

## CERTIFIED PAYROLL LABOR COMPLIANCE HANDOUT

Required Contract Provisions, Form [FHWA 1273](#), applies to all work performed on this project. Prime Contractors shall insert in each subcontract all of the stipulations contained in the Required Contract Provisions and further require their inclusion in any lower-tier subcontract or purchase order that may in turn be made.

The [Davis-Bacon Act](#) requires payment of locally prevailing wages and fringe benefits to laborers and mechanics employed on federally-funded contracts totaling \$2,000 or more (overall contract amount). Equal Employment Opportunity (EEO) provisions apply on all federal-aid construction contracts totaling \$10,000 or more (overall contract amount).

**Note: Primes Shall Ensure A Copy of The Wage Rate Schedule Is Provided To Each Subcontractor.**

### Davis-Bacon

- The [Davis-Bacon Act](#) requires contractors and subcontractors to pay workers unconditionally and not less often than once a week
- Workers shall be paid the appropriate wage rate and fringe benefits on the Wage Determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs four & five of Section IV of the [Form FHWA 1273](#) (apprentices & trainees).
- Wage rates are available electronically from the CR website: <http://vtrans.vermont.gov/civil-rights/doing-business/contractors-center/davis-bacon>. Click on the year and rates that apply. You can also obtain copies of Heavy Equipment, Building & Residential Wage Decisions from the USDOL website: <http://www.wdol.gov/dba.aspx#0>.
- The Davis-Bacon Act only applies to laborers/mechanics employed by a contractor or subcontractor on the "site of work."
- Davis-Bacon and Related Acts Questions & Answers: [http://www.fhwa.dot.gov/construction/contracts/dbra\\_qa.pdf](http://www.fhwa.dot.gov/construction/contracts/dbra_qa.pdf) .
- Davis-Bacon Compliance Guide: <http://www.dol.gov/compliance/guide/dbra.htm>
- USDOL Wage and Hour Division, Prevailing Wage Recourse Book: <https://www.dol.gov/whd/recovery/pwr/toc.htm>

## **Payrolls and Payroll Records**

### **General**

All Contractors submit their payrolls, and subcontractor payrolls electronically through a secure FTP Server web site. Please contact Sonya Boisvert, [sonya.boisvert@vermont.gov](mailto:sonya.boisvert@vermont.gov) to obtain a step by step guide to using the online system.

1. Certified payrolls are required on any federally funded construction project exceeding \$2,000 (contract as a whole). P Payrolls should be submitted by the prime contractor to the Office of Civil Rights & Labor Compliance, weekly for wages paid during the preceding week. Prime contractors are responsible for the submission of all subcontractor payroll.
  
2. Companies can use any desired format to submit payrolls as long as all required information is provided. For contractors' convenience, the Wage and Hour Form 347 is on the Wage and Hour web site at <http://www.dol.gov/whd/forms/wh347.pdf>. Side A of the payroll is the actual payroll data, side B is the payroll "certification." Side A must contain the following:
  - Name of the Contractor or Subcontractor
  - Contractor's address
  - Payroll number (eliminates the need for "no work" payrolls)
  - For Week ending" date
  - Employee pay date (either on payroll or on the attached Pay Date Form)
  - Project name and number (State # as a minimum)
  - The employees name, and 4 digit ID (for example the last 4 digits of their SS#)
  - The employee's correct work classification(s)
  - Hours worked each day
  - Overtime hours worked
  - Total hours worked that week
  - Rate of pay (including fringe benefit amounts when fringes are paid in cash)
  - Gross amount earned
  - Deductions (must be in accordance with the Copeland Act Regulations and 29 CFR, Part 3). Companies need to describe "other" deductions in remarks (i.e., court ordered child support, alimony, etc). Voluntary deductions must be authorized in writing by the employee and this documentation must be made available upon request.
  - An explanation of how you calculated fringe benefits being provided other than cash. (more info on Fringe Benefits below).

Payrolls and basic records relating to the job must be maintained by contractors and subcontractors for a period of **three years** from the date of completion of work.

### **Subcontractor Payroll**

The Prime Contractor is responsible for all Subcontractors and lower-tier Subcontractors employed on the project and must require them to pay the minimum rates listed in the contract and to submit payrolls in a timely manner. Please review subcontractor payrolls for discrepancies prior to submitting them electronically. Once reviewed the payrolls (including the Statement of Compliance form & the payroll date form) should be submitted electronically to the VTrans Office of Civil Rights & Labor compliance through the secure FTP Server. Please note if you find discrepancies in the subcontractor payroll you should still submit them electronically (to insure they are received by VTrans within the 7 days). Keep a copy and follow up with the subcontractor and then send an amended payroll if needed.

### **Working Supervisors**

Salaried superintendents and forepersons are not considered laborers or journeymen. They should be shown on the payroll as “salaried” with no rate of pay listed. However, when a superintendent or foreperson performs within a classification, such as a laborer, carpenter, ironworker, or equipment operators, for example, more than 20% of the time, Davis-Bacon provisions applies. Companies must then show all payroll data, including his/her classification, and reflect a rate of pay that sufficiently compensates him/her for the classification the work was performed in.

Note: Companies who are “one deep” should not show him/herself as supervisor or foreperson (they don’t supervise anyone). Simply show this person as “owner” and annotate “salary.”

### **Statement of Compliance (Side B)**

Each payroll must include a Statement of Compliance (payroll certification). Side B of Form WH-347 shall satisfy this requirement. If a company has its own payroll software, use side B of Form WH-347. A copy can be found at: <http://www.dol.gov/whd/forms/wh347.pdf>.

1. Each Statement of Compliance form must be completed in its entirety and signed. While the form need not be notarized, the statement on the back of the payroll is subject to the penalties provided by 18 USC 1001, namely, possible imprisonment for five years or a \$10,000 fine or both. Accordingly, the person signing this required statement should have knowledge that the facts represented are true.
2. Fringe Benefits Certification – 4a **or** 4b **must** be checked:
  - If a company fulfills its fringe benefits requirement by paying to **approved funds, plans, or programs**, sub-paragraph (a) must be checked. See more on this below.
  - If the fringe benefits for each employee shown on the payroll are **paid to employees in cash**, sub-paragraph (b) must be checked.

**IMPORTANT:** Companies should not check both 4a and 4b on the payroll certifications. This will be considered a discrepancy. If you have a person who elects not to receive benefits and instead receives fringes in cash, you should annotate his/her name in remarks and state this person receives fringes in cash (or vice versa).

### **Miscellaneous Payroll Exceptions**

1. Exceptions, if any, need to be noted in “remarks” on the payroll certification (or on the company’s Statement of Compliance if used).
2. If a contractor fulfills its fringe benefit obligation through an approved plan or fund but has a worker not yet eligible for these benefits because he/she has not yet completed a specified probationary period, the contractor must ensure these workers are paid fringes in cash. This person should also be indicate in Section 4c on the payroll and shown as an exception. In this instance, companies should also indicate the probationary “inclusive period” so the worker’s benefit status can be determined when looking at any payroll submitted.

### **Fringe Benefits**

- Contractors must pay their workers the “prevailing wage.” The two components of the prevailing wage are the basic hourly wage and the fringe benefit. The fringe benefit amount varies by work classification (the actual work being performed).
- Payments will either be paid in cash or through contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis Bacon Act (40 U.S.C. 276a)
- Exceptions must be indicated in 4c on the payroll or on the “Statement of Compliance”
- 29 CFR 5.23 – The Statutory Provision states: The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program will be communicated in writing to the laborers and mechanics.
- Contractors who use bona fide fringe benefits in order to meet the total rate of pay for a classification

must attach a fringe benefit breakout to each payroll submission, if it is not indicated on the payroll. See below for a sample fringe benefit breakout form.

### Example of a Fringe Benefit Break Down

- Employee makes \$14.00 per hour;
  - You give this employee 32 hours of paid holidays per season;
  - Multiply \$14.00 by 32 = \$448.
  - Divide \$448 by 26 weeks (a 6 month typical season) = \$17.23;
  - Divide \$17.23 by 40 hours a week = \$.43 per hour you would credit this employee toward fringe benefits. This formula would also apply to any other credited fringe benefit.
- More information can be found on the USDOL website: <https://www.dol.gov/whd/recovery/pwrb/Tab9.pdf>.

### Split Classifications

- Workers performing work in more than one classification must, as a minimum, be compensated at the rate specified for each classification for the time actually worked.
- Workers must be shown on the payrolls once for each classification he/she worked in and subsequently paid a rate of pay consistent with the wage determination

### Work Classifications

- Work classifications must be specific. **Payrolls cannot reflect just “operator”** because different types of equipment have different rates of pay (even if the amount paid to workers is higher than all work classifications listed).
- Contractors must use a classification exactly as it appears in the wage determination, **or a request needs to be made for and additional wage/work classification (see below)**.

### Missing Work Classifications

- Companies must request approval for all work classifications needed that do not appear in the wage schedule. Contractors should anticipate ahead all those classifications needed to complete the work and submit requests to the Labor Compliance Office (Subs should submit through the Prime) as soon as possible. The USDOL requires that you use the SF1444 form which can be found on our website: <http://vtrans.vermont.gov/civil-rights/doing-business/contractors-center/davis-bacon>. Or contact Sonya Boisvert [Sonya.Boisvert@vermont.gov](mailto:Sonya.Boisvert@vermont.gov) to have a copy emailed to you.
- Any proposed wage rate, including bona fide fringe benefits, must bear reasonable relationship to the wage rates contained in the Wage Determination. It is important to point out that wage rates vary according to which county the work is being performed in. Please ensure that any proposed wage rate is “prevailing” according to the county where the work will be performed. Otherwise the USDOL will deny your request and stipulate a higher rate.
- Important: The USDOL will not approve any proposed rate of pay that is below the already approved rate of pay for the lowest paid equipment operator for the county in question.
- Companies must maintain accurate weekly time records, including records for superintendents and foreperson. When any superintendent/foreperson performs work within a classification more than 20% in any given day, companies must classify that person in that work classification on their payrolls and ensure he/she receives the rate of pay indicated in the Wage Determination, as a minimum.
- **Welders:** Additional classifications are generally not needed for welders. Welding is commonly considered incidental to the work of employees for whom classifications are issued. Thus, it is appropriate for welders to be classified in the same classification as the employees who are performing the duties to which the welding work is incidental.

Note: Once your request is received in our office, we will forward it to the U.S Department of Labor (DOL). The DOL typically takes from one to two months to make a decision. (This is why requests for additional work

classifications need to be submitted as soon as possible). You will receive notification from our office when the request is approved or disapproved. If you have any questions regarding this procedure, please contact Sonya Boisvert at 802-279-1330.

### **Restitution Policy (Two-Step Process)**

- Companies need to complete and sign an LCO Form 8, Employee Pay Restitution Worksheet (can be completed by hand but must be legible) anytime restitution is involved. A separate worksheet is needed for each worker involved and for each pay week involved. A sample worksheet can be found on our website: <http://vtrans.vermont.gov/sites/aot/files/civilrights/documents/laborcompliance/EmployeePayRestitutionWorksheet.pdf>.

Please email the completed worksheets (and copies of checks) to Sonya Boisvert, [sonya.boisvert@vermont.gov](mailto:sonya.boisvert@vermont.gov).

### **Three Types of Workers Commonly Misclassified**

#### **Ironworkers**

The ironworker rate applies to both reinforcing and structural steel, whether or not the structure is temporary or permanent. The criteria for determining the entitlement is as follows:

- Employees who set the chairs, place, position, or tie the reinforcing steel must be paid the ironworker, “reinforcing” rate.
- Employees (excluding equipment operators, truck drivers, etc.) involved in placing, positioning, bolting, welding or otherwise working directly with the structural steel must be paid the ironworker, “structural” rate.
- The USDOL Occupational Handbook also describes—“Ironworkers at the construction site unload and stack the prefabricated steel so that it can be hoisted easily when needed. To hoist the steel, ironworkers attach cables (slings) to the steel and to the crane or derrick. One worker directs the hoist operator with hand signals while another worker holds a rope (tag line) attached to the steel to prevent it from swinging. The crane or derrick hoists steel into place in the framework, whereupon several ironworkers position the steel with connecting bars and jacks. Workers using drift pins or the handle of a spud wrench—a long wrench with a pointed handle—align the holes in the steel with the holes in the framework. Before the bolts are permanently tightened, ironworkers check vertical and horizontal alignment with plumb bobs, laser equipment, transits, or levels; then they bolt or weld the piece permanently in place.”

Note: Loading, off-loading, carrying and stocking reinforcing steel are duties of a laborer.

#### **Carpenters**

- Possess skills and perform work which is basic to most building construction
- Erect wood framework, build forms for concrete, erect partitions, studs, joints, drywalls, and rafters
- Install floor coverings, ceilings, paneling, trim, and interior systems
- Construct docks, work with large timbers, and drive piles to support the foundations of buildings and bridges

#### **Piledriver Operator**

- Use large machines mounted on skids, barges, or cranes to hammer piles into the ground. Piles are long, heavy beams of wood or steel driven in the ground to support retaining walls, bulkheads, bridges, piers, or building foundations. Piledriver operators move hand and foot levers and turn valves to activate, position, and control the pile-driving equipment. NOTE: This classification is not on any of the VT Highway Wage Decisions. An additional wage/work classification needs to be done (see above).

#### **Laborers**

- Range from unskilled to semi-skilled
- Are generally needed on virtually all types of construction projects—highways, bridges, tunnels, large buildings, sanitation, residential, etc.
- Handle/carry materials for bricklayers, cement masons, and carpenters
- Distribute building materials to the appropriate location as directed

- Tend machines used to mix concrete (portable mixers)
- Are usually employed on site from the day the project begins until the day it is completed
- Works with their hands and with power tools run by gasoline, electricity, and compressed air
- Work with pavement breakers, reamers, pumps, compressors, lasers, jackhammers and vibrators
- Work in a support role for Ironworkers and Carpenters but are not involved in the “cutting, fitting or placing.”

### **Labor Compliance Site Visits:**

The office of Civil Rights & Labor Compliance will conduct periodic site visits to assure labor compliance on the project. These will be scheduled with the Resident Engineer. Once the Site Visit Report has been completed, it will be emailed to the Prime Contractor’s home office with copies sent to the Resident Engineer, Regional Engineer, and Construction Engineer.

### **Employee Interviews**

The Office of Civil Rights is responsible for conducting random on site employee interviews. Every attempt will be made to perform interviews at times that will not disrupt key work activities. Interviews will be representative of all classifications of employees on the project.

Interviews are confidential and will not be conducted in the presence of other employees, superintendents, forepersons or other representatives of the contractor.

Superintendents/Forepersons will also be interviewed as a way to gather information concerning the contractor's compliance with the labor standards provisions with respect to employees under the foreman's supervision and the correctness of the foreman's classification as a supervisory employee. All procedures established for the conduct of employee interviews, and the recording and use of information obtained, apply to foremen interviews.

More information can be found on our website: <http://vtrans.vermont.gov/civil-rights> or contact Sonya Boisvert 802-279-1330, email: [sonya.bosivert@vermont.gov](mailto:sonya.bosivert@vermont.gov).