

Davis-Bacon Overview **and** **Step-By-Step Guide**

Table of Contents

Section 1_The Letter of the Law	2
Section 2- A Step-by Step guide	3
Section 3- What happens when things go Wrong	5
Section 4- Important Documents and Additional Information	7

This Guide will help organizations understand what Davis-Bacon is and how to implement it to comply with your legal obligations as a result of being granted a portion of Middletown's Community Development Block Grant. This is divided in to four sections: (section 1) an overview on the letter of the law, (section 2) a step-by-step guide on what you need to do at what time, (section 3) what to do when things go wrong, and (section 4) important information and documents.

Remember, if you have any question or anything goes wrong, we here at City Hall can help.

Section One- The Letter of the Law

The Davis-Bacon Act- The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the US Department of Labor) to all laborers and mechanics on Federal government construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

The Department of Labor has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found under Title 29 CFR Parts 1, 3, 5, 6 and 7.

Part 1 explains how the Department of Labor establishes and publishes **Davis-Bacon wage determination** (also known as wage decision) and provides instructions on how to use the determinations.

Part 3 describes **Copeland Act** requirements for payroll reports.

Part 5 covers the labor standards provisions that are in your contract relating to **Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions**.

Part 6 provides for **administrative proceeding enforcing** Federal labor standards on construction and service contracts.

Last, part 7 sets parameters for practice before the **Administrative Review Board** (formerly Wage Appeals Board). These regulations are used as the basis for administering and enforcing the laws.

Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. The following two clauses are normally bound into the contact specifications:

- 1) **The Labor Standard Clauses-** The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wage and obligates the contractor to comply with the labor requirements. The labor standards clause also provide for remedies in the event of violations, including withholding from the payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project.
- 2) **Davis-Bacon Wage Decisions-** The Davis-Bacon wage decision (or wage determination) is a listing of various construction work classification, such as Carpenter, Electrician, Plumber and Laborer, and the minimum age rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid.

Responsibility of the Principal Contractor

The principal contractor is responsible for the full compliance of all employers (the contractor, sub contractor and any lower-tier subcontractors) with the labor standards provisions applicable to the project. Because of the contractual relationship between a prime contractor and his/her subcontractors generally should communicate with the contract administrator only through the principal contractor.

Responsibility of the Contact Administrator

The contract administrator is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements. We use this term to represent the person (or persons) who will provide labor standards advice and support to you and other project principals, including providing the proper Davis-Bacon wage decision and ensuring that the wage decision and contract clauses are incorporated into the contract for construction. The contract administrator also monitors labor standards compliance by conducting interviews with construction workers at the job site and reviewing payroll reports, and oversees any enforcement actions that may be required.

The contract administrator is the Community Development Specialists of Middletown.

The Department of Labor also has a role monitoring Davis-Bacon administration and enforcement. In addition, Department of Labor has independent authority to conduct investigations. A Department of Labor investigator or other Department of Labor representative may visit Davis-Bacon construction sites to interview construction workers or review payroll information.

Section Two- A Step-by Step guide

Step 1- Wage Decision

After you have been awarded a portion of Middletown's Community Development Block Grant, and before you begin construction work, you need to obtain a wage decision (Section One cover what this is). A listing of the current wage decisions can be found at this website:

<http://www.access.gpo.gov/davisbacon/ct.html>

Select Connecticut and hit the "Davis-Bacon search" button at the bottom of the screen.

The are eight wage decisions:

CT020001 CT1 Building Construction projects, Heavy and Highway Construction
CT020002 CT2 Residential Construction Project
CT020003 CT3 Building Construction projects, Heavy and Highway Construction
CT020004 CT4 Building Construction projects, Heavy and Highway Construction
CT020005 CT5 Residential Construction Project
CT020006 CT6 Residential Construction Project
CT020007 CT7 Hopper Dredging Construction Projects
CT020008 CT8 All Dredging, except self-propelled hopper dredges

Once you have found the appropriate Wage Decision please inform the Middletown's CDBG administrator in writing, either letter or email, and print out a copy of the complete wage decision for you files.

If the work classification you need isn't on the wage decision, then you need to request an *addition classification and wage rate*. This process is usually very simple and you'll want to start right away. Basically, you identify the classification you need and recommend a wage rate for the Department of Labor to approve for the project. You make this request in writing to your contract administrator, who will pass the request to the HUD labor relations field staff. If you are going to request an *addition classification and wage rate*, you need to follow these four rules:

- 1) The requested classification is used by the construction contractors in the area of the project. (Within the county)
- 2) The work that will be performed by the requested classification is not already performed by another classification that is already on the wage decision.
- 3) The proposed wage rate for the requested classification "fits" with other wage rates already on the wage decision.
- 4) The workers that will be employed in the added classification, or the workers' representative, must agree with the proposed wage rate.

If an *addition classification and wage rate* is approved then the contractor must post the approval notice. If the *addition classification and wage rate* is declined, the Department of Labor will inform you in writing what classification and wage rate should be used for the work in question.

Step 2- Posting the Wage Decision

If you are the prime contractor, you will be responsible for posting a copy of the wage decision (or the Project Wage Rate Sheet) and a copy of a Department of Labor poster called Notice to Employees (Form WH-1321) at the job site in a place that is easily accessible to all of the construction workers employed at the project and where the wage decision and poster won't be destroyed by wind or rain, etc. The Notice to Employee poster is available on-line at HUDClips (www.hudclips.org/sub_nonhud/html/forms.htm) and can also be obtained in Spanish text through the contract administrator.

Step 3- Certified Payroll Reports

You'll need to submit a weekly certified payroll report beginning with the first week that your company works on the project and for every week afterward until your firm has completed its work. It's always a good idea to number the payroll reports beginning with #1 and clearly mark your last payroll for the project "Final."

Department of Labor form WH-347 (a sample is in Section 4) is the form that you need to use for Payroll Reports. The reverse side of the payroll report contains the certification language.

“No Work” payrolls may be submitted whenever there is a temporary break in your work on the project. If work will not be taking place for an extended period of time, then a short letter can be send stating when work will halt and when work will begin again. Therefore, no “No Work” payrolls will need to be submitted during this period.

The prime contractor is responsible for the full compliance of all reports and the prime contractor is responsible for subcontractors on the contract and will be held responsible for any wage restitution that may be found due.

All payroll reports and any basic records such as time cards, tax records, evidence or fringe benefits payments must be retained for at least 3 years after the project is completed. These records must be made available for review to any authorized representative of HUD or the Department of Labor.

Section 3- What happens when things go Wrong

Things can be expected to go wrong, and you should always contact your project administrator when they do. The following is a discussion of what you can expect and how problems can be resolved.

Administrative Review on Labor Standards Disputes

The labor standards clauses in your contract and Department of Labor regulations provide for administrative review of issues where there is a difference of views between the contract administrator and any employer. The most common circumstances include:

- 1) *Additional Classification and Wage Rates*- These requests are sometimes denied by the Department of Labor. An employer that is dissatisfied with the denial can request reconsideration by the Department of Labor Wage and Hour Administrator. The employer may continue to pay the wage rate, as requested, until a final decision is rendered on the matter. When the final decision is known, the employer will be required to pay any additional wages that may be necessary to satisfy the wage rate that is established.
- 2) *Findings of Underpayment*- Compliance reviews and other investigations may result in findings of underpayment. The primary goal in every case and at every step in this process is to reach agreement about who may have been underpaid and how much wage restitution may be due and, of course, to promptly deliver restitution to any underpaid workers. The contract administrator will usually work informally with you to reach such agreements. You will have an opportunity to provide additional information to the contract administrator that may explain apparent inconsistencies and/or resolve the discrepancies. If informal exchanges do not result in agreement, the final determination and schedule of wages due will be presented to you in writing and you will be permitted 30 days in which to correct the underpayment(s) or to request a hearing on the matter before the Department of Labor. The request for hearing must be made in writing through the contract administrator and must explain what findings are in dispute and the reasons. In such cases, HUD is required to submit a report to the Department of Labor or review and further consideration. All requests for a Department of Labor hearing must be submitted through the HUD Headquarters Office of Labor Relations.

Withholding

The contract administrator shall cause withholding from payments due to the prime contractor to ensure the payment of wages which are believed to be due and unpaid, for example, if wage underpayments or other violations are not corrected within 30 days after notification to the prime contractor. The Department of Labor may also direct the withholding of contract payments for alleged wage underpayments. Withholding is considered to be serious and is not taken unless warranted. If withholding is deemed necessary, you will be notified in writing. Only the amounts needed to meet the contractor's liability shall be withheld.

Deposits and Escrows

In every case, we attempt to complete compliance actions and resolve any disputes before the project is completed and final payments are made. Sometimes, corrective actions or disputes continue after completion and provisions must be made to ensure that funds are available to pay any wage restitution that is ultimately found due. In these cases, we allow projects to proceed to final closing and payments provided the prime contractor deposits an amount equal to the potential liability for wage restitution and liquidated damages, if necessary, in a special account. The deposit or escrow account is controlled by the contract administrator makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

- 1) Where parties have agreed to amounts of wage restitution that are due but the employer hasn't furnished evidence yet that all of the underpaid workers have received their back wages. The amount of the deposit is equal to the total amount of restitution due to the workers lacking payment evidence. As these workers are paid and proper documentation is provided to the contract administrator, corresponding amounts are returned to the depositor. Amounts for any worker who cannot be located are held in deposit/escrow account for three years and returned to HUD.
- 2) Where underpayments are suspected or alleged and an investigation has not yet been completed. The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that are estimated to be due. If the final determination of wages due is

less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor. If the parties agree to the investigative findings, the amounts due to the workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for any worker who cannot be located are held in deposit/escrow account for three years and returned to HUD.

- 3) Where the parties are waiting for the outcome of an administrative hearing that has been of will be requested contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

Administrative Sanctions

Contractors and/or subcontractors that violate the labor standards provisions may face administrative sanctions imposed by HUD and/or Department of Labor, such as the following:

- 1) Department of Labor Debarment- Ineligible to participate in any Davis-Bacon Act construction projects for up to 3 years
- 2) HUD Limited Denials of Participation- Prohibits the employer from further participation in HUD programs for a period up to one year.
- 3) HUD Debarment-
- 4) HUD Suspensions-

Falsification of Certified Payroll Reports

Contractors and/or subcontractors that are found to have willfully falsified payroll reports may be subject to civil or criminal prosecution. Penalties may be imposed of \$1,000 and/or one year in prison or each false statement.

Section 4- Important Documents and Additional Information***Davis-Bacon Act: Related Websites***

HUD Office of Labor Relations: <http://www.hud.gov/offices/olr/>

HUD Regulations: www.access.gpo.gov/nara/cfr/cfr-table-search.html

Dept.LaborDavis-Bacon: www.dol.gov/dol/compliance/comp-dbra.htm

Dept. of Labor Forms: www.dol.gov/esa/forms/whd/index.htm

Important Documents

Request Project Wage Rate Sheet: <http://www.dol.gov/esa/whd/programs/dbra/sf308.htm>

Payroll Report & Statement of Compliance: <http://www.dol.gov/esa/whd/forms/wh347instr.htm>