



# IMPACTING DAVIS-BACON WAGE DETERMINATIONS

## A Guide for Contributing to the Accuracy of Published Prevailing Wage Rates in Construction

*By: Tamika C. Carter, Director of Construction HR*

Contractors and other interested parties have the ability to impact the wages that are reported on construction wage determinations. Wage determinations are listings of wage rates and fringe benefit rates for each classification of laborers and mechanics established by the U.S. Department of Labor (DOL) as prevailing in a given area for a particular type of construction (e.g., building, heavy, highway, or residential). The Davis Bacon and Related Acts (referred to simply as “Davis-Bacon” hereafter) requires all contractors and subcontractors performing work on federal or District of Columbia construction contracts or covered federally assisted contracts in excess of \$2,000 to pay their workers no less than the rates set forth in those wage determinations. The Davis-Bacon “prevailing wage” is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination.

This guide will explain how DOL establishes Davis-Bacon wage and fringe benefit rates, how participation and involvement in the survey process by contractors and interested parties can make a difference, and how to challenge a wage determination.

### How DOL Establishes Davis-Bacon Wage and Fringe Benefit Rates

Davis-Bacon prevailing wages are established by the Secretary of Labor by trade classification, type of work and geographic location. Prevailing wages are primarily set using data submitted voluntarily by means of Davis-Bacon wage surveys (form WD-10) or adopting wages paid pursuant to collective bargaining agreements (CBAs.) When data provided as a result of a survey or CBA are insufficient, other means are used to determine federal prevailing wage rates. For example, with regard to highway construction, DOL now uses data collected from Davis-Bacon certified payrolls to determine the federal prevailing wage rate in an area.

#### Data Collection and Analysis

DOL uses several procedures to determine if it has sufficient information from collected and verified surveys to designate a wage rate as prevailing. In cases where the prevailing rate is also a collectively bargained, or union rate, the rate is determined to be “union-prevailing” and adopted as the overall prevailing wage rate. This typically occurs when either the union rate is indeed prevailing, or when survey data provided by open-shop contractors is insufficient in determining a true prevailing wage rate.

The failure of construction contractors to provide sufficient data through the survey process can have long-lasting consequences on open-shop contractors if the union rate is erroneously adopted as the prevailing wage rate in an area when the open shop rate is actually prevailing. Once the union rates are used, the wage determination can be updated as often as the CBA is updated, sometimes multiple times within a year. Wage rates that are not adopted from CBAs can be updated only when a new survey is conducted, which at a minimum could be once every three years, according to DOL’s survey frequency goal. As a result, open-shop contractors would be required to pay often higher, union-prevailing wage rates that increase periodically as CBAs are updated.

To issue a wage determination for a construction type in a given area, DOL must have sufficient data to determine prevailing wages for at least 50% of key job classifications. Key job classifications, according to DOL, are those determined necessary for one or more of the four construction job types.

After collecting survey data from contractors, if DOL finds that one rate is paid to a majority (over 50%) of the workers in a specific craft in a specific area, then that rate becomes the Davis-Bacon prevailing wage rate.

***Example:***

<u>Number of Carpenters</u>	<u>Rates of Pay</u>
15	\$22.00
5	\$20.80
45	\$23.50
10	\$18.35
<u>7</u>	\$20.00
82 (total)	

The prevailing rate in this case is \$23.50, since over 50% (45 out of 82) receive the same rate.

If a majority rate cannot be determined, DOL will use a weighted average rate. This is based on the total amount of wages paid divided by the total number of workers included in the survey information.

***Example:***

<u>Number of Carpenters</u>	<u>Rates of Pay</u>
15	\$22.00
5	\$20.80
25	\$23.50
10	\$18.35
<u>7</u>	\$20.00
62 total	\$1,345.00

$$\$1,345 \div 62 = \$21.69$$

The prevailing rate in this case is \$21.69, calculated by dividing the total amount paid per hour for each worker (\$1,345) by the total number of workers (62).

## Area Practice and Jurisdiction

By statute, DOL must issue wage determinations based on similar projects in the “civil subdivision of the state” in which the federal work is to be performed. DOL’s regulations state that the civil subdivision will be the county (or, in Louisiana, parish), unless there are insufficient wage data. When data from a county are insufficient to issue a wage rate for a job classification, a group of counties is created. When data are still insufficient, DOL includes data from contiguous counties, combined into “groups” or “super-groups” of counties, until sufficient data are available to meet threshold guidelines to make a prevailing wage determination.

Expansion to include other counties, if necessary, may continue until data from all counties in the state are combined. Counties are combined based on whether they are metropolitan or rural, and cannot be mixed.

## Making a Difference in the Survey Outcome

Interested parties, such as AGC chapters, may not have much influence over the reporting of wages that are paid through CBAs, at least those not involved in local collective bargaining negotiations, but they can have a significant amount of influence during the survey process.

### The Survey Process

DOL periodically sends out surveys to both federal and nonfederal contractors and interested third parties requesting information on the wages and fringe benefits that are paid for various types of work performed.

Previously, DOL determined which states it would survey each year based on a variety of factors, including the date of the state’s most recent survey, planned federal construction, and complaints or requests from interested parties on current wage determinations. Because this process did not guarantee a specific date for surveying, wage determinations went years without changes to reflect current conditions of the market. In recent years, DOL changed its survey selection process and now has a goal of surveying all construction types in each state every three years. As a result, some states are now seeing sudden and dramatic increases in Davis-Bacon wage rates as well as changes in the way wages are applied across each state.

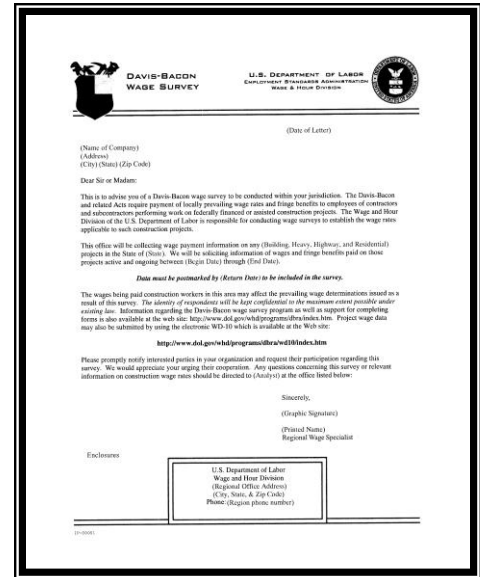
### Survey Participation

A report prepared by the U.S. Government Accountability Office on methodological changes needed to improve wage surveys, states that according to DOL’s Office of Inspector General (OIG), in a 2004 sample of collected wage survey forms (known as WD-10s), almost 100% of the forms reviewed contained contractor errors. In addition, the OIG reported that only contractors with the personnel to complete WD-10s typically respond to the survey requests and some companies choose not to participate in order to avoid involvement with the government. The OIG also found that higher participation by either unions or nonunion contractors could potentially weight the wage and benefit rates in their favor. The report noted that “of [DOL’s] published wage rates as of November 12, 2010, about 63% were union-prevailing; in contrast, [only] about 14% of construction workers nationwide were represented by unions in 2010, according to BLS figures.” This is evidence of the importance of contractor participation in the survey process in order to determine accurate prevailing wage rates. The report can be found at <http://www.gao.gov/assets/320/316836.pdf>.

## Increasing Survey Participation Among Contractors

There are several actions that interested parties can take to increase survey participation among contractors – both federal and non-federal – to help improve the accuracy of wage determinations.

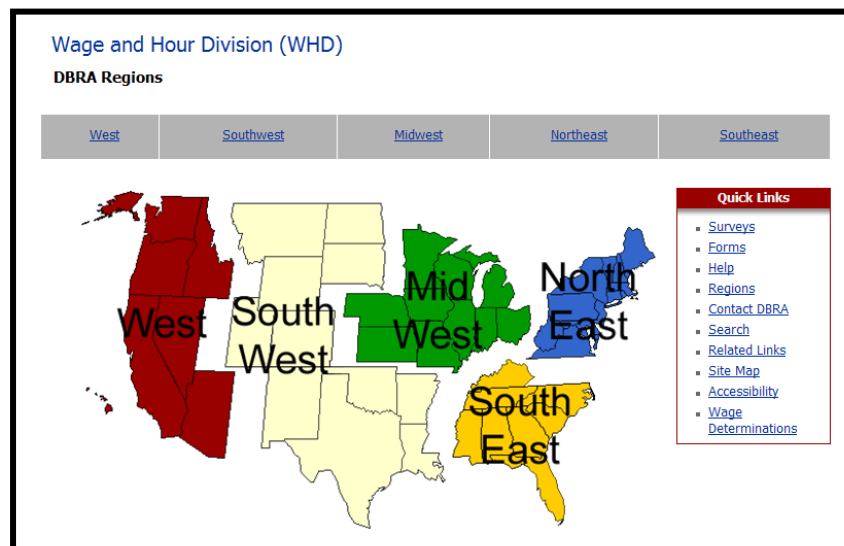
1. **Get advanced notice** – Once a survey is scheduled, DOL sends a letter to interested parties informing them of the upcoming survey. Interested parties may contact their DOL Regional Wage Specialist to ask to be added to the distribution list to receive notification when a Davis-Bacon wage survey is planned. Scheduled surveys can also be found at [www.dol.gov/whd/programs/dbra/surveys.htm](http://www.dol.gov/whd/programs/dbra/surveys.htm).
2. **Request a pre-survey briefing** – DOL frequently conducts *free* pre-survey briefings at its offices to clarify survey procedures and provide information on how data should be submitted in order to be considered valid. The presentation also includes information on how wage and fringe benefit data are obtained and compiled, sufficiency requirements for issuing rates and wage determinations, and the process for filing conformances (requests for missing job classifications) and wage determination appeals.



Survey announcement letter to interested parties

DOL also conducts these briefings at off-site locations and sometimes electronically. This is currently one of DOL's primary outreach efforts and is a great opportunity for organizations to educate contractors in a safe zone – either in person or via webinar for greater attendance.

If DOL does not contact your organization directly, you may contact a Regional Wage Specialist to request a briefing. Contact information can be found on the DOL website at [www.dol.gov/whd/programs/dbra/regions.htm](http://www.dol.gov/whd/programs/dbra/regions.htm).



[www.dol.gov/whd/programs/dbra/regions.htm](http://www.dol.gov/whd/programs/dbra/regions.htm)

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## Challenging a Wage Determination

The opportunity to influence Davis-Bacon prevailing wage rates does not end once DOL issues a wage determination. Interested parties with good cause to believe that the wage determination is inaccurate do have some prospects for recourse.

### Efforts by Contractors

A contractor may challenge the wage determination issued by DOL or identified by the awarding agency by filing a written appeal with DOL's Wage and Hour Administrator.

In these instances, it is not sufficient for a contractor to merely complain that the prevailing wage rate is too high and should be adjusted. Rather statistical data must be submitted with a letter requesting a review.

*For example: If plumbing, pipefitting and sheet metal work are all contained under one Davis-Bacon trade classification, the contractor could show through local CBAs, industry surveys, statistical data from the Bureau of Labor Statistics and other independent companies that the classification of plumber-pipefitter should be a separate category from that of sheet metal worker (HVAC), with distinct prevailing practices, wage rates and benefits.*

### Efforts by Others

Other interested parties that wish to challenge a wage determination must provide similar data. One way to provide the statistical data necessary to present to DOL is to conduct an independent prevailing wage survey of the survey area. It is important that the survey be administered and analyzed by an impartial third party that specializes in conducting and analyzing compensation surveys of this nature. A survey conducted directly by an organization like an AGC chapter, without use of such a third party, might be considered invalid and might raise antitrust concerns. If the data reflected by the third party survey supports your concerns, DOL may consider reevaluating their original data or conducting a new survey.

### Getting a Response

The letter and supporting documentation should be submitted to DOL's Wage and Hour Administrator at:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

If the decision of the Administrator is not favorable, an appeal may be directed to the Administrative Review Board (formerly the Wage Appeals Board.) Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

All decisions by the Administrative Review Board are final.

### Getting Federal and State Agencies and Officials Involved

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Sometimes, a battle is easier fought with the support of others. Depending on the political environment in which you operate, you may want to contact your federal and/or state government officials (e.g., member of Congress or state secretary of transportation) to explain how the inaccurate reporting of construction wages on wage determinations has affected the way your company (or the companies that your organization represents) conducts business and, in turn, how this affects government contracting and spending. In this era of constrained budgets and enhanced focus on fiscal responsibility, these government officials may be motivated to intervene with DOL on your behalf.

## More Information

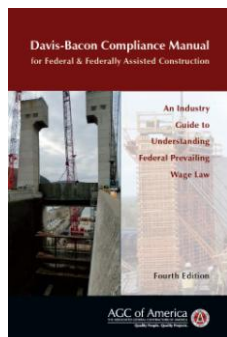
AGC of America offers several other resources on the Davis-Bacon and Related Acts covering a variety of compliance, as well as wage determination, issues.



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