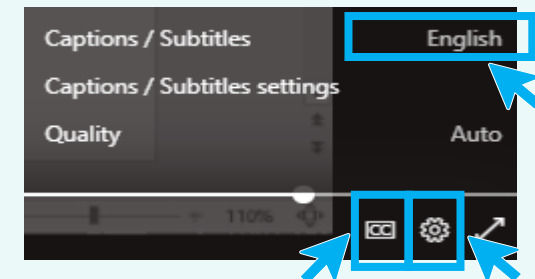


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This webinar will be recorded and posted to the EPA Grants website:
<https://www.epa.gov/grants/epa-grants-webinars>




Introduction

The Davis-Bacon and Related Acts generally apply to EPA grants and cooperative agreements (grants), for construction contracts of \$2,000 or more.

The purpose of the Davis-Bacon and Related Acts is to protect laborers and mechanics on projects that are funded in whole or in part with Federal funds.

The Department of Labor revised the regulations in the Code of Federal Regulations Title 29 (29 CFR) in August 2023, for awarding agencies to implement in October 2023.





Program
Applicability

Generally apply to programs under which infrastructure projects and/or remediation occur.

Examples include:

- Clean Water State Revolving Funds (SRF)
- Drinking Water SRF
- Brownfields Direct Cleanup Grants
- Brownfields Revolving Loan Fund Grants
- Congressionally Directed Spending (aka. Community) Grants



Background

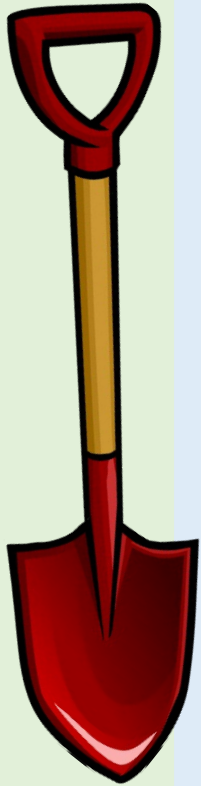
Enacted in 1931 and amended in 1935 & 1964 & 2023.

Applies to Federal construction contracts over \$2,000 and to Federal assistance when required by a “Related Act,” such as infrastructure projects under the Clean Water Act.

- “Site-based”
- Covers alteration, repair, painting, and decorating activities
- Applies to laborers and mechanics
- Requires payment of prevailing wages
- Requires weekly payment of wages



Laborers and
Mechanics



Laborers and mechanics:

- Are defined as workers whose duties are manual or physical in nature
- Include Apprentices, Trainees, and Helpers

Job types not covered:

- Supervisory position at the job site (<20% time in skilled labor)
- Clerical
- Professionals

Requirements

Davis-Bacon Poster

The WORKER RIGHTS UNDER THE DAVIS-BACON ACT poster

- Contractors and subcontractors must post at job sites
- Notice to All Employees (WH1321)
- Protected from elements
- Accessible to all laborers and mechanics
- Easy for all parties to see

WORKER RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS WORKING ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

The law requires employers to display this poster where employees can readily see it.

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

RETALIATION

The law prohibits discharging or otherwise retaliating against workers for filing a complaint, cooperating in an investigation, or testifying in a proceeding under the Davis-Bacon and Related Acts.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd



WH1321 REV 10/17



Certified Payroll

- Optional form [WH-347](#), Payroll
- Compliance statement on back (w/original signature of corporate official or designee)
- Payrolls required weekly
- Identify first and final payroll
- Prime contractor reviews subcontractor forms prior to submission
- Payroll retention = 3 years

The image shows the U.S. Department of Labor Wage and Hour Division PAYROLL form (WH-347). The form is titled "PAYROLL" and includes the U.S. Department of Labor logo. It contains fields for contractor information, project details, and a large grid for recording payroll data. The grid has columns for "DATE AND TIME", "HOURS", "RATE", "GROSS PAY", "DEDUCTIONS", "NET PAY", and "TAXES". The form also includes a "Public Notice Statement" at the bottom.

Compliance Statement

Date _____

I, _____ (Name of Signatory Party) _____ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____ (Contractor or Subcontractor) on the _____ (Building or Work); that during the payroll period commencing on the _____ day of _____, and ending the _____ day of _____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ (Contractor or Subcontractor) from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 3729 OF TITLE 31 OF THE UNITED STATES CODE.

Compliance Statement on back of Optional form [WH-347](#) (w/original signature of corporate official or designee)



Interviews

LABOR STANDARDS INTERVIEW					
CONTRACT NUMBER		EMPLOYEE INFORMATION			
NAME OF PRIME CONTRACTOR		LAST NAME	FIRST NAME	MI	
NAME OF EMPLOYER		STREET ADDRESS			
SUPERVISOR'S NAME		CITY	STATE	ZIP CODE	
LAST NAME	FIRST NAME	MI	WORK CLASSIFICATION	WAGE RATE	
ACTION				CHECK BELOW	
				YES	NO
Do you work over 8 hours per day?					
Do you work over 40 hours per week?					
Are you paid at least time and a half for overtime hours?					
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?					
WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?					
HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?			TOOLS YOU USE		
DATE OF LAST WORK DAY BEFORE INTERVIEW (YYMMDD)					
DATE YOU BEGAN WORK ON THIS PROJECT (YYMMDD)					
THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE					
EMPLOYEE'S SIGNATURE				DATE (YYMMDD)	
INTERVIEWER	SIGNATURE		TYPED OR PRINTED NAME	DATE (YYMMDD)	
INTERVIEWER'S COMMENTS					
WORK EMPLOYEE WAS DOING WHEN INTERVIEWED			ACTION (If explanation is needed, use comments section)	YES	NO
			IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?		
			ARE WAGE RATES AND POSTERS DISPLAYED?		
FOR USE BY PAYROLL CHECKER					
IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?					
<input type="checkbox"/> YES <input type="checkbox"/> NO					
COMMENTS					
CHECKER					
LAST NAME		FIRST NAME		MI	JOB TITLE
SIGNATURE				DATE (YYMMDD)	



Recent Changes



Change Highlights

Highlights of changes to the updated regulations include:

- The definition of "contracting officer" (CO) now includes someone involved in the contract award process for a state or local agency, or other entity awarded federal funding and issuing contracts, not just someone who awards contracts for a federal agency.
- The Department of Labor may adopt state and local prevailing wage rates
- The DBRA contract clauses apply, regardless of whether the proper T&C or contract clauses were included in the grant, subaward, contract, or subcontract.

A comprehensive comparison chart showing the recent changes is [available here](#).



Effective
Dates for
New
Contracts

In accordance with [AAM 244](#), the following updated requirements generally apply only to new contracts that are entered into after October 23, 2023, by recipients and subrecipients (including borrowers):

- Wage determination revisions
- Amended contract clauses
- Enforcement provisions




Existing Contracts

For contracts that existed prior to October 23, 2023, the rule generally requires contracting agencies to:

- Amend existing indefinite-delivery-indefinite quantity (IDIQ) (and similar) contracts annually to include the most recently updated wage determination(s).
- Incorporate new wage determination revisions into existing contracts where new out-of-scope covered construction or an additional unobligated time period has been added to the project.

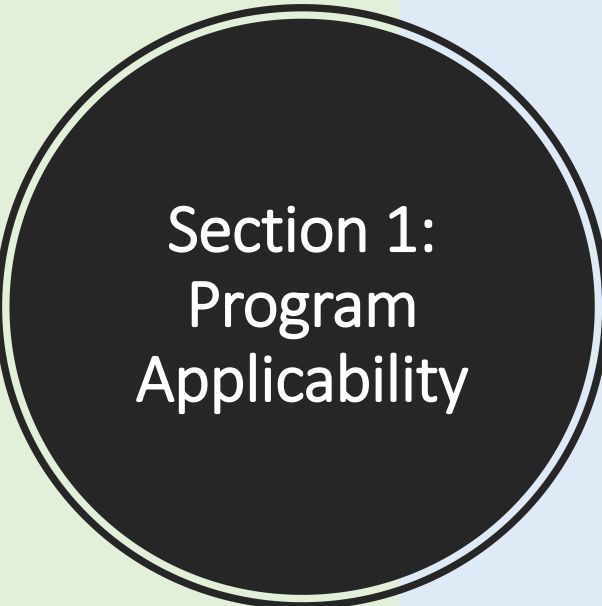
New Term & Condition



Term &
Condition

In alignment with the Department of Labor's regulatory updates that became effective October 23, 2023, OGD revised the DBRA T&C to:

- Streamline the language and significantly shorten the T&C
- Utilize hyperlinks to simplify the information
- Make it easier for EPA grant recipients and subrecipients to include the appropriate contract clauses in their contracts
- Make it clear that the regulations (including prevailing wage requirements) apply, regardless of whether the appropriate contract clauses are included in contracts



**Section 1:
Program
Applicability**

Section 1 of the T&C discusses program applicability. It will include the program name, program statute, activities that are allowable under the grant that trigger Davis-Bacon requirements, and wage classifications, if known.

1. Program Applicability

- a. Program Name
- b. Statute
- c. Activities subject to DB
- d. Prevailing Wage Classification (e.g. Heavy Construction, Residential, Commercial) (optional)



Section 2:
DBRA

2. Davis-Bacon and Related Acts

[Davis-Bacon and Related Acts \(DBRA\)](#) is a collection of labor standards provisions administered by the Department of Labor, that are applicable to grants involving construction. These labor standards include the:

- Davis-Bacon Act, which requires payment of prevailing wage rates for laborers and mechanics on construction contracts of \$2,000 or more;
- Copeland “Anti-Kickback” Act, which prohibits a contractor or subcontractor from inducing an employee into giving up any part of the compensation to which he or she is entitled; and
- Contract Work Hours and Safety Standards Act, which requires overtime wages to be paid for hours worked in excess of 40 hours of work per week, for contracts in excess of \$100,000.

A black circle with a white border containing the text "Section 3: Contracts" in white.

Section 3: Contracts

3. Recipient Responsibilities When Entering Into and Managing Contracts:

a. Solicitation and Contract Requirements:

i. Include the Correct Wage Determinations in Bid Solicitations and Contracts:

Recipients are responsible for complying with the procedures provided in [29 CFR 1.6](#) when soliciting bids and awarding contracts.

ii. Include DBRA Requirements in All Contracts: Include the following text on all contracts under this grant:

“By accepting this contract, the contractor acknowledges and agrees to the terms provided in the [DBRA Requirements for Contractors and Subcontractors Under EPA Grants.](#)”

b. After Award of Contract:

i. Approve and Submit Requests for Additional Wages Rates: Work with contractors to request additional wage rates if required for contracts under this grant, as provided in [29 CFR 5.5\(a\)\(1\)\(iii\)](#).

ii. Provide Oversight of Contractors to Ensure Compliance with DBRA Provisions: Ensure contractor compliance with the terms of the contract, as required by [29 CFR 5.6](#).



Section 4:
Subawards

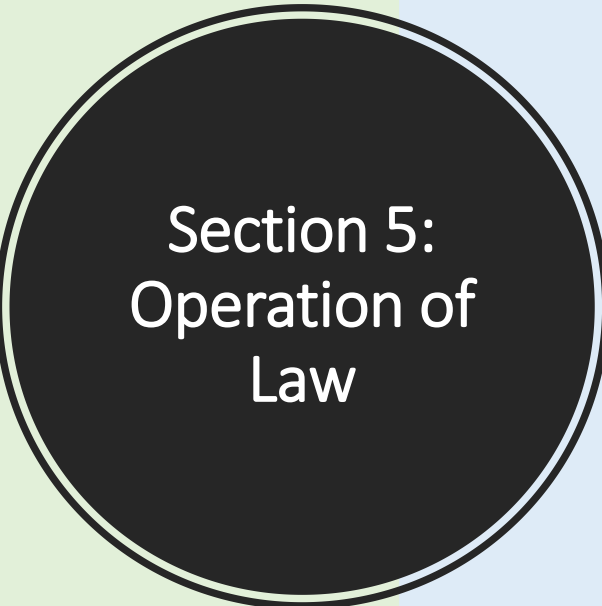
4. Recipient Responsibilities When Establishing and Managing Additional Subawards:

a. Include DBRA Requirements in All Subawards (including Loans):

Include the following text on all subawards under this grant:

“By accepting this award, the EPA subrecipient acknowledges and agrees to the terms and conditions provided in the [DBRA Requirements for EPA Subrecipients](#).”

b. Provide Oversight to Ensure Compliance with DBRA Provisions: Recipients are responsible for oversight of subrecipients, and must ensure subrecipients comply with the requirements in [29 CFR 5.6](#).



Section 5: Operation of Law

5. The contract clauses set forth in this Term & Condition, along with the correct wage determinations, will be considered to be a part of every prime contract covered by Davis-Bacon and Related Acts (see 29 CFR 5.1), and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Department of Labor grants a variance, tolerance, or exemption. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

Some Points about
Davis-Bacon



Wage Rate
“Lock In”

- **Competitive bidding:** Modifications published less than 10 days before bid opening may be disregarded if insufficient time to notify bidders, and a report is made to contract file.
- Lock-in at bid opening provided contract is awarded within 90 days.
- Must update wage determination if contract award is more than 90 days after bid opening.
- Once a Davis-Bacon wage rate has been “locked,” it stays in effect for the duration of the project.



Contracting Agency Role

EPA grant recipients may be contracting agencies, or if passing through funding to subrecipients, the subrecipients may be contracting agencies. The contracting agency is the entity that enters into contracts with the prime contractor.

- Obtain DOL's wage determinations that can be found on SAM.gov's [Wage Determinations](#) page.
- Ensure all bidding documents contain wage determinations
- Ensure all contracts contain wage determinations and labor provisions (prime and subcontractors), as applicable



Contracting
Agency Role
(cont'd)

- Obtain weekly contractor certified payroll submissions
- Conduct onsite interviews with laborers and mechanics
- Conduct spot-checks of payrolls and related records
- Periodically review use of apprentices and trainees
- Report potential violations
- Maintain full documentation (3 years)



Contractors & Sub Roles

The labor standards in the [DBRA Requirements for Contractors and Subcontractors Under EPA Grants](#) describe contractor responsibilities. Contractors and Subcontractors must comply with the required labor standards, for example:

- Applicable wage determination
- Post Davis-Bacon Posters at the job site
- Post prevailing wage rates at the job site
- Provide confidential space for interviews
- Provide records upon request



Prime Contractor Role

- Prepares and submits certified payrolls for its own employees to contracting officer weekly.
- Submits certified payrolls for all subcontractor employees to contracting officer weekly.
- Reviews wage determination and works with contracting officer to request additional classifications when needed.
- Provides subcontractors with labor standards, guidance, and responsibilities concerning Davis-Bacon requirements.
- Provides Davis-Bacon Poster
- Gives interviewer confidential access to employees on site.



Subcontractor Role

- Prepares & submits certified payrolls each week for its own employees to prime contractor.
- Provides lower tier subcontractors with labor standards, guidance, and responsibilities concerning Davis-Bacon requirements
- Reviews wage determination and works with prime contractor to obtain additional classifications if needed.
- Posts Davis-Bacon Poster and wage determinations on site
- Gives interviewer confidential access to employees on-site.

If Fed and
State Wages
Apply

- Contract must contain both Federal and State wage decisions/contract standards.
- Contractors/subcontractors must pay higher of two rates.
- Payrolls must carry Federal statement of compliance (reverse of payroll form WH-347).



Resources

- Davis-Bacon and Related Acts:
<https://www.epa.gov/grants/davis-bacon-and-related-acts-dbra>
- DOL Davis-Bacon Website:
<https://www.dol.gov/agencies/whd/government-contracts/construction>
- General Davis-Bacon Act requirements and applicability: [Compliance Assistance By Law - The Davis-Bacon and Related Acts \(DBRA\)](#)
- Wage Determination Information:
<https://www.dol.gov/agencies/whd/government-contracts/construction/faq/conformance>



But Wait!

- Davis-Bacon Poster:
<https://www.dol.gov/agencies/whd/posters/dbra>
- Certified Payroll Form WH-347:
<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf>
- Labor Interview Form SF-1445:
https://www.gsa.gov/system/files/SF_1445.pdf
- Request for Authorization of Additional Classification and Wage Rate (Conformance Request) SF-1444:
<https://www.gsa.gov/system/files/2023-10/SF1444-23.pdf>
- DBRA FAQs:
<https://www.dol.gov/agencies/whd/government-contracts/construction/faq>



There's
More!

- Davis-Bacon Reference Material:
<https://www.dol.gov/agencies/whd/government-contracts/construction/guidance>
- Prevailing Wage Resource Book:
<https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book>
- DOL Wage and Hour Division Offices:
<https://www.dol.gov/agencies/whd/contact/local-offices>
- DOL Wage and Hour Division Website:
<https://www.dol.gov/agencies/whd>





Training Resources

The Department of Labor's Wage and Hours Division (WHD) provides occasional training for contracting agencies, contractors, and others involved in Davis-Bacon covered projects.

Register for upcoming [Department of Labor 2024 Prevailing Wage Seminars](#)

View recorded [Presentations: Prevailing Wage Seminars](#)

Check out the [WHD site](#) and sign up for their free newsletter

Contact
Information

EPA Davis-Bacon National Coordinator:

Mr. Dominick Washington
washington.dominick@epa.gov

