

LABOR COMPLIANCE MANUAL FOR CONTRACTORS



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VERMONT AGENCY OF TRANSPORTATION
OFFICE OF CIVIL RIGHTS & LABOR COMPLIANCE



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INTRODUCTION

The purpose of this Manual is to explain in simple and non-bureaucratic terms exactly what is required of contractors and subcontractors working on construction projects covered by Federal Davis-Bacon prevailing wage and reporting requirements. The Vermont Agency of Transportation (VTrans) is providing this Guide as a service to assist you in better understanding your labor standards and compliance responsibilities.

This Manual is focused primarily on the requirements and responsibilities associated with VTrans Federal-aid construction projects subject to Davis-Bacon wage rates, but the guidance is also generally applicable to Davis-Bacon covered projects administered by other State/Federal agencies.

Not all VTrans construction projects are covered by Davis-Bacon wage rates. For the purpose of this Manual, we shall assume that a determination has already been made that Davis-Bacon wage rates are applicable.

THE DAVIS-BACON ACT

The Davis Bacon and Related Acts (DBRA) and the Copeland Anti-Kickback Act apply to contractors performing work on federally funded or assisted contracts valued more than \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.

The minimum contract size/threshold of \$2,000 only applies to the prime contractor. All related subcontractors on the project are covered under the DBRA regardless of the size of the subcontract.

The Act requires all contractors and subcontractors to pay no less than the prevailing wages and fringe benefits determined and published by the United States Department of Labor (USDOL) and included in the applicable contract.

PREVAILING WAGE PROGRAM

All contracts financed in whole or in part by Federal funds have the [Required Contract Provisions for Federal-aid Construction Contracts \(FHWA-1273\)](#) document included in the contract documents. These provisions require that all laborers and mechanics employed at the *site of work* and that perform part of the contract work be paid the prevailing wage rates and fringe benefit rates as established by the U.S. Department of Labor (USDOL). Laborers and mechanics are defined as those whose duties are manual or physical in nature (e.g. workers who use tools or who are performing the work of a trade).

The contract provisions are based on:

- [US Department of Labor Davis-Bacon Related Acts Home Page](#)
- [Copeland Anti-Kickback Act](#)
- [Contract Work Hours and Safety Standards Act](#)
- [Federal-Aid Construction Contracts - 23 CFR 633 Subpart A](#)
- [Fair Labor Standards Act \(FLSA\)](#)

A. CERTIFIED PAYROLL REQUIREMENTS

Laborers and mechanics must be paid unconditionally and without subsequent deduction or rebate on any account. Contractors or subcontractors may use form [WH 347 provided by USDOL](#). All information on this form must be included on the contractor's certified payroll.

As outlined in the [USDOL Instructions](#) for completing payroll, all (prime and subcontractor) certified payroll records submittals must contain the following information:

- Name of the Contractor or Subcontractor
- Contractor's address
- Payroll number (eliminates the need for "no work" payrolls)
- Workweek ending date
- Project location
- Project name and number
- Name and Individual Identifying Number of Worker
- The employee's work classification(s)
- Hours worked
- Overtime hours worked
- Total hours worked that week
- Rate of pay (including fringe benefits)
- Gross amount earned
- Deductions
- Net wages Paid for the week

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 an additional wage/work classification (see paragraph I below).

Each contractor payroll must be numbered. Consecutive numbering should be maintained for the prime contractor and for each subcontractor (or sub-subcontractor) that is working on the project and stay consecutive for the life of the project. If a prime or subcontractor does not work on a project during any given week, a payroll is not required. The next payroll submitted should remain in sequence.

B. 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).

The contractor must check the appropriate box on the Statement of Compliance on the reverse side of the certified payroll ([WH-347](#)). If fringe benefits are paid to approved plans, funds or programs, box (a) must be checked. If fringe benefits are paid in cash, box (b) must be checked. (Note: When fringes are paid in cash, this should be included on the payroll.) If there is a combination of fringe benefit payment, i.e., some to a plan and some in cash, both box (a) and box (b) must be checked with exceptions explained under (c).

If an hourly fringe benefit is not listed on the payroll, a list breaking down the hourly fringe benefit of each employee must be provided. Click [here](#) to view a sample fringe benefit breakout report.

C. STATEMENT OF COMPLIANCE

Each payroll is to be accompanied by a Statement of Compliance signed by an authorized agent of the contractor who has knowledge of the facts represented to be true. The Statement of Compliance verifies the payrolls are correct and complete, that the wage rates are not less than those required by the contract wage decision, and that the classifications for each laborer or mechanic conforms with the work performed.

D. DAVIS-BACON WAGE RATE

Wages on federal-aid projects are determined by federal Wage Decisions (WD) for Vermont. The wage rates shown in the contract are the rates to be paid for the duration of the project. The Davis-Bacon wage decision is a listing of various construction work classifications such as Carpenter, Plumber, Equipment operators and Electrician, for example, and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid. Click [here](#) access the most recent Wage Rates.

E. OVERTIME

All hours worked more than 40 hours a week on federal-aid project(s) must be paid to the worker at one and a half times the Davis-Bacon base wage rate. Fringe benefit amounts are never calculated at one a one-half time when overtime is calculated.

F. PAYROLL REVIEW AND SUBMISSION

On Federal-aid-projects, the prime contractor is responsible for submitting all (prime and subs) payroll within 7 days from the employee pay date using the submission tool outlined in the contract documents. Subcontractor payrolls are to be submitted to the prime contractor for review prior to submittal.

Each payroll should be a sperate submission and include a [cover letter](#).

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.

G. LABOR COMPLIANCE SPOT CHECK INTERVIEWS

Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the Office of Civil Rights, Resident Engineer, Agency Representative, or DOL Representative. The interviews are confidential, and the employee will be asked about the kind of work they perform and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work.

- **TYPICAL PAYROLL ERRORS AND REQUIRED CORRECTIONS:** The following paragraphs describe common payroll errors and the corrective steps you must take.
 - **Inadequate payroll information:** If the payroll does not contain all of the information that would be on the optional form WH-347, the employer will be asked to resubmit the payrolls on an acceptable form.
 - **Incomplete payrolls:** If the information on the payroll is not complete, for example, if work classifications, rates of pay or [cover letter](#) are missing, the employer will be asked to resubmit the payroll.

- Classifications: If the payrolls show work classifications that do not appear on the wage decision, the employer will be asked to reclassify the employees in accordance with the wage decision or the employer may request an additional classification and wage rate (*See paragraph I*). If reclassification results in underpayment (the wage rate paid on the payroll is less than the rate required for the new classification), the employer will be asked to pay wage restitution to all affected reclassified employees. (*See paragraph H for instructions about wage restitution.*)
- Wage Rates: If the wage rates on the payroll are less than the wage rates on the wage decision for the work classification reported, the employer will be asked to pay wage restitution to all affected employees. After payment, has been made, the contractor should submit revised payroll along with the Employee Pay Restitution Worksheet and a copy of cashed/cancelled checks as evidence that the restitution has been made.
- Apprentices and trainees: If a copy of the employee(s) registration or approved program ratio and wage schedule is not submitted with the first payroll on which an apprentice or trainee appears, the employer will be asked to submit a copy of each apprentice's or trainee's registration and/or the approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer will be asked to pay wage restitution to any excess apprentices or trainees. Also, any apprentice or trainee that is not registered in an approved program must receive the journeyman's wage rate for the classification of work they performed. Remember, the ratio of apprentices to journeymen is outlined in the approved program.
- Fringe benefits: If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid [neither 4(a) nor 4(b) is marked on the payroll form], the employer may be asked to submit corrected payrolls and will be required to pay wage restitution if underpayments occurred. However, if the basic hourly rates for the employees as much as the basic hourly rate plus the fringe benefit rate, then no correction is necessary. If an hourly fringe benefit is not listed on the payroll, a list breaking down the hourly fringe benefit of each employee must be provided.

H. RESTITUTION FOR UNDERPAYMENT OF WAGES

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible, and authorized deductions.

- Computing wage restitution: Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.
- Corrected payrolls: The employer will be required to submit a revised certified payroll for each week the restitution is due. A signed Statement of Compliance must be attached to the corrected payroll. Additionally, an [Employee Pay Restitution Worksheet](#) must be completed for each employee owed restitution. You must attach a copy of the canceled check to the Restitution Worksheet.

I. ADDITIONAL CLASSIFICATIONS AND WAGE RATES

When a contractor believes a new classification is necessary, the contractor must complete a General Services Administration ([GSA Standard Form SF1444](#)) and submit it to the Office of Civil Rights and Labor Compliance. Once approved the request will be forward to the USDOL for approval. The following criteria should be used to determine if a new classification is warranted.

- The work to be performed by the classification is not performed within an existing classification.
- The classification is utilized in the area by the construction industry.
- The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the determination in other categories.

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 it is important to submit the request as soon as possible). You will receive notification from our office when the request is approved or disapproved.

J. JOB SITE POSTERS

The prime contractor is responsible for printing and posting the job site posters, including wage rates, in an outside location where they can be seen easily by all employees.

Use the links below to print a copy of the required posters.

- [Equal Employment Opportunity is The Law](#)
 - [“EEO is the Law” Poster Supplement](#)
 - [Employee Rights Under the Davis-Bacon Act](#)
 - **Please use the applicable wage rates as outlined in the contract documents** - ALL pages of the wage rates must be displayed!
 - [Federal Minimum Wage Poster \(WH 1088\)](#) – Only for projects where Davis-Bacon rates do not apply
 - [Pay Transparency](#)
 - [Safety and Health Protection on the Job](#)
 - [Employee Rights Under the Family and Medical Leave Act](#)
 - [Employee Rights – Employee Polygraph Protection Act](#)
 - [Your Rights Under USERRA: The Uniformed Services Employment & Reemployment Rights Act Form FHWA](#) – Add Resident Engineers name in box that says, “State Transportation Agency”.
 - [Contractor Equal Employment Opportunity Statement Poster](#) – Add EEO Officer name and Contact Info
 - [Emergency Phone Number](#)
 - [CA101- VT Minimum Labor & Truck Rates](#)
- If the project does not have a job office due to the nature of the work and/or the length of the contract, the posters must be displayed at the home office where hiring is conducted, and each employee must be provided copies of all the notices or posters and sign a statement acknowledging they received them.

- The Prime contractor is required to submit a photo of the poster board prior to the start of construction, to the Civil Rights Drawer in Doc Express for approval by Civil Rights. Additional information can be found in the Contractors User Manual located in the working drawer in Doc Express.

Note: If the project you are working on is an IDIQ project not being administered by the VTrans Construction section, then the Prime contractor is required to take a photo of the poster board prior to the start of construction and email it to aot.civilrights@vermont.gov.

Have questions about Job Site Posters? Click here: [Job Site Posters FAQs – with examples!](#)

K. DEFINITIONS

Before we discuss how to complete the weekly payroll forms, we need to review a couple of definitions. These definitions can help you understand what will be required of you:

▪ SUBCONTRACTOR

The prime contractor is responsible for any subcontractor's adherence to Prevailing Wage Compliance Program regulations. VTrans does not have a contract with the subcontractors and will resolve all Prevailing Wage Compliance Program matters with the prime contractor. This can result in the prime contractor being responsible for restitution of wages due for the violation of one of its subcontractors.

▪ EMPLOYEES WORKING IN MORE THAN ONE CLASSIFICATION

When an employee works in more than one work classification, they must be paid the appropriate wage rates for the time worked. However, the contractor may pay the higher of the two rates on all hours if desired.

Required labor provisions (Form FHWA 1273) as well as wage rates must be physically attached to each subcontract.

▪ SITE OF WORK

The “site of work” is where the Davis-Bacon Wage Rates Apply.

Site of work means:

- The primary site of the work. The physical place or places where the construction called for in the contract will remain when work on it is completed; and
- The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is; (a) Located in the United States; and (b) Established specifically for the performance of the contract or project.

In addition, site of work includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided:

- They are dedicated exclusively, or nearly so, to performance of the contract or project; and
- They are adjacent or virtually adjacent to the “primary site of the work” or the “secondary” site of the work” as defined above.

Site of work does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site

of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period may be dedicated exclusively or nearly so, to the performance of a contract.

▪ **WORKING FOREMAN**

If a supervisor performs laborer or mechanic work on a regular or for a substantial portion of the time, the supervisor is subject to Davis-Bacon wages and should be paid the applicable Davis-Bacon wage. Generally, work which exceeds 20 percent of the employee's time is considered substantial.

▪ **OWNER/OPERATORS**

This exemption only applies to heavy hauling trucks (includes water trucks and distributor trucks). It does not apply to other equipment such as dozers, backhoes, motor graders, etc. If anyone other than the registered owner is operating the truck, that person would be considered an employee and must be paid the appropriate wage rate designated in the contract. Sponsors, relatives, and children of registered owners must be paid at the proper Davis-Bacon wage rate.

▪ **TRUCK DRIVERS**

Truck Drivers are covered by Davis-Bacon in the following circumstances:

- Drivers of a contractor or subcontractor for time spent working on the site of the work. See “site of work” definition.
- Drivers of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of the work if such time is not de minimis. See “de minimis definition.
- Truck drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site.
- Truck drivers transporting portions(s) of the building or work between a site established specifically for the performance of the contract or project where a significant portion of such building or work is constructed and the physical place(s) where the building or work called for in the contract(s) will remain. See “Site of work” for additional information.

▪ **QUALITY CONTROL:**

Individuals performing testing such as compaction testing do not need to be listed as they are exempt.

▪ **SURVEYORS:**

Unless performing labor such as brush clearing for 20% or more of a 40-hourwork week. If only performing survey work, they do not need to be listed as they are exempt.

▪ **DE MINIMIS” OR 20% RULE**

Only a few minutes at a time merely to pick up or drop off materials or supplies.

▪ **FRINGE BENEFITS**

In addition to the Davis-Bacon wage rate, fringe benefits must be paid:

- to a "bona fide" trust fund, or,
- to the employee, or,
- to a combination of 1 & 2 above

▪ **GUARDS AND WATCHMEN**

Guards and watchmen who serve in no other capacity are not covered under the Davis-Bacon Act; however, they are covered by the Contract Work Hours Standards Act. Therefore, they must receive time and a half for work over 40 hours a week. The straight-time hourly rate must be at least the current minimum wage rate under the Fair Labor Standards Act.

▪ **ON-SITE EQUIPMENT REPAIR**

The USDOL has ruled that employees of outside firms who repair tires or equipment at the site of the project are covered by the contract labor provisions if they perform a substantial amount of work at the contract site. Generally, work which exceeds 20 percent of the employee's time is considered substantial.

L. QUICK LINKS

- [US Department of Labor](#)
- [U.S. Department of Labor Field Operations Handbook](#)
- [Bureau of Labor Statistics – Occupational Outlook Handbook \(OOH\)](#)
(Great place to look for job descriptions)
- [Davis-Bacon and Related Acts \(DBRA\) Frequently Asked Questions](#)
- [US Department of Labor - Heavy Equipment, Building & Residential Wage Decisions](#)
- [FHWA Form 1273](#) - Required Contract Provisions Federal-Aid Construction Contracts
- [Federal Highway Administration](#)
- [VTrans Office of Civil Rights Contractors Center](#)
- [Who Ya Gonna Call](#) - Civil Rights contact info and useful links